

Report on the Public Hearing on Housing, Evictions and Repossessions

Abbreviations and Acronyms

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
COHRE	Centre on Housing Rights and Evictions
CRC	Convention on the Rights of the Child
ESTA	Extension of Security of Tenure Act 62 of 1997
FNB	First National Bank
GAA	Group Areas Act 41 of 1950
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Integrated Development Plans
NCA	National Credit Act 34 of 2005
PIE	Prevention of Illegal Evictions from and Unlawful Occupation of Land Act 19 of 1998
RDP	Reconstruction and Development Programme
SAHRC	South African Human Rights Commission
SAPS	South African Police Services
SETA	Services Sector Education and Training Authority

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Foreword

The Constitution of the Republic of South Africa Act 108 of 1996 (Constitution), and the Bill of Rights itself, provides the framework by which we, as a nation, are required to develop and build our society. Notwithstanding the fact that the constitutional provisions are held in high esteem as being visionary and progressive, there have been and will continue to be many battles that must be fought around the Constitution's provisions, how they are interpreted and given effect to, how they are balanced against each other and ultimately how we are to make choices in the matters that affect our lives. That is perhaps the nature of living in a constitutional democracy.

The South African Human Rights Commission (Commission), being a constitutional body, is charged with the task of promoting respect for human rights and a culture of human rights, promoting the protection, development and attainment of human rights, and the monitoring and assessment of the observance of human rights in the Republic. The Commission, apart from taking notice of high profile court judgments, investigations and annual surveys that highlight the inability of people to have access to adequate housing as well as the eviction and repossession process, has received many similar complaints in this regard, particularly from the members of the Ennerdale, Lawley and Kathorus communities of the Gauteng Province.

The right to have access to adequate housing - as well as the right that entrenches that no one may be evicted from their home, or have their home demolished, without an order of court, order of which is decided after consideration of all the relevant circumstances - is a critical right without which many other fundamental rights cannot be realised. The Commission, as part of the work of its ongoing mandate, has a duty, *inter alia*, to monitor the exercise and enjoyment of this right.

The Commission has deemed it appropriate to initiate a Public Hearing with a view to exploring the content of the right, and the context in our country and in particular to the areas referred to above, within which this right is given effect to. The Public Hearing aims to highlight the key issues that need to be addressed in order to fulfill the right to have access to adequate housing, in addition to the eviction and repossession process, rather than seeking to be a definitive pronouncement on the content of the right.

In addition, the Public Hearing is an important mechanism available to the Commission. It is essentially a forum that creates opportunities for dialogues between stakeholders and also allows for public accountability as envisaged by the Constitution. The Public Hearing also acts as an assessment tool for critically evaluating not only the progress we are making in the sector, but determining the advancement of the right to have access to adequate housing as well as the eviction and repossession process itself. While it allows for robust, frank and open debate, it is not intended to be adversarial.

The views that were expressed during the Public Hearing are synthesised in this Report. It provides findings and recommendations that seek to assist role players to grapple further with the issues that impede the full enjoyment of the right to have access to adequate housing as well as the eviction and repossession process.

Our thanks are extended to everyone who participated in and contributed to the Public Hearing. In particular, we would like to thank our colleague and Commissioner, Leon Wessels, who presided as the Chairperson of the Public Hearing, and also the other panellists, Louise du Plessis and Mothusi Lepheana. In addition, a special word of thanks has to go out to Lynette Bios, Pandelis Gregoriou and Zena Poggenpoel, as well as to all staff of the Commission, who contributed in a variety of ways.

Most importantly, we are extending a sincere thank you to those individuals who contributed to the submissions and shared with the panellists the human rights infringements and violations they are experiencing.

We hope that this Report will become a tool that will assist in the taking of measures and the implementation of programmes to alleviate the numerous problems that beset all aspects of access to adequate housing as well as the eviction and repossession process itself, contributing to a more comprehensive understanding thereof. Ultimately, the success of our democracy depends on our ability to ensure that the promise of the Constitution is able to reach everyone.

Executive Summary

Introduction

In the area of housing, the focus has been on housing delivery to the millions of South Africans who, during the course of apartheid, were forcibly removed from their land or due to structural poverty have been unable to afford housing currently available on the market. Less attention has been paid to the ability of people to retain houses that have been purchased through mortgages or used as collateral in securing loans.

The Commission has received complaints relating to evictions and the repossession of houses in Ennerdale, Kathorus and Lawley in Gauteng. National legislation provides specific procedures for repossessing houses and evicting occupants for failure to make mortgage payments, however a number of irregularities have been reported.

Community Issues

Issues raised through the complaints include evictions where people were never informed of the eviction proceedings. Others allege that they have not been given the opportunity to buy their properties back through auctions. More insidious are allegations that law enforcement and local government officials have been buying the houses for themselves. An additional complexity is when other low income households purchase the properties and then face the dilemma of having to evict the occupants.

