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ENSURING **RIGHTS** MAKE REAL **CHANGE**

DULLAH OMAR INSTITUTE
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Contents

Editorial

Welcome to the *ESR Review 1* of 2024, the first of two special issues on gender-based poverty, women and housing in urban areas.

These themes are timely and relevant not only for South Africa but the world at large – it is estimated that by 2050, the majority of people will live in urban areas. Even today, one in seven people live in deprived urban areas, a situation that is often reflected in the non-realisation of the right to adequate housing.

The focus on housing is important, as housing connects to gender-based poverty in urban areas in various ways. While adequate housing provides a person with a place to live in dignity and security, it also holds opportunity for income generation and serves a social function as a site for social exchange and gathering. These functions and assets of housing play a key role in urban areas, and are determined mainly by gender, race, and socio-economic status. The gender inequality inherent in political, legal, and social structures, as well as the legacy of apartheid, influences the socio-economic status of women in general and racialised women in particular.

In this issue, our first article, by Deborah Raduba and Adenike Fabohunda, contextualises the right to housing in South Africa from a historical point of view and demonstrates the limitations of post-apartheid law and policy in regard to tenure security for black women.

From the perspective of international human rights law, tenure security forms an important component of the right to adequate housing provided for in article 11(1) of the Covenant on Economic, Social and Cultural Rights. The right also has several other components, such as availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.

Our second article, by Mpho Raboeane and Noziphiwo Sigwela, delves deeper into the challenges women face in accessing adequate housing, and highlights the mutlidimensionality of the issue linked to a number of those components. The third article, by Justin Winchester and Ashita Alag, focuses on the implications of customary law and sketches out how to bridge the current gaps between customary and common law in South Africa, thus linking to the components of tenure security and cultural adequacy.

The intersections of gender, racialisation, and socio-economic status are at the heart of the topic of gender-based poverty, women, and housing in urban areas. Multiple forms of discrimination create a unique experience, conceptualised as 'intersectional discrimination', which is greater than the sum of each of the multiple forms of discrimination on their own. Based on a feminist perspective, the current international human rights legal framework is often criticised for not being able to adequately address intersectional discrimination, thus leading to gaps and limitations in addressing gender-based poverty and the right to housing.

The fourth article is a policy anaysis in this issue, written by Pamela Masiko-Kambala, the Director of Infrastructure Policy and Research of the Western Cape Department of Infrastructure, explains how intersectional discrimination can be addressed in practice and how the Department uses gender mainstreaming in its programme for upgrading informal settlements and, in particular, within its participation processes.

The need for affected people to participate in decision-making processes is, indeed, a common denominator of all four of the contributions: participation is a key ingredient for finding adequate solutions in relation to the right to housing and intersectional discrimination. Moreover, the international human rights framework itself emphasises the need for people affected by poverty, and for women in particular, to be included more effectively in decision-making processes.

These ideas are underlined in our fifth article, an interview with Mymoena Scholtz, the director of the non-profit organisation Where Rainbows Meet, which is based in the informal settlement of Vrygrond, Cape Town. Scholtz stresses the importance that participation and community organisation have as

tools for addressing the multifaceted challenges surrounding housing in urban areas. In the interview, she makes it clear that unsafe living conditions and location far away from social infrastructure and services exclude people living in informal settlements from participating in society and accessing social and income opportunities.

Indeed, the Special Rapporteur on Extreme Poverty and Human Rights has recognised social exclusion as one of the critical manifestations of poverty. In a multidimensional understanding of poverty, the latter has several dimensions, with these relating to income, capabilities or development, and participation – social exclusion is closely bound up with the dimension of participation. As such, participation should not only be viewed as a process-related issue determining how housing policies should be developed, but should also be looked at from a substantive point of view.

A human rights approach to gender-based poverty, women and housing in urban areas should thus be mindful of how housing can strengthen the social inclusion of women affected by gender-based poverty. These topics are explored further in our second issue, dealing with the challenges faced by women in realising their right to housing in urban areas. This second issue of ERS Review highlights specific questions relating to the social function of housing, such as location, gender-based violence, spatial segregation, and the criminalisation of homelessness – all of which may be drivers of exclusion.

Kelly Bishop
Guest Editors

Inspired by these valuable contributions, and drawing on my Swiss socialisation and academic background in international and human rights law, I have aimed in this editorial to add a different perspective on the topic of gender-based poverty, women and housing in urban areas. I believe these discussions are not only helpful in enhancing understanding and developing solutions within the South African context, but have the potential to inform international policy developments as well.

I look forward to the continuation of these conversations, and thank the Socio-Economic Rights Project at the Dullah Omar Institute for the opportunity I have had to learn from the numerous experts, academics, and practitioners contributing to this special issue of the ESR Review.

Acknowledgments

FEATURE

'A House All My Own': An Intersectional Reflection on the Failures of Post-Apartheid Law and Policy to Provide Tenure Security for Black Women in Urban South Africa

Deborah Raduba and Adenike Fapohunda

Introduction

'Not a flat. Not an apartment in back. Not a man's house. Not a daddy's. A house all my own. With my porch and my pillow, my pretty purple petunias. My books and my stories. My two shoes waiting beside the bed. Nobody to shake a stick at. Nobody's garbage to pick up after. Only a house quiet as snow, a space for myself to go, clean as paper before the poem.'
Sandra Cisneros, The House on Mango Street

Apartheid has remained one of the most pervasive systems of institutionalised racism in the world. A pillar of the system was the categorisation of people into different racialised groups (white, black and coloured people) and the use of this racialisation to deprive them of land and economic resources. This was effected through laws such as the Natives Land Act, which reserved merely 13 per cent of South Africa's land for over 80 per cent of the population.

For those burdened with apartheid's enduring consequences, its economic aftermath is especially significant. In 2019, Time magazine pointed out that, more than two decades after the legal and political emancipation of black citizens, South Africa was still the world's most unequal society. This stark reality affects all historically disadvantaged groups in the country.

'The land question' has consequently become an indelible part of South African political discourse. The question highlights the systemic deprivation of land access for black people during and after apartheid. One of the arguments associated with it is that while land is intrinsically linked to dignity, belonging, and economic mobility, policies that have tried to rectify past injustices have failed to see land through a gendered lens.

This article thus delves into the tenure discrimination that black women face in securing housing tenure nearly three decades after the end of apartheid, and looks at how the laws that have been put in place to rectify past injustices have not adequately addressed the effects of apartheid.

Historical background

Pre-apartheid

Claims about the position of women in regard to property ownership in pre-colonial or pre-apartheid South Africa are contentious. On the one hand, scholars such as Claassens & Ngubane (2008) argue that women, even single women, could acquire land in their own right and not in the name of a man or their family. They maintain that the rights women had to land ownership were all diminished by apartheid-era legislation, which restricted land rights to men.

On the other hand, some argue that women's right to land was usufructuary in nature. Primary access to land was through marriage rather than inheritance. The system of primogeniture, which was argued to be a part of African culture or custom, allowed only the first-born son of the family to control land or be able to inherit it. The system of primogeniture was still a part of South African law until the 2004 Constitutional Court case of Bhe v Khayelitsha Magistrate and others, in which the Court struck down regulations that allowed only men to inherit intestate estates.

Many scholars argue that laws deriving from African customary law were distorted by native administrators who did not understand communal structures and used the doctrine of repugnancy to strike down provisions of customary law that sought to empower women. For instance, our understanding of primogeniture is that while it excludes women from land ownership, there has been a failure to recognise that, in pre-colonial Africa, everyone under the household head was a minor, including unmarried men and married men who had not established separate households.

Nonetheless, it is also a distortion to pretend that African customary law was free of gender inequities. Customs such as ukungena, which are still practised today in parts of the Eastern Cape and KwaZulu-Natal, force women to marry the relative of the deceased husband, or else be expelled from their homes and lose their inheritance as well as custody of their children.

Apartheid

The apartheid housing policy aimed to use housing as a tool to create labour reserves by confining black people to specific areas, thereby ensuring that the white-dominated economy could utilise a readily available work force when needed.

This policy was undermined by country-wide urbanisation due to the mining boom in the late 19th and early 20th century, which led to industrialisation and mining in the Witwatersrand region as well as to increased migration to the cities of Durban and Cape Town given the employment opportunities available at their ports. Through the requirement that black men had to have work permits or 'passes' in order to move around the country lawfully, apartheid formalised a system of migrant labour.

In this shift of black people from rural to urban areas, young black men were predominant. With a few exceptions – related to domestic work, working as launderers, cooking traditional African food, or brewing alcohol in urban areas – the vast majority of black women were relegated to the Bantustans.

When black people did secure housing in urban areas, they were denied the right to own property. The sole housing options for them were available in townships, also known as 'locations', which were situated in outlying areas. Indeed, in the 1980s, the government enforced a resettlement policy to move black people into urban townships or rural homelands. As a move to prevent urbanisation, it also extended the pass system to black women and increased arrests for pass-law offences.

> **Through the requirement that black men had to have work permits or 'passes' in order to move around the country lawfully, apartheid formalised a system of migrant labour.**

> **However, South Africa continues to face a housing crisis in which large parts of the black population live in inadequate and overcrowded informal settlements.**

Black people were thus meant to move through urban areas with insecure housing and an inability to own property. In the late 1980s, the apartheid government introduced a barrage of inconsistent housing rights, usufructs, and 99-year leases and deeds that did not amount to property ownership rights. The revolving door of legislation made it impossible for black people to own land. Furthermore, the government did not allow black women to own or hold any of these subsidiary rights.

In sum, the apartheid housing policy reduced black people to the status of temporary migrants in urban areas; family accommodation for African people was limited to small match-box housing in planned townships located far from city centres. Unemployed African men, as well as most African women and children, were excluded from cities through mass arrests, prosecutions, and deportations. The townships themselves were provided with little infrastructure and service delivery.

Post-apartheid
South Africa today has a higher urbanisation rate than most other African countries: 63 per cent (UN-habitat) of its population lives in urban areas, given that cities are attractive for the many opportunities they offer.

In this context, the government has adopted policies such as the Reconstruction and Development Programme (RDP), which aims to enable all South Africans to enjoy a decent standard of living underpinned by the democratic values of human dignity, equality, and freedom. On paper, the state seeks to rectify past injustices through, for instance, laws that give the government the authority to expropriate land subject to paying 'just and equitable compensation'. Furthermore, section 25 of the Constitution provides that the state must take reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis.

Indeed, since 1994, the government has, among other things, built more than three million housing units.

