

EVENT

Roundtable Discussion on Meaningful Engagement: Challenges in the Realisation of the Right to Adequate Housing in South Africa (27 May 2019)

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Although South Africa's courts have accepted the basic need to shelter as judiciable since the *Grootboom* case, the right to adequate housing has been a contested issue. It has re-emerged into prominence thanks to public discussion about land redistribution and incidents of land-grabs.

The Dullah Omar Institute held a roundtable discussion entitled, 'Meaningful engagement: Challenges in the realisation of the right to adequate housing in South Africa' (27 May 2019) to delve into issues such as the concept of meaningful engagement and what the right to access to adequate housing entails. The roundtable also looked at the role of government and civil society in realising this right, as well as at challenges in the South African context. The roundtable brought together social justice activists, advocates, academics, community-based organisations, non-governmental organisations, policy-makers and other stakeholders.

Prof Sandy Liebenberg focused on the role and potential of meaningful engagement in relation to the right to housing. She began her presentation with two pertinent questions. First, what is the right to access to adequate housing in South Africa? Secondly, what is the gap between what the law says and the lived reality of South Africans? While the Constitution explicitly



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guarantees the right to access to adequate housing in section 26, adequate housing is not defined in the Constitution. Prof Liebenberg looked to other domestic and international sources that give context to this right. She noted that the United Nations International Covenant on Social, Economic and Cultural Rights guidelines on 'adequate' housing are useful in assessing the adequacy of housing in various contexts.

While policy states that housing is to be progressively realised over time, jurisprudence indicates that a reasonable policy must include provision for meaningful engagement with those who are affected by housing decisions. What



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is meaningful engagement in relation to a housing decision? Its purpose is to find a solution to conflict between property rights and housing rights in the case of private evictions; and it can be useful tool for finding creative solutions and determining the special needs of a community. Some courts have also found it necessary during upgrades of informal settlements.

Prof Liebenberg considered what makes engagement meaningful. 'Meaningful engagement' entails a bottom-up approach; is structured; requires trained, expert capacity in all spheres of government; is transparent and accessible; is sensitive to different needs and circumstances; is open to civil society and social movement processes; and is continuous. This is the ideal situation, but the reality is different. Common complaints from community members have to do with lack of empowerment, inaccessibility, limited scope for change, and huge gaps between policies in theory and policies when implemented in practice.

In the next presentation, Ms Nonhlanhla Buthelezi introduced the legislative framework and policies on housing and

'human settlements' in South Africa. A 'human settlement', she said, is defined as housing that uses combined infrastructure and agriculture to support sustainable living. Ms Buthelezi called for a broader understanding of what 'adequate housing' means – not just a 'four-wall' approach but one in which the environment needs to be accessible and safe.

She examined the functions of the three spheres of government in relation to housing, given that it is a concurrent government responsibility, and provided insight into various kinds of housing developments, ranging from those under the old Reconstruction and Development Programme (RDP) to those of the recent Breaking New Ground Strategy (BNG).

Ms Buthelezi noted the forums where departments review policies and enter into meaningful engagement at national level. The Department of Human Settlements' current Medium-Term Strategy Framework indicates that the demand for housing is higher than what it is able to provide in terms of land acquisition, formal upgrading and creating human settlements.

While there is acknowledgment of demand for special-needs housing, large gaps remain in terms of policy development. Special-needs housing requires collaborative effort from various departments; however, it was decided that it is largely the responsibility of the Department of Human Settlements. This is a programme which is venturing into new terrain, so meaningful engagement with the community and experts on special-needs care and construction is necessary.

Commissioner Ikdjia Ameerma introduced the constitutional mandate of the South African Human Rights Commission (SAHRC), which is to hold all spheres of government and organs of state accountable by monitoring and assessing the realisation of socio-economic rights. This includes the power to investigate and report on violations and to provide redress where necessary. Education and research are

other important functions of the Commission.

The Commissioner examined the apartheid system of spatial inequality and how its divisions continue into the present day. Apartheid sought to isolate people of colour from economic opportunities in the city, whereas post-1994 South Africa developed policies to undo this injustice. In keeping with this vision, the National Development Plan (NDP) aims to bring about development and spatial justice by dismantling privilege due to geographical location and ensuring that all human settlements are functional and equitable and provide access to amenities, infrastructure and economic opportunities.

Nonetheless, the SAHRC finds that policies and legislation largely fail to rectify inequalities. For instance, houses for the disadvantaged are still being built in peripheral areas far from opportunities, lacking in connectivity and hampered by poor transportation infrastructure. Post-1994 policies replicate the spatial injustices of apartheid and cement the disadvantages of the poor. Currently, the Commission is asking the government what its short- and long-term plans are to address these issues and why its actions are inconsistent with its goals.

In the final presentation, Dr Soraya Beukes looked at the link between corruption and housing in South Africa. She said corruption undermines the realisation of socio-economic rights. Realising the right to housing is directly dependent on economic resources, with funds having to be allocated for the construction of human settlements. However, these funds are being abused.

Dr Beukes noted that the government has not yet centralised its data on the housing crisis and instead civil society has conducted most of the research. As for the government's progress, it is clear that unrealistic goals have been set. Why, she asked, has it not been held accountable? There are bodies designed to monitor and assess the performance of government, but



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they are ineffective and ignored.

Dr Beukes provided data as to how many officials have been accused of fraud, maladministration and corruption in recent years but not yet penalised. The majority are still in their positions, which enables corruption to continue.

Another major concern is the increasing size of the temporary or emergency housing 'transit camp' sites, where facilities are sub-standard facilities.

The discussion concluded with a number of recommendations. There is a need for an overarching national legislative framework relating to meaningful engagement, equitable spatial development and enhanced systems-efficiency. Human settlements also need to be understood differently as enablers of sustainable development where people can live in comfort and dignity.