

**ANALYSIS OF INFORMATION
PROVIDED BY THE DEPARTMENT OF HOUSING
TO THE SA HUMAN RIGHTS COMMISSION IN
TERMS OF SECTION 184(3) OF THE
CONSTITUTION:
THE RIGHT OF ACCESS TO ADEQUATE
HOUSING**

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for the individual to realize the right on his/her own accord. (See Liebenberg, 'Fundamental Rights: Commentary on Chapter 3 of the 1993 Interim Constitution and Chapter 2 of the 1996 Constitution (Housing)' in Davis, Cheadle and Haysom (eds) *Fundamental Rights in the Constitution* (1997) 342 for a thorough analysis of the terminology used in Section 26 of the Constitution.)

2.2. The Definition of "Adequate Housing"

It must be further noted that Section 26(1) of the Constitution provides for a right of access to *adequate* housing as opposed to a right to housing *per se* or a right to shelter. It is accordingly clear that a definition of exactly what constitutes "adequate housing" is required. Due to the limited literature and jurisprudence concerning an actual definition of "adequate housing" in the South African context, reference will be made to the International Covenant on Economic, Social and Cultural Rights and the interpretation accorded to "adequate housing" by the UN Committee on Economic, Social and Cultural Rights (CESCR) in that particular context.

In a General Comment (General Comment No. 4, Para 8), the CESCR has commented that whilst cultural, climatic and contextual factors are important in making a determination on the adequacy of the housing there are certain core factors that are central to making this determination. These entitlements form the core guarantees which, under international law, are legally vested in all persons. They include the following:

Legal Security of Tenure:

Legal security of tenure refers to the fact that all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats. In ensuring legal security of tenure, the CESCR has noted that governments are obliged to take measures aimed at conferring legal security of tenure upon those households currently lacking such protection. It has further noted that this should be undertaken in consultation with the affected groups or individuals.

Availability of Services, Materials and Infrastructure

The CESCR has noted that the availability of services, materials and infrastructure refer to the right of all beneficiaries of the right of access to adequate housing to have sustainable access to natural and common resources, clean drinking water, energy for cooking, heating, lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services.

Affordable Housing:

The CESCR has noted that costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. It has further referred to the need for housing subsidies and protection from unreasonable rentals or sporadic rent increases.

Habitable Housing:

Adequate housing should, according to the CESCR, be habitable. It should provide the inhabitants with adequate space and protection from the cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of the occupants must be guaranteed.

Accessible Housing:

Adequate housing must further be accessible to those entitled to it. The CESCR has noted that disadvantaged groups must be accorded full and sustainable access to adequate housing resources. These would include groups such as the elderly, children, the physically disabled, the terminally ill, HIV positive individuals, mentally ill, victims of natural disasters, people living in disease prone areas and other vulnerable groups. Such groups should be ensured some degree of priority consideration in the housing sphere and their housing needs should be adequately reflected in laws and policies.

Location:

Adequate housing must, according to the CESCR, be in a location which allows access to employment options, health care services, schools, child care centres and other social and recreational facilities. Furthermore, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

Culturally Adequate Housing:

Finally, the CESCR has commented that the way in which housing is constructed, the building materials used and the policies underlying these must appropriately enable the expression of cultural identity and diversity.

2.3. Ensuring the “Progressive Realization” of the Right of Access to Adequate Housing

In making the right of access to adequate housing subject to the internal qualifier of progressive realization, the Constitution has sought to acknowledge that, within the current resource constraints, access to adequate housing cannot be realized immediately. It has accordingly allowed for the right to be realized progressively and over a period of time.

The term “progressive realization” in the ICESCR has been interpreted as imposing an obligation on states “to move as quickly and effectively as possible towards the goal of realizing the right of access to adequate housing.” (General Comment No. 3, Para 9) However, whilst the right is subject to the qualifier of progressive realization, the CESCR has noted that states cannot indefinitely postpone efforts to ensure the full realization of the right of access to adequate housing. Furthermore, it has noted that retrogressive measures will have to be fully justified. Finally, the CESCR has commented that the progressive realization of the right requires the effective use of the available resources.

The Limburg Principles, a set of interpretative principles concerning the implementation of the ICESCR developed by human rights scholars and representatives of several UN bodies has also accorded significant attention to the term “progressive realization,” which warrants attention.

Principle 16 notes as follows:

“All states parties have an obligation to begin immediately to take steps towards the full realization of the rights recognized in the Covenant”.

Principle 21 notes as follows:

“The obligation ‘to achieve progressively the full realization of the right’ requires state parties to move as expeditiously as possible towards the realization of these rights. Under no circumstances shall this be interpreted as implying for states the right to defer indefinitely efforts to ensure full

realization. On the contrary all states parties have the obligation to begin immediately to take steps to fulfill their obligations under the Covenant.”

Limburg Principle 23 provides as follows:

“The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of existing resources available.”

Limburg Principle 24 provides as follows:

“Progressive implementation can be affected not only by increasing resources, but also by the development of societal resources necessary for the realization by everyone of the rights recognized under the Covenant.”

These principles accordingly make it clear that whilst the right of access to adequate housing may be realized progressively as opposed to immediately, government has an obligation to move as quickly and effectively as possible towards ensuring the full realization of the right to adequate housing.

2.4. Realizing the Right of Access to Adequate Housing “Within Its Available Resources”

In recognizing the resource constraints within which the right of access to adequate housing will have to be realized in the country, the Constitution has made the right subject to the internal qualifier of “within its available resources”. The qualifier refers to the fact that even where available resources are demonstrably inadequate, the state should still strive to ensure the widest possible enjoyment of the right under the prevailing resource constraints. In realizing the right of access to adequate housing, it is important that the available resources are effectively and equitably utilized.

It must be further noted that the “available resources” are closely linked to the amount of revenue allocated for the purposes of housing. Section 214 (1) of the Constitution provides that an Act of Parliament must provide for the equitable division of revenue raised nationally among the national, provincial and local spheres of government. What is considered to be equitable for the purposes of the section will largely determine the available resources. The second consideration in determining the available resources will consist of additional funds that may be made available from the international community as will become evident at a later stage. The Housing Finance Bill will assist in determining the available resources for the realization of the right of access to adequate housing.

Although the ICESCR also contains a qualifier relating to resources, the terminology used is somewhat different. It uses the phrase “to the maximum of its available resources” as opposed to the South African Constitution which is subject to “within its available resources”. Whilst this difference is recognized, it is worth according some attention to the interpretation of the qualifier in the ICESCR. Once more, the Limburg Principles have proven to be extremely helpful on the interpretation of the term and certain sections are worth repeating.

Limburg Principle 25 provides as follows:

“State are obliged, regardless of the level of economic development, to ensure respect for the minimum subsistence rights for all.”

Limburg Principle 26 provides as follows:

“ ‘Its available resources’ refers to both the resources within a state and to those available from the international community through international co operation and assistance”

Limburg Principle 27 provides as follows:

“In determining whether adequate measures have been taken for the realization of the rights recognized in the Covenant attention shall be paid to the equitable and effective use of and access to available resources.”

Limburg Principle 28 provides as follows:

“In the use of the available resources due priority shall be given to the realization of the rights recognized in the Covenant, mindful of the need to assure everyone the satisfaction of subsistence requirements as well as the provision of essential services.”

It is important to note that although the alleged lack of resources is often used to justify the non fulfillment of certain socio economic rights, the UN Committee on Economic, Social and Cultural Rights has emphasized that even in times of severe economic contraction, vulnerable members of society can and must be protected by the adoption of relatively low cost targeted programmes.

The issue of core minimum obligations is closely related to the available resources of the state and will be accorded brief attention in the present section. Under the Covenant on Economic, Social and Cultural Rights, each state party notwithstanding its level of economic development, is under a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights found in the Covenant. When applied to housing, these benchmarks or standards will act as a measurement against which the current housing situation in the country can be examined and compared to.

Under the ICESCR, if a state claims that it is unable to meet even its minimum obligations because of a lack of resources, it must, at least, be able to demonstrate that every effort has been made to use all resources to satisfy, as a matter of priority, those minimum obligations. However, the lack of resources can never be used to justify the failure of the state to monitor the non enjoyment of the right.

In view of the aforementioned, it is accordingly clear that a lack of available resources may not be used so as to justify the total inaction of government to take any measures towards realizing the right of access to adequate housing. Even within extremely limited resources, the state has an obligation to take some measures towards the realization of the right of access to adequate housing. In addition, the state has an obligation delineate its core minimum obligations in terms of standards and benchmarks against which its performance can be measured. Due priority must be accorded to meeting these core minimum obligations within the limited resources that the state has at its disposal.

2.5. The State's Obligation to Take "Reasonable Legislative and Other Measures"

Section 26(2) of the Constitution obliges the state to take reasonable legislative and other measures to progressively realize the right of access to adequate housing. The question of reasonableness must be determined in relation to the ultimate goal of the South African government that seeks to ensure that everyone has access to adequate housing as well as the available resources that it is working within.

The terminology clearly refers to the fact that in addition to legislative measures, administrative, judicial, economic, social and educational measures must be taken. In order for these measures to be reasonable, the UN Committee on Economic, Social and Cultural Rights has noted that they must be deliberate, concrete and targeted as clearly as possible towards meeting the obligation of ensuring everyone the right of access to adequate housing. (General Comment No. 3, Para 9)

With specific reference to the right to adequate housing in international law, States parties are required to adopt a national housing strategy which should define the objectives for the development of housing conditions, identify the resources available to meet these goals, as well as the most cost effective way of using them, and set out responsibilities and time frames for the implementation of the necessary measures. Such strategies should further reflect genuine consultation and participation with all social sectors. Additional steps are required to ensure effective co ordination between the relevant national, provincial and local levels of government to ensure a comprehensive approach to the right of access to adequate housing.

2.6. Prohibition of Arbitrary Evictions

Section 26(3) of the Constitution accords express attention to the issue of unlawful evictions. It explicitly outlaws people being evicted or having their homes demolished without an order of court after due consideration has been accorded to all relevant circumstances. Whilst certain criteria as to what constitutes "all relevant circumstances" are required, it is clear that this subsection is significant in the sense that it is subject to immediate implementation and not qualified by the availability of resources. In addition, it unequivocally prohibits legislation that permits arbitrary evictions.

In a further attempt to avoid unlawful evictions, Section 25 (6) of the Constitution which deals with property expressly provides that a person or community whose tenure of land is legally insecure as a result of past racially discriminatory practices or laws is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

The UN Sub Commission on Human Rights has adopted a Resolution on Forced Evictions, Resolution 1992/14, parts of which are worth referring to in the present section. It has urged governments to undertake immediate measures, at all levels, aimed at eliminating the practice of forced evictions. It has further urged governments to confer legal security of tenure to all persons currently threatened with forced evictions and to adopt all necessary measures giving full protection against forced evictions, based upon effective participation, consultation and negotiation with affected persons or groups. It has recommended that all governments provide immediate restitution, compensation and /or appropriate and sufficient alternative accommodation or land, consistent with their wishes or needs, to persons and communities which have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups.

The UN Commission on Human Rights has adopted a further Resolution on Forced Evictions(1993/77), parts of which are applicable to the issue at hand and will accordingly be referred to in the present section. It has recognized forced evictions to mean: "[T]he involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness and in inadequate housing and living conditions." It has further noted its concern with the fact that forced evictions and homelessness intensify social conflict and inequality and invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society. In addressing the prevalent issue of forced

evictions, the UN Commission on Human Rights has emphasized that governments bear the ultimate legal responsibility for preventing forced evictions.

The CESCR has placed considerable emphasis on forced evictions and has asserted, in its General Comment No. 4, Para 18 (1991) on the right to adequate housing that “instances of forced evictions are *prima facie* incompatible with the requirements of the [ICESCR] and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law.” Although the South African Constitution differs in the sense that it prohibits evictions without an order of court after all the relevant circumstances have been considered (as opposed to “in the most exceptional circumstances”), some examples of what have been considered to be “the most exceptional circumstances” in the international realm are worth repeating. These include:

- Racist or other discriminatory statements, attacks or treatment by one tenant or resident against a neighbouring tenant;
- unjustifiable destruction of rented property;
- the persistent non payment of rent despite a proven ability to pay and in the absence of unfulfilled duties of the landlord to ensure dwelling habitability;
- persistent anti social behaviour which threatens, harasses or intimates neighbours, persistent behaviour which threatens public health or safety;
- manifestly criminal behaviour, as defined by law, which threatens the rights of others;
- the illegal occupation of property which is inhabited at the time of occupation;
- the occupation of land or homes of occupied populations by nationals of an occupying power.

It is accordingly clear that both in terms of the Constitution and international law, that the state has an obligation to take measures towards ensuring legal security of tenure as well as to avoid evictions without an order of court which has considered all of the relevant circumstances.

