

**How does the National Housing Policy of South Africa promote  
economic justice?**



A minithesis submitted in partial fulfillment of the requirements for the degree of Magister Administration in the Faculty of Economic and Management Sciences, University of the Western Cape.

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# HOW DOES THE NATIONAL HOUSING POLICY PROMOTE ECONOMIC JUSTICE?

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## KEY WORDS

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Bill of Rights

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GEAR

Economic policy

Social conditions



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## ABSTRACT

### **How does the National Housing Policy promote economic justice?**

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Lack of adequate housing is a key feature of poverty in South Africa. After the first democratic election in 1994, Government has faced the challenge of reconstruction and development, particularly with regard to improving the living conditions of those most disadvantaged by Apartheid. Inheriting a housing backlog as well as a fragmented and discriminatory approach to housing policy, Government has sought to make adequate housing affordable to especially those with little or no income. This mini-thesis aims to assess the approach of Government to the housing crisis. It does so by evaluating the National Housing Policy in the context of key legislation and policies that have shaped Government's response to the onslaught of poverty. The Constitution, the Reconstruction and Development Programme (RDP) and the Growth, Employment and Redistribution Strategy (GEAR) are the specific documents considered in terms of its impact on the nature of government's development priorities and its approach to addressing these priorities. The concept of economic justice is used as a basis on which to assess the Government policies in question. The Government's Subsidy Programme and its efforts to encourage private sector investment in housing are identified as the key strategies employed by Government to solving the housing crisis. The main conclusions are that in the context of unemployment and low incomes, the advantages of the Subsidy Programme are limited because the poor have a limited capacity to improve on the houses provided by the subsidy. Also the government relies too heavily on the private sector to provide housing. It is difficult to maintain consistent private sector involvement because this sector's primary motivation is profit and the low-income sector is considered a high-risk investment. This is not an effective strategy in attempting to resolve the housing crisis. Furthermore, the benefits of the Subsidy Programme, while enhancing economic equity by targeting the very poor, are limited because it relies on the availability of supplementary resources for housing. The implications of these factors for economic justice are that the equity cannot be fully achieved while improvement in the poor's economic capacity moves at a much slower pace than their capacity to improve their social conditions, specifically with regard to housing. Much more investment in housing from Government is proposed. Initiatives that could be utilised more are the establishment of more public works programmes and savings-linked credit schemes. The mini-thesis concludes that the national housing policy promotes economic justice only to limited extent, because of the problems identified with the strategies to place more emphasis on mobilising alternative resources, which are difficult to achieve in the current economic context the country finds itself in.

May 2002

## DECLARATION

I declare that How does the National Housing Policy promote economic justice? is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Lynn Boezak



15 May 2002

SIGNED: .....

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## INTRODUCTION

Homelessness seems to be a permanent part of our society. South Africa has experienced many far-reaching events, the most significant of which has been the election of its first democratic government, a definitive break with an oppressive past. Injustice is something South Africans understand all too well. For so long, our reality has been shaped by a constant struggle against political, economic and social injustices. Free and fair elections, the Constitution, the Truth and Reconciliation Commission, legal reforms abound and a firm political commitment to destroying the instruments which divided the country has been some of the landmarks of the new dispensation. Jobs, peace and freedom. A simple yet accurate description of some of the most basic aspirations of South Africans.

We have achieved remarkable progress in the quest for political justice, but improvement on the economic front has been much slower. Poverty remains a reality to a large portion of our population. Lack of adequate housing and services related to housing is a conspicuous feature of this poverty. The new government has not only inherited a backlog of housing for the poor, but also has to deal with an ever-growing population and an ever-growing backlog. This mini-thesis aims to assess the approach taken by government to the problem of housing. It addresses the question: How does the National Housing Policy in South Africa promote economic justice? It prioritizes the importance of economic justice, as a concept which has both economic and political dimensions, and the pursuit of which is firmly rooted in South Africa's history. The National Housing Policy is analysed, in the

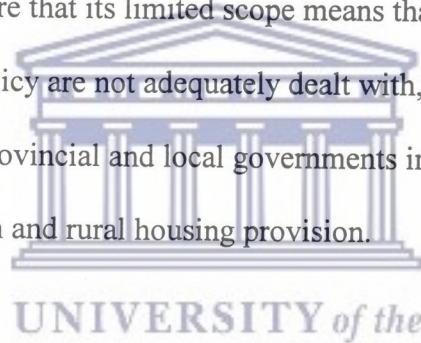


context of the RDP, the Bill of Rights in the Constitution and the Growth, Employment and Redistribution Strategy (GEAR), which set out development priorities and government's approach to achieving these priorities.

Chapter One provides an overview of some of the major interpretations of economic justice, notably by C. B. Macpherson and John Rawls, and arrives at an interpretation that is most useful for the South African context. It identifies indicators according to which government policy can be scrutinised with specific reference to economic justice, and proposes two principles against which policies can be evaluated. Chapter Two explores the Bill of Rights in the Constitution, highlighting rights to certain basic goods and services including housing. It considers the implications of these for the prioritisation of economic justice by Government. The implications of the rights contained in the Bill of Rights is further highlighted by considering a legal case brought before the courts (Grootboom vs. Government of the Republic of South Africa and others). This case dealt with the right to housing and Government's obligation to provide for the realisation of this right. It also describes sections of the RDP and GEAR that are significant indicators of the development priorities of Government. In Chapter Three, sections of the Housing White Paper are described to show the main points of departure and strategies of Government for solving the housing problem. Chapter Four assesses the extent to which the national housing policy promotes economic justice. It assesses whether the approach taken is likely to be effective in improving access to affordable housing for the poor, and whether economic justice remains a priority in government policy.

The methodology involved a critical analysis of government's housing policy, with a specific focus on the Housing White Paper. Crucial to this analysis is the above-mentioned policy documents, which have a significant influence on the environment in which the White Paper operates. Secondary sources were consulted to provide an understanding of economic justice as a concept. The selected literature is used as a basis for formulating an interpretation of economic justice. This interpretation in turn is used as a basis for analysis of the national housing policy.

Limitations of the study are that its limited scope means that certain factors important to an analysis of housing policy are not adequately dealt with, notably the issue of land distribution, the role of provincial and local governments in the housing process, as well as the differences in urban and rural housing provision.



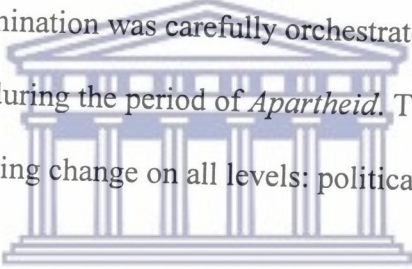
The need to prioritise economic justice forms the central motivation for this mini-thesis. The aim is to link economic justice to policy and legal initiatives and to show the inter-relatedness of politics and economics. It links housing policy to significant national policy documents and legislation and how these are both informed by and itself informs the prioritisation of economic justice. The analysis has important implications for contemporary notions of development, since it scrutinises Government policy in terms of its ability to effect economic equity as a crucial basis for improvement of the social conditions of the poorest sector of South African society.

## CHAPTER ONE

### WHAT IS ECONOMIC JUSTICE?

#### 1.1 Introduction

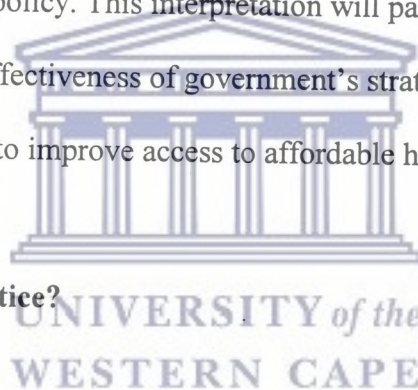
Huge economic disparities exist between rich and poor within many developing countries. Despite the goals of development, many people still do not have adequate access to basic amenities such as food, shelter and clean water. Economic justice becomes more and more important as the benefits of political rights and legal equality have not been extended as significantly to the economic sphere. This is particularly relevant in South Africa, where a cycle of poverty and discrimination was carefully orchestrated and imposed on the majority of the population during the period of *Apartheid*. The South African government faces the challenge of effecting change on all levels: political, legal and economic.



The international human rights movement has evolved in a manner that has transcended the traditional emphasis on civil and political rights. Increasingly, socio-economic rights have been recognised and advocated as a crucial part of promoting human rights. The persistence of widespread poverty has resulted in an increasing concern for socio-economic rights. However, the crucial question is the extent to which these rights can be realised on a practical level, and within the confines of the economic constraints faced by many countries, especially in the developing "Third" world. Even as countries democratise, and develop more democratic institutions, what is the scope for the realisation of socio-economic rights? In countries with progressive constitutions (such as

South Africa), where socio-economic rights are included in a Bill of Rights, to what extent can these rights be enforced? And who carries the responsibility of enforcing these rights? The demand for the realisation of socio-economic rights shows a growing dissatisfaction with the inability of traditional forms of justice in effecting a more practical improvement in the quality of life of millions of people.

The following section does not provide an in-depth analysis and discussion of the debates about economic justice. It explores some of the major interpretations of economic justice, and arrives at an interpretation that is useful for evaluating important political issues as expressed in government policy. This interpretation will particularly be utilized as a basis for evaluating the likely effectiveness of government's strategy (as expressed in the National Housing Policy) to improve access to affordable housing.



## 1.2 What is economic justice?

Macpherson defines economic justice within the following framework:

One obvious requirement ... is that it be about *economic* relations, that is, relations into which people enter ... in their capacities as producers or owners or exchangers of valuable goods or services... economic relations must be seen as having become something distinct from social and political relations in general. (1987:2)

A second requirement is that "...a concept of economic justice always asserts a claim to *regulate economic relations in the light of some ethical principle.*" (1987:2) (My emphasis). Such a framework is useful in that it establishes from the onset the parameters within which economic justice can be considered a distinct branch of justice. It deals with specific kinds of relations, i.e. economic relations. It also highlights the centrality ethical principles that should govern these relations. The nature of these principles are, ofcourse, a point for debate.