However, South Africa continues to face a housing crisis in which large parts of the black population live in inadequate and overcrowded informal settlements. The South African land reform initiative, which the government launched to facilitate land restitution, has focused on rural or commercial farming contexts, notwithstanding the scale of the urban racially-based land dispossession that occurred under apartheid. Urban land restitution processes have been long, arduous, and ineffective. Most claims for urban land are settled by compensation, and many remain incomplete.

The significance of urban land reform was highlighted in 2019 in the report of the Expert Advisory Panel on Land Reform and Agriculture (RSA 2019). This was followed by a report that recommended the formulation of an urban land-reform policy, the fostering of more equitable urban spatial patterns, the targeted use of state-owned land, and the recognition of the diverse tenure rights that were provided by the apartheid government.

Yet although the post-1994 government recognises the existence of spatial inequality in cities, its policies have not been able to bring about a significant restructuring of settlement. For instance, some of its pro-poor policies have instead reinforced people's exclusion by subsidising the cost of living on the periphery rather than by supporting better location decisions.

Notably, the state's interventions often lack gender sensitivity. Laws such as the Upgrading of Land Tenure Rights Act (ULTRA) 112 of 1991 and the Interim Protection of Informal Land Rights Act 31 of 1996 seek to rectify past injustices on the basis of race alone. In regard to gender, this has led to blind spots that have caused further disenfranchisement.

The case of *Rahube v Rahube* and Others

The historical legal landscape helps to shed light on why black women continue to be marginalised in regard to access to housing even under a democratic dispensation. Parliament promulgated ULTRA and the Conversions of Certain Rights To Leasehold Act of 1988 to better enable black people to acquire ownership of the land they occupy. At the outset, it seemed that the legislature was compliant with the requirements of subsections 25(5) and 25(6) of the Constitution. However, there was no equality, as black men were the only ones who acquired ownership – this was because, under apartheid, they were the sole holders of tenure rights, and thus the only people whose situation could be improved.

The case of Rahube v Rahube and Others demonstrates that, even in a democratic South Africa, black women face inequality in access to property due to their gendered, racialised, and socio-economic position in society.

Briefly, the facts of the case are that, in 1970, eight people (including Ms. Rahube and her brother) occupied a house in the township of Mobopane. Ms. Rahube left in 1973 to live with her husband, but returned to the house in 1977. All of the occupants had moved out by 2000, leaving her as the only original occupier. She resided there with her immediate family. Her brother instituted the eviction, alleging that he was the owner because the Deed of Grant was issued to him in terms of the provisions of Proclamation R293 of 1962 in terms of the Native Administration Act 38 of 1927 (later called the Black Administration Act).

Ms. Rahube became aware that her brother had gained full ownership when he instituted eviction proceedings against her in 2009. She had received no notification, and had no opportunity to make her representations, despite the fact that she was a lawful occupier and had been maintaining the property as well as paying rates and taxes. Ms. Rahube contended that she was never granted the opportunity to assert her interest in the ownership of the property, an opportunity that was not extended to women.

The Certificate of Occupation was issued to the brother of Ms. Rahube, who was the 'head of the household', and listed the people occupying the house. Ms. Rahube and the other women residing in the house were precluded from being issued the Certificate of Occupation due to their gender. The language used was racist and sexist, in that it was underpinned by patriarchy. On 13 September 1998, the Department of Local Government and Housing of the Republic of Bophuthatswana issued Deed of Grants to the person issued with the Certificate of Occupation, in this case her brother, thus making him the 'lawful' owner.

Section 2(1) of ULTRA deals with the circumstances in which occupation of a township house can be converted into ownership. This act vests automatic ownership without the opportunity for any person who may have a right to the property to make representations. In this case, Ms. Rahube brought the matter to court, stating that this 'automatic' vesting of ownership perpetuates discriminatory law because it excludes woman from ownership. This Proclamation sought to address past racially discriminatory practices, but it did not consider the history of occupation. Indeed, it perpetuated gender inequality, and failed to protect, notify, or consult with occupants of the property.

> **Black women were so disenfranchised that they were excluded from even seemingly gender-neutral spaces.**

On the face of it, section 2(1) of ULTRA seems to protect and promote tenure. It falls short of achieving this, however, because it entrenches the sexist and racist laws of apartheid. It violates the right to equality, the right to property, the right to dignity, and the right to fair administrative action. The purpose of ULTRA is to provide for conversion into full ownership.

When customary law was entrenched into the common law system, the administrators who were in charge of interpreting the law failed to understand certain social realities which recognised the position of women in society. This left them with few legal protections and very few rights. Colonialism thus exacerbated the patriarchy already embedded in African customs. It is important to note that the Black Administration Act provided in section 11(3)(b) that a 'native' woman living with her husband shall be deemed to be a minor and her husband shall be deemed to be her guardian. This law was repealed only in 2005, by the Amendment of Certain Laws Act. Black women were so disenfranchised that they were excluded from even seemingly gender-neutral spaces.

> ## The High Court found that the provisions of the act were unconstitutional...

Even though Ms. Rahube had lived on the property uninterruptedly for 32 years without the presence of a man, she was not afforded the opportunity to be allowed full ownership of the land because the Deed of Grant was issued in terms of the provisions of the Proclamation R293 under the Black Administration Act. Only men could be heads of family.

Land tenure rights were supposedly realised in terms of section 25(1), (5) and (6) of the Constitution; however, the Proclamation violates the equality clause contained in section 9 of the Constitution, as it does not encompass the rights of all those affected on an equal basis. At the very least, there should have been an opportunity for the affected people (listed on the Certificate of Occupation) to be provided notice or to be heard with regard to the ownership of the property. The deprivation was arbitrary.

Ms. Rahube, represented by Lawyers for Human Rights (LHR), challenged the constitutionality of section 2(1) of ULTRA for the reasons explained above. The High Court found that the provisions of the act were unconstitutional because they allowed for automatic conversion of tenure rights into ownership without any procedures for considering competing claims to ownership. It held that this violated sections 9, 25 and 35 of the Constitution. In terms of section 167(5) of the Constitution, when legislation is declared unconstitutional, the Constitutional Court must confirm the invalidity. Subsequently, LHR thus brought the matter before the Constitutional Court.

The Constitutional Court began its judgment by citing – in Setswana, Ms. Rahube's home language – article 1 of the Universal Declaration of Human Rights and the right to dignity. The judgment set out how vulnerable black women are, given that they suffer a three-fold discrimination based on race, socio-economic realities, and gender. The judgment held that the law must do more to eradicate discrimination and inequality rather than just regulate formalistically.

The Court found that Ms. Rahube had indeed been arbitrarily deprived of the right to property, and that section 2(1) of ULTRA was unconstitutional as it allowed for such deprivation. Section 2(1) of ULTRA was ruled unconstitutional and invalid to the extent that it deprives those occupants of a property that are not holders of the Certificate of Occupation or Deed of Grant of an opportunity to claim ownership. The exclusion is based on a gender discrimination.

This case not only helped Ms. Rahube but also women in similar circumstances. Currently, Parliament has drafted amendments as per the Constitutional Court order. How the changes will be implemented is another matter. The realisation of equality and housing for black women still has a long way to go.

> ## The judgment held that the law must do more to eradicate discrimination and inequality rather than just regulate formalistically.

Conclusion

Notwithstanding the progress that the post-apartheid state has made in providing equitable housing for black people, many of South Africa's laws and policies still have a noticeable blind spot when it comes to gendered experiences. This was elucidated in the case of Rahube and continues to be a problem affecting the urban landscape. If the injustices of the past are to be addressed, it is therefore necessary to put women at the forefront of decision-making on urban policy.

Take, for instance, the issue of informal settlements, which provide residence for about 3.1 million South Africans, and mostly so in cities. In addition to contending with the gendered dimension of living in informal settlements that subject them to an added layer of crime, violence, and hypermeability, women struggle to access property and tenure in the context of a market-based society where life opportunities are shaped by asset ownership. Expanding property ownership to the historically deprived would allow them to access revenue streams or capital gains, and provide the basis for economic activities. These could take such forms as informal trading, using houses as spaza shops, or providing a range of accommodation offerings that are especially beneficial to women in urban areas.

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This article was written while both authors were employed by Lawyers for Human Rights in the Land Housing and Property Rights Programme

References

Claassens, A. and Ngubane, S. (2008) 'Women, land and power: The impact of the Communal Land Rights Act'. In *Land, Power and Custom: Controversies Generated by South Africa's Communal Land Rights Act.* Ohio University Press, 154–183.

Presidential Advisory Panel on Land Reform and Agriculture (2019) *Final Report of the Presidential Advisory Panel on Land Reform and Agriculture.* South African Government.

The House on Mango Street by Sandra Cisneros: Cisneros, Sandra. The House on Mango Street. Vintage Books, 1991.

Cases
Bhe and Others v Khayelitsha Magistrate and Others (CCT 49/03) [2004] ZACC 17; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004)

Rahube v Rahube and Others (CCT319/17) [2018] ZACC 42; 2019 (1) BCLR 125 (CC); 2019 (2) SA 54 (CC) (30 October 2018)

FEATURE

The Multifaceted Challenges of Women's Access to Adequate Housing in South Africa : A Gendered Analysis

Mpho Raboeane and Noziphiwo Sigwela

Introduction

The Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights (CE-SCR) guarantee fundamental rights to all people. These rights are set out as colourless, genderless, and classless, but in reality are seldom realised by marginalised groups in society. Human rights, that is to say, are not a universal entitlement enjoyed by all. They often operate to the exclusion and detriment of large segments of the population that bear the brunt of poverty, discrimination, and violence by virtue of their gender.

This is an acute reality in Africa, and continues to be the case in middle-income South Africa, notwithstanding its post-apartheid constitutional order. The Bill of Rights of the Constitution of the Republic of South Africa aspires to advance the equal rights of all, particularly women. Section 9 of the Bill of Rights aims to protect individuals from unfair discrimination based on gender, marking a significant step towards a more equitable and just society.

In particular, sections 25(5) and 26(1) draw special attention to equitable access to land and the 'right to have access to adequate housing', respectively. The Housing Act 107 of 1997 accordingly emphasises giving priority to the housing needs of the poor, ensuring affordability, and prohibiting discrimination based on gender or other unfair grounds. It also recognises the importance of protecting vulnerable groups, including women, and upholding the right to equality.

The above provisions are attempts to address the historical suffering of women, which to a large extent was state-facilitated through apartheid legislation as well as socially practised in the form of discrimination promoted by cultural practices and traditional laws. This history continues to play a formative role in determining where, how, and whether women of colour can access land and adequate housing today.