2.7. Obligations that the Right of Access to Adequate Housing Imposes on the State

It is trite that for every right in law, there is a corresponding legal obligation. It accordingly follows that whilst everyone has a right of access to adequate housing, the state has a corresponding obligation that seeks to ensure that everyone does, indeed gain access to this right. In speaking to the obligation on the state to ensure the right of access to adequate housing, Section 7(2) of the Constitution obliges the state to respect, protect, promote and fulfill the rights in the Bill of Rights, included within which is clearly the right of access to adequate housing. A brief exposition of each of these duties on the state as they pertain to the right of access to adequate housing follows in the present section.

2.7.1. The Duty to Respect the Right of Access to Adequate Housing

The duty to respect the right of access to adequate housing requires that government refrain from any action which prevents people from satisfying this right themselves when they are able to do so. Respecting this right mainly requires that the government abstain from certain practices which deprives, denies or obstructs peoples access to adequate housing or unfairly discriminates against an individual or group of individuals in extending access of the right to adequate housing.

The responsibility of respecting the right of access to adequate housing requires that the state refrain from carrying out, condoning or advocating the forced or arbitrary evictions of persons and groups. It should further respect peoples rights to build their own dwellings and order their

environments in a manner that most effectively suits their culture, skills, needs and wishes. Ensuring the rights to privacy and equality also form part of this obligation to respect the right to adequate housing.

In short, the obligation on the state to respect the right of access to adequate housing imposes a series of limitations on state action that have the effect of impinging on the individual's right of access to adequate housing.

2.7.2. The Duty to Protect the Right of Access to Adequate Housing

The duty to protect this right demands that government ensure that any possible violation of this right by third parties such as landlords and property developers are prevented. It essentially obliges government to protect peoples' rights of access to adequate housing from being infringed, violated, threatened or compromised by other more powerful groups or individuals in society. Where such infringements do occur, the relevant public authorities should act to prevent any further deprivations and guarantee to affected persons access to legal remedies of redress for any infringement caused.

In order to protect this right of people from acts such as forced evictions, government should take immediate measures aimed at conferring legal security of tenure upon all persons and households in society who currently lack such protection. In addition, residents should be protected, by legislation and other effective measures from discrimination, harassment, withdrawal of services or other threats.

Steps should be further taken to ensure that housing related costs for individuals, families and households are commensurate with income levels. A system of housing subsidies should be established for sectors of society unable to afford adequate housing, as well as for the protection of tenants against unreasonable or sporadic rent increases.

Government should further ensure the creation of judicial, quasi judicial, administrative or political enforcement mechanisms capable of providing redress to alleged victims of any infringement of the right to adequate housing.

2.7.3. The Duty to Promote and Fulfill the Right of Access to Adequate Housing

In comparison with the duties to respect and protect the right of access to adequate housing, the duties to promote and fulfill this right are much more positive in nature. The duty to promote the right of access to adequate housing refers to the fact that government must educate the public about their rights and strive to create a culture in which the right of access to adequate housing can become a reality. The duty to fulfill this right essentially requires positive conduct by the state to ensure that persons who do not currently enjoy access to this right gain access to it. It gives rise to the contentious issues of public expenditure, government regulation of the economy and land market, the provision of public services and related infrastructure, the redistribution of income and other positive obligations.

The UN Committee on Economic, Social and Cultural Rights has asserted that identifiable government strategies aimed at securing the right of all persons to live in peace and dignity should be developed. Access to land as an entitlement should be included in such strategies. The CESCR has further noted that many of the measures required to satisfy this right will involve resource

allocations and that, in some cases, public funds allocated to housing might most usefully be spent on direct construction of new housing.

Generally, on the issue of housing finance, government must establish forms and levels of expenditure that adequately reflect society's housing needs, and which are consistent with the obligations arising from the Constitution and other legal resources.

As proclaimed in the Limburg Principles on the implementation of the Covenant on Economic, Social and Cultural Rights and reiterated subsequently by the CESCR, due priority shall be given in the use of all available resources, to the realization of rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services.

2.8. Children's Right to Shelter

As has been noted, Section 28(1)(c) of the Constitution accords every child the right to basic nutrition, shelter, basic health services and social services. This section may be distinguished from Section 26 many respects. Firstly, it provides for a right to shelter as opposed to adequate housing. A definition of what constitutes shelter for the purposes of the section is accordingly required. Secondly, it provides for a right to shelter as opposed to a right of "access" to shelter. Finally, children's rights to shelter are subject to neither the internal qualifier of "progressive realization" nor that of "within its available resources". The section is accordingly subject to immediate implementation and resource limitations may not be used to justify a failure to implement the right.

Whilst it is clear that the criteria for making a determination as to what constitutes shelter are clearly less stringent than the criteria for establishing adequate housing, clarity is nevertheless required on the criteria used to make an assessment on the forms of dwellings that constitute shelter for the purposes of Section 28(1)(c). Furthermore, it is clear that children's rights to shelter are subject to a more stringent level of enforcement than the right of access to adequate housing, as it is not subject to the internal qualifiers of "within its available resources" and "progressive realization."

As with the right of access to adequate housing, in implementing children's rights to shelter, the state has an obligation to respect, protect, promote and fulfill the right of all children to shelter. The nature of each of these duties apply in a similar manner to children's right to shelter as they have been described above to apply to the right of access to adequate housing.

3. RELEVANT ORGANS OF STATE

Having analyzed both the nature of the right as well as the type of obligations that are required for the realization of the right, it is now important to establish exactly who are the relevant organs of state that bear the responsibility of fulfilling the right of access to adequate housing and children's right to shelter. The importance of establishing the relevant organs of state for the purposes of housing and children's right to shelter is important for the obvious reason of establishing clarity as to who bears the responsibility for the implementation of these rights as well as to establish the organs of state that are relevant for the purposes of Section 184(3), and ultimately the organs of state that the Human Rights Commission must target for the purposes of monitoring the implementation of the right of access to adequate housing and children's rights to shelter.

Section 239 of the Constitution defines the term “organ of state” as follows:

In the Constitution, unless the context indicates otherwise-

“organ of state” means -

- (a) Any department of state or administration in the national, provincial or local sphere of government; or*
- (b) Any other functionary or institution -*
 - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or*
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.*

Whilst the section provides clarity as to what an organ of state refers to, the challenge of determining what a “relevant organ of state” is for the purposes of Section 184(3) still remains. It is suggested that in making a determination on the relevance of a particular organ of state, the extent to which its primary duties and functions relate to the implementation of the right of access to adequate housing and children’s right to shelter should be key.

As has been noted, Section 7 (2) of the Constitution, obliges the state to respect, protect, promote and fulfill the rights in the Bill of Rights. As the state consists of the national, provincial and local levels of government, the section makes clear that in terms of this section, all three tiers of government bear the responsibility of respecting, protecting, promoting and fulfilling the rights in the Bill of Rights.

Section 8 of the Constitution further speaks to the application of the Bill of Rights and notes that it applies to all law, and binds the legislature, the executive, the judiciary and all organs of state. As Section 239 explicitly includes the three tiers of government within the definition of “organ of state,” Section 8 reiterates the fact that all three tiers of government are bound by the provisions of the Constitution.

It is accordingly clear that the three tiers of government are included in both the reference to the term “state” as well as within the term “organ of state”. An assessment in terms of the criterion suggested to establish their relevance to housing and shelter will accordingly be made in the present section.

3.1. Relevant Organs of State as regards the Right of Access to Adequate Housing

As housing is included as a functional area in Part A of Schedule 4 which relates to the areas of concurrent national and provincial legislative competence, it is clear that both the national department of housing and the provincial departments of housing, have as part of their primary functions, a constitutional responsibility to realize the right of access to adequate housing and are accordingly relevant organs of state for the purposes of Section 184(3).

However, the exact role of local government in relation to housing is less clear. In order to determine its relevance for the purposes of the task at hand, some attention will be accorded to local government and its role as regards housing.

The fact that housing is listed as a functional area within the concurrent legislative competence of national and provincial government in terms of Part A of Schedule 4 of the Constitution creates a gross misconception that local government has either no role or an extremely limited one to play as

regards the implementation of the right of access to adequate housing. But, contrary to this common misconception, it is argued that in view of the objects as well as the developmental duties of local government, that it does, in fact, have a vital role to play in the implementation of the right of access to adequate housing, and accordingly a relevant organ of state for the purposes of Section 184(3).

Included in the objects of local government are the objects of ensuring the provision of services to the communities in a sustainable manner, promoting social and economic development and promoting a safe and healthy environment. As adequate housing is clearly critical to the very essence of promoting social and economic development, it is contended that it would clearly fall within the ambit of the objects of local government.

Furthermore, the Constitution accords vast developmental duties to local government. The term development has been argued to refer to "the satisfaction of people's material and strategic needs" (Mastenbroek and Steytler, 'Local Government and Development: The New Constitutional Enterprise' (1997) (Forthcoming) *Law, Development and Democracy*). As this definition equates with an improvement in one's standard of living and a reduction of poverty, it is argued that the implementation of the right of access to adequate housing is a critical component of the developmental duties of local government.

The Constitution further obliges local government to give priority to the basic needs of the community. In making a determination as to what the basic needs of the community are, it is argued that conditions conducive to the general health and well being of the individual should be key. The contention is that housing is central to ensuring such conditions as was acknowledged even at the time of the Universal Declaration on Human Rights which recognized housing as a critical component to the health and well-being of the individual. The Housing Act offers further support for the contention in accepting in its preamble, that housing as adequate shelter fulfills *a basic human need*.

Finally, the Constitution notes that local government has executive authority in respect of and has the right to administer local government matters listed in Part B of Schedule 4 and Part B of Schedule 5. Although housing *per se* is included in neither of these parts of these Schedules, it is argued that many of the areas that relate to the adequacy of housing are included therein. These areas pertain to certain core factors to determining adequate housing that The UN Committee on Economic, Social and Cultural Rights has noted in a General Comment. As has been noted, these factors include legal security of tenure, the availability of services, materials, facilities, infrastructure, affordability, habitability, accessibility, location and cultural adequacy. What follows serves merely to illustrate the relationship between certain functional areas of local government and the core factors that the CESCR has outlined as critical to making a determination of the adequacy of housing. For instance, municipal health services, water and sanitation services, child care facilities and stormwater management systems, which are central to the availability of services and location of housing fall within the competence of local government, as does municipal public transport which is central to the issue of infrastructure. Building regulations and electricity and gas reticulation which are also within the competence of local government relate to the habitability of housing.

In view of the foregoing, it is clear that in terms of the Constitution, local government has a vital role to play with regard to housing. The objects of local government, the developmental duties of

local government as well as the functional competencies of local government lend support to this contention. This role is reiterated and elaborated on in terms of the Housing Act.

The Housing Act 107 of 1997, is the primary legislative framework giving effect to Section 26 of the Constitution. The Act speaks to the role of national, provincial as well as local government in relation to housing development.

Section 9 of the Act deals in particular with the functions of municipalities. It obliges every municipality as part of its process of integrated development planning (The Local Government Transition Act 209 of 1993 obliges municipalities to prepare integrated development plans and financial plans in respect of their powers, duties, functions and priorities), to take all reasonable and necessary steps within the framework of national and provincial housing legislation to fulfill a number of specific duties.

The actual powers, functions and duties accorded to municipalities are vast as well as specific in terms of the Housing Act. As local government interfaces most with civil society, it is clearly the level of government that is best suited to making an assessment on certain fundamental issues concerning housing development. The Act accordingly obliges municipalities to ensure that inhabitants within its area of jurisdiction have access to housing opportunities on a progressive basis. In order to ensure such access to housing opportunities and in view of their intimate knowledge of the areas within their jurisdiction, the Act obliges them to specifically identify and designate land for housing and associated purposes, to initiate, plan and execute any appropriate housing development, to facilitate and coordinate housing development in its area of its jurisdiction as well as to regulate health and safety standards regarding housing development. These duties clearly illustrate an overall responsibility on local government for the management and co-ordination of housing development within its area of jurisdiction.

Municipalities are further obliged to set housing delivery goals as well as to create and maintain a public environment conducive to viable housing development. Again, their knowledge and interaction with members of their communities would make them best suited to assessing the needs, the opportunities, the capacity and the resources available within their particular jurisdiction so as to set appropriate housing delivery goals.

In accordance with the constitutional object of municipalities ensuring the provision of services to its communities in a sustainable manner and the duty of giving priority to the basic needs of the community, the Act obliges them to ensure the provision, operation and maintenance of water, sanitation, electricity, roads and stormwater drainage and transport in respect of housing. Municipalities are further responsible for the provision of bulk engineering services, and revenue generating services in so far as such services are not provided by specialist utility suppliers.