John Rawls addresses the issue of justice in *A Theory of Justice* (1971). He uses the classical idea of the Social Contract as the basis on which people in society agree on principles of justice. But he further develops the theory of the social contract. The key concept he employs when considering principles of justice is one which he calls *justice as fairness* (Rawls, 1971:250). For Rawls, principles of justice are those that "...free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association." (Rawls, 1971:249). These persons would choose principles which would determine the rights and duties of each person in society, as well as how social benefits will be divided (Rawls, 1971:250). An important aspect of the process of choosing these principles relates to the conditions under which the choice is made. Here Rawls states clearly that:

Among the essential features of this situation is that no-one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I

shall even assume that the parties do not know their conceptions of the good or their special psychological propensities (Rawls, 1971:250).

Rawls claims that principles of justice are chosen under a 'veil of ignorance'. And what makes such a situation fair is that, because no-one is aware of their social circumstances they would choose principles which would be fair to each person. Rawls refers to this initial position of equality as the 'original position'. Another important feature of justice as fairness is that people in the original position are "...rational and mutually disinterested." (Rawls, 1971:250). This means that each person does not take an interest in another person, and that such persons are rational in the sense that they will take the most effective means to given ends. Individuals are committed to a reasoned discourse, where decisions are made in terms of what is reasonable for everybody (DeMartino, 2000:93).

Rawls proposes two principles of justice:

- 1) Each person is to have an equal right to the most extensive basic liberties
- 2) Social and economic inequalities are to be arranged so that they are both
  - a) reasonably expected to be to everyone's advantage, and
  - b) attached to positions and offices open to all

(1971:253)

Rawls' first principle, which he points out should always precede the second principle, deals with justice on a more general level. The right to basic liberties such as freedom of speech and assembly and freedom from arbitrary arrest are required by the first principle to be equal (Rawls, 1971:253). The second principle applies to the distribution of income and wealth and "...to the design of organizations that make use of differences in authority and responsibility, or chains of command." (Rawls, 1971:253). Rawls suggests that, in a just society, the distribution of income and wealth need not be equal. However, it must be to everyone's advantage, and "...positions of authority and offices of command must be accessible to all." (Rawls, 1971:253-254). The requirement of this principle is that primary goods should be equally distributed, except where unequal distribution would benefit those who are worst off (DeMartino, 2000:94). Rawls further states that "All social values - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage." (Rawls, 1971:254). Rawls is thus suggesting that inequality itself is not unjust, but that inequality that is not to the benefit of all, is unjust.

Macpherson draws on Aristotle's writings on economic justice, drawing particular attention to two branches of economic justice, i.e. commutative justice and distributive justice. Commutative justice refers to justice in acts of exchange, where these acts should be done at a just price (Macpherson, 1987:6). A 'just' price is taken as "...that which yields to the producer of each commodity a return proportionate to the status customarily enjoyed by a person of his occupation or skill." (Macpherson, 1987:6). Distributive justice

refers to "...justice in the distribution of society's whole product..." and it "...required at least that every household should have the moderate income needed for the good life..." (Macpherson, 1987:6). The principles of economic justice referred to by Macpherson deals with two aspects of economic justice - fairness in exchange of goods and services produced and fairness in the distribution of all goods and services produced by society as whole.

An important difference between the concept of economic justice explored by Macpherson and that proposed by Rawls, is that Macpherson's discussion is contextualised, whereas Rawls attempts to abstract the concept to a more general level. In fact, for Rawls, it is crucial that a concept of justice be protected from a setting in which people's position and status in society are known, in order to arrive at principles of justice which are fair. Macpherson, on the other hand, traces the development of the concept of economic justice within the context of the changing nature of economic relations in particular societies. Macpherson argues that economic justice as a distinct concept did not exist until economic relations driven by the market began to encroach on social relations in traditional political society. The concept arose as a defense against this encroachment (Macpherson, 1987:1). The key factor he considers is the changing relationship between the market (and market-determined values) and the social and political structures (and its values) present in these societies. The turning point, in Macpherson's view, is "...the achievement by merchants and markets of a relative autonomy or independence from the state." (1987:4). This autonomy came to be perceived as a threat to the supremacy of



politically and socially determined values in society. Goods increasingly were produced as commodities for the market rather than for the household or community. This led to the growth of the 'impersonal market' and to the growth of money transactions. "It called for a concept of economic justice, comprising principles both of fair exchange of commodities, and of fair distribution of the society's whole product." (Macpherson, 1987:5). The emergence of economic justice, according to Macpherson, was thus a response to specific developments in economic relations in society.

Rawls chooses instead to identify a setting in which people do not take into account any such specific developments when they decide on principles which would be fair to all. He states that "without these limitations on knowledge the bargaining problem of the original position would be hopelessly complicated..." (Rawls, 1971:252). Since he considers the original position to be a situation of equality, and in which principles are chosen behind a veil of ignorance, such principles are considered fair. He states that "The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair." (Rawls, 1971:250). Rawls' theory is based on a hypothetical situation that would give rise to fair principles. Macpherson's approach instead takes cognizance of actual changes taking place at different periods in society.

The difference between these two theorists is also evident in their conception of the nature of human beings. Rawls assumes that parties in the original position are rational and mutually disinterested. He points out that the original position corresponds to the state of

nature in the traditional theory of the social contract (Rawls, 1971:250). This is an extension of Hobbes' theory of the state of nature, in which human beings are thought to be innately unsocial, which corresponds with Rawls' idea of mutually disinterested individuals. For Macpherson, though, such a theory should be left out of a concept of economic justice, because "...it leaves out the possibility for an ethical principle that would regulate human relations out of the control of any purposeful human agency..." (1987:3). Macpherson further asserts that Rawls' theory can hardly be considered a theory of *economic* justice.

For it starts from the claims of dissociated individuals, not of individuals as members of society, and assumes market-maximising behaviour as their innate or essential attribute, whereas the hallmark of the concept of economic justice, has been its assumption that social norms and ethical values should prevail over, or not be eroded by, impersonal market values. (1987:12).

Macpherson sees individuals and the economic choices they make within their social and political context, whereas Rawls isolates the principles of justice that individuals would make outside of such a context.

Another important dimension of the debate is the idea of trade-offs. This is linked to the perceived choice that has to be made between efficiency and equity. Kuttner suggests that "The economic illusion is that social justice is bad for economic growth." (1984:1). This alludes to the idea that there is an inevitable trade-off between economic growth and

social welfare. Equality and efficiency are pitted against each other. One has to be sacrificed to gain the benefits of the other. Macpherson challenges such an approach, pointing out that it restricts the choices to two alternatives, thereby ignoring the possibility of a third alternative (1987). Bardhan explains that public opinion about social justice comes from both the 'right' and 'left' of the political spectrum in the following way:

- On the right, it is believed that if we pursue equity or social justice, the principles of efficiency will be violated.
- On the left, it is believed that priority should be given to social justice, as a primary goal, and that while there are costs in terms of efficiency, we should be prepared to sacrifice those. (2000:20)

Bardhan challenges such notions which assumes a trade-off. The author claims that the trade-off between equity and efficiency "...is often false or at least exaggerated."

(2000:20-21). Bardhan claims that the relationship between equity and efficiency is not black-and-white, with some redistributive projects enhancing productive efficiency, while in other cases, particularly in poor countries, such projects are inadequate (2000:21).

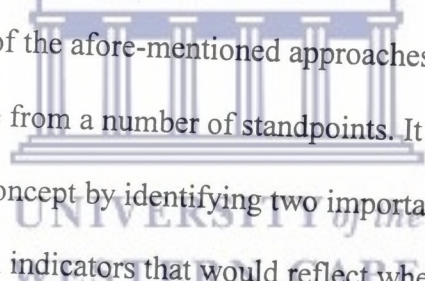
Bardhan characterizes the debate about redistributive policies and equality as partial and incomplete. He suggests that egalitarians favour government intervention, but do not consider adequately the incentive problems in the public sector. On the other hand, opponents of this approach favour an idealized view of the private economy "...overlooking the incentive problems caused by inequality itself in the process of

exchange" (2000:21). Bardhan's emphasis is on the equity-efficiency relationship at the micro-level, at the "...level of firms, farms, neighbourhoods and local communities." (2000:22). There is a great deal of scope at this level for efficiency-enhancing egalitarian measures (Bardhan, 2000:22). He states that "...inequality quite often induces more political instability and ...may in turn depress investment and productivity growth." (2000:22). He discusses a number of cases in which the interaction of equity goals and efficiency goals have had divergent effects and results.

What is interesting (and important) about Bardhan's analysis is that he delves into the specific conditions present in the cases he cites, exploring the relationship between various groups in the society, such as the State (government), communities and private business. Bardhan's contextualised approach is similar to that of Macpherson, in that it addresses the complexities associated with economic and political relations in society, and how this affects a conception of economic justice.

What makes these interpretations significant? It represents, even if only to a limited extent, two opposing views on the interaction between politics and economics, one that highlights the importance of ethics and the inter-relatedness of politics and economics, and one that separates the politics and economics, giving these factors some independence from each other. Despite the danger of over-simplifying what appears to be a dichotomy between a more liberal view and a more socialized conception of justice, it is nevertheless useful to consider these important to the present analysis.

Rawls' conception of economic justice does not adequately aid an understanding of the complexities of politics and economic in SA. The present political landscape is too inextricably linked to the past to support any claims that the principles of a just South African society can be made on the basis of free and equal persons, since it is precisely the curtailment of freedom and the inequality which characterizes the history of the country. Furthermore, South African society is thoroughly conscious of status, be it economical, social or political. Macpherson and Bardhan's analysis is more useful in this regard, since it utilises the context of particular societies as a point of departure for interpreting economic justice.



What are the implications of the afore-mentioned approaches to economic justice? The concept is clearly debatable from a number of standpoints. It is helpful, though, to arrive at an interpretation of the concept by identifying two important aspects. Firstly, it is necessary to point to certain indicators that would reflect whether a policy or law addresses economic justice as distinct from general justice. Here, Macpherson's description of what makes economic justice distinct is useful. A policy or law should thus deal with the exchange of or access to valuable goods and services. Specifically in the South African context, goods and services that should be singled out are those that can be seen as basic necessities of life, such as housing, water, food, education and health care.