The areas where complaints have been reported, are areas that have turbulent histories. Many complainants fled their houses on the East Rand during the violence of the late 1980s and early 1990s. Other areas were destinations for communities suffering from forced relocations. Current factors impacting on the ability to secure homes are massive unemployment, social dislocation and economic devastation from HIV and AIDS, divorce, illness and death. An additional burden has been the number of interest rate increases, resulting in higher mortgage payments. Those most affected by the evictions are the elderly, children and households headed by women.

The issues raised by the complainants highlight the complexity of poverty. If unaddressed, the cycle of poverty will be exacerbated as households are left homeless, blacklisted with the credit bureau and carrying the legal costs of the eviction.

Role Players

The Public Hearing highlighted the conflict balancing act between the rights of those dispossessed and the rights of those who have purchased the houses. A key question that was addressed was whether creditors in the foreclosure industry and third party role players, such as bulk property buyers, are exploiting households in difficult circumstances. It raised the issue of communication and whether people were fully aware of the implications of the terms of the agreements that were signed. Consumer

protection and the role of government in protecting the rights of vulnerable people came under scrutiny. The role of the South African Police Service and the role of the Sheriffs were found to be complex in that they are becoming the face of evictions. The need to ensure that the SAPS and the Sheriffs act within the confines of the law was reiterated.

Findings and Recommendations

Although the Public Hearings focused on evictions in Kathorus, Ennerdale and Lawley, the issue is widespread and thus the findings and recommendations have a broader applicability. The hearing found that although many of the role players are following the letter of the law, more can be done to advance the right to access adequate housing. Furthermore, the role players should do more to live up to ideals and the promise of *ubuntu*. The Department of Housing, which focuses on low income first-time homeowners, fails to adequately address the issue of evictions which occur as a result of people who default on their bond repayments. The very same issue is also not being addressed by the private sector, which has required an increasing amount of codes, guidelines and legislation to ensure that it operates ethically in the low income home loan sector.

Those facing evictions are a vulnerable group, who through a lack of awareness of their rights and obligations, the legal processes and recourse mechanisms that they may have, are often exploited by unscrupulous buyers. It was acknowledged by the Sheriffs and the SAPS that illegal evictions are taking place. As those affected are vulnerable, it appears that there is the perception that this could continue without public scrutiny. More humane measures should be considered by the relevant stakeholders.

The Public Hearing hopes to shine a light on these issues. Those operating illegally need to face the legal consequences. Role players implementing the minimum standards outlined in legislation need to think on how they can go the extra mile in ensuring that they play a positive role in realising the right to housing in South Africa.



Chapter 1: Introduction



The right to have access to adequate housing is a central right in our constitutional democracy. Without housing, other rights, including the right to an environment that is not harmful to one's health and wellbeing, access to healthcare, access to social services and water are also jeopardised. The right to housing is a basic human right and is key to ensuring that people live with dignity. It is an indispensable means of realising other human rights. In South Africa, the right to housing is enshrined in the Constitution under Section 26 (1) and (2).

1.1 Legislative Mandate of the Commission

The Commission is obliged by its constitutional mandate to promote respect for human rights and to promote the protection, development and attainment of human rights in terms of Section 184 of the Constitution. Section 9 of the South African Human Rights Commission Act 54 of 1994 (Human Rights Commission Act) empowers the Commission to investigate and to report on the observance of human rights and to take steps to secure appropriate redress where human rights have been violated.

1.2 Terms of reference for the Public Hearing

Terms of reference are based on the complaints received and outlines the following areas for investigation:

1. The observance of human rights during the process of evictions in the areas of Kathorus, Ennerdale and Lawley relating to:

- 1.1 Service of court process and notification of eviction proceedings, in particular allegations of non-service to the affected evictees;
- 1.2 The sale in auction of the repossessed houses, including selling of repossessed houses for nominal amounts, selling of houses to the sheriffs who carried out the evictions, and refusing to allow the original owners to buy back their houses;
- 1.3 The role of financing banks or institutions and Estate Agents in selling occupied houses, including selling houses after payment arrangements have been made with the owners;
- 1.4 The conduct of SAPS or Metro Police Officers and the Sheriffs in treating the evictees inhumanely;
- 1.5 The role of government and the Ministry of Housing in providing housing for the evictees.

2. To consider the causes or reasons for failure or inability to pay for the mortgage bonds.

3. To further ascertain whether the promotion and protection of human rights has been realised by public and private role players such as the Department of Housing, the Banking Association, the Board of Sheriffs and the Estate Agents Affairs Board.

1.3 Methodology and rules of process

The Public Hearing is not a court of law but a platform that contributes to the dialogue on the right to housing in the above-mentioned areas. The Public Hearing created a framework for all role players within the housing sector to evaluate and interrogate the issues pertaining to access to the right to housing and the implementation thereof within the context of the complaints received. The Public Hearings provide an accountability mechanism that can serve as an educational opportunity to all who attended.

The Public Hearing was conducted in terms of the rules of procedure promulgated in Section 9 (6) of the Human Rights Commission Act. In terms thereof, the Commission called for submissions from the public and interested parties from the government, private sector, non-governmental sector and affected communities.