Finally, in executing its primary duty of ensuring access to housing opportunities, municipalities bear a responsibility to promote the resolution of conflict arising in the housing development process and to participate in national and provincial development programmes.

These duties undeniably point to an enormous responsibility on local government for a number of issues, all of which are vital for housing delivery to, in fact, take place.

Yet, it is conceivable that this vital role may be further enhanced. The Act further allows that any municipality may apply in writing to the MEC to be accredited for the purposes of administering one or more of the national housing programmes. Clearly, should such accreditation take place, the role of a particular municipality in relation to housing would be significantly enhanced.

In view of the clear mandate accorded to national and provincial government as regards housing, it is undeniable that the housing departments at both these levels are indeed relevant organs for the purposes of Section 184(3). Furthermore, in view of the aforementioned, it is equally clear that local government has, as part of its primary duties, a vital role to play in realizing the right of access to adequate housing and is accordingly also a relevant organ of state for the purposes of the section.

In accordance with the principles of co operative government as is provided for in Chapter 3 of the Constitution, these three tiers of government should co operate and work with each other in the implementation of the right of access to adequate housing. Whilst there may be other organs of state that are of relevance to the implementation of the right of access to adequate housing, it is suggested that these three tiers of government assume the primary responsibility for collating information from other relevant organs of state at national, provincial and local levels in the field of housing in order to provide the Human Rights Commission with a comprehensive overview of steps that are being taken at all three levels of government as regards the implementation of the right of access to adequate housing.

3.2. Functions of the Relevant Organs of State as regards the Implementation of the Right of Access to Adequate Housing

Having established the relevant organs of state, the present section accords brief attention to the duties, powers and functions accorded to each of these organs of state. Reference will accordingly be made to the Housing Act which includes the powers, duties and functions of each of these tiers of government.

The primary function of national government is, in terms of the Housing Act, to establish and facilitate a sustainable national housing development process after consultation with the South African Local Government Association and every MEC. In so doing, the Minister has numerous specific obligations which include, determining national policy, including national norms and standards in respect of housing development, setting broad national housing delivery goals as well as facilitating in the setting of such goals at provincial level and where appropriate local level. In addition, the Minister is obliged to monitor the performance of the national government and, in co operation with every MEC, the performance of provincial and local governments against housing delivery goals and budgetary goals. The Minister is further obliged to assist provinces to develop their administrative capacity for the purposes of housing development as well as to support and strengthen the capacity of municipalities to manage their own affairs and perform their duties in respect of housing development. In order to perform these duties, the Minister is entrusted with numerous additional powers which he or she *may* exercise. (See Section 3 of the Housing Act for an exhaustive list of the powers, duties and functions accorded to national government as regards the implementation of the right of access to adequate housing)

Provincial governments, in terms of the Housing Act bear an overall obligation to do everything in their power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy. In so doing, the Act obliges them to do so after consultation

with provincial organizations representing municipalities. In fulfilling this duty, they are further obliged to determine the provincial policy on housing development, to promote the adoption of provincial legislation to ensure effective housing delivery as well as to co-ordinate housing development in the province. As with national government, provincial governments are also, in terms of the Act, obliged to support municipalities in the performance of their duties regarding housing development as well as to intervene where a municipality cannot or does not perform a duty imposed by the Act. (See Section 7 of the Housing Act for an exhaustive list of the powers, duties and functions accorded to provincial government as regards the implementation of the right of access to adequate housing)

As the duties, powers and functions of local government have been discussed in the preceding section, they will not be repeated in the present section.

3.3. Relevant Organs of State as regards Children's Rights to Shelter

In terms of a Record of Understanding that was entered into between the Department of Housing and the Department of Welfare, it was agreed that the implementation of children's rights to shelter would fall within the domain of the duties and functions of the Department of Welfare. The Department of Welfare is accordingly a relevant organ of state for the implementation of children's rights to shelter. However, due to relevant documentation not having been provided, issues as to whether all three tiers of government and/or additional organs of state bear the responsibility of implementing this right remains unclear. Due to the absence of relevant documentation, the writer has similarly not been able to determine the duties, powers and functions of the relevant organs of state as regards the implementation of children's rights to shelter.

4. SUMMARY OF THE INFORMATION PROVIDED

4.1. National Department of Housing

4.1.1 Past Overview

The Department of Housing acknowledges that past discriminatory legislation has disadvantaged the Black population's access to housing. It has accordingly repealed the following discriminatory legislation relating to housing:

- The Housing Act, 1966;
- The Development and Housing Act, 1985;
- The Housing Act (House of Representatives), 1987;
- The Development Act (House of Representatives), 1987; and
- The Housing Development Act (House of Delegates), 1987

The Department has, however, had to deal with various administrative problems in the phasing out these old systems. Section 14(9) of the Housing Act 107 of 1997 further provides that the Minister must institute a new national housing programme to phase out within one year of the commencement of the new legislation, every housing subsidy granted under the previous racially discriminatory legislation. This national housing subsidy scheme must contain time limits to phase out categories of housing subsidies.

In dealing with the impact of past laws and other measures on children's rights to shelter, and their effect on the Department's ability to realize children's rights to shelter, the Department has responded that the right of destitute children to shelter represents a specialized housing field that should be managed by the Department of Welfare. Such agreement was reached during the

consultative process on the draft Housing Bill, whereby it was agreed that the Department of Welfare would be responsible for the accommodation needs for the category of persons who cannot independently care for themselves and require institutional care.

In responding to the effects of consolidation or non consolidation of departments and legislation from the previous homelands on the Department's ability to realize the housing rights in Section 26 and the right of children to shelter, the Department notes that its legislation applies throughout the country, included within which are obviously the previous homelands that have been incorporated into the Provinces. It further notes that the Provinces may have clearly felt the effects of consolidation in terms of the administrative problems concerned. Finally, the Provincial Boards created in terms of the Housing Arrangements Act 155 of 1993 also service areas falling under their jurisdiction of which the previous homelands form part.

4.1.2. Understanding its Constitutional Obligations

The Department understands that it has an obligation to respect everyone's right of access to adequate housing, to protect this right through the introduction of enabling legislation and to develop national programmes which promote the realization of the right. The Department has accordingly embarked on a process of legislative development to facilitate the creation of an environment in which appropriate housing policy, strategy and development systems could be developed. The Housing Arrangement Act of 1993 was established to facilitate this process in the transitional period until a new Housing Act is put in place. The new Housing Act, 107 of 1997 was recently adopted by Parliament and approved by the President and has come into effect since 1 April 1998. The Act provides for the facilitation of a sustainable housing development process, lays down the general principles applicable to housing development, defines the functions of national, provincial and local governments in South Africa and provides for financing of national housing programmes.

To promote the achievement of its obligations, the National Housing Subsidy Scheme was developed and introduced. It provides for various instruments which direct funding provided by government towards housing assistance to the poor and the realization of the said right.

Due to the agreement reached with the Department of Welfare regarding children's rights to shelter, the new Housing Act does not make provision for the subsidization of welfare housing.

The Department's official interpretation of the words "access to" housing in Section 26 of the Constitution is "the opportunity of everyone to exercise choice in respect of housing options and to access such elected options."

The Department's official interpretation of "adequate housing" in Section 26 of the Constitution is that "housing meets the basic human needs that are of a standard that satisfies the minimum health and safety requirements applied by local authorities and constitutes a permanent residential structure, ensuring privacy and providing adequate protection against the elements."

The Department's official interpretation of the words "progressive realization of this right" refers to the limited resources available to the Department being utilized on the basis of economic principles. It further understands the term to refer to Government's intention to sustain its housing assistance obligations and initiatives to award everyone the opportunity to have access to adequate housing.

The Department's official understanding of "relevant circumstances" in Section 26(3) of the Constitution refers to all circumstances pertaining to a specific case where termination of occupation is considered. It notes that such circumstances could include, but are not limited to the agreement between the parties or the lack thereof, the circumstances that led to the termination of occupation and the justification for the termination of occupation.

The Department's official interpretation of "shelter" in Section 28 of the Constitution is that it could include the definition of adequate housing but will also include the definition for "shelter" as contemplated by Welfare legislation and policy.

4.1.3. Information Gathering

In response to the question regarding the Department's systems (or access to systems) to collect and analyze statistical and other information relating to the implementation of the right of access to adequate housing and children's right to shelter, the Department notes that it is in the process of developing the Nomvula - Housing and Urbanization Information System (HUIS). The Department describes the vision of Nomvula as being a system that will enable the housing family to have national management information that will allow regional and national comparisons and will assist with the design and targeting of housing and urban development policy.

Nomvula will allow the Department to extract raw data from multiple sources, convert the data into meaningful information and thereby provide users with easy access to housing and urbanization information. The data will be sourced from over 20 Organizations to provide a comprehensive source. It will include the Department's Housing Subsidy Scheme which is administered at Provincial Level, the Central Statistical Service, Mortgage Indemnity Fund, National Housing Finance Corporation, Property and Loan Application Network, National Homebuilders Registration Council, and the National Urban Reconstruction and Housing Agency.

The system and the type of information that is collected by Nomvula is described as having three principle components:

- Housing Information - Covers both economic information (including macro economic information, sector specific information and funds allocations) and management information (including housing subsidy information, project performance and housing standards).
- Human Settlement Information - Focuses on infrastructure, land and the environment.
- Basic Demographic Information - Will contain only that data necessary for the development of housing and urbanization policy and strategy development.

The first phase of Nomvula is now in the user acceptance phase, and was expected to have been completed by the end of February 1998, at which stage the information will be available via the Intranet. Once it is well established on the Intranet, it will be placed on the world wide web for public access.

4.1.4. Vulnerable Groups

The Department has identified the following groups as more vulnerable than others and accordingly in need of special attention by the Department:

- The poor;
- the disabled;
- female headed households, children and the youth;

- the elderly;
- farmworkers; and
- rural households.

4.1.5. The Department's Obligation to Respect the Right of Access to Adequate Housing and Children's Rights to Shelter

The Department is unaware of any current laws and other measures that have the effect of denying, depriving or discriminating in the provision of housing or shelter to people or children. Furthermore, investigations are afoot to determine the basis upon which subsidies will be made available in respect of traditional tenure and rural housing (including farmworker housing).

The Department has repealed discriminatory legislation by the Housing Act 107 of 1997 in an attempt to get rid of past laws and measures that impact on people's housing rights. However, it has taken no steps to get rid of past laws and other measures which impact on children's rights to shelter as this area is out of their jurisdiction and within that of the Department of Welfare.

In order to remedy the effects of these past laws and other measures which impacted on people's housing rights and children's rights to shelter, the Department has enacted new legislation and repealed discriminatory legislation. It has also made subsidies available to the poor to help them gain access to housing. It has set up various bodies to enable persons to access finance e.g. National Housing Finance Corporation, Rural Housing Loan Fund. Finally, it has set up the Peoples Housing Partnership Process to enable people on the ground to be actively involved in obtaining their own homes.

4.1.6. The Department's Obligation to Protect the Right of Access to Adequate Housing and Children's Rights to Shelter

The Department is in the process of drafting legislation called Prevention of Unlawful Occupation of Land Act which will provide protection against evictions and the demolishing of people's homes without an order of court.

The Department has entered into the Mortgage Indemnity Fund as a measure to protect people (including children) against unfair discrimination in the allocation and availability of housing in the private sector.

In an attempt to protect people (including children) against any other practices in the private sector which have a negative effect on their rights of access to adequate housing and shelter, the Department is in the process of drafting the National Homebuilders Registration Council Bill. The Bill is intended to ensure that people building homes will be protected in the event of defects and other problems arising in their homes and caused through the negligence of the builder.

4.1.7. The Department's Obligation to Promote and Fulfill the Right of Access to Adequate Housing and Children's Rights to Shelter

The Department was unable to provide information on its available budget to promote and fulfill the rights to shelter and adequate housing or on the percentage of this budget that will have been spent by the end of the 1997/8 financial year. It has undertaken to forward this information to the Human Rights Commission when it receives it from the Directorate of Finance. At the time of writing, such information had not as yet been forwarded to the Human Rights Commission.

In an effort to inform and educate all South Africans, and in particular the identified vulnerable groups about their housing rights, the Department of Housing has an ongoing communication campaign aimed at informing the public about the National Housing Programme. The Department further intends providing more targeted and detailed information to a specific audience through Housing Support Centres which are being established within communities which are involved in the Peoples' Housing Process. It is also in the process of establishing a website which will provide general information on the work of the Department, details on the Housing Subsidy Scheme and online subsidy applications.

In order to inform and educate all children about their right to shelter, the Department is in the process of discussing the possibilities of including the right to housing and related obligations in the primary school curriculum.

In response to the question concerning the Department's understanding of its core minimum obligations as imposed by the right of access to adequate housing, it makes reference to the Housing Act 107 of 1997 which repeals all discriminatory legislation pertaining to housing.