As in South Africa, formal gender equality is recognised worldwide in numerous constitutions, laws, and international commitments, but in practice, large gender equality gaps remain due to entrenched attitudes and power structures. As a result, women are condemned to societal, economic and cultural structures that impede substantive equality in the provision of shelter, security, dignity and ultimately, prosperity. As McLean & Chenwi (2009, p 517) note:

> *A gendered, or feminist, perspective on women and housing focuses on the lived reality of poor women and women-headed households, and the survival strategies employed by these women. It also provides a critique of how existing laws, policies, and social practices perpetuate their situation.*

Through this lens, this article attempts to locate women in the struggle against the barriers to realising rights of access to adequate housing and equitable access to land. Outlining these barriers, we draw lessons from women who have fought for the recognition of

Gender-based violence

In South Africa, a real barrier to access is in the very homes or immediate communities of women and girls (Amnesty International 2021). Gender-based violence (GBV) poses a substantial impediment to the attainment of secure and sustainable housing for numerous women. Survivors of domestic violence encounter challenges in securing safe housing alternatives that offer protection from their abusers, compelling them to remain in proximity to their perpetrators.

The dearth of resources confines many women to limited choices, potentially pushing them into homelessness or precarious living arrangements, including informal housing. These risks were heightened during the Covid-19 pandemic, when the home became the most dangerous place for women and girls and restrictions on movement meant survivors were unable to escape abuse (Amnesty International 2021).

The Committee on the Elimination of All Forms of Discrimination against Women recommends that states 'ensure access to financial aid, crisis centres, shelters, hotlines and medical, psychological and counselling services' (Committee 2015: para 16). Less addressed in such recommendations is the inadvertent reinforcement of power asymmetries in removing survivors rather than perpetrators from the home and placing them in situations of transience.

Criminal sanction is a means of addressing this injustice, but the South African criminal justice system is notoriously slow and ineffective in GBV matters (Public Protector 2024). Women therefore experience highly insecure tenure situations, with laws and policy being silent on the displacement and transience imposed on women by violence. Emergency provisions must thus provide for a way toward long-term tenure security, which serves both as a stabilising factor and a means of protection.

Economic barriers

Urbanisation has laid bare an artificial land scarcity, particularly near economic centres and highly valued land. Access in these instances is barred by socio-economic status, with the majority of poor people in South Africa being women. Economic barriers to entry automatically exclude women from the propertied classes while forcing them to the frontlines of informality, a predicament that attracts criminalisation and further social exclusion.

Women comprise about 53.1 per cent of South Africa's informal settlement population (Mntambo et al. 2024). In 2021, 42.1 per cent of informal settlement households were female-headed. Furthermore, 56.2 per cent of those households had no employed household members, while the highest labour force participation was male (Stats SA 2022). Income inequality and financial constraints significantly impact on women's ability to access adequate housing. This barrier is multifaceted and rooted in systemic disparities that disproportionately affect women's economic standing.

Income disparities between genders

'The gender wage gap is a national disgrace,' said the Institute of Women Policy Research (IWPR) (2024) president and CEO, Jamila K. Taylor:

Even in professions typically dominated by women, men earn more for doing the same job. Equal pay for equal work has been the law of the land for more than a half-century, yet women still cannot get fair treatment when it comes to employment and earnings. And it's worse for women of colour, who face rampant racial discrimination in the workforce in addition to ongoing pay inequities.

> **Emergency provisions must thus provide for a way toward long-term tenure security, which serves both as a stabilising factor and a means of protection.**

According to the International Labour Organization (2023), South African women earn about 23 per cent less than men on average, while the South African PayScale Gender Pay Gap Report (2022) indicates that women in South Africa earn about 25 per cent less than their male counterparts. This wage disparity is not just a figure but a fundamental factor that translates into reduced purchasing power and savings for women. Lower earnings mean that women often have less disposable income, which directly affects their ability to afford housing. Whether they are considering renting or buying a home, this wage gap creates a significant barrier to accessing quality housing options.

Beyond wage gaps, occupational segregation plays a critical role in limiting women's financial capabilities. Women are disproportionately represented in lower-paying and less stable job sectors. Many are employed in part-time, informal, or precarious positions that lack job security and benefits. This over-representation in unstable employment limits not only their earning potential but also their ability to save and invest in housing, thus further entrenching their housing insecurity.

Access to credit and financial services

Access to credit is another significant hurdle for women seeking housing. Libertun (2021) argues that financial institutions often exhibit systemic biases that make it harder for women to obtain loans and mortgages. These biases, coupled with women's generally lower income levels and less collateral, restrict their access to essential financial products. Without adequate credit, women struggle to secure the financing necessary for purchasing homes or managing rental payments, factors which are crucial for long-term housing stability.

> **These biases, coupled with women's generally lower income levels and less collateral, restrict their access to essential financial products.**

Economic dependency and single-income households

Many women, particularly single mothers, head single-income households. These households face the dual challenge of relying on a single income while bearing the entire financial burden, which significantly restricts their housing options. The situation is further complicated for women who depend on male partners or family members for financial support. Such dependency can limit their autonomy and access to housing, especially in cases of domestic violence or relationship breakdowns, where women may need to seek new housing urgently and independently.

The cumulative impact of these economic challenges manifests in various forms of housing insecurity for women. Lower incomes and financial constraints often lead women to live in unstable housing conditions. They may be forced into substandard housing, face frequent risks of eviction, or even experience homelessness. Financial constraints also often result in women living in overcrowded or poor-quality housing, which can severely affect their physical health and overall well-being. Such living conditions undermine their ability to provide a safe and stable environment for themselves and their families, exacerbating the cycle of poverty and housing insecurity.

Absenting women from the creation of space

Urbanisation has taken the character of informality and the face of a black woman, betraying the fact that planning, development, and both private and public sector provision of housing invisibilise her, her family and their need for inclusion in our cities.

A study by Ovens & Associates (2007) on the assessment of planning skills reveals a persistent gender disparity in the planning profession, with a disproportionate representation of male graduates compared to their female counterparts. This imbalance is noteworthy given the critical role that planners play in shaping policies and guiding urban and rural development. The

planning profession, which is responsible for creating and implementing policies that impact on the built environment, continues to be dominated by men, raising important questions about the representation and inclusion of diverse perspectives in the field.

This lack of representation of various stakeholders in planning processes, particularly vulnerable socio-economic groups such as women and children, is highlighted by Greed (1994), who contends that the planning profession is gender-biased, serving as an instrument for men to control spaces and consequently be seen as heroes of the landscape.

Greed (1994) advocates for the incorporation of gender considerations into planning, emphasising that a better understanding of the challenges faced by women can lead to the development of gender-inclusive policies.

Watson (1999) recommends that gender-sensitive planning should ensure that policies balance the agendas of both men and women to create equal opportunities. Hayden (1980) stresses the importance of including women in planning and policy decisions such as zoning and land use, as these directly impact on the livelihoods of all individuals regardless of gender. Certain housing policies may unintentionally disregard or inadequately address the specific needs of women, particularly those from marginalised communities, often due to a lack of gender-sensitive planning and consideration in policy formulation and execution. The current gap in planning policies also points to a failure to recognise the roles and responsibilities of women in relation to land and the home.

> **This imbalance is noteworthy given the critical role that planners play in shaping policies and guiding urban and rural development.**

Women, land rights, and cultural impacts

Matriarchal systems are arguably more attuned with the land than patriarchal ones, with the earth itself assigned a feminine identity in concepts such as terra madre and Mother Earth. The generative force of reproduction in the land and in the home has traditionally lain in women's hands. This was disrupted by colonial and post-colonial private property legislation, as well as patriarchal concepts of land ownership, commodification, and capitalist land valuation, all of which has resulted in land scarcity.

Women, who have been profoundly dispossessed of their function as guardians of land, are now consistently less likely than men to own land and to have fewer rights to land than them, while the land they do own or have access to is of lower quality than men's (FAO 2011).

Women and daughters are often denied opportunities to inherit land due to the belief that land can be accessed only through marriage (Moyo 2017). In many South African communities, the inheritance of land and property is typically reserved for male relatives, leading to the marginalisation of women, especially when it comes to inheriting so-called 'family houses' in an urban context.

Notwithstanding the landmark Bhe case (cited in Bolt & Masha, 2019), which declared male primogeniture unconstitutional, we contend that this principle remains the dominant paradigm in family house succession, with male ultimogeniture emerging as a secondary alternative. Although the application of male primogeniture is not absolute, and consideration is often given to the housing needs of surviving family members, a persistent bias in favor of male offspring as preferred custodians of inherited property is discernible.

Moreover, research suggests that even when a male heir who has inherited the family residence is married, the surviving spouse is frequently subjected to intimidation and coerced into vacating the family home upon his

demise. This phenomenon can precipitate protracted legal disputes or, more egregiously, the wife's relinquishment of her property rights. This pattern underscores the entrenched influence of patriarchal norms in shaping inheritance practices, exacerbating the vulnerability of women's property rights in the face of deeply ingrained gender biases.

Although women comprise the majority of participants in social movements advocating for housing rights, men predominantly hold leadership positions. This gender disparity raises critical concerns about the representation and prioritisation of women's issues within these movements.

" This highlights the need for intentional efforts to amplify women's leadership and ensure their issues are prioritised and addressed.

Culturally, men are often perceived as natural leaders, perpetuating a patriarchal dynamic that may overshadow women's voices and concerns. As a result, there is a risk that women's specific needs and perspectives may be marginalised or overlooked despite their being the majority stakeholders in the movement. This highlights the need for intentional efforts to amplify women's leadership and ensure their issues are prioritised and addressed.

Improving women's access to and control of economic resources has a positive effect on the realisation of a range of human rights, such as the right to adequate housing provided for in article 11(1) of CESCR, the right to non-discrimination in economic and social life in articles 3 and 13 of CEDAW, and the right to equal treatment in land resettlement schemes, as provided for in article 14(2)(g); improvements in this regard also serve a range of development goals, including poverty reduction and economic growth (FAO 2011).

Indeed, women are at the strategic centre of reducing hunger, malnutrition, and poverty, as they play a central role in household food security, dietary diversity, and children's health. Moreover, in the urban context, we argue that women hold the key to community-building – which is a cardinal tenet of social and spatial transformation.

Women in the struggle for land and housing

Women, having faced the obstacles above, are now at the helm of social movements fighting for decent housing and access to land. One such activist, a single mother and community leader in Haven View, Cape Town, asserts that her activism is rooted in changing the material conditions for herself and children.