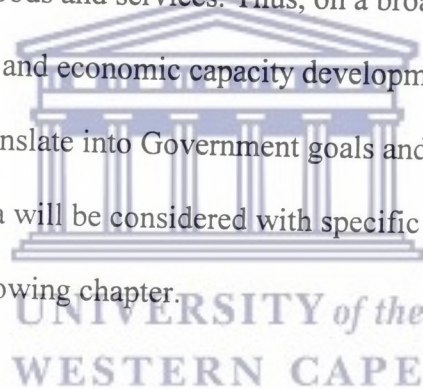
Secondly, the policy or law should locate these valuable goods and services within the historical, political and social context of the members of society whose access to and use of those goods and services are at stake. This implies that any consideration of what is economically just should take into account the historical and current political, economic and social developments in that society. Both Macpherson and Bardhan's analysis highlight the significance of the specific context when considering questions of economic justice. Macpherson achieves this at a broader level, taking account of the historical changes that have shaped the emergence and existence (characterized by rise and decline) of economic justice. Bardhan's analysis is based on the micro-level, showing the varying factors that influence the perceptions and practice of efforts to attain social justice.

Next, I wish to propose principles of economic justice according to which Government policy can be scrutinised. These are ethical principles (informed by Macpherson's analysis). This implies not only that these principles should inform the broader framework of Government policy, but should also specifically guide its goals and actions

It is important to note here the important role of the Government in the drive for economic justice. The present analysis infact focuses on the role and responsibilities of Government in this regard. This does not assume that the State is solely responsible, but recognises the leading role it plays in shaping relations between various sectors in society. At the same time, Government's interaction with these sectors,

particularly the private sector and economically disadvantaged groups in civil society is highlighted.

*The first proposed principle* is that the distribution of the State budget should increase economic equity. The State budget, as a primary tool of distribution of wealth, is instrumental in effecting a more equitable distribution of goods and services. *The second proposed principle* is that measures should be taken which would increase people's capacity to access basic goods and services. This includes institutional, economic and legal measures to ensure that previously disadvantaged groups are able to improve their capacity to access these goods and services. Thus, on a broader level, Government should aspire to economic equity and economic capacity development, and more specifically, these principles should translate into Government goals and actions that would aim to achieve this. These criteria will be considered with specific reference to the National Housing Policy in the following chapter.



### **1.3 Why is economic justice important in South Africa?**

“Our struggle was never only about political democracy. It was and is about equity, about access to resources, about decent housing” – Trevor Manuel (Budget Speech, 1998:1)

The need to highlight the importance of economic justice is particularly relevant in SA. The struggle against Apartheid as a system of political, social and economic oppression

was one which sought to demand the dignity and quality of life which every citizen of the country is entitled to. Apartheid created unequal development of different population groups (groups which were designated by government), and lead to extreme poverty, especially of Black people (referring to so-called African, Coloured and Indian people). The Apartheid government systematically deprived Blacks of having equal access to basic amenities, and this was reflected in their separationist policies in areas such as education, health and housing.

Poverty has remained a politically contentious issue and one that remains a persistent feature of South African society. According to May,

...the definition of poverty has been the subject of some debate amongst policy analysts. The emerging consensus sees poverty as generally characterized by the inability of individuals, households or entire communities to command sufficient resources to satisfy a socially acceptable minimum standard of living. (2000:5)

Economic justice goes to the very heart of the poor's capacity to command resources to improve their living conditions.

Furthermore, other aspects of poverty identified by the South African Participatory Poverty Assessment are "...alienation from the community, food insecurity, crowded homes, use of basic forms of energy, lack of adequately paid, secure jobs and fragmentation of the family." (May, 2000:5). Poverty is certainly one of the legacies of Apartheid. One of the major aims of policy and legislation in the New South Africa (post-



poverty. Furthermore, it assesses the National Housing Policy, and the resultant strategies government has employed to address the housing problem in South Africa.



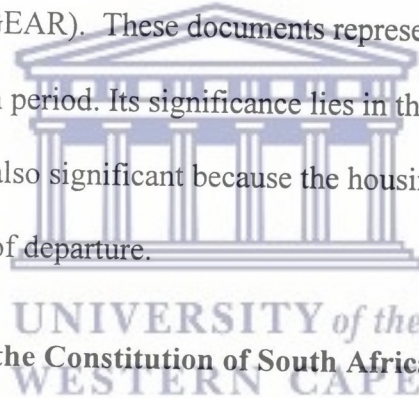
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## CHAPTER TWO

### BEYOND '94 - PRIORITIES OF DEVELOPMENT FOR SOUTH AFRICA

#### 2.1 Introduction

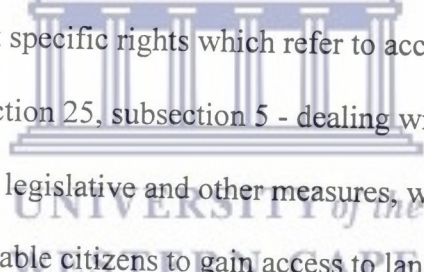
This chapter explores the key legislation and policies of Government that have shaped its prioritisation of the goals for reconstruction and development of South Africa in the Post-Apartheid period. Those singled out for attention are the Constitution of South Africa, The Reconstruction and Development Programme (RDP) and the Growth, Employment and Redistribution Strategy (GEAR). These documents represent, to an extent, certain periods in the post – 1994 election period. Its significance lies in the goals of development it attempts to advance. It is also significant because the housing policy explicitly identifies these as important points of departure.



#### 2.2 The Bill of Rights in the Constitution of South Africa

The preamble of the Constitution speaks to the motivation for adopting the Constitution as supreme law of the country. It states that the people of South Africa "Recognise the injustices of our past, ..." and "Respect those who have worked to build and develop our country". The Constitution is adopted as supreme law of the Republic so as to "...establish a society based on democratic values, social justice and fundamental human rights;" and "...improve the quality of life of all citizens and free the potential of each person...". There is thus an explicit recognition of the injustices of the past, and the need to restore,

enhance and sustain justice and the fundamental rights of all citizens, and to improve the quality of life of all citizens. Chapter One, Section One sets out the values on which the country is founded. Subsection (a) states that among these values are "Human dignity, the achievement of equality and the advancement of human rights and freedoms". Section 2 deals with the supremacy of the Constitution, and states that "...the obligations imposed by it must be fulfilled". Equality and human rights are thus identified as primary values, and that obligations stemming from the Constitution as supreme law must be fulfilled. Section 7 (2) of the Bill of Rights spells out the obligation of the State to fulfill the fundamental rights of South Africans. It states that "The State must respect, protect, promote and fulfill the rights in the Bill of Rights".

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- The Bill of Rights sets out specific rights which refer to access to basic goods and services. For example, Section 25, subsection 5 - dealing with property - states that "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis."
  - Another example is Section 27(1) which states that: everyone has the right to have access to –
    - a) Health care services, including reproductive health care;
    - b) Sufficient food and water; and
    - c) Social security, including, if they are unable to support themselves and their dependants, appropriate social assistance

Section 26 deals with the right to housing, and provides that:

(a) Everyone has the right to have access to adequate housing

(b) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right

(c) 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.

Consistently, it is provided that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. The Bill of Rights not only establish such rights as priorities, but also goes further to placing an obligation on the State to fulfill these rights.

This does not place responsibility solely at the door of government, but does compel it to take 'reasonable' measures within its available resources to fulfill these rights. The obligation of the State as well as the nature and approach to the right to housing provided for in Section 26, came under the spotlight in the case of *Government of the Republic of South Africa and Others vs. Grootboom and Others*. In this case, the Appellants (Government and Others) challenged the correctness of a previous judgement in which the Cape of Good Hope Provincial Division of the High Court had ordered the government to provide the Respondents in that case with temporary accommodation. The court required that "...tents, portable latrines and a regular supply of water..." should be provided to the

Respondents (BCLR 1169 (CC), 2000:1169). The court had considered whether the Cape Metropolitan Council had taken adequate measures to ensure that the respondents had access to temporary basic accommodation, specifically since these particular Respondents were living under deplorable conditions and found themselves in a crisis situation.

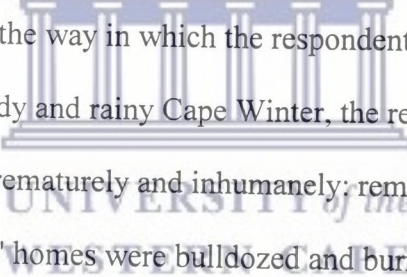
In his judgement of the case brought by the Appellants, Judge Yacoob described the events which had lead to the small community of squatters to settle on private land without permission of the owner. Mrs. Irene Grootboom and other Respondents (consisting of 510 children and 390 adults) had previously lived in an informal squatter settlement called Wallacedene. They lived under terrible conditions. Unemployment was rife in the settlement, and those who did work earned low incomes, with more than two-thirds earning less than R500 per month (figures taken from BCLR 1169 (CC), quoting from a needs assessment compiled in December 1997). They had no water, sewage or refuse removal services. Many of the people living in this community had applied for subsidised low-cost housing from the municipality. However, they had been on the waiting list for some years and could not obtain satisfactory answers from the municipality when they had made enquiries. Consequently, they moved out of Wallacedene and erected shacks and shelters on vacant land that was privately owned. The owner obtained an ejection order, but they continued to occupy the land. Mrs. Grootboom had reported that they had nowhere else to go, and that their sites in Wallacedene had been filled by others. An order was once again granted requiring the Respondents to vacate the land and authorising the sheriff to evict them and to remove any

of their structures they had put up on the land. The magistrates court also ordered the parties and the municipality to identify alternative land where those evicted could be accommodated, permanently or temporarily. However, no mediation took place, and the respondents were eventually forcibly evicted. Their homes were destroyed. The respondents took shelter at the Wallacedene sports field.

The evictions had taken place at the start of the winter season. Consequently, the Respondents had extreme difficulty maintaining a form of shelter which could withstand the winter conditions. The Respondents' attorney wrote a letter describing the conditions under which his clients were living, and demanded that the municipality provide temporary accommodation to the Respondents. The Respondents were not satisfied with the response of the municipality, and brought an urgent application in the High Court. The High Court granted relief to the Respondents.