In explaining how this understanding is reflected in laws and other measures adopted by the Department, reference is made to Part 1, Section 2(1) of the Housing Act which obliges government to give priority to the needs of the poor in respect of housing development and promote:

- the meeting of special housing needs, including but not limited to, the needs of the disabled;
- the housing needs of marginalised women and other groups;
- encourage and support individuals and communities in their efforts to fulfill their own housing needs by assisting them in accessing land, services and technical assistance in a way that will realize the transfer of skills to empowerment of the community.

In response to the question concerning minimum requirements set by the Department (such as national norms and minimum standards) for making sure the housing rights and children's rights to shelter are applied in a uniform way across the country and the laws and other measures that they are included in, it has referred to the White Paper on Housing, the Housing Act 107 of 1997 and the Subsidy Implementation Manual. It further refers to a National Housing Code containing the national housing policy which will be published in terms of the Housing Act and will detail the national norms and minimum standards for housing in South Africa.

In providing a description of current law and other measures that have been adopted to improve or advance the right of access to adequate housing as well as those that deal with people who have been unfairly discriminated against in the past and those that deal with the identified vulnerable groups, the Department refers to:

- The existing housing subsidy scheme which has been developed on non discriminatory principles;
- female headed households which have been accommodated and specific policy guidelines in regard to rural housing development which have been developed but not yet finalized;
- the Department in collaboration with the South African Disability Institute has developed policy guidelines for the variation of the housing subsidy amount to cater for the special housing needs of the disabled. This policy was due to have been finalized in February 1998.

The Department was not in a position to respond laws or other measures that have been adopted to improve or advance the right of children to shelter for reasons mentioned earlier.

The Department was also not in a position to provide any information on new laws or other measures (such as budget cuts and scaling down) that have been introduced in the past year which had a negative impact on the progressive realization of the right of access to adequate housing or children's rights to shelter as it has not received the necessary information from the Finance Directorate. It has undertaken to forward this information to the Human Rights Commission when available. At the time of writing, it had not as yet forwarded such information to the Human Rights Commission.

The Department refers to the South African Housing Development Board established in terms of the Housing Act as bearing the responsibility of monitoring the implementation of national housing policy and the Urban Indicators Programme for tracking the success of the Department's policies.

4.1.8. Future Goals

The Department lists the following laws and measures that it intends putting in place to respect, protect, promote and fulfill the housing rights and the rights of children to shelter:

- The implementation of the New Housing Act, 1997 and the publication of the new Housing Code;
- finalization of the Rural Subsidy Programme;
- finalization of the Peoples Housing Process Policy;
- development of Policy in respect of Bridging Finance to Developers; and
- to undertake a capacity building programme.

In response to the question requesting details including, the laws and measures that are aimed at the identified vulnerable groups, goals and targets set by the Department, time lines for implementation, benchmarks or indicators to chart progress and evaluate plans, the Department has provided the following information:

- The implementation of the New Housing Act, 1997 which *inter alia* entails the norms and standards in respect of permanent residential structures, the development of a national programme to phase out all previously instituted housing assistance measures and to publish a National Housing Code. The Housing Act is to take effect on 1 April 1998.
- finalization of the Rural Housing Policy - May 1998;
- finalization of the Peoples Housing Process - April 1998;
- the Policy in respect of Bridging Finance to Developers - May 1998
- Variation of the Subsidy Amount to cater for the Special Needs of the Disabled - February 1998;
- development of Public Sector Hostels Policy Refinement - August 1998;
- the capacity building programme - Continuous
- other assistance measures - Continuous

The Department was unable to provide any information on steps it is taking to eliminate existing laws and other measures which make it difficult for children to get access to shelter for reasons mentioned earlier. However, in an attempt to eliminate laws or other measures which make it difficult for people to get access to housing, the Department has repealed discriminatory legislation as regards housing.

The Department failed to provide a response on any additional other measures or initiatives that they have undertaken or are planning to undertake so as to ensure that the right of access to adequate housing (and children's rights to shelter) are respected, protected, promoted and fulfilled.

4.2. Provincial Governments

Of the questionnaires sent out to all of the provincial governments in the country, Mpumalanga, Free State, Kwa Zulu Natal, Northern Cape and Gauteng Provincial Governments were the only ones that responded. The Eastern Cape, Northern Province and North West did not respond at all to the questionnaire. The Western Cape, Department of Health was the only department within the province to respond. A summary of the responses the provincial governments that responded to the sections of the questionnaire dealing with housing follows in the present section.

4.2.1. Mpumalanga Provincial Government: Department of Local Government, Housing and Land Administration

At the outset it must be noted that different parts of the questionnaire were responded to separately by the different directorates within the Department which consisted of: The Directorate of Management Services, the Development Facilitation Act, Councilor Training, The Masakhane Campaign and Housing Administration.

(a) Provincial Government's Understanding of its Constitutional Obligations

The Director-General in the Office of the Premier provided a comprehensive and accurate analysis of its constitutional obligations, which accords with the analysis provided earlier on in this paper, and, will accordingly not be repeated.

(b) Initiatives Undertaken by the Department to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing

Through a range of tenure options more than 45 000 households within the province have gained access to a housing subsidy. This has enabled households to acquire a residential stand and some form of top structure which is registered in the name of the qualifying beneficiary. Furthermore, in addition to the Mortgage Indemnity Fund (MIF), a Mortgage Indemnity Scheme Provincial Forum has been established which serves as a communication channel between MIF and the residents of Mpumalanga and is also involved in consumer education and the normalization of lending and dispute resolution.

The Development Facilitation Act (DFA) was enacted to speed up the acquisition of land and its development. Thus far 4 500 sites have been approved for township development within the Province. The Provincial Task Team on the implementation of the DFA drafted Provincial Regulations for the establishment of Land Development Objectives, the workplans of which are to be submitted in March 1998. There are also policies drafted for macro planning in the province.

To resolve the non payment for services and the lack of visible delivery on the part of government, the Masakhane Campaign was launched. During 1996 the Department availed funds to all Transitional Local Councils for 2 major programmes: The Municipal Infrastructure Programme and the Extension of Municipal Infrastructure Programme.

(c) Initiatives Undertaken by the Department to Satisfy its Responsibilities in terms of Part A of Schedules 4 and 5 of the Constitution

The Housing Administration Directorate within the Department is responsible for the planning of housing delivery, budgeting and processing of applications for the housing subsidy scheme and to facilitate and co ordinate with developers.

Elected provincial political representatives as well as Housing Board members play an important role in determining priorities. There are also provincial initiatives to satisfy the housing needs of disadvantaged communities. For example, housing rural people through housing subsidies by actively involving developers and local governments in the area who were not actively taking up the matter was undertaken. It similarly mobilized banks to enter into joint ventures with major developers, local authorities and provincial governments.

Furthermore, progress was made with empowering local authorities to prevent disasters and to alleviate the effects of disasters. Assistance was given to local authorities to maintain fire fighting services through the promotion of rural disaster management associations.

(d) Initiatives Undertaken by the Department to Satisfy its Additional Responsibilities in terms of Part B of Schedules 4 and 5 of the Constitution

When considering an application for development, the Development Facilitation Act requires that the prescribed conditions be met such as storm water drainage. The Department assisted local authorities who lack capacity to apply building regulations.

The Municipal Infrastructure Programme referred to above focused on:

- Water provision and sanitation;
- cleansing/ refuse removal; and
- stormwater drainage/ municipal Roads.

Continuous support is being rendered to enable local authorities to regulate air pollution, building regulations, electricity reticulation, health services, storm water management, water and sanitation services, cleansing services, abattoirs, municipal roads and noise pollution. The Department has also undertaken to provide temporary accommodation (tents) in the event of homeless people whose homes were destroyed by storm water etc.

(e) Laws and Other Measures of National or Local Governments in the Province that Assisted the Department to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing as well as to Satisfy its Responsibilities and Additional Responsibilities

- The Constitution;
- Local Government Ordinance 1939 as amended;
- Local Government Transition Act 209 of 1993 as amended;
- Civil Defence Act 1977, applied in this province by the Civil Defence Ordinance (No. 20 of 1977);
- The Fire Brigade Act 99 of 1987;
- Aspects of the Occupational Health and Safety Act, 85 of 1993 (b) and (c) applicable;
- The Housing Amendment Act No. 8 of 1994;
- The Housing Second Amendment Act 33 of 1994; and

- The Housing Amendment Act No. 6 of 1996.

(f) Laws and Measures from National or Local Governments in the Province which made it Difficult for the Department to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing as well as to Satisfy its Responsibilities and Additional Responsibilities

The Department provides a list of legislation that needs to be rationalized to ensure that it is in accordance with the Constitution. This legislation has presented difficulties for the Department. (Annexure A).

(g) New Laws or Other Measures that Will be Put in Place to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing

- Promulgation of new planning and development legislation that will rationalize the planning legislation - mid 1999.
- The Department is also investigating all legislation on land development and planning to rationalize this to form one Act.
- A further assessment of new laws or other measures will be made once the new legislation that emanates from the White Paper processes on Local Government and Disaster Management is in force.
- The Housing Act will become law on 1 April 1998. There will also be a supportive Provincial Housing Act for planning which will be effect in July 1998.

(h) Goals, Targets and Timelines for Implementing New Laws or Other Measures

The New Housing Act will take effect on 1 April 1998. Delivery targets in housing are set in accordance with the availability of funds. However, the housing allocations for the province will only be available in April. The national target has been scaled down to 800 000 for the period 1995-1999 of which Mpumalanga will be allocated its own target.

(i) Structures or Mechanisms to Chart Progress and Evaluate Plans

- Mpumalanga Housing Board;
- Provincial Housing Delivery Support Team;
- Departmental Project Management Office; and
- Departmental and the Operations Committee.

(j) Measures to Eliminate Existing Laws or Other Measures that Make it Difficult for People to Get Access to Housing

- The enactment of the Housing Act 107 of 1997 as well as the Mpumalanga Housing Act which is to be enacted in July 1998 will amend and repeal existing laws and other measures which make it difficult for people to obtain access to adequate housing and which make it difficult for the Department to deal with its responsibilities and additional responsibilities.
- Improve emergency communication in remote areas where communities do not have access.
- Promote the empowering of local authorities and especially rural communities to prevent or lessen the effects of possible disasters.

4.2.2. Free State Provincial Government: Department of Local Government and Housing

(a) Provincial Government's Understanding of its Constitutional Obligations

The Department respects the right that all South Africans have to housing in which to live in peace and dignity, by striving to facilitate the establishment of viable, socially and economically integrated communities situated in areas allowing convenient access to economic opportunities as well as health, educational and social amenities, within which all people will have access on a progressive basis to:

- A permanent residential structure with secure tenure, ensuring privacy and providing adequate protection against the elements;
- potable water; adequate sanitary facilities including waste disposal and domestic electricity supply.

The Department passes laws and issues directives aimed at protecting socio economic rights. It also provides guidance and supervision to local authorities to ensure that these rights are protected.

The Department promotes the right of access to adequate housing by disseminating information about its role, powers and functions. It further provides training programmes to strengthen knowledge of its constitutional obligations.

The Department fulfills its responsibilities by rendering the following functions:

- Managing development planning in urban and rural areas;
- managing land use and land tenure;
- handling housing development and community liaison;
- managing housing projects, assets and finance; and
- rendering administrative support services on traditional affairs and civil disaster claims.

The Department understands the term "*access to*" adequate housing in Section 26 to refer to the right of all South Africans to have opportunities to a place in which to live in peace and dignity to ensure fully integrated and viable communities.

The Department understands the terms "*adequate housing*" in Section 26 to refer to a formal top structure on appropriately developed land with basic municipal services, community facilities and employment opportunities within the affordability levels of the people. The Department understands the "*progressive realization of the right of access to adequate housing*" as referring to a variety of processes through which habitable, stable and sustainable public and private residential environments are created for households and communities.

(b) The Department's Obligations to Satisfy its Responsibilities in terms of Part A of Schedules 4 and 5 of the Constitution

- The overall implementation of the housing policy and programmes and the provision of affordable housing in particular;
- administration of provincial legislation and policy regarding disaster management;
- the approval of land development objectives (LDO's) and integrated development plans (IDP's) to ensure the provincial plan is informed by regional plans and vice versa.

(c) The Department's Obligations to Satisfy its Additional Responsibilities in terms of Part B of Schedules 4 and 5 of the Constitution

- Regional planning and development (urban and rural);
- housing and infrastructure cluster - inter sectoral cluster that co-ordinates and leads implementation of projects such as housing. It aims to achieve maximum alignment of public and private sector investment;
- land reform process - assists the Department of Land Affairs with technical advice to promote orderly and sustainable development in the rural areas.