The call for submissions was published in the Government Gazette on 27 August 2007. The closing date for submissions was 30 September 2007. The Public Hearings were held from 7–8 November 2007 at the Commission's Offices in Parktown.

A panel presided over the hearings. The panel was chaired by Commissioner Leon Wessels and included Advocate Mothusi Lepheana, Provincial Manager at the Commission's Free State Provincial Office and Ms Louise du Plessis, a practising attorney at the Legal Resources Centre.

1.4 Structure of the report

Chapter 2 of this Report provides a brief background to housing issues in Johannesburg and highlights the legal framework on the right to housing. Chapter 3 discusses the issues raised by communities at each stage of the eviction process. Chapter 4 reflects on the submissions and responses of various role players to their conduct and the allegations made. Chapter 5 contains the findings and recommendations of the Public Hearing.



Chapter 2: The Right to Housing



2.1 Brief History¹

Johannesburg's spatial legacy has been shaped by racial segregation, which was implemented over the first 100 years of its history. Johannesburg grew from the late 1800s, when gold was discovered, from a miners camp of 3000 people to a city of 250 000 people. At the onset, there were attempts to expel Africans from ownership and occupation of land reserved for mining.

The Natives (Urban Areas) Act of 1923 further reduced the number of legal tenure options for African people by making urban tenure conditional on urban employment. By 1946 there was already a housing backlog with Africans restricted to out-of-town settlements.

During the height of apartheid, the government devised the Homeland Policy, which saw the establishment of four quasi-independent homelands and seven self-governing territories. The Bantustans were originated when Africans were repatriated whenever they were not needed to work in the white cities and farming areas, and as a result they were barred because of influx controls.

State housing for Africans was based on long leasehold or rental tenure and not ownership. There was increasing overcrowding in townships and a mushrooming of backyard shacks.

From 1983, political reforms introduced black local authorities and allowed for the sale of some homes rented from the state. Local authorities were the sites of boycotts and protests as they attempted to raise revenue from an impoverished population.

By the end of the 1980s, townships were in a crisis; informal settlements were increasing; there were severe infrastructure and service backlogs; a refusal to pay for services; a breakdown in governance and inner city decay.

With the new government, there was a shift to transformation and delivery. The government introduced Integrated Development Plans (IDPs), which were to 'enable local government to deal with scarcity through aligning their budgets with service delivery programmes'². The intention was that IDPs would result in sustainable new housing settlements close to job opportunities, social services and economic development nodes. According to the Centre on Housing Rights and Evictions (COHRE), this has not been the result. New developments have been located on outer edges of townships, far from jobs, facilities and services. Transport costs have been a major barrier.

Informal settlements have been a contentious issue with some of them located on land that is unsuitable for development, but close to the livelihood opportunities. Despite a number of initiatives to address the housing backlog, thousands of people remain

on waiting lists and are living in informal settlements. The lack of housing is thus a contributor to people's reluctance to move from houses when they are repossessed as there is a lack of alternative affordable housing stock.

2.2. Legislative Framework

Apartheid Land Law³

Even though apartheid was only formally adopted as a policy when the National Party came into power in 1948, the Black Land Act 27 of 1913 is regarded as having been the first building block in the statutory framework that became known as 'apartheid land law'. The main purpose of apartheid land law was to subdivide South Africa along racial lines, with every parcel of land eventually apportioned to a designated 'race zone'.

Existing colonial land dispossession was for the most part confirmed by the 1913 Act referred to above. Although it did not specifically provide for forced removals, the Act had the effect of forcing people to leave their land by making it a criminal offence to enter into any agreement for the 'purchase, hire or other acquisition' of land between and across race lines ('native' and 'non-native'). The Beaumont Commission, which reported to Parliament in 1917, drew up a list of 'scheduled' areas in which 'natives' were allowed to own land. The report recommended the expansion of the scheduled areas to a point where 13% of rural South Africa was set aside for black occupation. After additional land was released under the 1936 Development Trust and Land Act, this percentage was eventually achieved.

The Black Administration Act 32 of 1927, the Development Trust and Land Act, 18 of 1936 and the various Group Areas Acts (the last of which was Act 36 of 1966) were the other major apartheid land law statutes.

The urban equivalent of these laws were the Group Areas Acts (GAA), which worked through creating categories of 'qualified' and 'disqualified' persons and specifically which land could be owned by which group and where. The successive Community Development Acts expropriated and sold land which was owned contrary to its racial zoning to the allocated racial group.

The decision in *S v Govender*⁴ virtually brought to a halt the implementation of the Group Areas Act 36 of 1966 (GAA) in the former Transvaal. Section 26 (1) of the GAA criminalised the occupation of land in contravention of the Act, but Section 46 (2) gave magistrates the discretion as to whether or not to order the eviction of a person convicted under this section.

A summary demolition or removal of buildings or structures erected or occupied without the land owner's consent was provided for by 1976 with a new provision, Section 3B

(1) (a), which was inserted in the Prevention of Illegal Squatting Act 52 of 1951. This provision was a clear attempt to exclude the common law *mandament van spolie*^e in such circumstances. An ouster clause⁶ was added in 1977 (section 3B (4) (a)), making it incompetent⁷ for any person to ask for an order, judgment or other relief founded on the demolition or intended demolition of buildings or structures in terms of Section 3B.