The importance of this case lies in two factors. Firstly, the presiding judge took into account the historical and social context within which the case should be considered. He described the historical events (including policies of the Apartheid government) which had led to the ghastly conditions under which many people still live. Secondly, it addresses the obligation placed on the State to realise the socio-economic rights enshrined in the Constitution.

In his description of the conditions under which Mrs. Grootboom and the other respondents lived, Judge Yacoob referred to the past measures taken by the Apartheid government, which in his view, was the cause of the acute housing shortage in the country. He identified influx control as a central feature of the Apartheid policies. This system aimed to limit African occupation of urban areas (BCLR 1169 (CC), 2000:1177). Despite these control measures, African people continued to move to urban areas in search of jobs. Because there was no formal housing, many people moved into informal settlements. This had led to "...inadequate housing, resultant overcrowding, mushrooming squatter settlements, constant harassment by officials and intermittent forced removals." (BCLR 1169 (CC), 2000:1177).



The judge also referred to the way in which the respondents were evicted "...at the beginning of the cold, windy and rainy Cape Winter, the respondents were forcibly evicted... This was done prematurely and inhumanely; reminiscent of Apartheid style evictions. The respondents' homes were bulldozed and burnt and their possessions destroyed." (BCLR 1169 (CC), 2000:1178). The kind of description and analysis employed by the court in this case reflects an explicit recognition of the importance of the political and social roots of the socio-economic conditions in question.

The second aspect considered was the approach to be taken to the actual rights contained in the Bill of Rights, which addresses the right to have access to adequate housing. The rights contained in Sections 26 and 28 was considered in the context of the cluster of

socio-economic rights in the Constitution (BCLR 1169 (CC), 2000:1170). The court held that even though the realisation of these rights clearly had budgetary implications for the State, it was nevertheless *justiciable*. The court was therefore constitutionally bound to ensure that such rights are protected and fulfilled. Furthermore, the right of access to housing could not be seen in isolation. There is a close relationship between that right and other socio-economic rights.

The extent of the State's obligation is identified by three key elements (a) the obligation to "take reasonable legislative and other measures"; (b) "to achieve the progressive realisation of the right; and (c) "within available resources" (BCLR 1169 (CC), 2000:1171). With regard to "reasonableness" a court would not enquire what other measures could have been adopted that may have been more desirable or whether public money could have been better spent. Instead, it would concentrate on the reasonableness of the measures that had been adopted. But legislative measures themselves are not enough. It needs to be supported by appropriate, well-directed policies and programmes. "Within available resources" refers to "...the rate at which the desired result is achieved...governed by the availability of resources." (BCLR 1169 (CC), 2000:1172). Availability of resources is thus an important factor when considering if a measure is reasonable.

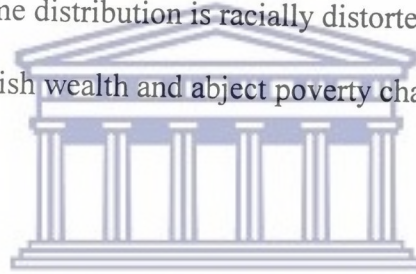


The spelling out of socio-economic rights in the Bill of Rights has implications which reach beyond legal compliance by government. The Constitution is a deeply contextual document, and provides an ethical as well as political character to Government's responsibility to ensure realization of such rights. It also has economic implications, making it all the more contentious, especially at a political level. The Grootboom case also highlights that Government is called upon to show that 'reasonable' legislative and other measures are taken to provide for these rights. The court's role is limited, however, with regard to the terrain in which these rights are contested. The Constitution establishes housing as a development priority, but can only provide limited guidance as to how this priority is to be achieved. Terms such as 'reasonable measures' and 'within available resources' is difficult to define in strictly legal terms, since it involves choices and decisions made in the political and economic terrain. It establishes the principle, but cannot by itself adequately direct the implementation of policy.

\* The RDP provides more 'meat' to this bone of contention, and provides more political justification for prioritizing socio-economic rights, including housing.

### 2.3 The Reconstruction and Development Programme (RDP)

The RDP emphasises redistribution and poverty alleviation. It describes the basic principles and guidelines for the reconstruction and development of South African society. A key priority identified in the RDP is the meeting of basic needs. In the preface to the RDP, former President Nelson Mandela notes that the RDP builds on the tradition of the Freedom Charter, recognising at the same time that it must go beyond the Charter "...to an actual programme of government." The document highlights throughout, the devastating effects Apartheid has had on the economy, and the resultant social problems. The RDP points out that "Our income distribution is racially distorted and ranks as one of the most unequal in the world - lavish wealth and abject poverty characterise our society." (1994:2).



Attacking poverty is identified as the first priority of government. Three of the basic principles underpinning the RDP are important to consider:

- 1) An integrated and sustainable program which would involve a co-ordinated effort to harness all possible resources for the reconstruction and development of the country;
- 2) Such a program would be centred on a people-driven process, where the RDP would focus on the most immediate needs of people and would rely on the energies of those people to meet their needs;
- 3) Link reconstruction and development, employing an integrated process which would not regard growth and redistribution as contradictory;

(RDP, 1994:4-7).

These principles indicate the approach taken by government to development, one which seeks to mobilize alternative resources (in addition to State resources), seeks to put people (previously disadvantaged) at the center of the process, and sees growth and redistribution as complimentary rather than contradictory. The impact of the latter becomes clearer when considering the way in which economic growth has become more and more prioritized as a means to achieving redistribution.

The RDP consists of five key programmes:

- 1) Meeting basic needs;
- 2) Developing human resources;
- 3) Building the economy;
- 4) Democratizing the State and society; and
- 5) Implementing the RDP



The first priority is "...to begin to meet the basic needs of people - jobs, land, housing, water, electricity, telecommunications, transport, a clean and healthy environment, nutrition, health care and social welfare." (RDP, 1994:7). Housing is thus identified as a basic need, is prioritized as such and forms part of the government's strategy to attack poverty. Two of these key programmes can be singled out for attention, i.e. meeting basic needs and building the economy. This is useful, firstly, because meeting basic needs

includes dealing with the provision of housing to previously disadvantaged groups.

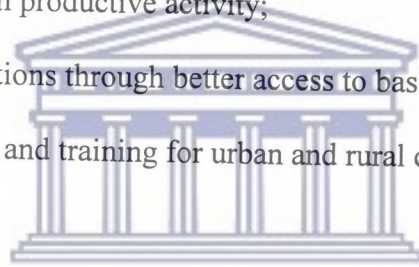
Furthermore, building the economy can be seen as a strategy of government towards creating conditions in which people will be able to improve their capacity to access these goods and services, including housing.

<sup>4</sup> The strategy for meeting basic needs includes:

1) Boosting production and household income through job creation, productivity and efficiency, improving conditions of employment, and creating opportunities for all to sustain themselves through productive activity;

2) Improving living conditions through better access to basic physical and social services, health care, and education and training for urban and rural communities

(1994:15-16)



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<sup>4</sup> With respect to housing, there is an important link between these two strategies. Access to services which would improve living conditions is closely linked to levels and conditions of employment. Services particularly relevant to housing such as electricity and housing as well as payment of municipal rates, requires investment by low-income home-owners, and can take up a significant portion of household income. Boosting of household income and employment creation would thus be beneficial to low-income groups.

Recognizing housing as a basic human right, the RDP states that:

Although housing may be provided by a range of parties, *the democratic government is ultimately responsible for ensuring that housing is provided to all.* It must create a policy framework and legislative support so that this is possible, and it must allocate subsidy finds from the budget - to reach a goal of not less than five percent of the budget by the end of the five-year RDP - so that housing is affordable to even the poorest South Africans (1994:23) (My emphasis).

This statement is significant, as it locates the major responsibility with Government to provide housing. It also sets a target for housing's share of the National Budget. This has implications for the role of Government as envisioned in the National Housing Policy. It also serves as a point of reference for assessing whether and how Government's role in the provision of housing has evolved since 1994.

The RDP sets minimum standards for housing, indicating that all housing must provide "...protection from weather, a durable structure and reasonable living space and privacy. A house must include sanitary facilities, storm-water drainage, a household energy supply..." and it must "...provide for secure tenure in a variety of forms." (1994:23). It also calls for rapid development of legislation which would address issues such as tenants' rights, squatters' rights, community re-investment by banks, the rights of people living in informal settlements, eviction, consumer protection, land restoration, community participation in planning and development, and anti-discrimination protection (1994:24). It proposes that administrative procedures related to housing should not be corrupt and

should not lead to any form of discrimination. The government should intervene to facilitate access to land that is suitably located, and planning should involve the communities affected. This suggests a leading role for government in ensuring that legal and institutional reforms are effected, while emphasizing the importance of involving communities in the planning process.

With regard to subsidies, it proposes a 'blending' of public and private sector funds to make housing finance affordable. It recommends that commercial banks must be encouraged to make credit and other services available in low-income areas. The significance of this notion becomes more pronounced in the Housing White Paper, which is dealt with in Chapter Three.

Furthermore, the roles of all the actors in the housing sector should, according to the RDP, be clearly defined. The actors include civic associations and other community groups, the public sector, non-governmental organizations, private sector developers, trade unions and financial institutions. It sees a leading role for the State in bringing about reconstruction and development, but also points to the need for a thriving private sector and the active involvement of all sectors in civil society (1994:78-79). The central goal is to create a strong economy that will eliminate poverty and meet basic needs, while also eliminating low or unequal wages. It points to the leading role to be played by the State in guiding the economy and the market, with the aim of achieving a "...dynamic balance between government intervention, the private sector and the participation of civil society.'

(1994:80). It identifies economic growth as a critical factor in improving services and incomes. This is important since it indicates an important element of the government's approach to providing housing and some of its underlying policy assumptions, e.g. that economic growth can lead to development and better opportunities for people to gain access to housing.

✓ The RDP, by identifying the meeting of basic needs as one of a key programme, provides an important role for economic justice in SA's development programme. It identifies barriers to housing that should be removed and describes Government's goals for improving access of the poor to affordable housing.