(d) The Department's Performance to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing

In respecting the right, the Department helps people become home owners by providing assistance with subsidies.

The Department has protected the right of access to adequate housing by a right sizing programme which has been introduced to curb evictions from properties owned by banks. The programme allows occupants to occupy property whilst paying a rental they can afford. Such persons are further assisted to find alternative accommodation for which the government pays relocation costs. Furthermore, the Department is part of the Mortgage Indemnity Fund. The MIF aims at solving problems, disputes, conflicts arising from non payment and possible evictions.

In efforts to promote the right, the Department has embarked on road shows to educate communities on their rights to housing. Regional offices were established in major centres to allow access to information and assist with subsidy applications. Radio talk shows, circulars and brochures have further publicized the functions of the Department.

In order to fulfill the right, the Department has set a target of 69 000 houses to be built over 5 years at a rate of 13 800 per year. The statistics provided that refer to the fulfillment of the right are as follows:

• Subsidies allocated to projects	:	29 379
• Houses completed	:	14 958
• Houses under Construction	:	1 733
• Individual Subsidies Completed	:	3 419

(Figures at 15 December 1997)

In addition, in order to fulfill the right, the following initiatives have been embarked upon:

Hostel Upgrading - has been undertaken in 8 towns in line with availability of resources. To date 127 hostel units (family and single) could be upgraded.

Extended Housing Benefit scheme (R 7 500 Discount Scheme) - Statistics regarding this scheme are as follows -

• Houses built with government funding	:	31 5 113
• Discounts finalized	:	16 301
• Properties transferred to beneficiaries	:	3 618

Housing Support Centres - 3 Housing Support Centres have been established with 5 more having been approved by the provincial housing board.

Rural Housing - 1 pilot project was approved by the Housing Board for 1000 subsidies provided that the Department of Land Affairs finances these subsidies.

Informal settlements - Planning and surveying of 15 000 sites is in process to allow informal settlers to be settled formally.

The National Electricity Regulator electrification funds supplied 30 344 connections.

Disaster Management - initiation, maintenance and co-ordination of disaster management programmes is being strengthened. In particular, previously disadvantaged communities have been mainstreamed.

(e) Laws and Other Measures of National or Local Governments in the Province that Assisted the Department to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing as well as to Satisfy its Responsibilities and Additional Responsibilities

- Development Facilitation Act
- Free State Land Development Objectives Regulations
- The Township Ordinance (9 of 1969)
- The Local Government Transition Act (Second Amendment) 1996
- Removal of Restrictions Act (84 of 1967)
- The Less Formal Township Establishment Act (113 of 1991)
- Environment Conservation Act and Amendments (115 of 1962)
- Subdivision of Agricultural Land (70 of 1970)
- Physical Planning Act (88 of 1967)
- Physical Planning Act (125 of 1991)
- Housing Arrangement Act (155 of 1993)
- Housing Act (4 of 1966)
- Free State Mission on Rural Investment;
- Rural Development Framework;
- White Paper on SA Land Policy;
- RDP White Paper.

(f) Laws and Other Measures of National or Local Governments in the Province which made it Difficult for the Department to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing as well as to Satisfy its Responsibilities and Additional Responsibilities

Local Government Ordinance, 8 of 1962 - Section 119 made it difficult for houses to be transferred to first time home-owners who were in arrears to qualify for subsidies. It has subsequently been amended.

(g) New Laws or Other Measures that Will be Put in Place to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing

Management of Urbanization and the Combating of Squatting

The Department acknowledges that it has a direct responsibility in managing urbanization and combating squatting, and accordingly seeks to pro-actively and humanely deal with the matter.

Upgrading and Rendering Tenure Rights

Efforts are being made to upgrade inferior forms of tenure to allow full ownership.

Facilitation of the Development of Land Development Objectives/Structure Plans by Local Authorities

Although the compilation of Land Development Objectives in terms of the DFA, is the primary responsibility of local authorities, the Department will facilitate and co-ordinate these LDO's.

(h) Measures to Eliminate Existing Laws or Other Measures that Make it Difficult for People to get Access to Housing

The Department merely acknowledges that such laws or other measures need to be repealed or amended.

4.2.3. Gauteng Provincial Government: Department of Housing

(a) Provincial Government's Understanding of its Constitutional Obligations

The Department recognizes that it has an obligation to respect, protect, promote and fulfill the right of access to adequate housing. It understands these obligations to accord with the interpretation provided in the section dealing with the analysis of these obligations, and will accordingly not be repeated.

The Department understands "access to" adequate housing in Section 26 of the Constitution as imposing an obligation on the State to create an enabling environment within which the right can be realized. The Department has failed to provide any interpretation as to what constitutes adequate housing. It has noted that whilst the Housing Bill is under preparation, there is no official guidance on the interpretation of the term. As regards an interpretation of "progressive realization," the Department recognizes that the realization of the right requires programmatic action which, in turn implies planning and prioritization.

(b) The Department's Obligations to Satisfy its Responsibilities in terms of Part A of Schedule 4 and 5 of the Constitution

The Report notes that the Department bears the responsibility of implementing the right of access to adequate housing as provided for in terms of Section 26 of the Constitution. It does, however, provide no insight as to what its obligations to satisfy its responsibilities in Part A of Schedule 4 and 5 of the Constitution are.

(c) The Department's Obligations to Satisfy its Additional Responsibilities in terms of Part B of Schedules 4 and 5 of the Constitution

The Department makes reference to numerous responsibilities aimed at ensuring the provision of public transport. It does however, provide no information on other additional responsibilities in terms of the said Schedules.

(d) The Department's Performance to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing

Gauteng Department of Housing

- A Provincial Housing Bill is under preparation - the time frame for its completion is dependent on the National Housing Act.
- The Residential Landlord and Tenant Act (Gauteng) - was promulgated in April 1997.

referring to the duty to hold workshops, conferences, etc. where such rights are explained to the citizens or pamphlets, notices etc. are disseminated. The duty to fulfill the right is understood as referring to the obligation on provincial government to ensure that the rights of citizens are not denied.

It understands the term "access to" adequate housing as an obligation to make land and financial resources available to those in need of them. It understands the term "adequate housing" as being sufficient to provide accommodation taking account of the available resources within the provincial government. "Progressive realization" is understood so as to refer to the obligation on provincial government to put policies, guidelines and directives in place to realize the right.

(b) The Department's Obligations to Satisfy its Responsibilities in terms of Part A of Schedule 4 and 5 of the Constitution

It understands its responsibilities as being to provide training and capacity building to officials of the provincial administration in order to be able to carry out its mandate towards provision of these services.

(c) The Department's Obligations to Satisfy its Additional Responsibilities in terms of Part B of Schedules 4 and 5 of the Constitution

It understands its additional responsibilities to be the same as its responsibilities as has been referred to.

(d) The Department's Performance to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing

The Provincial Department has set certain targets and timeframes in accordance with its available resources for the provision of houses in the province. Furthermore, capacity building courses are offered in various areas such as, urban and rural development, development facilitation, processing of housing subsidies etc.

(e) Laws and Other Measures of National or Local Governments in the Province which have Assisted the Department to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing as well as to Satisfy its Responsibilities and Additional Responsibilities

- Northern Cape Housing Bill;
- The Development Facilitation Act.

(f) New Laws or Other Measures that Will be Put in Place to Respect, Protect, Promote and Fulfill the Right of Access to Adequate Housing

- It is drafting the Provincial Housing Bill, which is to come into operation later this year.
- The local government sphere will be streamlined when the new Act on Local Government comes into operation in the course of this year.

4.3. Local Government

Of the questionnaires sent out to all of the local governments in the country, the Greater Johannesburg Metropolitan Council (GJMC) was the only one that responded. A summary of this response follows in the present section.

4.3.1. The Greater Johannesburg Metropolitan Council (GJMC)

(a) Local Government's Understanding of its Constitutional Obligations

It understands its duty to respect the right of access to adequate housing to mean that "the state must refrain from doing anything which (unreasonably) deprives people of the right or of access or unreasonably denies or obstructs people in getting access to the right." The duty to protect the right of access to adequate housing is understood to mean that "the state has an obligation to do something to protect peoples socio economic rights against unjustified infringement and limitations." It understands its duties to promote and fulfill the right of access to adequate housing to mean that "the state has an obligation to take reasonable measures including laws or other measures to make it possible for people to meet their own needs through their own initiatives and efforts." It further understands this duty to include the obligation to inform and educate people of their rights and how to get access to them.

The GJMC fails to provide a definition of "access to" and "adequate housing" in Section 26 of the Constitution as it notes that Section 26 relates to the functional competencies of concurrent national and provincial government. In responding to the interpretation of "progressive realization" in Section 26(2), it once again notes that housing is not within its competency. But, it nevertheless interprets the phrase in the context of health services and water as meaning that it has an obligation to strive within its financial and administrative capacity to achieve the provision of the services in an incremental, sustainable and equitable manner.

(b) Local Government's Obligations to Satisfy its Responsibilities

It notes that municipal planning with regard to housing does not relate to the provision of houses or access thereto by local government. However, in the context of housing, it views its responsibilities as being the provision of the basic infrastructural services, the maintenance of the services and the development of equality and parity in the service provision.

(c) Local Government's Obligations to Satisfy its Additional Responsibilities

It notes that many of the additional responsibilities outlined in the Explanatory Note by the Human Rights Commission, are already being performed. It draws no distinction with these additional responsibilities except for the fact that assignment of certain matters require necessary capacity and sufficient resources for the exercise of such power or the performance of such duty.

(d) Local Government's Performance with regard to its Obligations

The Greater Johannesburg Metropolitan Council has restructured itself and its budget to focus on service delivery and is continuing to do so to ensure that the said right is being respected.

In order to protect the right, it has established a Greater Johannesburg Legal and Constitutional Working Group to review all by-laws and bring them in line with the Constitution.

It has created a Human Rights Department with the specific function of advising Council on human rights issues and to actively promote the creation of a human rights culture. In fulfilling the right, it has created an economic development department to investigate and implement mechanisms to ensure economic development within the disadvantaged groups. The Human Rights Information Centre also has produced various publications.

(e) **Laws and Other Measures of National or Provincial Government that has Assisted Local Government to Respect, Protect, Promote and Fulfill the Socio Economic Rights as Well as Satisfy its Responsibilities and Additional Responsibilities**

- Development Facilitation Act - Assists participation with local government on access to land;
- Landlord and Tenant Act - Clarifies Relationship with landlord and tenant;
- Urban Regeneration and Integration White Paper - Focuses on Urban Development;
- Housing Act 107 of 1997 - Assists Local Government to manage social housing;
- Vusani Amadolobha Fund - Fund by the Gauteng Provincial Government for Urban Regeneration.

(f) **Laws and Other Measures of National or Provincial Government that have Made it Difficult Local Government to Respect, Protect, Promote and Fulfill the Socio Economic Rights as Well as Satisfy its Responsibilities and Additional Responsibilities**

- The 1939 Local Government Ordinance.

(g) **New Laws and Other Measures to Respect, Protect, Promote and Fulfill the Socio Economic Rights as Well as Satisfy its Responsibilities and Additional Responsibilities**

- Organizational Review;
- Financial Restructuring;
- Information Management Systems Review and Restructuring;
- Public Private Partnerships;
- New Credit Control Policies; and
- Implementation of the White Paper on Local Government with special focus on its development vision

Targets, Timeframes and Benchmark are still being worked out.

(h) **Steps to Eliminate Existing Laws and Other Measures which Make it Difficult to Get Access to Socio Economic Rights or to deal with its Responsibilities and Additional Responsibilities**

The Legal Constitutional Working Group will revise all by-laws and bring them in line with the constitutional obligations of local government. Further, they are not enforcing any of these laws that are contrary to the Constitution regardless of whether they have been formally repealed or not.

(i) **Additional Initiatives**

- The Mayors Children Fund which is focusing on Children's Rights;
- The Indigency Policy - Welfare service in development by council to assist with poverty alleviation.

5. ASSESSMENT OF INFORMATION PROVIDED

5.1. National Department of Housing

5.1.1. The Department's understanding of its obligations in respect of the right of access to adequate housing

As has been mentioned, the Department has a fairly clear understanding of the terms "access" to housing as "the opportunity of everyone to exercise choice in respect of housing options and access such elected options."