The application of the Govender judgment to section 3 (1) of the Prevention of Illegal Squatting Act was effectively nullified by the further amendment in 1988 to the Act by removing the discretion magistrates previously had not to order eviction of a person for contravening the Prevention of Illegal Squatting Act.

The land control framework provided for the following land control forms before the land reform measures were introduced in 1991:

- a) The so-called “black areas” comprising of:
 - i) Urban areas (outside rural areas); and
 - ii) Areas (so-called “traditional areas”) encompassing the four national states, self-governing territories and South African Development Trust land; as well as
- b) The remainder of South Africa, consisting of specially proclaimed group areas as well as the areas controlled in terms of the Group Areas Act.⁸

With the demise of apartheid in 1994, dismantling apartheid land law was a priority. International and regional frameworks informed the new Constitution, legislation and policies.

International and Regional Human Rights Framework

Internationally, the right to adequate housing and protection from evictions is enshrined in Article 25 of the Universal Declaration of Human Rights (1948) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966). The provisions in these conventions recognise the interconnectedness of socio-economic needs and emphasise that housing delivery must be planned to ensure that communities can access social services and economic opportunities.

The Convention on the Rights of the Child (CRC) extends the rights to children and imposes the obligation on state parties to assist parents with providing adequate housing for their children. The International Convention on Civil and Political Rights (ICCPR) guarantees that everyone is equal before the law and that all parties to a dispute are entitled to a fair and Public Hearing by a competent and impartial judge.

The African Charter on Human and People’s Rights (ACHPR) recognises the dignity of the person, stating that everyone is equal before the law and has the right to protection

of the law. The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa and the African Charter on the Rights and Welfare of the Child (ACRWC) explicitly guarantee women and children the right to adequate housing.

Constitutional Provisions

The Constitution recognises the right of everyone to adequate housing and prohibits unlawful evictions. Section 26 (1) and (2) state that:

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

It further states that, 'no one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances.' The term 'relevant circumstances', appears to require more explicit definition to ensure that people are not deprived of property unfairly.

The Constitution outlines further protection through establishing the right of the children to basic shelter. Property rights are enshrined and no one may be deprived of property except in terms of the law.

National Housing Law and Policy

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act⁹

The Prevention of Illegal Evictions from and Unlawful Occupation of Land Act 19 of 1998 (PIE), prescribes the procedures to be used for evictions. PIE requires that the court hearing the eviction request must serve written and effective notice. PIE also provides that special consideration be given to the rights of the elderly, children, disabled persons and households headed by women. If the state is obtaining the eviction order, the court must take into consideration the availability of alternative accommodation or land. The court may appoint the local sheriff to oversee the eviction.

The PIE Act replaced the Prevention of Illegal Squatting Act 52 of 1951. The Prevention of Illegal Squatting Act at the time of its repeal was widely regarded as being unconstitutional. The administration of the PIE Act was assigned to the Department of Housing in 1999.

The PIE Act may be regarded as the sister statute to the Extension of Security of Tenure Act 62 of 1997 (ESTA). The PIE Act applies to proceedings for eviction against unlawful occupiers, whereas ESTA lays down the procedures that must be followed, and the substantive grounds that have to be satisfied, in relation to the eviction of a lawful occupier.

The two main differences between the ESTA and the PIE Act are, first, that the latter statute provides procedural defences only against eviction, applying to people who have no substantive rights in law. Second, unlike the ESTA, the PIE Act applies throughout South Africa and its area of application is not geographically restricted.

The term ‘unlawful occupier’ is defined in Section 1 of the PIE Act as meaning:

“A person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996).”

The word ‘occupies’ in this definition is ambiguous. If the word ‘occupies’ is understood as ‘taking up occupation’, the PIE Act would apply only to people who move onto land without permission. If, on the other hand, it is read to mean ‘is occupying’, the PIE Act would apply not only to cases of land invasion, but also to cases of ‘holding over’. This is where a common law tenant refuses to vacate premises after lawful termination of the lease agreement.

The question whether the PIE Act applies to cases of ‘holding over’ may be rephrased as a question of whether it is possible to move from being lawful occupiers (under ESTA or the common law) to that of unlawful occupiers under the PIE Act.

*Ndlovu v Ngcobo; Bekker and Another v Jika*¹⁰ settled the uncertainty surrounding the application of the PIE Act. Harms JA held that the ordinary meaning of the definition of an ‘unlawful occupier’ in Section 1 of the PIE Act applies to all those whose occupation of another’s property, at the time their eviction is sought, is unlawful, regardless of whether their prior occupation of such property was lawful or not. The provisions of the PIE Act now have to be followed in all applications for the eviction of unlawful occupiers, including that of tenants who initially take up occupation of the land in terms of a lease agreement, but who refuse to vacate the land after lawful termination of the agreement; as well as mortgagors (i.e. homeowners) who default on their bond repayments and, after execution of the bond and transfer of the property to a third party, remain in occupation.