'I do not want my children to inherit poverty from me,' she says. Having been failed by the state, she has implemented an eco village in her community that promotes food security, self-reliance and climate-conscious practices. Her premise is that all change starts from having a 'base', a secure place to be.
Through the act of occupation, she has been freed of the monetary impediment to accessing land, namely having to pay feudalistic tributes to a landlord. She has liberated herself from being at the mercy of another, especially in situations of unemployment and unequal economic opportunity. Her self-reliance has not detracted from her work of keeping the state accountable, work she continues under the banner of her movement, Housing Assembly.

Similarly, the women who lead the occupations of Ahmed Kathrada House in Sea Point and Cissie Gool House in Woodstock are testament to the liberatory potential of women accessing land and housing and the positive multiplier effect of benefiting whole communities and bringing about societal change.

These women have fearlessly led the struggle to access valuable and highly contested land in their respective areas, thereby confronting the capitalist machinery that operates to negate the social value of land. These women have created spaces for households to thrive and rebuild their lives after eviction or endemic homelessness and landlessness. They have created hope through programmes, feeding schemes, and

political leadership to house residents, converting once-empty and derelict state buildings into homes for almost 2,000 people.

The occupations thus stand as beacons of hope demonstrating the centrality of location for a dignified life. Better access to amenities, economic opportunities and resultant employment and better quality of life are but some of the stories to be told as a result of occupation, albeit that these victories come with challenges. What was once a political standpoint has become the self-attained realisation of sections 25(5) and 26 of the Constitution.

Conclusion

The analysis here highlights the multifaceted challenges faced by women in accessing suitable housing in South Africa, despite the protective measures outlined in the Constitution and subsequent legislation. Economic constraints, discrimination, social and cultural norms, and gender-based violence collectively contribute to housing insecurity for women, perpetuating gender inequalities and violating universal human rights of equality, notably the right to adequate housing provided by articles 11(1) of the CESCR and 14(2)(h) of CEDAW.

Women have thus had to forcibly take up space, undertaking a redistributive agenda outside of the state albeit legally unrecognised and therefore insecure.
The state's redistributive policies have acknowledged the need to focus on marginalised people and women, as discriminatory practices against women acquiring property and accessing land impact on half of South Africa's population. The act of occupying land, specifically as it finds manifestation in the South African context, necessitates weaving together households from different walks of life with only a need for a place of belonging in common for the well-being of all.

Overall, addressing these complex challenges requires a comprehensive approach that takes into account not only legislative reforms and policy improvements but also shifts in societal attitudes, economic empowerment, and concerted efforts to combat GBV. These approaches should learn from and be centred on the experience of women from the village to the

occupation in addressing questions of equitable access. Specifically, the heart of the urban redistributive project should be the promotion of women's access to land, property and economic opportunities. Securing a woman's rights of access will be the rebuilding of our nation's relationship with land, space, and the concept of home.

Only through an intentional and holistic approach can South Africa make meaningful progress towards ensuring that all individuals, especially marginalised women, have access to adequate and dignified housing, as provided for in international human rights law such as the ICESCR and CEDAW and mandated by the Constitution.

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References

Amnesty International (2021) 'Southern Africa: Homes become dangerous place for women and girls during COVID-19 lockdown'. Available at https://bit.ly/4g9fjBK.

Bolt, M. and Masha, T. (2019) 'Recognising the family house: A problem of urban custom in South Africa', *South African Journal on Human Rights* 35(2), 14–168.

Constitution of the Republic of South Africa, 1996.

FAO (2011) *The State of Food and Agriculture 2010–2011: Women in Agriculture: Closing the Gender Gap for Development.* Rome: FAO.

Greed, C.H. (2003) *Women and Planning: Creating Gendered Realities.* London: Routledge.

Hayden, D. (1980) 'What would a non-sexist city be like? Speculations on housing, urban design, and human work', *Signs: Journal of Women in Culture and Society* 5(3), S170–S187.

Housing Act 107 of 1997.

International Covenant on Economic, Social and Cultural Rights (1966). Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976, in accordance with article 27.

International Labour Organization. (2023) Global Wage Report 2022–2023. Available at https://webapps.ilo.org/digitalguides/en-GB/story/globalwagereport2022-23.

Libertun, N. (2021) 'Three factors barring women from accessing housing credit'. Available at https://bit.ly/3ALdFGr.

McLean, K., and Chenwi, L. (2009) '"A woman's home is her castle?" Poor women and housing inadequacy in South Africa', *South African Journal on Human Rights* 25(3), 517–545.

Mntambo, S., Adebayo, P., and Ndinda, C. (2023). Women, *Informal Settlements*, and the *Policy Practice Disjuncture* in South Africa. In The Palgrave Handbook of Global Social Problems. Cham, Switzerland: Springer, 1-22.

Moyo, K. J. (2017) 'Women's access to land in Tanzania: The case of the Makete District' (PhD thesis, School of Architecture and Built Environment, Royal Institute of Technology, Stockholm).

Public Protector (2024) 'Report No. 01 of 2024/25 on an investigation into allegations of systemic investigation into administrative deficiencies relating to gender-based violence (GBV)'. Available at https://www.pprotect.org.

Statistics South Africa (2022) *Gender Series Volume IX: Women Empowerment,* 2017–2022 (Report no. 03-10-26). Available at https://www.statssa.gov.za/publications/Report-03-10-26/Report-03-10-262022.pdf.

United Nations Committee on the Elimination of Discrimination against Women (2015) *General Recommendation No. 33 on Women's Access to Justice.* Available at https://digitallibrary.un.org/record/807253?v=pdf.

Watson, J. (1999) 'So what does gender planning mean to policy makers?', *Agenda* 15(40), 32–37.

FEATURE

Contested Co-Existence: Addressing Women's Housing Insecurity with the Legal Recognition of Family Homes

Justin Winchester and Ashita Alag

Introduction

'The values indelibly imprinted in our Constitution require that we seriously and consciously consider the lives that women have been compelled to lead by law and legally-backed social practices' (Nzimande v Nzimande [2012] ZAGPJHC 223, para 63)

South Africa has a pluralistic legal system where customary law and common law co-exist, but not necessarily harmoniously. This is evident from the trend of cases in which applicants seek legal recognition of their 'family homes': a hybrid form of freehold tenure infused with African values. However, in urban areas, title deeds are used to confer exclusivity, and are prioritised over the dynamic, kin-based arrangements these families intend for their homes – often to the detriment of the women who, due to law and legally-backed social practices, are compelled to be the homemaker but never the homeowner.

Analysing this situation through the lens of 'family homes', we argue that women's constitutional rights to equality (section 9), land (section 25), and housing (section 26) are fundamentally limited by courts' adherence to the common law property paradigm.

First, we examine the historical background of black land-holding in South Africa and the disproportionate dispossession experienced by black women. Thereafter, we reflect critically on the jurisprudence on family homes, as well as the recognition of 'family property' in polygynous marriages, and show that the law's transformative potential is hindered by common law-mindedness that pigeonholes customary property rights into common law property concepts to the detriment of women.

We conclude that large-scale, bottom-up law reform that centres women is necessary. In the interim, we propose two measures to provide immediate relief to women at risk of losing their family homes.

Dispossession and adaption: The story of family homes

Apartheid-era legislation prevented black people – especially black women – from acquiring title to urban land. The Black (Urban Areas) Consolidation Act 25 of 1945, for example, prevented black people from owning property in urban areas and townships. Instead, by way of the Regulations Governing the Control and

> " **Often, families were told that only one person could be registered on the title deed (Bolt 2022).**

Supervision of an Urban Black Residential Areas (GN R1036 of 14 June 1968) issued under the 1945 Act, black people could apply for permit-based rights to designated areas of urban land.

These permits, conferring personal rights vesting exclusively in the named permit-holder, were non-transferable by agreement or succession. Moreover, officials were conferred far-reaching, often unchecked, discretion to cancel permits, rendering occupants of those sites without any legal protection (Olivier 1988: 33).

Consequently, the death of a permit-holder was widely unreported for fear of losing the permit and, hence, the home. Instead, internal family arrangements would decide how household duties would be allocated, typically in terms of African custom. Thus, a single home acquired significance as it remained in the family for generations.

In 1986, the Black Communities Development Act 4 of 1984 was amended to process ownership rights for black persons in urban areas. The Conversion of Certain Rights to Leasehold Act 81 of 1988 was passed to formalise this process through provincial administration. The Conversion Act, as amended in 1993, allowed for certain permit-holders to acquire full ownership rights.

Often, families were told that only one person could be registered on the title deed (Bolt 2022). Following customary prescripts, this tended to be the eldest male, who bears responsibility as the family head. The houses were understood by their inhabitants to be 'family homes', supervised by a custodian and dealt with to the benefit of all who live in it. Unaware of what registration on the deed meant (ownership), women were left with only customary rights to the property, which were invisible under the common law property paradigm.

While the term 'family home' is ubiquitous, it lacks a singular formal definition (Bolt & Masha 2019: 155). Its distinguishing feature is its focus on family and inclusion, as opposed to the exclusive individual ownership which is at the centre of the common law of property.

Empirical research by the Socio-Economic Rights Institute of South Africa has observed that the family home is a 'hybrid' system of tenure, one which is based on freehold title infused with African, familial notions of property (SERI 2024: 5). This hybrid nature is exemplified by recurring features associated with family homes, features that highlight its combination of both fixed and dynamic characteristics. While family homes maintain strong adherence to values of family, reciprocity, and kinship, the application of these values adapts to the different realities of the family members.

A family home is intrinsically connected to the abstract idea of a 'family', and is the physical manifestation of the family. 'Family' is understood multi-generationally as encompassing past, present, and future generations. The preference is for including extended family as right-holders and duty-bearers in the property, rather than confining this only to the individual or nuclear family, as is the case under common law (SERI 2024: 16).

> **'Family' is understood multi-generationally as encompassing past, present, and future generations.**

The home therefore keeps the family together, physically and spiritually. In the physical sense, it serves as a tangible space to which family members facing hardship can return to as a matter of right by virtue of being a 'patrilineal descendants of an original householder' (Bolt 2022: 222). In the spiritual sense, family homes are a place of refuge providing security for family members – a home they can return to in times of need and social, physical or economic hardship (Bolt & Masha 2019: 156–157). Need is an important factor in determining occupation, use, and administration of the family home. Hence, despite seldom having formal legal title over it, women and children are often the primary occupants of family homes (Mbatha 2002: 269).