However, its definition of “adequate housing” does not expressly reflect of the CESCR’s definition. The actual definition provided makes no reference to the legal security of tenure, availability of services, materials, facilities and infrastructure, the affordability, the accessibility, the location or cultural adequacy of the housing. But, in spite of these elements not being included within the definition of adequate housing, many of them are reflected in the laws and policies of the Department. For example, the Extension of Security of Tenure Act 62 of 1997 reflects a commitment to ensuring legal security of tenure, the policy relating the special needs of disabled people seeks to ensure that housing is accessible, the Development Facilitation Act 67 of 1995 makes references to the location of the housing. Furthermore, the definition of “housing development” as provided for in the Housing Act expressly makes reference to “habitable, stable and sustainable public and private residential environments”. It further refers to such structures allowing convenient access to economic opportunities, health educational and social amenities to allow access on a progressive basis to permanent residential structures with secure tenure, ensuring privacy and providing adequate protection against the elements as well as potable water, adequate sanitary facilities and domestic energy supply.” (Section 1(vi)). It is accordingly clear that many of the core elements of adequate housing as has been recognized by the CESCR are, in fact, similarly recognized in the South African context.

The Department has a clear understanding of the term “progressive realization” as meaning that the right has to be realized on the basis of economic principles and should reflect sustainable housing assistance measures to ultimately award everyone the right of access to adequate housing which accords with the Limburg Principles on the interpretation of the term as has been referred to above.

The Departmental Report to the Human Rights Commission reflected some of the issues that would constitute the relevant circumstances in Section 26(3). The Extension of the Security of Tenure Act further refers to such termination being just and equitable, and having regard to all relevant factors and in particular to -

- The fairness of an agreement, provision in an agreement or provision of law on which the owner or person in charge relies;
- the conduct of the parties giving rise to the termination;
- the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;
- the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and
- the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier has or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.

The Prevention of Illegal Evictions from and the Unlawful Occupation of Land Bill makes further reference to the consideration of relevant circumstances. Section 4(7) provides as follows:

“If an unlawful occupier has occupied the land in question for more than 6 months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances including, except where the land is sold in a sale of execution pursuant to a mortgage, whether the land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner, for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.”

With regard to evictions at the instance of organs of state, Section 6(3) of the same Act provides as follows:

In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to -

- The circumstances under which the unlawful occupier occupied the land and erected the building or structure;
- the period the unlawful occupier and his or her family have resided on the land in question; and
- the availability to the unlawful occupier of suitable alternative accommodation or land.

Whilst none of the aforementioned provisions provide for an exhaustive list of the relevant circumstances that should be considered preceding a court order for an eviction, they point to the seriousness of evictions by providing for a broad range of interests that need to be considered prior to an eviction order being issued. These interests point to an overall consideration of what is considered to be just and equitable before an eviction order is granted.

The Department has a clear understanding that it has an obligation to respect, protect, promote and fulfill the right of access to adequate housing as is required in terms of Section 7(2) of the Constitution. However, in terms of its Report to the Human Rights Commission, it has drawn no conceptual difference between these obligations but, rather recognized that overall, they refer to the introduction of enabling legislation in which appropriate housing policy, strategy and delivery systems can be developed.

Nevertheless, reference to legislation from the Department indicates that the Department has aimed to respect, protect, promote and fulfill the right of access to adequate housing so as to provide for an holistic and comprehensive approach to securing access to adequate housing. Reference will be made to the relevant legislation and other measures to assess the department's understanding of its obligations to respect, protect, promote and fulfill the right of access to adequate housing. The Housing Act 107 of 1997 and the White Paper on Housing will be referred to first as both these instruments represent the primary legislative and policy frameworks within which housing development should take place. Reference will then be made to other legislation and/or policy and/or other measures as they pertain to each of the state's obligations.

The Housing Act 107 of 1997

The Housing Act 107 of 1997 seeks to respect, protect, promote and fulfill the right of access to adequate housing. It aims to provide for the facilitation of a sustainable housing development process by laying down general principles applicable to housing development in all spheres of government, to define the functions of national, provincial and local governments in respect of housing development and to provide for the establishment of a South African Housing Development Board, the continued existence of the provincial boards and the financing of national housing programmes. A National Housing Code will also be published in terms of the Act which will detail national norms and minimum standards for housing in South Africa.

The White Paper on Housing

As has been mentioned, the White Paper on Housing represents the primary policy framework that seeks to give effect to Section 26 of the Constitution. It analyses the housing sector within the context of the macro economy and outlines the current housing context in South Africa. It further

proposes a national housing strategy and speaks to the institutional arrangements within which housing will be tackled as well as speaks to the issues of housing subsidies.

5.1.2. Measures taken to Respect the Right of Access to Adequate Housing

As is clear from the analysis of the duty to respect the right of access to adequate housing, this duty requires that the government refrain from taking any action which prevents people from satisfying the right when they are able to do so themselves. In addition to the Housing Act, The Prevention of Illegal Evictions from and Unlawful Occupation of Land Bill further aims to respect this right. It seeks to provide for the prohibition of unlawful evictions and to provide procedures for the eviction of unlawful occupiers. It further repeals the Prevention of Illegal Squatting Act of 1951 and other obsolete laws. These aims accord with the international recognition that the prohibition of unlawful evictions forms an integral component of the state's duty to respect the right of access to adequate housing.

The Development Facilitation Act further aims to introduce measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land. It accordingly lays down general principles governing land development throughout the country. It further seeks to provide for nationally uniform procedures for the subdivision and development of land in rural areas so as to promote the speedy provision and development of land for residential, small scale farming or other needs and uses. Finally, it aims to promote security of tenure while ensuring that end user finance in the form of subsidies and loans become available as early as possible in the land development process.

Furthermore, as has been noted, the duty to respect the right prohibits unfair discrimination in the provision of access to adequate housing. The Department has accordingly recognized that the goal of equality in access to adequate housing, requires special measures for certain sectors of the population. In this regard, it has outlined the following groups as being in need of special measures as regards access to housing:

- The poor;
- the disabled;
- female headed households, children and the youth;
- the elderly;
- farmworkers;
- rural households.

The Housing Subsidy Scheme is intended to assist the poor in gaining access to adequate housing. It is also in the process of developing a policy for the variation of the subsidy amount to cater for the special needs of the disabled. However, due to documentation regarding the exact details of this policy not having been provided, no assessment can be made as regards its content. Whilst, the Department has listed female headed households as a group requiring special measures, an excursus of the relevant legislation fails to make clear as to exactly what special measures are in place or planned for female headed households, except to vague reference to the fact that female headed households must be considered as a relevant factor in the granting of an eviction order. (The Prevention of Illegal Evictions from and the Unlawful Occupation of Land Bill, Section 4(7)) Furthermore, whilst the Department has also listed children and the youth as a group in need of special measures as regards housing/shelter, this group's housing needs fall within the domain of the Department of Welfare. Similarly, from the information received, there is little clarity as to

what special measures are in place or intended to be put in place to address to housing needs of the elderly except for their interests being considered a relevant factor in the granting of an eviction order. In undertaking special measures with regard to farm workers, the Department makes vague reference to investigations that are afoot to determine the basis upon which subsidies will be made available for farmworker housing. Finally, it is in the process of finalizing its rural housing subsidy policy so as to cater adequately for rural households in the provision of housing. However, due to the relevant documentation not having been provided, an assessment of this policy cannot be made.

The Department has further repealed all laws and other measures that unfairly discriminate against persons or groups of persons and their housing rights as part of its duty to respect the right of access to adequate housing. Such laws have been repealed in terms of the Housing Act. It has further undertaken other measures (such as the housing subsidy scheme) to remedy the effects of past discrimination.

Whilst the aforementioned issues clearly point to the Department's commitment to respecting the right of access to adequate housing, an in-depth assessment as to how these measures have actually ensured respect for the right cannot be made due to the absence of relevant documentation.

5.1.3. Measures taken to Protect the Right of Access to Adequate Housing

As is clear from the analysis of the duty to protect the right of access to adequate housing, this duty requires that the state take measures to ensure that any possible violation of this right by other more powerful individuals and groups in society is prohibited.

Tenants should, in terms of the state's duty to protect the right of access to adequate housing, be protected against unreasonable or sporadic rent increases. The Rent Control Act 80 of 1976 (although not referred to in the Department's report to the Human Rights Commission) seeks to consolidate the law relating to rentals and provide for "reasonable rentals" of premises. The Act accordingly protects the rights of tenants against unreasonable or sporadic rent increases as is required by the CDESCR.

In order to protect this right of people from acts such as forced evictions, government should, in terms of the ICESCR, take immediate measures aimed at conferring legal security of tenure upon all persons and households in society who currently lack such protection. The Prevention of Illegal Evictions from and Unlawful Occupation of Land Bill accordingly aims to protect this right from other more powerful groups or individuals in society.

The Extension of Security of Tenure Act has also been passed in an attempt to confer such legal security of tenure. The Act aims to provide for measures with state assistance to facilitate the long term security of land tenure, to regulate the conditions of residence on certain land and to regulate the conditions on and circumstances under which persons, whose right of residence has been terminated, may be evicted from land.

The National Homebuilders Registration Council Bill will further ensure that people building homes will be protected in the event of defects and other problems arising in their homes caused through the negligence of the builder.

Finally, the Mortgage Indemnity Fund has ensured that banks are not discouraged from making available homeloans to poorer home buyers because such risks were insured by the fund.

All of the aforementioned measures ultimately aim to protect the right of access to adequate housing as is required in terms of international law.

5.1.4. Measures taken to Promote and Fulfill the Right of Access to Adequate Housing

As has been noted, the duty to promote the right of access to adequate housing means that the government must educate the public about their rights, and must strive to create a culture in which the right of access to adequate housing can become a reality. The Department has accordingly undertaken an ongoing communication campaign aimed at informing the public of the National Housing Programme. Furthermore, it has established Housing Support Centres which, as has been noted, are established within communities which are involved in the Peoples' Housing Process to provide more detailed and targeted information to a specific audience. In addition, it is in the process of establishing a website. Whilst these measures seemingly accord with international law on the issue, a detailed assessment of them cannot be made in the absence of the relevant documentation explaining the details of such measures.

In order to fulfill the right of access to adequate housing, the National Housing Subsidy Scheme has been implemented. As the national housing subsidy scheme is the cornerstone of government adhering to its obligation of fulfilling the right of access to adequate housing, it will be briefly discussed in the present section.

The amount available for subsidies are allocated between the provinces on the grounds of criteria like population, income categories, existing informal housing, backlogs, urbanization etc. which is in accordance with the departmental policy of providing housing for the poor.

Individual ownership subsidies are allocated to beneficiaries to assist them to acquire ownership of fixed residential properties for the first time. The subsidy levels are linked to household income. There are two types of individual ownership subsidies: project linked subsidies and individual subsidies. The project linked subsidies provides housing opportunities for individuals on an ownership basis in projects approved by the Provincial Housing Board. The individual subsidy affords persons access to acquire ownership of an existing property or a property not approved by the provincial housing board.

The Consolidation Subsidy allows for persons who before the Housing Subsidy Scheme, received housing assistance from the state in the form of ownership of serviced sites, to apply for a further benefit from the state to improve their existing housing circumstances.

Institutional subsidies are available to institutions that create affordable housing stock to enable eligible persons to live in subsidized residential properties based on secure tenure.

All subsidies are paid out of the National Housing Fund in order to allow a qualifying beneficiary to acquire a residential property with secure tenure at a price that he/she can afford, that satisfies the minimum health and safety requirements and one that allows as many housing delivery options and opportunities. Housing subsidies are controlled by the national and provincial housing boards who receive subsidy applications from local authorities, developers or individuals. The Subsidy Implementation Manual provides a comprehensive input on the housing subsidy scheme.

Furthermore, as has been mentioned, the Rural Housing Subsidy Policy as well as the Policy on the Variation of the Subsidy Amount for Disabled Persons are in the process of being developed so as to fulfill its duties to promote and fulfill the right of access to adequate housing as regards rural households and disabled persons. Finally, the Mortgage Indemnity Fund has also sought to ensure that the right of access to adequate housing is fulfilled.

In addition, the Department has set up various bodies such as the National Housing Finance Corporation and the Rural Housing Loan Fund to enable people to access finance.

These measures accord with the CESCR's recognition that housing subsidies should be made available as they are an important part of the state's duty to fulfill the right of access to adequate housing.

5.1.5. Establishing Minimum Core Obligations for the Right of Access to Adequate Housing

As has been noted, under international law, minimum core obligations and specific benchmarks are required for the right of access to adequate housing. However, the Department's response to its minimum core obligations reflected an extremely poor understanding of the concept of minimum core obligations. Vague reference was made to the Housing Act and its commitment to give priority to the needs of the poor, with no information having been provided as to exactly what the minimum core obligations of the right of access to adequate housing were.