#### **2.4 Growth, Employment and Redistribution Strategy (GEAR)**

The fundamental view of the Government is that a disciplined approach to fiscal and monetary policy is not a curb on the attainment of RDP objectives, but rather a basic prerequisite for the attainment of those objectives on a sustainable basis.

Statement by Finance Minister Chris Liebenberg, Budget Speech, 15 March 1995, Cape Town (cited in *Housing Southern Africa*, 1995:4)

Government has regarded investment as a driving force for economic growth, which should entail "...investment in factories and machinery, investment in roads and houses and clinics, investment in people and their skills" (Manuel, 1998). The conditions needed

to foster such investment are dealt with in the GEAR. The two main objectives of the GEAR strategy are the transformation of the economy to meet the needs of SA's new democracy and enabling it to be competitive within the world economy (Government of South Africa, 1998). GEAR identifies the following key goals:

- 1) A competitive fast-growing economy that creates sufficient jobs for all work seekers;
  - 2) A redistribution of income and opportunities in favour of the poor;
  - 3) A society in which sound health, education and other services are available to all; and
  - 4) An environment in which homes are secure and places of work are productive
- (1996:1).

These goals promote economic growth, employment creation, redistribution of income and improved access to goods and services.

To achieve sustainable growth, transformation is needed towards a competitive outward-orientated economy (GEAR, 1996:1). Among the developments called for are:

- 1) A brisk expansion in private sector capital formation;
- 2) An acceleration in public sector investment;
- 3) An improvement in the employment intensity of investment and output growth;  
and
- 4) An increase in infrastructural development and service delivery making intensive use of labour-based techniques

(GEAR, 1996:2)



The above emphasises development of a strong private sector, creation of employment and productivity, as well as attracting investment.

Part of the core elements of the government's strategy includes budget reform that would strengthen redistribution, reducing the fiscal deficit and debt service obligations and countering inflation. It proposes a medium-term strategy, which would include eliminating government dissaving, revising the tax structure, and revising the budget to enhance the redistributive aspect of expenditure (1996:4). The GEAR further suggests that government consumption expenditure should be cut back (1996:5). As a result of the reduction in government consumption and government dissaving, domestic savings can be achieved. This would be an important basis for sustained long-term growth (1996:5-6). This growth strategy requires a favourable investment climate to be maintained, in order to attract foreign investment (GEAR, 1996:6).



GEAR consistently highlights the importance of job creation, and suggests that if the measures contained in the GEAR are adhered to, the potential for job creation is much greater. It proposes the following measures that would aid this kind of growth:

- 1) Tax reforms aimed at international competitiveness;
- 2) Trade and industrial policies that aim to promote an outward-orientated industrial economy, integrated into the regional and global environment and fully responsive to market trends and opportunities;

- 3) Public sector reforms, comprising asset restructuring, budget reprioritisation and improved service delivery, underpin social and infrastructural development in both urban and rural areas and contribute to the redistribution of opportunities and income; and
- 4) Employment and training policies that enhance the growth potential of industry, extend job opportunities to the unemployed and contribute over time to the redistribution of income (1996:6).

The above measures shows the consistent emphasis on promoting employment creation, developing human resources, creating a favorable environment for the private sector to thrive and closely monitoring and directing the way in which public resources are spent. GEAR aims to tighten fiscal policy, and proposes a lowering of the fiscal deficit target. In order to achieve the proposed targets the GEAR proposes an audit of government expenditure "...including RDP allocation, to identify those areas in which budgetary cuts can be made without detracting from the priorities and commitments of the Government." (1996:8). It further proposes the restructuring of the public service, with the aim of creating a more cost-effective service. GEAR states that "careful management of the overall government wage bill is central to the fiscal strategy" (1996:8).

The redistributive force of expenditures such as education, health, welfare, and housing is identified as a fundamental objective of economic policy. Furthermore, taxation should remain progressive. An improvement in economic growth and improved tax administration should increase tax revenue (1996:9). GEAR proposes changes to the

monetary and exchange rate policy of Government. The main objective of monetary policy is the maintenance of financial stability and reduction of the inflation rate. "Low inflation is an important requirement for higher economic growth, the creation of employment opportunities and a more equitable distribution of income." (GEAR, 1996:10). Real interest rates need to be kept at positive levels in a way that would not hamper growth. What is needed is lower (but positive) interest rates. This can be achieved by, inter alia, reducing government dissaving and attracting direct investment flows.

It is clear from the objectives and strategies of GEAR, that while much emphasis is placed on employment and redistribution, these are seen more as a consequence of accelerated growth in the economy than as stimulants for growth. The strategies articulated in GEAR are directed more towards finding ways to make the country attractive to investors as a means for achieving economic growth. It is also noteworthy that much of the focus is on a much more disciplined fiscal approach, which has important implications for government expenditure. Curtailment of government expenditure impacts on the amount that can be made available for housing. It has been argued that because inequality is so rife in SA, cutting back on spending will make it very difficult for government to deliver essential goods and services to the poor (Khanya College, 1997:22).

There has been a shift in emphasis regarding the means of achieving development goals in SA. On the one hand, the Constitution has established a clear principle of each person's right to quality of life. This is described in the Bill of Rights, in which a number of socio-

economic rights are entrenched. The RDP goes beyond legal principle to actually laying the foundations for future policy on how these rights can be realised. And a strong role is given to the State to provide the framework within which this should occur. An important difference between the RDP and GEAR is that in the RDP, meeting basic needs is a key programme alongside the building of a strong economy. With GEAR, growth of the economy is regarded as the best means of achieving other desirable goals such as creating employment and redistribution of resources. GEAR also encourages a redistribution of the budget, rather than an increase in overall budget expenditure.

Two aspects of this shift in emphasis is important to an assessment of the national housing policy. Firstly, the change in the nature of government intervention in ensuring that the most disadvantaged have access to affordable housing, and secondly, the expectation of the contribution of the private sector in aiding the provision of housing to the poor. The high level of unemployment in SA, as well as the persistence of low incomes also has a significant influence on efforts to establish a sustainable affordable housing programme. These aspects become clearer in the following chapter, which deals specifically with the national housing policy.

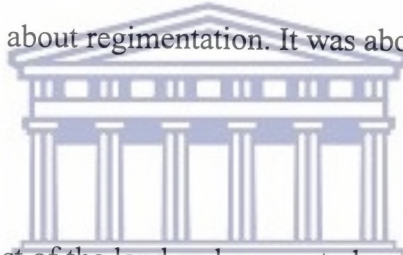
## CHAPTER THREE

### THE NATIONAL HOUSING POLICY

#### 3.1 Brief historical background to housing in SA

Joe Slovo (addressing the Housing Summit in Botshabelo) aptly described the motivating force of the Apartheid government's housing policy affecting Black people (in Goodlad, 1996:1):

What housing there was, was about control. It was about excluding people from urban areas. It was about regimentation. It was about the administration of deprivation.



Apartheid ensured that most of the land and access to housing was made available to Whites, whereas many Black people were forcibly removed from their homes and placed in separate areas, often living under poor conditions such as overcrowding, and lack of access to facilities. Black communities often lived in government (council) housing, informal settlements and Bantustans. According to Kentridge (1986:8), government had no coherent housing policy, but instead policy was made up of "a mixture of Housing Commission recommendations, speeches by Cabinet Ministers, and directives imposed by the central government on local authorities". The author points out the particular importance of the Viljoen Committee, appointed in 1981. This committee had to investigate the involvement of the private sector in overcoming the housing shortage

(Kentrige, 1986:8). The committee identified the following factors that contributed to the housing backlog:

- The temporary sojourner status of urban Africans
- Insufficient government funds for housing
- Inadequate involvement of the private sector
- Minimal utilisation of the resources of urban Africans

(Kentrige, 1986: 9)

The more urban areas became the centre of economic activity, the more Black people were compelled to seek employment in the towns and cities. This increased the need for accommodation in these areas, and presented problems to the government of the day. Continuing migration to cities led to an expansion of informal settlements, as the government was not adequately addressing the accommodation shortfalls in the towns and cities (Goodlad, 1996:4). Ramphele and Wilson identified dense overcrowding as one of the major aspects of the housing crisis (1989:129). The high levels of poverty were linked to high levels of unemployment and lack of access to services, as well as a destabilized housing environment (Department of Housing, 1998).

The formation of the National Housing Forum prior to the democratic elections laid the basis for the GNU's formulation of SA's National Housing Policy. This forum was a multi-party non-governmental negotiating body, consisting of members of business, the community, government and development organizations. This body researched and

developed legal and institutional interventions (National Housing Code, 2000:3UF). A National Housing Accord was signed by a range of stakeholders in October 1994. This Accord set out the beginnings for a vision for SA's housing policy. The Accord was followed by the Housing White Paper, which was promulgated in 1994. The Housing Act 107 of 1997 legislated and extended the provisions set out in the White Paper (National Housing Code, 2000:3UF-4UF). South Africa also endorsed the Habitat II Agenda that was put forward at the Second United Nations Conference on Human Settlement held in Istanbul, Turkey, 1996. This agenda consisted of two main themes: adequate shelter for all and sustainable human settlements development in an urbanizing world (Department of Housing, 2000).



### 3.2 Why is housing important?

A fundamental part of any long-term plan to deal with poverty must be housing (Ramphela and Wilson, 1989:330). Development of housing can be seen as an important part of alleviating the effects of poverty in the country. Types of benefits that stem from housing investment include:

- Better health, due to improved living conditions
- Improved labour productivity
- Community pride
- Employment opportunities
- Investment in infrastructure stimulates economic growth

- Improved quality of life
- Creation of stable communities

(National Housing Code, 2000:85)

Especially women stand to benefit from improved housing and infrastructure, as they are most often the primary care-givers and homemakers (Bond, 1998; Budlender (ed), 1996:122-123). Furthermore, housing is a very important contributor to women's security, with many women facing threats of domestic violence (Budlender (ed), 1996:122).

There is great inequality between male and female-headed households. Single female-headed households in rural areas still form the most impoverished sector of the population (Department of Housing, 2000). In the Western Cape metropolitan areas African women account for 40% of household heads (Mazur and Qangule (1995) cited in Budlender (ed), 1996:122). Cook et al also draw attention to the fact that female-headed households are not a homogeneous group and range from "...single mothers struggling to raise children alone to elderly widows whose children are grown and on their own..." (1994:16).