In contrast to an owner at common law, a family home is headed by a custodian, typically the eldest male family member, who manages the family home in the

best interests of all occupants (Kingwill 2017: 245). What has been noted is a gradual shift away from situations where the title-holder exercises custodianship to ones where capable and responsible persons (increasingly women) are appointed as custodians (Kingwill 2017: 258). This reflects how community rules applicable to family homes are flexibly adaptive in furthering the best interests of the family. However, the shift towards appointing women as caretaker-type custodians at customary law rarely affords them enforceable property rights, as women custodians are seldom registered on the title deed.

Lastly, owing to the communal nature of a family home, there are limitations on the custodian's ability to alienate the home (SERI 2024: 25). Importantly, a family home cannot be unilaterally alienated. A family home may only be sold, for instance, when there is broad agreement among the family members (SERI 2024: 26).

Brick by brick: Judicial recognition of family homes

In this section, we reflect on the jurisprudential recognition of family homes from two angles. First, we do so from the perspective of cases that have dealt explicitly with the sale of family homes without the consent or knowledge of other family members. Secondly, and somewhat more promisingly, we consider the order in *Ramuhovhi,* which recognised 'family property' for the first time. Both avenues are, however, seemingly dead-ends in that they fail to bring customary notions of property into the mainstream property paradigm, thereby failing to accurately reflect the experiences of customary-law-abiding women.

The 'I' in family

Since 2014, a notable trend has emerged wherein properties formerly governed by the permit system have been converted into ownership rights. Although such properties are intended to be family homes, they often get sold unbeknownst to their inhabitants, or without the agreement of the non-owner inhabitants.

In Khwashaba and Maimela, the applicants sought to cancel the name registered on the title deed to properties holding their family homes. The customary character of the property was emphasised by the applicants in Khwashaba, who urged that their brother, whose name was on the title deed, 'was only the de jure holder of leasehold on behalf of his mother and her family' (para 9). The registration in the name of the brother came about because he had 'replaced his father as the head of the family' (para 9).

In both cases, the court held that because 'the upgrading from residential permit holder rights to ownership took place automatically, the basis of the transfer … occurred without a lawful basis' (Maimela, para 10). The courts ordered that the contested ownership be resolved through a participatory rights-enquiry, adjudicated by the provincial Director-General and governed by section 2 of the Conversion Act.

> " **Such registration 'would have [placed] a restriction on the rights of the persons appearing on the deed to further deal with the property' (para 6).**

Although such an approach serves to protect the family home, in many cases it might not be permitted. For example, in Maimela, the court directed a section 2 enquiry even though the site in question did not fall within the definition of sites for which such inquiries were permitted (Marule, para 16). More fundamentally, such an approach may be inappropriate. The applicants' claim in Khwashaba did not relate to ownership. They sought recognition of their family home as a family home, which has no owner. The mandated enquiry into ownership ignores this.

To enhance the protection of family homes, family rights agreements (FRAs) have become a tool. In Ntshalintshali, an FRA was concluded vesting

responsibility of a family home in the eldest son as 'custodian for the benefit of the entire family' (para 2). The Housing Department, however, failed to register the FRA against the title deed. Such registration 'would have [placed] a restriction on the rights of the persons appearing on the deed to further deal with the property' (para 6). The custodian's ex-wife, whom he had married in community of property, sought to sell the property.

> ## " What is sought is the recognition of the family home as a family home.

The court found that the ex-wife – herself a signatory of the FRA – knowingly 'took advantage of the error' by the Housing Department. Given both her inability to plead ignorance and the lack of a section 2 enquiry in the determination of ownership, the registration on the title deed in the name of the eldest son and his ex-wife was declared null and void, with the court ordering that a section 2 enquiry be undertaken.

In *Hlongwane,* the Housing Department again failed to register the FRA against the deed. There, three sisters agreed to register their brother on the title deed on the basis that he would assume a 'supervisory or safe-keeping role for and on behalf of the whole family', with their preference being for the property be a family home (para 21). Taking advantage of the error, the brother sold and transferred the property to a bona fide third party. This time, the court held that the FRA 'was nothing but a personal arrangement between the siblings' and not an 'arrangement above the real right of ownership in the immovable property, registered through the transfer process' (para 53).

The court noted, furthermore, that 'the advice of the department [to conclude an FRA] was misconceived' because 'the Act makes no provision for the concept of a "Family House"' (para 54). Therein lies the problem. The default common law property regime – which views property rights as boundaries of exclusion – scowls at the dynamic and inclusive nature of customary property encumbered only by mutual obligations.

Customary law is hence erased in the process.

This disjuncture is perpetuated by so-called statutory 'remedies'. For example, mandating a section 2 enquiry to determine ownership of affected sites ignores the fact that 'ownership' is seldom what families truly seek, or is sought as a compromise to protect the family home. What is sought is the recognition of the family home as a family home.

Likewise, the conclusion of FRAs is another attempt by customary law adherents to express their lived realities through the suffocating constraints of the common law property paradigm, notwithstanding the fluctuating judicial treatment of such agreements.

Plurality through polygyny?

An alternative route to the recognition of family homes emerged from the Constitutional Court's order in Ramuhovhi. In Ramuhovhi, the constitutionality of section 7(1) of the Recognition of Customary Marriages Act 120 of 1998 (RMCA) was challenged insofar as it enshrined differentiated matrimonial property regimes between customary spouses married before the RCMA came into effect (to whom customary law applied) and those married after (which were, by default, in community of property). Under the applicable Venda customary law, wives were not entitled to ownership or control of property (paras 1, 9).

The Court found that section 7(1) 'perpetuate[s] inequality between husbands and wives' in pre-RCMA polygamous marriages (para 35). The section unfairly discriminated on the basis of gender, race, and marital status, according wives in pre-RCMA polygynous marriages comparatively weaker property rights than those in post-RCMA polygynous marriages (paras 37-45).

Importantly, the Court ordered (para 71) an interim regime to govern the property rights in pre-RCMA polygynous marriages so as to ensure 'joint and equal ownership' as well as 'joint and equal management and control' of marital property between husbands and wives.

Marital property rights were divided between those in (a) family property, held between the husband and all the wives, to be exercised 'jointly and in the best interests of the whole family'; and (b) house property, held between the husband and the wife of the house concerned, to be exercised 'jointly and in the best interests of the family unit constituted by the house'. The ruling makes the concept of family property enforceable in customary law.

While facially a progressive step towards securing women's property rights, the judgment does raise difficulties. For starters, as explained above, 'ownership' is an alien concept in family homes. Moreover, the phrase 'joint and equal management and control' was unaccompanied by any explanation of its meaning or application.

Crucially, however, unequal power dynamics exacerbate the patriarchal mores that underpin marriages. The Court hinted at this when it dealt with section 7(4), which allows wives in pre-RCMA marriages to apply to a court jointly to change the property regime applicable to their marriage. This, the Court noted, was 'cold comfort' for wives in polygynous marriages, as the option was dependent on consent of their husband (paras 41-42).

The patriarchal realities of marriages could turn this new court-introduced interim regime into pie-in-the-sky. Wives are often dependent on their husbands for access – economic and social – and have constrained autonomy or control when it comes to important family decisions. In this context, 'joint and equal management and control' may end up as an empty promise that yields little practical progress for wives. The power imbalance makes it easy for the husband's wishes to find their way into 'joint' management and control.

The Ramohovhi regime does little to address this power disparity, with no safeguards provided to prevent the wives' wishes and needs from being ignored. Even if in theory a wife could enforce her right if she did not get a say in dealing with marital property, in reality the existence of coercive economic and social factors would prevent her from approaching courts to ensure compliance by her husband. As such, the practical usefulness of this regime remains unclear.

En-gendering change: Reform and recommendations

Realistically speaking, major law reform is necessary for giving customary law equal status to common law under the Constitution. But this cannot be resolved by a top-down approach: relying solely on codification and formal legal structures to deal with customs that have developed over centuries is often counterproductive. It also fossilises customary law, creating a precedential hierarchy in which codified law ends up at the top (SERI 2024: 64).

Law reform must be informed by the community it will impact. Therefore, any further changes in the law with the aim of bringing family property or homes into the South African constitutional framework must centre the voices of the customary communities. The body tasked with remedying the issues highlighted above must conduct consultations with the communities that live in family homes. These consultations must specifically include women, and ensure that women of all marital categories – wives, widows, sisters, daughters, mothers, maternal figures, and women leaders within the communities – are consulted. Additionally, there must be cross-community representation in these consultations, so that nuances in the application of customary law as it relates to family homes in different regions can be accounted for.

Nonetheless, intervention in the short term is crucial. The starting-point for any intervention must be

These consultations must specifically include women, and ensure that women of all marital categories – wives, widows, sisters, daughters, mothers, maternal figures, and women leaders within the communities – are consulted.

to accept that people may choose to comply with customary practices irrespective of their legality.

In Hlongwane, for example, notwithstanding that the rule of male primogeniture was declared unconstitutional in Bhe, the sisters explained that they wanted their brother's name on the title deed only because 'in our culture, a male child is usually given a responsibility to look after the family' (para 21; Ntshalintshali, para 4). The challenge is to find ways to honour customary norms to the greatest extent within the existing legal framework.

> ❝ **The challenge is to find ways to honour customary norms to the greatest extent within the existing legal framework.**

To this end, we make two suggestions. First, section 2 enquiries should be employed purposively. Section 2 vests wide discretionary powers in the Director-General to make decisions about the implementation of the conversion provisions. In doing so, the Director-General may give effect to 'any agreement or transaction in relation to the rights of a holder' (section 2(3)(a)). The term 'any agreement' is wide enough to include agreements between family members amounting to written or oral FRAs. This gives a purposive interpretation to section 2, as it recognises rights in ownership and the limitations of that ownership, including those acknowledged under customary law.

Secondly, courts should develop the common law in accordance with section 39(2) of the Constitution to inject custom into the mainstream. In Shomang, for example, Du Plessis J suggested fragmenting land rights 'by developing a more comprehensive range of rights, such as a property right in a family home, that can sometimes trump ownership' to be applied flexibly and contextually (para 73).

Another option, one which does not depend on the recognition of new rights, is applying the common law requirements for transfer of ownership in ways that enliven customary values.

For example, the requirement that there be a 'real agreement' – an intention of the transferor to transfer, and an intention of the transferee to receive, ownership of the property – can be held to be defective where the transferor is aware that his name appears on the title deed only as a matter of necessity but appreciates that the home is a family home. In those circumstances, the transferor does not truly believe that he has ownership, and cannot intend to transfer ownership.