Whilst the CESCR has outlined certain minimum core obligations relating to housing, the Department has not expressly referred to any of these. However, some of these factors are implicit in certain legislation such as legal security being provided for in the Extension of Security of Tenure Act. Furthermore, Section 3(1)(c)(iii) of the said Act refers to policy, administrative policy and laws promoting efficient and integrated land development in that they promote the availability of residential and employment opportunities in close proximity to or integrated with each other which relates to the location of housing as has been recognized by the CESCR. Section 3(1)(c)(iv) of the same Act further refers to optimizing the use of existing resources including such resources relating to agriculture, land, minerals, bulk infrastructure, roads transportation and social facilities. Finally, the Department's commitment to ensuring the accessibility of housing is reflected in the Policy dealing with the variation of the subsidy amount so as to cater for the needs of the disabled people. The aforementioned has sought to ensure that whilst certain components of the CESCR as regards core minimum obligations have been incorporated in the laws and policies of the Department, their actual report to the Human Rights Commission has reflected a very poor understanding of the concept.

5.1.6. The Baseline provided for the Realization of the Right

The information received from the Department does, by no means present a comprehensive overview of the housing situation in South Africa. It has failed to refer to all relevant legislation that deal with the right in question. For instance, it has not made mention of the Extension of Security of Tenure Act, the Development Facilitation Act or the Rent Control Act. It has further failed to provide an adequate summary of the legislation that it has referred to. In those cases where reference has been made to laws or other measures that are of relevance to the questionnaire, it has failed to provide any supporting documentation regarding such laws or other measures, except for an extremely brief input as to what they entail in certain cases.

In addition, the Department has not responded to certain questions such as those relating to the percentage of the Department's budget set aside to promote and fulfill the right of access to adequate housing nor any information as to how much of this budget will have been spent by the end of the 1997/8 financial year. Furthermore, it has not provided any information on the laws and other measures introduced in the past year which have had a negative impact on the progressive realization of the right of access to adequate housing.

Finally, the accuracy of the information cannot be assessed due to the "one-sided" approach used by not according NGO's the opportunity to respond to certain issues. International experience has shown that NGO inputs are vital to provide the backdrop against which state reports can be evaluated. It is accordingly suggested that in order to obtain a comprehensive as well as accurate overview of the housing situation in South Africa, the input of NGO's should be an indispensable component of this reporting procedure.

5.1.7. Information Systems to Monitor the Progressive Realization of the Right - Focus on Disaggregated Data regarding Vulnerable and Disadvantaged Groups

As has been mentioned, the Department is in the process of developing Nomvula - Housing and Urbanization Information System which seeks, amongst other things, to provide economic information which includes sector specific information and funds allocations as well as housing standards. As the system has not been adequately described and once more, no supporting documentation has been provided, an assessment of its ability to monitor the progressive realization of right of access to adequate housing and its focus on disaggregated data regarding vulnerable and disadvantaged groups cannot be made. However, the fact that it will allow regional and national comparisons and sector specific information, indicates that it might be able to monitor the progressive realization of the right of access to adequate housing. It might further be able to focus on disaggregated data relating to vulnerable and disadvantaged groups depending on what is meant by the Department's reference to "sector specific information".

Furthermore, as has been noted a pilot study which is in line with the UNCH's Global Urban Observatory Programme, has already been carried out to develop key indicators for tracking the success of the Department's policies. Whilst the initiative is laudable, an assessment cannot be made due to a lack of relevant information.

5.1.8. The Existence of a Coherent Plan or Policy to Address the Realization of the Right

As has been noted, the CESCR has noted that States parties are required to adopt a national housing strategy which should define the objectives for the development of housing conditions, identify the resources available to meet these goals, as well as the most cost effective way of using them, and set out responsibilities and time frames for the implementation of the necessary measures

In view of the aforementioned information, its existing initiatives indicate that the Department possibly does have a plan to address the right of access to adequate housing in the Constitution. The Housing Act is the primary legislative framework that seeks to give effect to this right. In addition, the White Paper on Housing, the Extension of Security of Tenure Act, the Prevention of Unlawful Evictions from and the Unlawful Occupation of Land Bill, the Development Facilitation Act, the Rent Control Act, the impending National Housing Code as well as the Homebuilders Registration Council Bill together form part of the Department's plan to realize the right of access to adequate housing.

Furthermore, other policies such as the Variation of the Subsidy Amount for Disabled People Policy, the Rural Housing Subsidy, the Policy in respect of Bridging Finance to Developers as well as the Public Sector Hostels Refinement Policy reiterate the point.

In addition, the Mortgage Indemnity Fund, the Subsidy Scheme and the ongoing education campaign lend further support to the Department's overall plan in making access to housing a reality for the people of South Africa.

However, whilst all of these laws and other measures suggest an overall plan, no documentation or input from the Department has revealed the existence of any such plan. It is accordingly suggested that in order to concretize a coherent overall plan of the Department, a document should be formulated that refers to the overall plan as well as provides for the laws and other measures that are currently in force as well as those that are intended, together with the time frames and the available resources that the Department is working within be formulated. It is suggested that such an overall plan will also be of assistance to the provinces as it will avoid provinces introducing measures on a particular area which will need to be modified or amended when and as national measures are introduced. In short, the existence of an overall plan by the national department will allow the provinces to have some insight on the planned measures nationally and as such, avoid time being wasted in drafting and repealing such measures at provincial level. Obviously though, in order to have such an effect, it is important that such plan be made available to all of the provincial and local governments.

5.1.9. Recommendations

(i) The Way the Department has Reported

Whilst recognizing the constraints that the Department is operating within, it is strongly suggested that it provide a clear summary of the laws and other measures that have been taken or are intended to be undertaken so as to allow for a comprehensive analysis of its performance in relation to its ultimate goal of realizing the right of access to adequate housing. In further contributing to a comprehensive analysis, it is suggested that all supporting documentation regarding measures that are in place or that are intended to be put in place is provided. The Department should bear in mind that the overall purpose of the information that it provides is to present the Human Rights Commission with a *comprehensive overview of measures that are being undertaken to realize the right of access to adequate housing* in order for an assessment to be made on these measures.

It is further recommended that the Department approach the Human Rights Commission for clarity on questions where it is unsure and cannot be clarified by the Explanatory Note provided with the questionnaires. For example, the poor understanding of the minimum core obligations reflected in the Report may necessitate such clarity. In addition, where questions are not responded to and the Department undertakes to furnish such information to the Human Rights Commission, it is strongly recommended that the Department adhere to such commitments.

Finally, it is suggested that the Department provide input on the finances available for the realization of the right and appropriate legislation where further information on the issue can be obtained from (such as the Housing Finance Bill which the Department does not even make mention of in its Report to the Human Rights Commission).

(ii) The Improvement and Strengthening of its Protection of the Right of Access to Adequate Housing

It is suggested that, as a matter of priority the Department develop a set of core minimum standards and benchmarks in respect of the right of access to adequate housing, for the critical reasons expressed above. The National Housing Code should be formulated as a matter of priority so as to lend clarity to the national norms and minimum standards for housing in the country.

Furthermore, as has been suggested, the Department should develop a comprehensive, coherent overall plan which provides for the laws and other measures that are currently in force as well as those that are intended, together with the time frames and the available resources that the Department is working within, for reasons suggested earlier. As has been suggested, this plan should be made communicated to provincial and local governments, to avoid the duplication of legislation and the unnecessary wastage of time.

Finally, whilst the Department's recognition of special measures being required for vulnerable and disadvantaged groups is laudable, it is suggested that such special measures be adequately reflected in its laws and policies. For example, whilst female headed households have been recognized as a group in need of special measures, there has been no indication of exactly what special measures have been undertaken or are intended to be undertaken to ensure the realization of the right to this group of persons. Should such measures exist, it is strongly suggested that they be drawn to the attention of the monitoring bodies.

5.2. Provincial Department of Housing (Mpumalanga)

5.2.1. The Department's Understanding of its Obligations in Respect of the Right of Access to Adequate Housing

The Director-General in the Office of the Premier has provided an excellent analysis of its understanding of its obligations to respect, protect, promote and fulfill the right of access to adequate housing, which accords with international law on the subject. It has further referred to numerous initiatives, which, though not a comprehensive indication of its duties to respect, protect, promote and fulfill the right of access to adequate housing, reflect its commitment to fulfilling these obligations. The Department's undertaking to provide temporary accommodation (tents) in the event of homeless people whose homes were destroyed by storm water etc. is a particularly impressive initiative by the Department.

5.2.2. The Baseline provided for the Realization of the Right

As the questionnaire was responded to by different directorates within the Department, a full picture of the housing situation within the province cannot be gauged. Whilst numerous initiatives were referred to, they failed to provide a comprehensive overview of the housing situation in the province. Instead, the information provided was fragmented and vague. Furthermore, the comments made regarding NGO input are similarly applicable to the information of provincial departments, so as to ensure an accurate picture of the housing situation within the province.

5.2.3. Information Systems to Monitor the Progressive Realization of the Right - Focus on Disaggregated Data regarding Vulnerable and Disadvantaged Groups

As has been noted, the Department has numerous structures (as has been noted above) to chart its progress and evaluate its plans. However, the Department has failed to provide any information as to whether such data will be disaggregated or not. An assessment of the systems to monitor the progressive realization of the right with a particular focus on disaggregated data can accordingly

not be made. However, for the present purposes suffice it to note that there are systems in place to monitor the progressive realization of the right in question.

5.2.4. The Existence of a Coherent Plan or Policy to Address the Realization of the Right

No reference has been made to the existence of a coherent plan at provincial level to address the realization of the right. Random reference has been made to the types of measures that are underway to realize the right of access to adequate housing, as opposed to a coherent overall plan. Whilst this might exist, no such indication was given in its Report to the Human Rights Commission.

5.2.5. Recommendations

(i) The Way the Department has Reported

Whilst it is recognized that different directorates work on different areas pertaining to housing, it is suggested that the information provided by the different Directorates is formulated in a way that a response by all of the Directorates follows a particular question as opposed to all 6 Directorates responding to each question in the questionnaire separately. Furthermore, due recognition should be accorded to the actual purpose of these reports, which is intended to provide the Human Rights Commission with a comprehensive overview of the measures that are being undertaken by the Department at provincial level so as to ensure the realization of the right. The information provided should accordingly be comprehensive, accurate and clear to allow for the proper monitoring of the right.

It is further suggested that all supporting documentation is attached to the Report that is provided to the Human Rights Commission.

(ii) The Improvement and Strengthening of its Protection of the Right of Access to Adequate Housing

It is suggested that the Department formulate a coherent plan as regards the initiatives that it is undertaking to realize the right of access to adequate housing.

5.3. Free State Department of Housing

5.3.1. The Department's Understanding of its Obligations in Respect of the Right of Access to Adequate Housing

The Free State Department of Housing has a clear and accurate understanding of its obligations in respect of implementing the right of access to adequate housing. It further provides for an excellent definition of adequate housing, which as has been mentioned, takes account of both the definition of "housing development" as provided for in the Housing Act as well as the affordability levels of the people. The latter is particularly significant because affordability has been listed by the CESCR as one of the factors to determine the adequacy of housing, yet has been accorded very limited attention in the South African context. It further refers to various initiatives it has undertaken to comply with its obligations in respect of the right.

5.3.2. The Baseline provided for the Realization of the Right

The Department provides for a comprehensive list of initiatives that were undertaken to ensure the realization of the right, which reflect a clear overall picture of the housing situation within the province. However, due to the absence of NGO input as well as the lack of supporting documentation, the accuracy of the information cannot be determined.

5.3.3. Information Systems to Monitor the Progressive Realization of the Right - Focus on Disaggregated Data regarding Vulnerable and Disadvantaged Groups

The Department has provided no information as regards information systems that are in place to monitor the progressive realization of the right and hence, whilst there might be such mechanisms in place, an assessment cannot be made due to a lack of the relevant information.

5.3.4. The Existence of a Coherent Plan or Policy to Address the Realization of the Right

Whilst the initiatives undertaken by the Department point to an overall plan, the Report has, at no point made any reference to the existence of any such plan. It is accordingly not possible to make a determination of the existence of any such overall plan.

5.3.5. Recommendations

(i) The Way the Department has Reported

The Department has provided an excellent overview of what is being done to realize the right of access to adequate housing. However, in order to strengthen its Report, it is suggested that the Department respond to all questions in the questionnaire so as to allow for an assessment of, for instance, its monitoring mechanisms etc. in addition to measures being undertaken to ensure housing delivery. It is further suggested that all supporting documentation be provided.

(ii) The Improvement and Strengthening of its Protection of the Right of Access to Adequate Housing

In order to ensure the progressive realization of the right, it is suggested that mechanisms against which to evaluate plans and chart progress be put in place. Such mechanisms should also ensure that disaggregated data is obtained. It is further suggested that the Department develop an overall, coherent plan to address the realization of the right.