### **3.3 The Housing White Paper (1994)**

Government's national housing policy comprises of the Housing White Paper, the Housing Act as well the Urban and Rural Development Frameworks. Key documents that influence housing policy are the RDP and GEAR (National Housing Code, 2000:5UF).

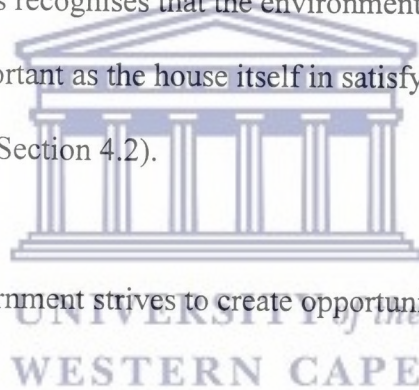
This chapter focuses on the Housing White Paper as the main policy document through which Government has set out its approach to affordable housing. The National Housing



Code sets out in detail the various elements of the Government's approach and strategies for meeting the housing challenge. It is therefore helpful to refer to the Code in the discussion of the main aspects of the White Paper, as the Code was published in 2000, and contains some of the more recent measures taken by government to implement its housing policy.

With reference to the national housing vision, the White Paper defines housing as:

...a variety of processes through which habitable, stable and sustainable public and private residential environments are created for viable households and communities. This recognises that the environment within which a house is situated is as important as the house itself in satisfying the needs and requirements of the occupants (Section 4.2).



It also specifies that government strives to create opportunities for all people to have access to:

- 1) A permanent residential structure with secure tenure, ensuring privacy and providing adequate protection against the elements; and
- 2) Potable water, adequate sanitary facilities including waste disposal and domestic electricity supply (Section 4.2).

Furthermore, government's goal is to "...increase housing's share in the total state budget to five percent and to increase housing delivery on a sustainable basis to a peak level of

338 000 units per annum, within a five year period, to reach the target of the Government of National Unity of 1, 000, 000 houses in five years" (Section 4.3). This goal builds on the foundation laid by the RDP, in terms of setting targets and time frames for addressing the housing backlog.

The White Paper explores the existing constraints to solving SA's housing crisis. In addition to the scale of the housing problem, a key constraint it identifies are low incomes which causes many people to be unable to afford adequate housing (Subsection 3.3.1). Linked to this there is also a lack of end-user finance, especially for low-income households, which is in part due to the reluctance of formal financial institutions to lend in certain areas and to certain income groups (Subsection 3.3.5). The single biggest constraint identified by the White Paper is *affordability*. This relates firstly to how much government can afford to spend on housing (given that housing also competes with other priorities in the national budget such as health, water and education). The second aspect is poverty, which has a big impact on the ability of the poor to afford houses (Subsection 3.3.10). These two aspects of the affordability constraint should be seen in light of the principles of economic justice identified in Chapter One, since the amount spent by Government on housing is reflected in the budget, and the ability of the poor to purchase a house is related to their capacity to have access to affordable housing.

In its exploration of the opportunities prevailing in the housing environment, the White Paper recognises housing as a key priority of the RDP and points out that this "...should

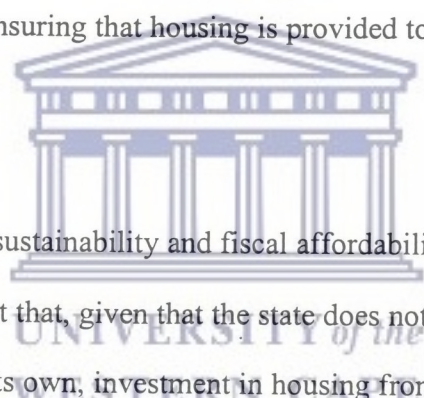
secure the necessary political will and fiscal support to enable the successful launch of sustainable housing programmes." (Subsection 3.4.2). This requires two main approaches: first, securing an adequate contribution from the budget and second, establishing multi-sectoral and multi-departmental co-ordination.

Some of the basic points of departure for development of a housing policy are:

- 1) **Sovereignty of the Constitution** and the recognition of **housing as a basic human right** - The White Paper recognises the State's duty to create conditions that will lead to an effective realisation of that right. It points out, however, that this should be done within resource and other limitations. The challenge is to "...develop a strategy in the short term to direct scarce and insufficient state housing and other resources together with private, non-state resources, to ensure that all those in need...are able to progress towards the realisation of an effective right to housing." (Subsection 4.4.2).
- 2) **Role of the State** - the State has the responsibility to implement policies and strategies that will redress the imbalance in the distribution of wealth in the country. It further states that the State should increase independency from State financial assistance and support, an approach that is consistent with the RDP (Subsection 4.4.3).
- 3) **People-centred Development** - Government is committed to a development process that empowers and equips people to develop their own economic empowerment, physical environment and satisfaction of their basic needs. Such a

process should be driven from within communities, and requires support that includes financial resources, appropriate institutional frameworks and support structures (Subsection 4.4.4).

These points of departure are consistent with the priorities articulated in the Constitution and the RDP, particularly with its emphasis on the right to housing and the responsibility of Government in this process, as well as the encouragement of community involvement in housing. Important to note is the assertion that the State should increase independence from State resources. As compared to the statement in the RDP that the Government is ultimately responsible for ensuring that housing is provided to all, this is a significant shift.



The White Paper identifies sustainability and fiscal affordability as an underlying policy consideration, and points out that, given that the state does not have sufficient resources to meet the housing needs on its own, investment in housing from other sources is needed. Private investment is needed. Maximum possible sustained investment should be mobilised from the State, private sector and individuals, which further requires the State to ensure level playing fields between the broader public sector and the private sector.

- The White Paper identifies four inter-related areas as important to the housing policy:
- 1) **Real side linkages** - includes the effects of housing policy on macro-economic variables such as output, employment, income, consumption, savings and investment, prices, inflation, and the balance of payments;

- 2) **Financial linkages** - the relationship between the financial sector - in particular formal and informal institutions providing housing finance - and the demand for, and supply of housing;
- 3) **Fiscal linkages** - the contribution of government to the supply of housing through tax and subsidy policy; and
- 4) **Socio-economic linkages** - housing policy impacts on socio-political stability, productivity and attitudes and behaviour (Housing White Paper, 1995).

These linkages are crucial because they describe aspects of housing that have an impact both on Government's capacity to provide resources for housing (fiscal linkages) and the capacity of the poor to access housing (financial linkages).

It becomes clear that emphasis is placed less on Government as provider of housing and more on mobilising alternative resources for housing. With regard to the fiscal deficit, expansion of the housing delivery programme necessitates a substantial increase in fiscal spending on housing. "The size of the budget deficit, however, implies that this additional funding will have to come either from an expansion of the tax base, or from a reallocation of current funds among budget categories." (Subsection 2.2.6). The White Paper thus explores various options for Government to find alternative resources.

Essentially, the State has four options open to it:

- 1) budget reallocation,
- 2) increasing taxes,
- 3) domestic borrowing, and
- 4) foreign borrowing.

Increasing taxes is said to be politically unpopular, and is thus not a viable option.

Domestic borrowing carries the danger of government crowding out private borrowing on the local capital markets. Foreign borrowing to finance housing both increases State debt and places a burden on the balance of payments with respect to debt servicing. Given the South African government's commitment to decrease the budget deficit to 3 per cent of GDP by the year 2000, neither of these alternatives would appear to be suitable to finance housing (National Housing Code, 2000:88-89). A reallocation of resources within the budget means that the State is able to devote more resources to housing without resorting to increased taxation or deficit financing. However, reallocation also means that the State is transferring funds to housing and away from other areas of State responsibility while keeping the total level of State spending constant. This is the method currently being employed by the government to finance housing (National Housing Code, 2000:88-89). Noteworthy is that budget reallocation is favored above an increase in the size of the budget. This is quite telling with regard to its determination to curb its spending, and in this case its spending on housing.

➤ Only a limited State subsidy contribution towards the cost of a house is possible (Section 4.1). The White Paper consistently emphasises the need for a partnership between the various tiers of governments, the private sector and communities. This is reflected in the strategies for addressing the housing challenge. It seeks to approach the housing challenge through pursuing seven key strategies:

- 1) Stabilising the housing environment
- 2) Establishing a range of institutional, technical and logistical support mechanisms
- 3) Mobilising private savings and housing credit
- 4) Providing subsidy assistance
- 5) Rationalising institutional capacities
- 6) Facilitating the speedy release and servicing of land
- 7) Co-ordinating and integrating public sector investment and intervention.



This chapter focuses on strategies, as these demonstrate the main elements of Government's approach to the housing problem. These strategies also reflect the role of other actors involved in the housing process, particularly the private sector and beneficiaries of Government's housing programme.

## 1) Stabilising the housing environment

A stable public environment is needed for viable private investment. Government aims to pursue an incentive-based approach to stabilising the living environments of communities.

This approach entails:

- i) A campaign aimed at resumption of payment for goods and services, combined with public investment and management in areas where the public environment has collapsed
- ii) Engagement by the private sector in the public environment, focusing on housing credit

Two agreements were signed between Government and the Association of Mortgage Lenders (now called the Banking Council):

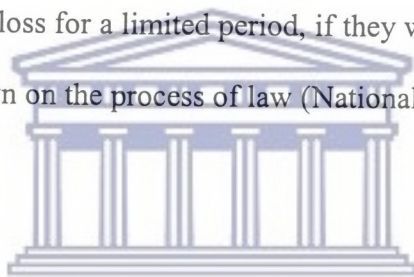
- i) Record of Understanding, which was later replaced by
- ii) The New Deal

**The Record of Understanding** aims to increase the availability of credit and to alleviate the risks associated with this credit. Risk alleviation interventions comprise of a *Masakhane* Campaign, which is a government-driven campaign aimed at encouraging individuals to pay their rates, service and mortgage or rental payments. Part of the motivation for this campaign was to avoid the idea of citizens being passive recipients of Government delivery (Republic of South Africa, 1998). This is seen as a 'carrot and stick'



approach which would provide development and assistance for housing in exchange for an increase in fiscal responsibility by communities (Summary of White Paper, 1994). It is aimed at reversing a culture of entitlement and it aims to persuade all people that they must contribute to this process through participation and payment for housing and services (Lewis, 1995:67).