In coming to this decision, Harms JA structured this argument based on the presumption that where the literal meaning of a legislative provision is clear, it follows that an intention to alter the common law in line with that literal meaning may be inferred. According to Harms JA, the literal meaning of the definition clearly covers a person who occupies land unlawfully at the time when proceedings for eviction were instituted.

*Shoprite Checkers (Pty) Ltd v Jardim*¹¹ confirmed that the PIE Act is not relevant where property is being used for business or commercial purposes.¹²

Procedure under the PIE Act¹³

The procedure to be followed and the circumstances that need to be considered by a court when the owner or person in charge of the land wants to evict an unlawful occupier, is set out in Section 4 of the PIE Act. Section 4 (1) provides that:

Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.

It is plausible to read this provision as meaning that both the common law and the PIE Act must be complied with. In practice, however, the courts have granted eviction orders in proceedings brought purely under the PIE Act, without reliance on the common law. The substantive grounds for the granting of an eviction order under the common law will also be met if the applicant/plaintiff proves that s/he or it is the owner of the land and that the respondent/defendant is an unlawful occupier under the PIE Act.

Section 4 (2) provides that:

At least 14 days before the Public Hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the lawful occupier and the municipality having jurisdiction.

An eviction order under the PIE Act may not be granted *ex parte* (i.e. in the absence of the unlawful occupier/s) in terms of this provision.¹⁴

It would appear that it is also not possible to apply for default judgment in proceedings under the PIE Act because Section 4 (2) contemplates the holding of a hearing. The owner must request the court to set the matter down, and to serve written and effective notice of the date on which the matter will be heard on the unlawful occupier and the relevant municipality, if the matter is undefended. The court must grant the order in open court even if the respondent/defendant fails to attend the hearing.

Section 4 (2) provides that the court, not the owner's attorney, must serve the notice. This does not mean that the court itself, 'in the person of a Judge or Magistrate' must serve the notice. What it does mean is that 'the contents and the manner of service of the notice ... must be authorised and directed by an order of the court concerned'.¹⁵

In addition to the other court notices that may ordinarily be required, e.g. notice in terms of the Uniform Rules of Court Rules 4 and 6 in motion proceedings in the High Court, Section 4 (2) requires a further notice to be delivered.

The Section 4 (2) notice must be authorised and directed by the court only after all the papers on both sides have been served, if High Court motion proceedings are used, since this is when the date of the hearing will be determined.

With regard to what constitutes 'written and effective notice of proceedings' as required by Section 4 (2), notwithstanding this provision being peremptory and requiring strict adherence, this does not mean that any deviation there from is necessarily fatal.¹⁶

Notice of the proceedings must be 'effective'. Typically this means that the ordinary procedure for serving of notices in civil proceedings in the court in question (Magistrates' Court or High Court) must be followed (Section 4 (3)). The court may direct that the notice be served in some manner (substituted service), provided it is 'adequate', i.e. provided it puts the unlawful occupier in a position to defend the case (Section 4 (4)) where the ordinary rules governing the service of notices are inconvenient or too cumbersome.

Notwithstanding the fact that illegal settlements fluctuate and that persons are constantly moving in and out of the community, the court in *Illegal Occupiers of Various Erven, Philippi v Manwood Investment Trust Company (Pty) Ltd*¹⁷ held that one of the foundations of litigation is the identification of the parties and that adequate measures must be attempted to identify the occupants.

The circumstances that the court must consider in deciding whether or not to grant the eviction order, depends on the length of time that the defendant/respondent has been in unlawful occupation, assuming that the notice is effective and that the owner proves that the respondent/defendant is an unlawful occupier. A distinction is drawn in Section 4 (6) and (7) between unlawful occupiers who have been in occupation of the land for less than six months, and those who have been in occupation for longer. The rights and needs of the elderly, children, disabled persons and households headed by women must be considered in both cases. The court must in addition consider 'whether land has been made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier' (Section 4 (7)), where the land has been occupied for longer than six months.

The availability of suitable alternative accommodation or land for resettlement should however not be elevated to 'a precondition for the granting of an eviction order', whether under Section 4 or 6.¹⁸ Notwithstanding the fact that courts are not barred from granting an eviction order under Section 4, following the fact that the land owner has failed to prove that the unlawful occupiers would have somewhere else to go were they evicted,

courts may suspend the eviction order for a period of time to allow the unlawful occupants an opportunity to find alternative accommodation.

Section 5 of the PIE Act in certain circumstances allows for urgent proceedings for eviction.

An organ of state is authorised to institute proceedings for the eviction of an unlawful occupier from land which falls within its area of jurisdiction in terms of Section 6 (1) of the PIE Act. In this case, Section 6 (3) provides that the court must have regard to three factors when deciding whether an eviction order would be just and equitable, namely:

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

It is clear from the rest of this section that the legislature intended this provision to apply to a situation where the land is privately owned, and the owner for some or other reason is reluctant to institute eviction proceedings. In such circumstances, the responsible organ of state may institute the eviction proceedings and recover the costs from the owner. The proceedings should be instituted under Section 4, i.e. by the relevant organ of state in its capacity as representative owner of the land, where the land is owned by the state.