5.4. Gauteng Department of Housing

5.4.1. The Department's Understanding of its Obligations in Respect of the Right of Access to Adequate Housing

The Department has a fairly clear understanding of its obligations in respect of the right of access to adequate housing. However, it has failed to provide any definition for "adequate housing," which, it responds, is due to the Housing Bill not having been finalized, although the Housing Act came into being in December of 1997, approximately 2 months before the Department responded to the questionnaire. It is accordingly suggested that the Department keep abreast of national developments pertaining to housing in order to best fulfill its duties. It further refers to a Provincial Housing Act, the completion of which is dependent on the finalization of the National Housing Act, which as has just been mentioned, is already finalized.

5.4.2. The Baseline provided for the Realization of the Right

The Department provides for two initiatives that were undertaken to ensure the realization of the right (The Provincial Housing Act and the Landlord and Tenant Act). These initiatives, do, by no means reflect a clear overall picture of the housing situation within the province. Furthermore, due to the absence of NGO input as well as the lack of supporting documentation, the accuracy of the information cannot be determined.

5.4.3. Information Systems to Monitor the Progressive Realization of the Right - Focus on Disaggregated Data regarding Vulnerable and Disadvantaged Groups

The Department has provided no information as regards information systems that are in place to monitor the progressive realization of the right and hence, whilst there might be such mechanisms in place, an assessment cannot be made due to a lack of the relevant information.

5.4.4. The Existence of a Coherent Plan or Policy to Address the Realization of the Right

The Department's Report has, at no point made any reference to the existence of any such plan. It is accordingly not possible to make a determination of the existence of any such overall plan. Furthermore, due to the limited initiatives that have been referred to no inference can be drawn on the possible existence of any such plan.

5.4.5. Recommendations

(i) The Way the Department has Reported

The Department has provided a vague, fragmented overview of what is being done to realize the right of access to adequate housing. In order to strengthen its Report, it is suggested that the Department respond to all questions in the questionnaire and, refer, in a comprehensive, clear and accurate way to initiatives that have been undertaken to realize the right of access to adequate housing. It is further suggested that all supporting documentation be provided.

(ii) The Improvement and Strengthening of its Protection of the Right of Access to Adequate Housing

In order to ensure the progressive realization of the right, it is suggested that mechanisms against which to evaluate plans and chart progress be put in place. Such mechanisms should also ensure that disaggregated data is obtained. It is further suggested that the Department develop an overall, coherent plan to address the realization of the right. Finally, as has been noted, it is suggested that the Department keep abreast of national developments in the housing arena, such as the finalization of the Housing Act which has implications for the provincial departments. Due to inadequate information having been provided, suggestions for improvement as regards its obligations in respect of the right of access to adequate housing cannot be made.

5.5. Kwa Zulu Natal Department of Housing

5.5.1. The Department's Understanding of its Obligations in Respect of the Right of Access to Adequate Housing

The Department makes reference to its Provincial Vision in responding to its understanding of its obligations in respect of the right of access to adequate housing. Whilst the aims set out in this Provincial Vision are laudable, it fails to reflect any concrete understanding of what the different obligations in respect of the right of access to adequate housing impose on provincial government. It does however, recognize that minimum standards will have to be set in respect of the socio economic rights. Whilst its recognition of this obligation is laudable, the fact that it makes reference to minimum standards being required for "shelter" as opposed to adequate housing raises concerns as to the kind of attention is being accorded to "adequate housing," as well as the criteria being employed to determine the adequacy housing within the province. It further provides no definition of adequate housing, as such definition is considered as being within the competence of national government, the implementation of which, it notes, is the function of provincial government. However, in providing this response, it fails to make any reference to national legislation or policy that provide some indication of what is considered to be adequate housing. In

short, on the basis of the information provided, the Department reflects a very poor understanding of the concept of "adequate housing".

It must further be noted that the provision of homes for street children is considered to be one of the responsibilities of the Kwa Zulu Natal Provincial government. Whilst it makes no reference as to which Department bears this responsibility the recognition of this obligation is laudable.

Finally, although the province has a Programme in place to address the needs of the poor, the relevance of this programme to ensuring access to adequate housing has not been provided.

5.5.2. The Baseline provided for the Realization of the Right

The Department refers to some initiatives such as the Provincial Housing Strategy to address the realization of the right. However, due to no input having been provided as regards what such initiatives aim to do, nor any supporting documentation having been provided, a full picture of what is being done to address the realization of the right cannot be gained. Furthermore, due to the absence of NGO input the accuracy of such information cannot be tested.

5.5.3. Information Systems to Monitor the Progressive Realization of the Right - Focus on Disaggregated Data regarding Vulnerable and Disadvantaged Groups

The Department makes reference to a Performance Bill to assess performance management. It further introduces minimum standards in Departments as well as key performance indicators against which performance can be judged. Whilst the progress that is being made is determined in terms of performance, it is unclear whether this Bill will allow for monitoring the progressive realization on the actual right. Furthermore, it is unclear whether this Bill focuses on disaggregated data. Due to no supporting documentation it is unclear whether it will allow for monitoring both the actual progressive realization of the right as well as provide disaggregated data.

5.5.4. The Existence of a Coherent Plan or Policy to Address the Realization of the Right

The Report makes reference to the Provincial Vision which seems to refer to a coherent overall plan to address all of its obligations. However, due to insufficient information an assessment as regards this plan cannot be made.

5.5.5. Recommendations

(i) The Way the Department has Reported

The Department has provided a vague overview of what is being done to realize the right of access to adequate housing. In order to strengthen its Report, it is suggested that the Department respond to all questions in the questionnaire and, refer, in a comprehensive way to initiatives that have been undertaken to realize the right of access to adequate housing. It is further suggested that all supporting documentation be provided. The overall Report bears very limited relevance to concrete initiatives and details thereof that have sought to realize the right of access to adequate housing.

(ii) The Improvement and Strengthening of its Protection of the Right of Access to Adequate Housing

In order to ensure the progressive realization of the right, it is suggested that mechanisms against which to evaluate plans and chart progress be put in place. Such mechanisms should also ensure that disaggregated data is obtained. Due to inadequate information having been provided,

suggestions for improvement as regards its obligations in respect of the right of access to adequate housing cannot be made.

5.6. Northern Cape Department of Housing

5.6.1. The Department's Understanding of its Obligations in Respect of the Right of Access to Adequate Housing

The Department has provided a vague response on its understanding of its obligations to realize the right of access to adequate housing. It has failed to recognize its obligation to protect the right of access to adequate housing from other private individuals and groups in society. It has further provided an extremely vague understanding of the term "adequate housing" as being "sufficient accommodation". It has failed to provide any understanding of what is meant by "sufficient".

Furthermore, it has understood its duties to satisfy its responsibilities and additional responsibilities as merely being to provide training and capacity building in the provincial administration to enable staff to fulfill their duties. The Department has provided no input on the exact measures that it has undertaken to ensure the realization of the right of access to adequate housing. It is accordingly clear that the Department either has a very limited understanding of its obligations in relation to the said right or a very limited understanding of the vital importance of having socio economic rights monitored so as not to provide a comprehensive response to the questionnaire.

5.6.2. The Baseline provided for the Realization of the Right

Due to the vague and incomplete response that was provided a full and accurate picture of the housing situation in the province cannot be gauged. The absence of NGO input has further contributed to this.

5.6.3. Information Systems to Monitor the Progressive Realization of the Right - Focus on Disaggregated Data regarding Vulnerable and Disadvantaged Groups

Due to insufficient information having been provided, the possible existence of monitoring systems nor the nature thereof cannot be made.

5.6.4. The Existence of a Coherent Plan or Policy to Address the Realization of the Right

No reference was made to any such plan. Furthermore, there is no indication of any such plan.

5.6.5. Recommendations

(i) The Way the Department has Reported

The Department has provided little insight as to exactly what is being done to realize the right of access to adequate housing. In order to strengthen its Report, it is suggested that the Department respond to all questions in the questionnaire and, refer in a comprehensive way to initiatives that have been undertaken to realize the right of access to adequate housing. It is further suggested that all supporting documentation be provided. The overall Report bears very limited relevance to concrete initiatives and details thereof that have sought to realize the right of access to adequate housing in the Province. It is accordingly suggested that the purpose of the information that it provides the Human Rights Commission with is borne in mind. In short, in order to allow the Commission to properly fulfill its mandate of monitoring the implementation of the said right, it is recommended that the Department provide a comprehensive, clear and accurate overview of the measures that are being undertaken to realize the right of access to adequate housing.

(ii) The Improvement and Strengthening of its Protection of the Right of Access to Adequate Housing

Due to inadequate information having been provided, suggestions for improvement as regards its obligations in respect of the right of access to adequate housing cannot be made.

5.7. Local Government (Greater Johannesburg Metropolitan Council - GJMC)

5.7.1. The Department's Understanding of its Obligations in Respect of the Right of Access to Adequate Housing

The GJMC provides a clear understanding of the duties to respect, protect, promote and fulfill socio economic rights. However, in fulfilling these duties, it expressly notes that the right of access to adequate housing is within the competence of national and provincial government, as is provided for in Part A of Schedule 4 of the Constitution and that it, accordingly has no role to play in the implementation of the right of access to adequate housing. With regard to its responsibility regarding municipal planning relating to housing, it understands its obligations to be the provision of basic infrastructural services, the maintenance of services and the development of equality and parity in the provision of services. It undertakes pollution control together with national and provincial government.

It is suggested that the GJMC make reference to the legislation referred to above and the Housing Act in particular as regards its actual obligations in relation to the realization of the right of access to adequate housing. In addition to local government's obligation to deal with certain specific areas regarding housing development, it bears a further obligation to deal with numerous other areas that are closely related to housing (such as certain factors relating to the adequacy of housing). It is accordingly recommended that instead of viewing its duties as regards housing in as simplistic a way as it does, that it use the Constitution and appropriate legislation (an analysis of the sections that support local government's important role as regards housing in terms of both the Constitution as well as the Housing Act has been provided for above) to determine its actual role as regards the implementation of the right of access to adequate housing and undertake the necessary measures to fulfill these duties.

5.7.2. The Baseline provided for the Realization of the Right

As the response of local government's obligations in relation to the right of access to adequate housing reflected an extremely poor understanding of its actual obligations in relation to the right of access to adequate housing, which is clearly contrary to the provisions of certain legislation on the issue, a full picture of the housing situation within its area of jurisdiction cannot be gauged. Furthermore, the comments made regarding NGO input are similarly applicable to the information of local governments, so as to ensure an accurate picture of the housing situation within the jurisdiction of the GJMC.

5.7.3. Information Systems to Monitor the Progressive Realization of the Right - Focus on Disaggregated Data regarding Vulnerable and Disadvantaged Groups

No indication has been provided as to the measures or structures that are in place to ensure the progressive realization of the right of access to adequate housing.

5.7.4. The Existence of a Coherent Plan or Policy to Address the Realization of the Right

No reference has been made to the existence of any such plan. Furthermore, the existence of any such plan to address the realization of the right of access to adequate housing is unlikely due to the understanding that local government has no role to play in the realization of the right.

5.7. 5. Recommendations

(i) The Way the Department has Reported

It is suggested that brief summaries are provided for all the laws or other measures that local government refers to. It is further suggested that all supporting documentation is attached to the Report that is provided to the Human Rights Commission. Once more, the information provided should be comprehensive, clear and accurate so as to allow the Human Rights Commission to fulfill its constitutional mandate of monitoring the realization of the right in question.

(ii) The Improvement and Strengthening of its Protection of the Right of Access to Adequate Housing

It is recommended that the GJMC refer to relevant legislation to determine its role as regards the implementation of the right of access to adequate housing. It should further assume this critical role to ensure the realization of the right of access to adequate housing. It is further suggested that the GJMC formulate a coherent plan as regards the initiatives that it is undertaking or intends undertaking to realize the right of access to adequate housing.

6. CONCLUSION

The information that has been provided by the aforementioned Departments is indicative of the numerous measures that are underway to implement the constitutional right of access to adequate housing. Although this Report had aimed to assess the implementation of both the right of access to adequate housing and children's right to shelter, it has only achieved the first of these aims. As has been mentioned, it has been agreed that the implementation of children's rights to shelter would fall within the domain of the Department of Welfare which has provided little or no information on measures that have been taken to implement this right. As a result, this Report has not been able to provide a comprehensive overview of the measures that are in place to realize this right or provide as assessment of such measures. Furthermore, the assessment provided on the right of access to adequate housing has had certain limitations due to insufficient information being provided as well as the absence of supporting documentation and the fragmented way in which many of the provincial governments have responded. It must be stressed that the relevant organs of state should respond to the Human Rights Commission in a comprehensive, clear and accurate way so as to allow the proper monitoring of the realization of socio economic rights. Nevertheless, in spite of the limitations, this Report has sought to provide accurate an assessment of how the right of access to adequate housing should be understood, what is being done to implement the right and recommendations on how the state reports as well as the implementation of the rights can be improved upon, so as to ensure that the right of access to adequate housing becomes a reality for everyone in South Africa.