Conclusion

While family homes lack formal legal definition, they are central to the social organisation of African families in customary settings, where they both preserve and anchor family relationships (Bolt & Masha 2019: 155–156). Judicial recognition of family homes is patchy and inconsistent, revealing the juxtaposing values that underpin customary versus common law property systems. Likewise, the court's culturally sensitive remedy in Ramuhovhi still superimposed common law concepts of 'ownership' and 'joint and equal management and control' unknown to customary law over family property. Moreover, the gendered power imbalance underlying marriages could impede any practical improvement that the judgment intended to bring about in the lives of the wives in pre-RMCA polygynous marriages.

> ❝ **Temporary relief can come from section 2 rights-enquiries, and from courts applying the common law in ways that give effect to customary norms.**

Temporary relief can come from section 2 rights-enquiries, and from courts applying the common law in ways that give effect to customary norms. Taking the pluralistic reality of customary adherents seriously not only provides protection for women who choose to adhere to gendered customs, but elevates the status

of customary law from applying in a silo to influencing the everyday lives of the majority of South Africans.

But rather than introducing formal, top-down legal solutions, what is necessary is law reform which is bottom-up – that is to say, informed by the community and the needs of women therein. The experiences of women to whom the customary property regime applies may shed light on the manner in which these regimes have reinforced intersecting structures of oppression or, instead, how at times they may have provided them with informal structures of support. This might help accurately highlight the gaps that have to be filled in order to bring the regime into consonance with constitutional framework, and thereby give meaningful protection and impetus to women's rights to equality, property, and housing.

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Acknowledgments

References

Bolt, M. (2021) 'Homeownership, legal administration and the uncertainties of inheritance in South Africa's townships: Apartheid's legal shadows', *African Affairs* 120(479), 219–241.

Bolt, M. (2023) 'The family home in South African townships is contested – why occupation, inheritance and history are clashing with laws'. Available at https://bit.ly/3AJyFx0.

Bolt, M., and Masha, T. (2019) 'Recognising the family house: A problem of urban custom in South Africa', *South African Journal on Human Rights* 35(2), 147–168.

Hlongwane and Others v Moshoaliba and Others [2018] ZAGPJHC 114.
Khwashaba and Another v Ratshitanga and Others [2016] ZAGPJHC 70.

Kingwill, R. (2017) 'Square pegs in round holes: The competing faces of land title' in Hornby, D., Kingwill, R., Royston, L., and Cousins, B. (eds.). *Untitled: Securing Land Tenure in Urban and Rural South Africa.*

Mbatha, L. (2002) 'Reforming the customary law of succession', *South African Journal on Human Rights* 18, 259–286.

Ramuhovhi and Others v President of the Republic of South Africa and Others [2017] ZACC 41.

Shomang v Motsose N.O. and Others [2022] ZAGPPHC 441; 2022 (5) SA 602 (GP).

Socio-Economic Rights Institute of South Africa (2024) Women's Equal Rights to Land and Housing: A Gendered Analysis of Family Homes in South Africa. Available at https://www.seri-sa.org/images/SERI_Family_homes_in_South_Africa_Report_FINAL.pdf.

POLICY ANALYSIS

'Context is Everything': Permutations of Gender Mainstreaming in the Public Service

Pamela Masiko-Kambala

Introduction

The term 'gender mainstreaming' is widely used and can have different meanings depending on the context and the individuals involved. For example, it will vary in meaning even among public servants and within government departments, entities, and municipalities. To promote clarity and understanding, it is beneficial to provide clear definitions that apply in various contexts. The Handbook on Gender Mainstreaming for Gender Equality Results defines 'gender mainstreaming' as

> *the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal is to achieve gender equality (United Nations Women 2022: 11).*

The definition is meant to be comprehensive, but it is important to tailor definitions to specific contexts to avoid ambiguity. Gender mainstreaming should not be considered in isolation from other aspects of identity. It is 'intersectional', shaped by factors such as age, disability, ethnicity, religion, socio-economic status, marital status, sexual orientation, and expression (United Nations Women 2022: 63).

These factors significantly influence how one experiences service delivery, and should inform public policy. Intersectional identities can experience multiple forms of discrimination and exclusion due to the interplay of different aspects of an individual's identity.

The experience of intersectional discrimination is greater than the sum of each of the multiple forms of discrimination (Crenshaw 1989: 140).

For example, a Black transgender person may face discrimination based on their gender and race identity in such a way that the two forms of discrimination overlap with or amplify each other, while a homosexual woman living with a disability may be vulnerable to discrimination based on her sexual orientation, disability, and gender. These additional layers of identity, as noted, significantly influence how one experiences service delivery and, some might argue, should inform how public policy is conceptualised.

When incorporating gender mainstreaming in public policy, broadly understood, it is crucial to recognise and take into account the diverse contexts of public service provision. For human resources (HR) managers in government departments, gender mainstreaming often means promoting gender equality through policy-making and management, and encouraging behaviour that supports equality in the workplace.

In addition, HR managers need to ensure equal protection for employees with minority gender identities in the LGBTQIA+ spectrum. At times, these public servants may need to develop new employee policies, update outdated ones, and organise behavioural interventions such as workshops and information sessions. It can be argued that a workplace that is welcoming to all employees may lead to positive impacts on service delivery, especially for employees whose roles involve interacting with the public.

However, when government officials are asked about how they are applying a gender lens to their workplace, their responses often focus on these HR initiatives rather than the substantive content of their work and how it relates to service-delivery provision to the public.

As a public servant involved in developing and interpreting housing and infrastructure policies, my experience is that the concept of gender mainstreaming carries nuanced meanings for my colleagues and me, meanings which hinge upon the varying contexts in which we discharge our duties. Similarly, the interpretation of gender mainstreaming may be different for technically adept public officials in the housing sector, who are influenced by the specific contexts and objectives of their respective areas of expertise. For technical specialists such as engineers and architects, gender considerations centre on the design and functionality of spaces, which are shaped by spatial and physical dimensions.

As a public policy expert with a background in the social sciences, my responsibilities include contributing theoretical frameworks that underline the necessity of integrating accessibility and inclusivity in infrastructure design. Policy-makers in this realm strive to incorporate user experiences and advocate for technical experts to take into account the physical differences and requirements of various users within spatial dimensions. Therefore, the achievement of gender mainstreaming demands a thorough exploration that encompasses diverse perspectives and layers, as elaborated below.

Gender mainstreaming in housing macro public policy

Section 26 of the Constitution of South Africa guarantees everyone the right to adequate housing. It requires the state to take reasonable legislative and other measures, within its resources, to make this right a reality. The Constitutional Court has interpreted this right to include access to land as well as basic engineering services, and a place to live (a dwelling), rather than just bricks and mortar (see the Grootboom case).

Housing is not solely the responsibility of a single sphere of government but is a concurrent function shared between national and provincial levels. National and provincial governments delegate certain functions to municipalities to facilitate housing provision. The national government sets broad policies, while provinces establish their own policies and perform key tasks, such as disbursing grants and approving subsidies.

Housing responsibilities cover multiple areas listed in Parts A and B of Schedules 4 and 5 of the Constitution, including water, sanitation, and waste management,

> **For technical specialists such as engineers and architects, gender considerations centre on the design and functionality of spaces, which are shaped by spatial and physical dimensions.**

which fall under the jurisdictions of all three spheres of government. In the Western Cape, municipalities play a significant role in delivering completed houses to beneficiaries, including services like water and

sanitation, and in some cases, the construction of homes. However, this level of municipal involvement is not consistent across the country.These are summarised in Table 1.

Table 1: Housing subsidy qualification criteria

Legal requirements (all must apply)	A South African citizen or permanent resident
	18 years or older
	Competent to contract
Housing requirements (all must apply)	Not previously benefitted from a government housing subsidy
	Not have previously owned residential property
Personal requirements (at least one must apply)	Married or living with a partner – with or without dependents
	Single or divorced – with dependents
	A military veteran listed on the Department of Military Veterans (DMV) database
	Household member living with a permanent disability
Household income (low vs affordable housing income)	A combined household income of up to R3,500 per month
	A combined household income from R3,501 to R22,000 per month

In subsidised housing and other housing opportunities, women as spouses and cohabitating partners are granted equal property rights. When a title deed is issued for a government-subsidised property, it is issued to both parties, and their details are registered on the property. This serves to protect women's property rights and mitigate economic inequality by ensuring that women have rights to financial assets in relationships. These rights may also be enforced through the country's courts.

If we were to focus solely on housing macro policy, it could be argued that policy implementation empowers women and that the policy is impartial to gender. When examining gender mainstreaming in specific contexts, such as informal settlement upgrading led by municipalities through competitive bidding, a different perspective arises beyond macro housing allocation policy.

Gender mainstreaming in upgrading informal settlements

Informal settlements have different origins and histories. They vary in size, demographics, and organisation. Some are well-located and organised, with residents actively shaping the community. However, most informal settlements in the Western Cape province and the country at large suffer from inadequate living conditions. These areas are also at risk due to climate change, higher crime rates, unhygienic conditions, and strained social relations due to crime and a lack of private spaces.

Although access to basic services such as electricity, water, sanitation, and waste removal has improved marginally according to the 2022 Census (Stats SA

2023), conditions remain severe for many individuals living in informal settlements. Moreover, households in informal settlements often face higher levels of personal violence than those in formal settlements, with some groups being disproportionately affected.

High unemployment and low economic growth mean that many people cannot afford to acquire housing without government support. As a result, they are forced to live in informal settlements, in inadequate, overcrowded housing in formal areas, including in backyards. The increase in the number of informal settlements puts significant strain on existing infrastructure and places pressure on the government to provide adequate services. However, this is constrained by continual decline in housing capital grants and municipal revenue.

The Western Cape is experiencing remarkable population growth, becoming the fastest-growing province in the country. This rapid expansion is placing substantial demand on resources. The strain on service resources is compounded by increased in-migration, urbanisation, natural population growth, and household fragmentation due to splitting. Over the years, the average household size in the province declined from 3.6 people per household in 2001 to 3.3 in 2022. These demographic shifts are placing significant demands on the province's resources.

> **Gender differences also impact on access to services, as women and men have different requirements for using toilets.**

In informal settlements, women, children, and people living with disabilities have limited access to safe, basic services due to the fact that infrastructural design does not address their specific needs. Gender differences also impact on access to services, as women and men have different requirements for using toilets. For instance, for sanitary-wear disposal, women may

need washing facilities and running water, which are often not available in communal toilets. Additionally, communal services are usually designed for able-bodied individuals, overlooking the needs of differing populations in informal settlements.