The *Mortgage Indemnity Fund (MIF)* was a government owned company established for a 3-year period in June 1995. Its purpose was to encourage mortgage lenders to resume lending in the affordable housing market, and to provide financial institutions with indemnity insurance against loss for a limited period, if they were unable to repossess properties due to a breakdown on the process of law (National Housing Code, 2000:9UF-10UF).



The following institutions have also been established as part of Government's effort to stabilise the housing environment:

**Servcon Housing Solutions** – A private company established in June 1995 in terms of the ROU. Government and the Banking Council each own a 50% share of the Company. Its purpose is to assist households who have defaulted on their loans to resume payment. It uses a Payment Normalisation Programme, which offers a number of options to lenders. The options are Installment Sale, Rescheduled payment and a Rightsizing Programme (National Housing Code, 2000:10UF).

**National Homebuilders Registration Council** – Established in June 1995 as a Section 21 Company. Its purpose is to ensure good quality standards for the home building industry and protecting housing consumers from unscrupulous builders (National Housing Code, 2000:11UF).

**The New Deal** – After the closure of the MIF in May 1998, the ROU was reformulated and in April 1998 the New Deal was signed. It provides a framework for greater co-operation and sharing between government and the Banks, in the absence of the MIF. As part of this deal, Thubelisha Homes was established to procure or develop housing stock appropriate for rightsizing (National Housing Code, 2000:11UF).

These measures and institutions established by Government represent its attempt to form a partnership between itself, the private sector and communities. Campaigns such as Masakhane have been used to reverse the trend of communities refuse to pay for services, a tool used previously as a form of resistance against the Apartheid Government. Government has also attempted to facilitate the entry of the private sector into the low-income housing market.

## 2) Supporting the housing process


Given that many households cannot access credit and/or accumulate savings for housing, the State seeks to assist these households through State subsidies and appropriate technical and institutional support. This strategy, later referred to as the *People's Housing Process* aims to support and facilitate the process of home building by individuals, families or communities. It assists these households to access housing subsidies and technical, financial, logistical and administrative support (National Housing Code, 2000:17UF). The strategy makes use of the following arrangements:

**Support Organisations** – which are legal entities formed or contracted by individuals or communities to:

- Secure housing subsidies for families
- Facilitate the acquisition of land on the basis of secure tenure and
- Provide technical, financial, logistical and administrative support to housing subsidy beneficiaries regarding the building of their homes.

Each support organization operates from a Housing Support Centre, located in an existing or new facility, centrally located to ensure access for members of the community involved in the Project (National Housing Code, 2000:17UF-18UF).

**Funding** – involves the housing subsidy, facilitation and establishment grant. The facilitation grant provides funds for the community and the support organisation to prepare for applying for funding from the Provincial Housing Development Board. Workshops are held to enable the community to enter into an agreement with the support organisation, to prepare for the subsidy project application and develop locally defined solutions to housing problems. It is also aimed at developing a detailed business plan. The Establishment Grant enables the support organization to provide technical, financial, logistical and administrative support to the beneficiary communities.



**The People's Housing Partnership Trust** – implements the People's Housing Process. Its support activities are carried out at a provincial and local level. This capacitation programme involves advocacy, promotion and the creation of support for the People's Housing Process, facilitating streamlined operational procedures for the delivery of land, finance and infrastructural services, assistance to local organizations to organize and support People's Housing Initiatives, the development and promotion of technical skills and associated developmental support skills, and ongoing facilitation and promotion of housing support functions and arrangements. According to the Guidelines for supporting the People's Housing Process, "...experience has proved that if beneficiaries are given the chance either to build houses themselves or to organize the building of houses themselves, they can build better houses for less money" . They can save on labour costs and can avoid paying a profit element to developers (Guidelines for supporting the People's Housing Process:1-2).

This strategy is in line with Government's goal to involve communities in the housing process, by providing institutional and legal support, and enabling communities to be more directly involved in the process.

### **3) Mobilising Housing Credit**

Credit supplemented with savings can enable many people who are eligible for State subsidies to gain access to housing. This strategy seeks to encourage lending to the low-income sector by managing and cushioning commercial risk and sharing it between a range of players including the individual, the private sector and government. It seeks to indemnify financial institutions from loss of investment with the support of government. The idea is to share the risk between government and the private sector (National Housing Code, 2000:12UF). The White Paper identifies short-term and long-term credit mobilisation measures. Among the short-term interventions proposed in the White Paper are:

- A code of conduct for mortgage lending to prevent redlining and discrimination
- A mortgage indemnity scheme, whereby government will identify financial institutions for losses

- Address the problem of existing properties in possession by financing institutions
- Rightsizing, where borrowers who have defaulted are assisted in downsizing their accommodation to suit their affordability; and
- Homebuilders Warranty Fund, which includes a scheme to assist emerging black contractors to be accredited.

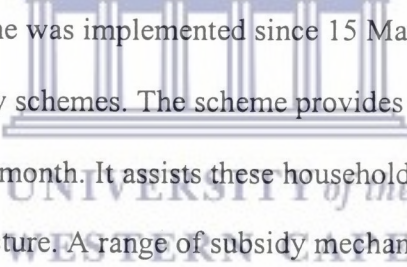
Long-term mobilisation of credit includes developing the capacity of non-traditional retail lenders. It also proposes the establishment of a National Housing Finance Corporation. The Government also wishes to mobilise savings by encouraging personal savings, through for example, savings-linked credit schemes in which individuals would have access to credit based on their participation in the scheme. These measures are also in line with Government's drive to stress the need for investments to be financed by savings through generating domestic savings as well as attracting foreign savings (Manuel, 1998).

Particularly with regard to housing investment, Government wishes to encourage and develop a track record of experience in the low-income market, as a way of bringing the private sector back into this market segment (Habitat Country Report, 2000). Government has thus spear-headed this effort by convening, for instance, a task team of bankers and developers, that sought to address issues relating to mortgage lending criteria (Housing in Southern Africa, 1997:4). Concerns have been raised that the private sector has been

hesitant to become involved in affordable housing developments because of poor payment records (Housing Southern Africa, 1997:12).

Government has thus attempted to encourage the involvement of the private sector by mitigating the effects of what has been considered a high risk sector for investment.

#### 4) Subsidies



The Housing Subsidy Scheme was implemented since 15 March 1994 and replaced all previous government subsidy schemes. The scheme provides a subsidy to households earning up to R0-R3500 per month. It assists these households to obtain secure tenure, basic services and a top structure. A range of subsidy mechanisms are provided namely, the Individual subsidy, the Project-Linked Subsidy, the Consolidation Subsidy, the Institutional Subsidy, the Relocation Assistance subsidy and the Rural subsidy.

The Discount Benefit Scheme promotes home ownership for long term tenants of State financed rental stock prior to 15 March 1994. The scheme also applies to deed of sale transactions and individual loans concluded before 15 March 1994, where a balance of the purchase price or loan still exists. The Public Sector Hostel Redevelopment Programme aims to rehabilitate public sector hostels to create acceptable living conditions and to integrate the hostel with the surrounding community.

Government's approach includes the principle of gearing, which entails measures that aim to gear non-state investment to the greatest possible extent. To this end, government has supported a policy of joint venture partnerships with the private sector in housing delivery (National Housing Code, 2000:44). Government has cautioned that if it wishes to provide support to as many citizens as possible, within the resources available, it is not possible to increase the size of the subsidy (Republic of South Africa, 1998). It has therefore stressed the need for fiscal discipline.

It states further that "...the subsidy policy is based on the principle of width rather than depth, where a large number of families will get a lesser subsidy, rather than a smaller number of families getting a larger subsidy." (National Housing Code, 2000:15UF). In the context of the limitations of the housing subsidy (which Government acknowledges does not purchase an adequate house), it maintains that partnerships between State subsidies and housing credit as well as personal savings should be promoted (National Housing Code, 2000:15UF). Government highlights the importance of the GEAR policy and its impact on housing. The most significant aspect of the GEAR policy is its impact on the availability of funds for housing. The National Housing Code states that:

GEAR is clear about promising tighter fiscal policy measures, which are being brought about by a cut in government expenditure and a more cost-effective civil service. Consequently, it is unlikely that government will have the capacity to



expand the scope of subsidies or grants, beyond those already accepted as housing policy....(2000:10).

The Constitution and The RDP as points of departure for the national housing policy provide a basis for establishing housing as a basic human right, and allocates a strong role for government to play in creating conditions for the realisation of this right. However, when considering the specific strategies engaged in by government, the measures encouraged by the GEAR strategy become the focus of the housing effort. In particular, budget deficit reduction and creating conditions favorable for private sector investment are conspicuous characteristics of the approach. A number of measures are used to encourage private sector involvement in the lower end of the market, i.e. low-cost housing, with government taking on much of the risk involved in providing financing of loans in this segment of the market. GEAR also calls for budget reprioritisation, as opposed to increasing budget expenditure. Government has taken a similar approach with regards to the budget allocation for housing.

Government seeks to enhance the role of the private sector in the provision of affordable housing, while reducing dependency on State financial assistance by beneficiaries. It also encourages communities to increase personal savings as a way of mobilising alternative resources for housing. Important to note here is that the Government acknowledges that the State subsidy alone cannot provide an adequate house. It depends on the capacity of the private sector and of individuals themselves to supplement the subsidy with alternative

resources. The implications of government's approach for promoting economic justice are dealt with in the following chapter.



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## CHAPTER FOUR

### THE NATIONAL HOUSING POLICY AND ECONOMIC JUSTICE

#### 4.1 Introduction

This chapter aims to assess the extent to which the National Housing Policy matches the criteria set out in Chapter One of this mini-thesis, in the context of the priorities set out in the key legislation and policies dealt with in Chapter Two. It assesses whether the policy promotes economic justice, and how it does or does not achieve this.