It is of value to note that in *Port Elizabeth Municipality v Peoples Dialogues on Land and Shelter & Others*¹⁹ the court held that the general approach that ought to be followed in considering an application for eviction under the PIE Act is that of balancing opposing interests in deciding whether it was 'just and equitable' to grant an eviction order. The court added that the terms 'just and equitable',

“... relates to both interests, that is what is just and equitable not only to the persons who had occupied the land illegally, but to the landowner as well. The term also implies that a court, when having to decide a matter of this nature, would be obliged to break away from purely legalistic approach and have regard to extraneous factors such as morality, fairness, social values and implications and any other circumstances which would necessitate bringing out an equitable principled judgement.” (1081F-G)

The Constitutional Court confirmed in *Port Elizabeth Municipality v Various Occupiers*²⁰ that the approach by Horn AJ in *Port Elizabeth Municipality v Peoples Dialogues on Land and Shelter & Others* was judicially and academically sensitive and balanced.

Section 4 (8) states that if a court is satisfied that all the requirements have been met and that no valid defence has been raised by the occupier, it has to grant an eviction order. The details regarding a just and equitable date on which vacation is to take place; and a date on which the eviction order is to be carried out if vacation does not occur, must be contained in such an order. After all the relevant factors have been taken into account, such as the period of occupation, a court shall determine the equitable date.²¹

Other related legislation

The National Building Regulations and Building Standards Act 103 of 1977 is often used to effect evictions on the grounds of health and safety.

The National Housing Act 107 of 1997 outlines the roles of the various tiers of government. Included in the Housing Act is the establishment of a National Housing Code, the South African Housing Development Board and the Housing Subsidy Scheme. The core of housing delivery has been the provision of subsidy assistance to low income first-time homeowners.

The Home Loan and Mortgage Disclosure Act 63 of 2000 establishes the Office of Disclosure to monitor financial institutions providing credit. The Disclosure Act does not require banks to disclose information about foreclosed loans.

The Upgrading of Land Tenure Rights of 1991 provides for the conversion of land tenure rights to ownership. Ownership by conversion is subject to any mortgage bond registered immediately before such conversion.

The Usury Amendment Act 10 of 2003 offers consumer protection. Under the Act, the Directorate of Licensing and Inspections is supposed to undertake pro-active inspections on financial institutions.

National jurisprudence

Litigation on housing rights has focused on the State's failure to cater for people living in desperate circumstances while they wait in the queue for low-cost housing. The landmark case has been the Government of the Republic of South Africa and Others v Grootboom and Others.²² The court found that the state's policy was not reasonable as it did not cater for people living in situations of crisis or desperate need.

Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 (CC)²³

The *Grootboom* case concerned a community of people who invaded land they renamed 'New Rust' after having left an area known as Wallacedene in the Western Cape Province. The private owner of the invaded land, under the Prevention of Illegal Eviction from and

Unlawful Occupation of Land Act, 19 of 1998 (PIE), obtained an eviction order against the community. The community members sought shelter on the Wallacedene sports field after the order was executed. Their attorney wrote a letter requesting urgent assistance to the relevant local government authority (the Oostenberg Municipality). Relying on Section 26 (1) and (2), and Section 28 (1) (c) of the 1996 Constitution, the community then sued the Municipality in the Cape High Court for temporary shelter. An order in terms of Section 28 (1) (c) was granted by Davis J, instructing the respondent to provide shelter for the children of the Wallacedene community and accompanying parents. The state appealed against the order to the Constitutional Court.

The essence of the Constitutional Court's decision in *Grootboom* is that where the state is required to progressively realise a socio-economic right, both government policy and the measures taken to implement that policy must be 'reasonable'. When a policy fails to cater for people in 'desperate need' it is not 'reasonable'.

In so doing, the direct applicability of the United Nations Committee on Economic, Social and Cultural Rights General Comment 3 of 1990 paragraph 10 on minimum core obligations was rejected by the Constitutional Court. The reference in article 2 (1) of the International Covenant on Economic, Social and Cultural Rights to the obligation on a State Party to promote Covenant rights 'to the maximum of its available resources' was interpreted by the comment to mean that state parties had to devote all the resources at their disposal first to satisfy the 'minimum core content' of the right in question.

There were two bases for the Constitutional Court's rejection of this approach in *Grootboom*. Firstly, and particularly given regional variations and the rural/urban divide, the court held that there was insufficient evidence before it to allow it to determine the minimum core content of the right to housing in Section 26 of the 1996 Constitution. Secondly, the primary emphasis in South Africa should be placed on whether government policy was reasonable, especially given the textual differences between Section 26 (1) and (2) of the 1996 Constitution and Articles 2.1 and 11.1 of the ICESCR. An indicator of this larger inquiry is the minimum core content of the right to housing. A housing policy was clearly unreasonable and therefore unconstitutional that did not cater for people in desperate need. With the inevitable budgetary implications, the appellant was accordingly ordered to amend its policy. However, the court stopped short of ordering the government to prioritise spending on the provision of emergency shelter, as the wholesale adoption of General Comment 3 paragraph 10 would have entailed.