This lack of consideration puts women and other groups at risk of danger and indignity. Improving safety in neighbourhoods could have a significant impact on women, as a substantial portion of violence at a community level is gendered. It is distressing to note that women and children are often assaulted on their way to or from communal toilets, particularly if these facilities are located in dark and unsupervised areas in their settlements.

Gender mainstreaming in the context of policy instruments

Non-governmental organisations (NGOs) in the built-environment sector across South Africa have been conducting social audits in informal settlements to assess if service provision and maintenance standards match up to the intent of the Upgrading of Informal Settlements Programme (UISP). The UISP, introduced in 2004, is a government-funded housing subsidy programme to provide a process and procedure for the in situ upgrading of informal settlements. The programme provides access to basic services to informal settlement dwellers, formalised serviced plots, and tenure security.

The UISP adopts a four-stage approach to upgrading settlements:

1. **Stage 1 (Application):** This involves authorities' conducting assessments, community consultations, geotechnical investigations, land acquisition, pre-planning, and the provision of temporary municipal services.

2. **Stage 2 (Initiation):** This stage includes surveys, feasibility studies, planning, and finalising social compacts with the community through consultation. The provision of temporary municipal services can also occur at this stage.

3. **Stage 3 (Implementation):** This stage involves the installation of permanent municipal services, the construction of individually serviced sites, and the issuance of tenure certificates.

4. **Stage 4 (Consolidation):** In this final stage, ownership registration is finalised, housing construction for qualifying beneficiaries takes place, and any outstanding social amenities are addressed (National Department of Human Settlements 2009).

Each upgrading project considers several, often unique, characteristics that determine whether the UISP's standards can be met in full or partially when upgrading a settlement. In the process of providing services, residents of informal settlements may need to be moved within the site or to other suitable sites, sometimes temporarily, while a final site is prepared.

However, temporary solutions have become more long-term fixtures in some informal settlements. In Knysna, more than 35 per cent of informal settlement residents rely on temporary chemical toilets as shared sanitary services (Jooste 2023). The provision of permanent services, such as municipal service connections to individual residential plots delivered in stages 3 and 4, involves committing to permanent spatial layouts for the settlement, as well as to the infrastructural network which is needed to support these layouts.

> " **Viewing these findings through a gender lens may provide valuable insights into the experiences of women.**

NGOs have been using data gathered from community members at the grassroots level to report service quality deficiencies to municipalities in order to hold officials accountable for meeting the prescribed standards. This data, collected through interviews with men and women living in informal settlements, has shown that women in particular face challenges in accessing interim municipal services provided in stages 1 and 2 of the UISP. Viewing these findings through a gender lens may provide valuable insights into the experiences of women.

For instance, research conducted by Asivikelane Western Cape (2021) revealed that women in informal settlements are afraid to use communal toilets after dark, with 64.87 per cent feeling unsafe at night and 40.8 per cent feeling unsafe by day. Asivikelane, initiated in 2020, is a network of NGOs working in metropolitan areas across the country to gather information from informal settlement residents about water, sanitation, and waste removal services. Its goal is to use this information to enhance municipal accountability and improve cooperation between municipalities and informal settlements.

Additionally, a 2020 survey of seven informal settlements found that women in these areas struggle to access quality services, face higher health risks due to unsanitary conditions and overcrowding, and are disproportionately affected by crime and gender-based violence (Asivikelane Western Cape 2020).

Informed by valuable insights and the dedicated advocacy of NGOs, particularly Asivikelane, the Western Cape Department of Infrastructure, which is responsible for human settlements service delivery, proactively identified an opportunity to formulate Policy Guidelines for gender mainstreaming within the existing UISP framework.

The Department's Policy Guidelines (2024) offer a forward-looking perspective on gender mainstreaming as an essential framework for approaching service-delivery planning and provision in informal settlements in the Western Cape. The document examines in detail how individuals of different genders – influenced by their social, biological, and physical differences – access and utilise temporary municipal services such as communal water and sanitation services provided during stages 1 and 2 of the UISP. In response to these varied needs, the Guidelines provide invaluable guidance for municipalities and service providers in devising, implementing, and sustaining temporary municipal services.

The Guidelines have been crafted for municipalities to use specifically in UISP projects, but they can also

be beneficial for technical service providers involved in settlement development, as well as for NGOs, community leadership forums, and all those engaged in the improvement of informal settlements beyond the UISP. The Policy Guidelines are meant as a starting-point for enabling municipal and departmental technical specialists – such as engineers, architects as implementers, and town planners – to recognise the importance of gender mainstreaming and develop processes that can easily be integrated into the provision of interim municipal services.

Though the changes required may present challenges due to the unique nature of each project, the essential aspect of any intervention in informal settlements is genuine engagement with the affected community, particularly women, and forming partnerships with organisations equipped to facilitate such engagements and build trust over time. While the guidelines mark the Department's initial steps in exploring gender mainstreaming in service delivery at the service level, they should be seen as a work in progress, with further efforts and strategies envisaged to enhance service delivery across various aspects of infrastructure provision.

Gender mainstreaming: How is it done?

The current approach of providing interim services at a local level through the UISP requires a thorough re-evaluation. While municipalities may emphasise the importance of providing services at settlement level and meeting predefined targets, there is a notable absence of focus on the actual end-user experience.
The Department's guidelines, summarised below, suggest specific approaches. While some aspects of the process may already be addressed or implied in the UISP stages, the documented experiences of women living in informal settlements highlight a significant deficiency. There is a lack of consideration of gender-specific needs in service delivery, especially when assessing temporary municipal services provided in stages 1 and 2 of the UISP.

- **Project planning**
  To effectively plan UISP projects, municipalities should aim to build strong partnerships with NGOs

and local communities to incorporate the needs of women into the planning process. By collecting comprehensive data on demographics and household sizes, valuable insights can be gained into the perspectives and requirements of the target users. Additionally, setting realistic timeframes for service utilisation and carefully considering the long-term impact of addressing the specific needs of women within the community will contribute to the success of the projects.

- **Product and service procurement**
  It is crucial to prioritise the implementation of procurement under the Preferential Procurement Framework and to actively consider women and women-owned businesses for technical services, maintenance, and cleaning in informal settlements. Calculating the necessary ratio of toilets and taps based on the number of residents and households is essential for providing adequate sanitation.

Additionally, including gender-separated toilet facilities and specifying larger, gender-designated toilet cubicles with necessary features can significantly improve the overall living conditions. Accessibility for people living with disabilities must be ensured to promote inclusivity. Using national minimum norms for services as the minimum requirement and adjusting as needed will ensure efficient and effective service delivery.

Finally, establishing a reporting mechanism for residents to monitor and report service quality anonymously is vital for maintaining accountability and improving community well-being.

- **Community consultation**
  The process of community consultation is vital and should be conducted before drafting bid specifications for UISP projects. This ensures that end-users have the opportunity to provide their input timeously. The consultations should engage key stakeholders and strive to achieve equitable gender representation, with specific mechanisms in place to encourage and sustain the participation of women. Additionally, it is important to establish monitoring and evaluation systems that provide regular project progress updates to the community as the end-users.

- ***Health norms and standards policy***
Ensuring access to water facilities is fundamental as a basic human right. In settlements, it is recommended to provide one standpipe for every 20 households within a 100-metre radius as a minimum standard for basic water provision. However, this standard should be adjusted based on the average household size for a more tailored approach. Placing water sources near toilet cubicles can improve access and cleanliness, particularly for women during menstruation and pregnancy, as well as for older women and those living with disabilities. Municipalities should collaborate with community and private institutions to raise awareness about health and hygiene. In addition, service providers should prioritise displaying repair and maintenance schedules and ensure that reporting channels are easily accessible and cost-effective.

- ***Safety norms and standards***
During community engagements, it is crucial to engage in in-depth discussions about the optimal placement of temporary municipal amenities such as street lighting, toilet cubicles, and water taps. It is vital to take into account specific technical requirements, ongoing maintenance needs, cleaning protocols, accessibility considerations, and safety measures so as to identify the most suitable locations for these facilities. Moreover, allocating gender-specific cubicles for community caretakers designated for cleaning and maintenance purposes can contribute significantly to the efficient upkeep of these amenities. When delving into the topic of public lighting, careful consideration of the appropriate quantity and strategic placement is paramount to enhancing overall safety and security within the community.

Conclusion

As argued earlier, gender mainstreaming can be interpreted differently depending on the applicable contexts. For instance, when evaluating how well human settlement policy safeguards the socio-economic rights of women in the country three decades after democracy, the answers may vary depending on context. In the broader policy context, such as housing policies, programmes, and allocation of housing opportunities, gender equality and mainstreaming are guaranteed as women have equal rights to men.

However, when we focus on the provision of interim municipal services at an informal settlement level, particularly in stages 1 and 2 of the UISP, the answers might not be so straightforward. It becomes evident that the context within which gender mainstreaming is applied or interrogated plays a crucial role in understanding its effectiveness. Indeed, 'context is everything'.

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References

Asivikelane Western Cape (2020) 'Progress in Ekurhuleni and eThekwini, concern in Cape Town and Johannesburg'. Available at https://bit.ly/3AMbF0t.

Asivikelane Western Cape (2021) 'Women are caregivers, but does government care for them?' Available at https://bit.ly/47fj7gY.

Constitution of the Republic of South Africa, 1996.

Crenshaw, K. (1989) 'Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics', *University of Chicago Legal Forum* 1989(1).

National Department of Human Settlements, 2009. National Housing Code. Available at www.dhs.gov.za/content/national-housing-code-2009.

Government of the Republic of *South Africa v Grootboom ('Grootboom')* (2000) 1 SA 46 (CC).

Jooste, T. (2023) 'Knysna communities pave the way for female-friendly sanitation'. Asivikelane Western Cape Brief 1 (March 2003). Available at https://asivikelane.org/wp-content/uploads/2023/03/asivikelane-wc_brief-1-gender-toilets-final.pdf.

Stats SA (2023) Census 2022 Release. Available at https://census.statssa.gov.za/

United Nations Women (2022) *Handbook on Gender Mainstreaming for Gender Equality Results.* UN Women. Available at https://bit.ly/3XsixZN.

Western Cape Department of Infrastructure (2024). Policy Guidelines on Gender Mainstreaming Service Delivery in Informal Settlements.