#### 4.2 Does the National Housing Policy promote economic justice?

Chapter One sets out indicators that show whether a policy is said to deal with economic justice. *The first indicator* is that a policy should deal with access to valuable goods and services, specifically those related to basic needs such as housing, water, food, education and health care. The Housing White Paper includes a broad definition of housing that describes housing as more than just the physical structure of the house, to include the environment in which the house is built, as well as services that are an important element of housing. It also describes the importance of housing to the goals of the RDP, especially as it forms part of one of its key programmes, i.e. meeting basic needs. It recognises housing as a basic human right, and further explains its importance in terms of the impact it has on the economy, the individual and communities. The broader and more inclusive

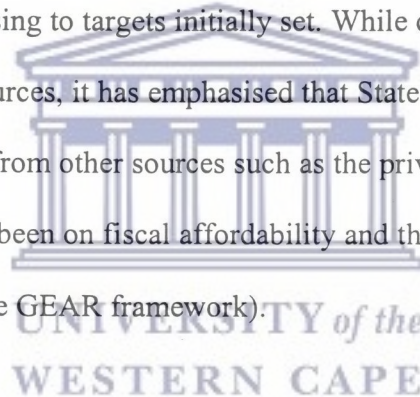
description of what housing entails, speaks to its value for the economic and social well-being of especially previously disadvantaged groups. It establishes housing as not just a product/good but also a service, one that is crucial to creating more stable communities.

The housing policy does therefore address this aspect of economic justice. It does this not only by adopting a conception of housing as a right enshrined in the Constitution, but also a right for which the State has a responsibility to create conditions for its realization. This has important political implications, since it creates the opportunity for people from disadvantaged communities who pledged political support for the ANC (as majority party in government) in the 1994 election to hold the party accountable for creating an enabling environment in which access to affordable housing is improved. Housing was an important part of the ANC's political campaign during the 1994 election.

*A second indicator* is that the policy should locate these goods and services within its historical, political and social context. This contextualisation is important to understand the position of various actors present in the domain in which access to these goods take place. The Housing White Paper describes the impact of Apartheid policies on SA's economy, politics and social conditions. These conditions form part of key constraints to the provision of housing. This ranges from legal constraints such as the multiplicity and duplication of legislation that has a bearing on housing, to broader political issues such as the lack of an overall housing strategy, which was symptomatic of the fragmented

approach that was characteristic of the Apartheid policies. This indicator is thus reflected in national housing policy.

*The first proposed principle of economic justice* requires that the distribution of the State budget should promote economic equity, since the budget is a primary tool for the distribution of resources. Government's goal was to increase housing's share in the total state budget to 5%. On the other hand, its efforts to ensure fiscal discipline have involved a curtailment of spending. This has resulted in Government not increasing the portion of the budget allocated to housing to targets initially set. While continually guarding against 'dependency' on State resources, it has emphasised that State resources are limited and that investment in housing from other sources such as the private sector and individuals is needed. The focus has thus been on fiscal affordability and the need for the State to limit its spending (in line with the GEAR framework).



The Subsidy Programme forms the biggest part of the State's contribution. The subsidy allocation focuses on people with the lowest or no income. This can be seen as one of the main ways the housing policy aims to promote equity in the distribution of resources. The Subsidy Programme is one of the key strategies to solving the housing problem and has the biggest impact on the housing budget. Government has adopted the approach of width versus depth, choosing rather to provide as many houses as possible, rather than focusing on the quality of the house. It does acknowledge that the houses built using the subsidy are inadequate. It attempts to remedy this by making opportunities available for these houses

to be improved by encouraging banks to enter into the lower end of the market as mortgage lenders as well as encouraging individual beneficiaries to save money for housing improvements.

*The second proposed principle* of economic justice is that the policy should increase people's capacity to access basic goods and services. The People's Housing Process, as part of Government's strategy, goes some way towards increasing low-income communities capacity to improve their access to affordable housing, especially through financial support (subsidy), logistical and institutional support. However, the People's Housing Process does not appear to be as extensive a part of Government's programme as the Subsidy Programme. Mobilising alternative resources to supplement the subsidy has also been difficult. On the one hand, unemployment and low wage levels may hinder ability of beneficiaries to accumulate personal savings. On other hand, financial institutions are apparently reluctant to provide finance to the low-income segment.

### 4.3 Conclusions

To draw conclusions from the above principles, it is useful to consider the implications of the approach contained in the housing policy on the main actors in the housing process.

The main elements of Government's approach to housing are its Subsidy Programme, which forms the most extensive part of the budget. Its broader economic objectives are also important here. Its goal of maintaining fiscal affordability has led to it shifting its position gradually from a role as the main provider of housing to a more facilitative role, with the aim of mobilising alternative resources, particularly from the private sector.

The role of the private sector is closely linked to that of Government, since more involvement from the private sector has been a fundamental part of Government strategy. This refers not only to the provision of finance for housing from financial institutions, but also to the building of low-cost houses by private contractors. The area of difficulty appears to be the high risk involved in providing mortgage loans to the low income sector.

As for the beneficiaries of the Subsidy Programme, a large portion of this sector experiences unemployment, while those who are employed often earn low incomes. This may affect their capacity to qualify for mortgage loans provided by financial institutions. A key part of Government's efforts have been directed at encouraging personal savings to supplement the subsidy allocation. But it has done so in the context of high

unemployment rates and economic growth that has not translated into the creation of jobs as envisaged by the GEAR. This may negatively affect people's capacity to save. And therefore their capacity to afford home improvements is more limited. This in turn affects the quality of life of beneficiaries of subsidised housing who may not be able to improve their living environments. The White Paper itself has highlighted unemployment as a significant characteristic of SA. It acknowledges that this high level of unemployment as well as the declining per capita GDP has a negative effect on housing and places constraints on the Government's ability to mobilise resources for housing.

A recent newspaper report (Sunday Independent, 13 January 2002) suggests that Government has now moved away from its perceived role as provider of housing, to a more facilitative role. More emphasis is being placed on the poor becoming much more involved in the provision of housing. Considering that the RDP located primary responsibility for providing housing with the Government, this is a significant shift. While it is important to ensure that the poor are part of the solution to problems of housing, this should not diminish the role of Government in the provision of housing. Priorities consistent with the GEAR framework have resulted in Government attempting to play a lesser role in the provision of housing, choosing rather to foster economic growth as a vehicle for an improvement in the availability of resources for housing. Economic growth has not had the effect initially envisioned by government, especially in terms of employment creation. Also, government has relied too heavily on private sector



involvement, and has tended to focus more on contractor built housing projects than on self-help schemes.

Government employs a “width versus depth” approach. The effectiveness of this approach is limited to the extent to which alternative resources can be mobilized to supplement State assistance. Again, this is difficult to achieve in the context of unemployment and low incomes. At the same time, banks are reluctant to provide financing to low-income groups. The width versus depth approach therefore limits the impact that the Subsidy Programme can make, in the absence of conditions conducive to the mobilization of non-State resources.



People-centred development becomes an impoverished concept when considering the low economic power of targeted beneficiaries. To what extent can the housing process be people-centred if people are not economically empowered? The benefits of economic growth are not being felt fast enough for people to be able to take advantage of this growth to improve their own living conditions, therefore government has to continue to take the lead in providing housing. It is still too soon for Government to depend on private sector investment, as well as personal savings, since economic growth has not increased the economic capacity of the poor sufficiently to enable them to take a larger responsibility for investing in housing.

The Government does not seem to approach housing as an investment for which there are beneficial rewards. It has not emphasised the need for an extensive public works programme that may have the dual benefit of providing housing and creating jobs. The White Paper itself points out that housing itself can also have a major effect on revitalising the economy, by creating opportunities for job creation (White Paper, 1995, Section 2.2.3).

If the efforts of Government to solve the housing crisis as expressed in the strategies identified in the Housing White Paper is weighed up against each other, it appears that much more weight is given to encouraging private sector involvement in the provision of affordable housing. Financial contributions of beneficiaries to their own housing needs is limited especially in the context of unemployment and low wage levels as described above. Since profit is the main motivating factor for institutions in the private sector, it is difficult to encourage these institutions to invest in a sector which puts profits at greater risk as compared to other sectors,

Compared to the Bill of Rights and the RDP, GEAR places much more emphasis on improvement of access to goods and services as a consequence of growth and investment, rather than as a worthwhile pursuit in itself. This kind of approach is reflected in the housing policy, where increased investment by the Government in housing is not preferred. The policy rather aims to make greater effort to pursue alternative sources of

funding for housing. This approach in itself is not inherently problematic, but its effectiveness is limited by the current economic conditions of poor communities.

In terms of promoting economic equity, then, the housing policy appears to fall short. It does promote equity by targeting the poorest sectors of the population in its Subsidy Programme. But this measure only goes so far in improving access to housing, since the subsidy is not sufficient to provide an adequate house. Again, this in itself would not be as problematic were it not for the problems of mobilising additional funding for housing.

Economic justice is difficult to achieve since it is not the primary guiding force of Government's efforts. Government seems to prioritise the needs of the private sector over those of economically disadvantaged groups. Admittedly, it does this with the aim of encouraging economic growth that is expected to be to the benefit of the poor. But the benefits of economic growth do not seem to keep pace with the worsening economic status of the poor.

Government must take the lead in the provision of housing. While this may seem to encourage dependency on State resources, it may on the contrary lead to a more empowered population, as it would contribute to a better standard of living. Avenues that could be utilised much more are the establishment of public works programmes and savings linked credit schemes, and increased co-operation with non governmental organisations.

Resolving the housing crisis is one of the biggest challenges facing South Africa.

Government taking the lead in providing housing need not imply dependency of the poor on State resources. This conclusion is based on the notion that investment in housing by the Government can serve as an empowering mechanism. Also important is that this conclusion is grounded in a consideration of the current context South Africa's poor find themselves in. An increase in the economic capacity of the poor seems to be a long term process. In the meantime, people continue to live under deplorable conditions.

Government must be guided by the spirit of the Constitution and the ideals of the RDP. It is not only an ethical obligation, but also a political commitment. Economic justice should remain uppermost on Government's agenda, until the most devastating effects of poverty have been eradicated.



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