In paragraphs 39 to 46 of the judgement in *Grootboom*, the three constituent parts of Section 26 (2) are considered separately.

The allocation of responsibilities to different spheres of government is what is primarily involved when reference is made to 'reasonable legislative and other measures'.

Although not the only way, it also means that the policy must be theoretically capable of realising the right in question; and that the implementation strategy itself must be reasonable. A programme that excludes a significant segment of society cannot be said to be reasonable.

With regard to the 'progressive realisation of the right' part of Section 26 (2), the United Nation Committee on Economic Social and Cultural Rights General Comment 3 paragraph 10 interpretation to the effect that provision like this 'imposes an obligation to move as expeditiously and effectively as possible towards that goal', was adopted by the court. With such an approach the 'deliberately retrogressive measures' are impermissible.

Impact of Section 26 (3) on the common law pleading requirements in an action for ejectment

One needs to consider the impact of the constitutional eviction principle on common law evictions in normal landlord-tenant evictions, where the land reform laws have been said not to apply.

*Graham v Ridley*²⁴ and *Chetty v Naidoo*²⁵ set out the common law pleading requirements in an action for ejectment. According to these two cases, ownership of the land and the fact that the defendant is in occupation, are the only two things that the plaintiff needs to allege and prove. The owner must obviously answer this plea in his or her application if the defendant pleads lawful occupation in terms of a lease agreement. The plaintiff assumes the onus of proving lawful termination of the defendant's right to occupy the land in terms of an agreement of lease if the plaintiff at any point concedes the existence of such an agreement (which strategically s/he may be forced to do).

Section 26 (3) of the 1996 Constitution provides:

No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

In *Ross v South Peninsula Municipality*²⁶ the court held that the common law with regard to evictions had been altered by Section 26 (3) of the Constitution. As opposed to the common law situation where a person who seeks to evict an illegal occupier from his or her home simply had to allege ownership of the premises and occupation by the defendant, the court argued that Section 26 (3) placed an extra onus of proof on the plaintiff to inform the court of circumstances justifying the eviction, placing sufficient information before the court to enable it to exercise its constitutional discretion and consider all the relevant circumstances. The court, when considering which circumstances would be relevant in such a case, determined that the PIE Act could provide guidance and that the legislature's interpretation of the constitutional requirement meant that the 'rights

and needs of the elderly, children, disabled persons and households headed by women' should be protected.²⁷

In the decision of *Betta Eiendomme (Pty) Ltd v Ekple-Epoh*²⁸ the court held that the 'normal landlord and tenant' relationships are not affected by Section 26 (3), thereby declining to follow *Ross*. The court in *Betta Eiendomme* approached the matter in the following way: the common law regarding the right of ownership makes it clear that a landowner is entitled to possession of his or her property under normal circumstances; the common law right of ownership 'as recognised before the Constitution has not been affected by the Constitution', and ownership 'still carries within it the right to possession'; the restriction of the owner's rights as against an illegal occupier of the land is neither required by the text of Section 26 (3) nor the constitutional obligation to promote the values that underlie the Constitution or the spirit, purport and objects of the Bill of Rights; and lastly, the mere fact that the plaintiff is the owner and that the defendant is in possession renders it 'right and proper' that the owner be granted an eviction order, in the absence of constitutional or legislative interference with the owner's rights, 'against someone who has no business interfering with the possession'.²⁹

The court restricted Section 26 (3) of the Constitution's application to cases where the ejection order is sought under apartheid-style legislation, therefore depicting it as a 'never again' provision. Flemming DJP argued that the court in *Ross* was wrong to cite the PIE Act for guidance on 'relevant circumstances'. The need to protect ownership rights and the concomitant rights of contract, together with the impact of 'squatting' on the South African economy (of which the court took judicial notice), are rather the circumstances that one should consider when applying Section 26 (3). The court held, later on in the judgment, that relevant circumstances were those circumstances that had been made relevant by the pleadings. The court need not go in search of relevant circumstances, i.e. the ordinary adversarial model applied, where the defendant had not pleaded anything, as is by definition the case in an application for default judgement.