INTERVIEW

Where Rainbows Meet: Addressing Community Challenges and Inspiring Change

An Interview with Mymoena Scholtz

Introduction

Established in about 1900, Vrygrond – near Muizenberg and roughly 20 kilometres from the city of Cape Town – is the oldest informal settlement in the Western Cape in South Africa, and has a population of almost 40,000.

Where Rainbows Meet is a non-profit organisation (NPO) founded in 2008 and led by Mymoena Scholtz with the aim of empowering women in the Vrygrond community. With many community members themselves working for the organisation, Where Rainbows Meet demonstrates how people in general, and women in particular, are engaged in addressing community challenges and working towards uplifting themselves. It is an example of a grassroots organisation that has been able to gain the trust of, and work with, different community members. This it does by responding to the needs and challenges of the people who live there, and providing support to people who have difficulty in accessing services, infrastructure, and safe spaces.

Personal background

Can you tell us a bit about yourself and how you became a community leader?

After my children left home, I sought new responsibilities and opportunities, embarking on a 10-week course to acquire job skills related to business administration at the New World Foundation (a not-profit organisation which was founded in 1980 in Lavender Hill in Cape Town). This path led me to an internship with the Foundation, which later offered me a position as a life skills trainer. Over the 12 years that I worked at the Foundation, my passion for community work deepened. Upon resigning, community members, mainly older women from Vrygrond, urged me to continue my efforts within the community. Inspired, I founded the non-profit organisation, Where Rainbows Meet, over 15 years ago, dedicated to serving and uplifting the community.

What motivated you to engage within your community?

My primary motivation stemmed from my love and respect for the people and women of Vrygrond, with whom I had previously engaged. Despite the anticipated challenges, my determination to transform community life and create a space for change remained steadfast.

Challenges and housing issues for women

What are the main housing challenges faced by residents, and especially women, in your community?

The social history of women in Vrygrond, Cape Town, is deeply rooted in the area's persistent socio-economic inequalities, where poverty, housing challenges and gender-based violence intersect. Vrygrond, one of the oldest settlements in the Western Cape, was originally built during apartheid, with 1,600 housing units. Since then, the community has grown beyond the capacity of its infrastructure, resulting in poor housing conditions, including overcrowding and inadequate access to water, services and facilities.

Women in Vrygrond disproportionately bear the burden of these harsh realities, managing households

and caring for children and the elderly in difficult living conditions, exacerbated by an unsafe, fire-prone environment. In addition, poor water and sanitation facilities create additional challenges for women, who are disproportionately affected by additional time and stress required to find adequate solutions due to their gendered care responsibilities.

Access to schools for children is also a challenge, as schools are located far away and school uniforms and books are often an additional cost. Job opportunities in Vrygrond are scarce, often limited to distant locations in the informal sector, where income is both unreliable and unstable. Consequently, many people must also rely on government social grants to sustain their livelihoods. The lack of accessible social and community development services and safe spaces, combined with extremely high levels of violence and substance abuse, compounds the challenges they face. Gender-based violence is a particularly serious problem, and women are often vulnerable in an environment where support systems are limited.

The negative impact of overcrowding and poor living conditions was exacerbated during the Covid-19 pandemic when many people lost their jobs in the informal sector and the crowded living conditions made it more difficult for people to practise social distancing. Women were again particularly affected by this, as they are often employed as domestic workers and also have the primary responsibility for caring for sick family members, making them more vulnerable to the virus.

Despite these overwhelming challenges, the women of Vrygrond remain resilient, playing crucial roles in their families and community, advocating for social justice, and striving for a better future in the face of adversity.

Organising and advocacy

How does your community organise itself to address housing and human rights issues?

Where Rainbows Meet was registered as a non-profit organisation in 2008. Since its inception, in recognition of the multiple disadvantages and challenges facing the Vrygrond community, the organisation has expanded and diversified its work. It aims to achieve social, economic and health improvements within the community of Vrygrond and its surroundings.

By offering a variety of services and events, Where Rainbows Meet provides community members with access to information, education, and support, empowering them to take charge of their lives and their families' well-being. Our activities also aim to enhance job skills, reducing unemployment and associated social issues like drug abuse, gender-based violence, and child neglect. Key services and projects include early child development, income generation, life skills courses, small business development, feeding schemes, and annual awareness events.

What role do women play in these organisational efforts?

Women play a pivotal role, acting as the glue that holds the community together. Through grassroots activism, women have been at the forefront of campaigns for better housing, access to essential services, and the protection of their rights. These efforts highlight the critical role women play in challenging the status quo and advocating for social justice.

The organisation provides them with opportunities to learn new skills, gain confidence, and achieve independence and strength. Women attend meetings around the improvement of living conditions as well

> " **Gender-based violence is a particularly serious problem, and women are often vulnerable in an environment where support systems are limited.**

as discussions on social and economic issues and gender-based violence. We work with experts to provide training and development pogrammes that focus on women and how they can improve their lives and the lives of others.

Women also work in our organisation, in the soup kitchen, in the community garden, on creative projects and in our development programmes and training workshops. This can inspire other women, their children, neighbours and partners. Women are often the catalyst for changing the outlook of their entire social circle and wider community. However, their struggle is ongoing, as they continue to navigate a socio-economic landscape that is slow to change, but their determination and collective action remain a beacon of hope for a better future in Vrygrond.

Can you share some successful strategies or initiatives that have made a positive impact in the community?

Among the successful initiatives is our community facility, which is a space where we gather for community meetings as well as our sewing and beading project. The organisation supports children through a pre-school crèche, particularly for those who have lost or been abandoned by their parents. A community garden supplies vegetables for our kitchen, cultivated and maintained by community members. The soup kitchen as well as the nutrition programme provide meals not only for women, but for the community at large. Additionally, we connect the community with businesses for job opportunities, selecting suitable candidates for internships and jobs, thus integrating the community into the broader workforce. The inclusion of men in our efforts has also been vital, offering them a place to connect and contribute.

> **Where Rainbows Meet adapted swiftly to continue serving the community as an 'essential service organisation'.**

During the Covid-19 pandemic we had to adapt our work. As many initiatives closed down, we were the primary source for support in the community. Where Rainbows Meet adapted swiftly to continue serving the community as an 'essential service organisation'. Our primary goal was to ensure that the nutritional feeding programme remained operational, offering meals to anyone in need, whether children or adults, across the Vrygrond community and beyond.

We also took on the critical task of educating the public about preventing the spread of the virus. This included promoting social distancing, providing sanitation resources, and offering services normally provided by other organisations that were forced to close during the lockdown. As the need grew, we scaled our operations to feed thousands of people every day, becoming a lifeline for many. This experience highlighted the resilience of our community and the essential role of organisations like ours in times of crisis.

Participation in local government

How do you and other community members participate in decision-making processes?

When we started, protests in the community were quite popular, and regularly members of the community would protest by burning things and resorting to destruction. By communicating with all the many different group leaders and key stakeholders within the community, we developed an understanding that it is not helpful for the communtiy to destroy our own place.

As an alternative way, over time we have found and established more formal ways to communicate with the government. We have also established the Vrygrond Community Forum, which gives the different members of the community a formal space to organise around the different challenges we are facing. Nowadays many of the key stakeholders of the community and the major organisations are part of this Forum, which has made it easier and more effective to talk to the government authorities. It is a structure that allows [us] to filter information from different channels into the community.

What challenges do you face when trying to engage with local government officials?

The challenge is often that although we discuss our challenges with the government, there is little or no change in the housing situation. They promised houses a long time ago and we still have not seen any changes. We have also repeatedly applied for government funding for our organisation, striving to meet all requirements to the best of our ability. However, the overly bureaucratic process has made it impossible for us to rely on government support so far.

Support and collaboration

What kind of support do you receive from NGOs, international organisations, or other external entities?

Support comes from various sources, predominantly international organisations, and local partnerships. Despite the lack of government funding, collaborations with local NGOs and businesses, alongside our own initiatives, provide financial resources for the organisation.

We also work together with the government when it comes to delivering government social grants. The South African Social Security Agency (SASSA) comes once a month to our school in order to make access easier for people. These grants, which include child support, disability, and old-age pensions, play a vital role in alleviating poverty and providing a safety net for the most vulnerable populations, particularly because formal employment opportunities are scarce in Vrygrond.

With regard to gender-based violence, we report cases to the relevant authorities, such as the Department of Social Development, to assist with immediate placement and removal from the areas. Due to safety concerns, we do not have a shelter in our community, as we had bad experiences with this in the past. We also offer many training progammes and psychosocial support programmes for affected women, and assist them with job placement through our link with local businesses later on in their recovery journey.

> **" The South African Social Security Agency (SASSA) comes once a month to our school in order to make access easier for people.**

Vision and future goals

What is your vision for the future of your community in terms of housing and human rights?

My vision for the future involves securing a major donor to expand the organisation's capacity, enabling more comprehensive support for community members and the development of additional programmes.

Personal insights and advice

What has been the most rewarding part of your work as a community leader?

The most rewarding aspect of my work is witnessing the community's self-sufficiency as people develop skills and hope for positive change.

What advice would you give to other women who want to take on leadership roles in their communities?

You need to be patient and earn the community's trust over time. Women leaders in various communities must understand that we do not own the community and need to support any development that can possibly make the communities better, and should never stop development in any form, as we are merely serving the public as we committed ourselves to be servant leaders.

We need to support each other more as leaders, as the world is big enough for all of us to bring the changes we wish to see in our communities, and we can only do it stronger together. There is no greater revelation than the development of others.

Closing thoughts

Is there anything else you would like to share about your work or the situation in your community?

I want to emphasise that the living and housing conditions in this community are inhumane. For others, it might be unimaginable what kind of challenges people here face, and we cannot allow this to continue.

How can people outside your community best support your efforts and advocacy for better housing and human rights?

People can promote Where Rainbows Meet nationally and internationally. They can try and bring their local companies on board, as well as sharing skills with us to enhance our work. Although we do have people that support us, it is not enough to carry the organisation, as it foresees closure. The organisation has grown into a multipurpose training facility with many pillars of development, and the size of the funds coming in does not match the size of the organisation.

Mymoena Scholtz is the Director of Where Rainbows Meet, a community-based organisation in Vrygrond, Cape Town, South Africa. As a community leader, she aims to economically and socially empower women, men, and youth in informal settlement communities through skills and development training.

For volunteer opportunities or to provide support through donations, contact Mymoena Scholtz at info@ whererainbowsmeet.org or +27 21 205 3496. More information is available on the organisation's website: www.whererainbowsmeet.org

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