The Supreme Court of Appeal (SCA) settled the controversy over the impact of Section 26 (3) on the common law in *Brisley v Drotsky*³⁰, while upholding the basically conservative approach relating to the effect of the Constitution established in *Betta Eiendomme*, overturning both *Ross* and in part *Betta Eiendomme*. The majority of the court held, contrary to *Betta Eiendomme*, that Section 26 (3) was not of vertical application only and that in cases of this nature, an eviction order may only be granted once the relevant circumstances have been considered. For purposes of Section 26 (3), the relevant circumstances, according to the SCA, are circumstances that are legally relevant, rather than the personal circumstances of the person facing eviction, including the availability of alternative accommodation. However, it also decided, contrary to *Ross*, that Section 26 (3) did not grant the courts a discretion to deprive the landowner of an eviction order that s/he would otherwise – in the absence of a statutory or other right to occupy – have

been entitled to, based on the personal circumstances of the occupier and his/her family or the availability of alternative accommodation. The court's discretion to refuse to grant an eviction order, where the owner is otherwise entitled to such an order, is not conferred on the courts by Section 26 (3). Consequently, in the absence of a statute which explicitly confers an equitable jurisdiction on a court, and, except insofar that right is limited by the Constitution, another statute, a contract or some other legal basis, an owner is entitled to possession of his property and an eviction order against a person who occupies his property unlawfully.³¹

It is important to note that the court in *Brisley* did not make clear which other circumstances, besides the applicant's ownership and the respondent's occupation, could be taken into consideration.³²

The SCA has recently applied *Brisley* in the matter of *City of Johannesburg vs Rand Properties (Pty) Ltd and Others*³³, and although Harms ADP confirms that it was not invited to revisit *Brisley*, it has not found anything in the Constitutional Court jurisprudence to suggest that it was wrongly decided. Questions that have not yet been addressed by the Constitutional Court are the meaning of the term 'relevant circumstances' and whether a court has a general discretion after having considered the 'relevant circumstances'. Sachs J's comments in *Port Elizabeth Municipality vs Various Occupiers*³⁴, although ostensibly an interpretation of the PIE Act, are suggestive of the impact that Section 26 (3) of the Constitution may have where the Act does not apply. The boundaries of the court's discretion, however under Section 26 (3), are still evolving and the question of the circumstances under which the courts exercise an equitable discretion in terms of the subsection is unresolved.³⁵

The right to housing is thus elaborated through a range of legal frameworks that continues to be refined in our young democracy.

2.3 Other processes to address housing issues in South Africa

In addition to the legal frameworks, a vast range of processes have been undertaken to address the right to housing in South Africa:

- The National Housing Forum in 1994 was held to deal with the payment boycotts inherited from the 1990s and developed housing policy papers to inform policy and legislation;
- The National Housing Summit in 1994 facilitated commitments by banks in the housing delivery chain;
- The White Paper promoted people-centred development and non-discrimination in housing delivery;

- Housing Institutions, such as the National Housing Finance Corporation, were set up to provide wholesale housing finance and the Home Builders Registration Council to deal with the quality of workmanship;
- Servcon was established in 1994 as a public-private partnership between government and the banks to address about 33 306 homes that were at risk of being repossessed. The programme included converting mortgages to rentals and rightsizing. The mandate extended from 1996 to 2006 and most of the cases were resolved. 80% of the properties that were not normalised were in the areas mentioned in the hearings;
- A Mortgage Indemnity Fund was instituted in 1995 with the government agreeing to underwrite certain risks;
- The Ombudsman for banking services was established in 1997. The Ombudsman requires that banks highlight non-vacant repossession. The ombudsman provides a last resort prior to legal action against the bank;
- In 2003 the banking sector formed the Financial Sector Charter. The Charter set up Project Sizwe to establish best practice in lending to low income housing;
- A Home Loan Code of Conduct was incorporated in 2004 into the banking code of practice;
- In January 2006 a Code of Practice for Emerging Home Loan Markets, which is aimed at borrowers in distress, was developed;
- In July 2007 the National Credit Act (NCA) was implemented. The NCA intends to ensure responsible lending by enforcing a rigorous credit assessment regime on lenders.



Chapter 3: Community Issues



3.1. Introduction

The challenges in delivery on the right to have access to adequate housing highlight conflicting interests between different groups. With the Department of Housing focusing on housing the poorest of the poor who have never owned a house, new challenges are emerging for those who once were able to afford a bond, but due to changing circumstances are no longer able to do so. The hearings provided evidence of how evictions create tension in the communities and further entrench the cycle of poverty. In addition, an area with high levels of defaulting on bonds discourages banks from investing in the area and thus contributes to further depreciation. The following chapter outlines the key issues that emerged from the oral and written submissions by community-based organisations and individuals.

3.2. Flow Chart of the Eviction Process (Page 28)

The following flow chart broadly outlines how community members experience the process of evictions. It outlines which role players are relevant to particular stages of the eviction process. Community allegations suggested irregularities at a number of stages in the process.

‘We know we are defaulters; people don’t have jobs and that’s why our people have become defaulters.’ Ennerdale Housing Crisis Committee

Pre-default Stage

- Terms and conditions of granting finance;
- Reasons for subsequent default i.e. loss of employment, death, illness and so forth;
- Attempts made by complainants to settle or enter into repayment arrangements with financial institution once in default.



Institution of Legal Process Stage

- Delivery of letters of demand;
- Service of legal notices informing the commencement of legal process;
- Conduct of Sheriffs of the Magistrates' or High Courts;
- Court proceedings i.e. conduct of presiding officer;
- Lack of representation at court proceedings
- Service of order of court for eviction;
- Conduct of Sheriffs;
- Eviction process;
- Conduct of Sheriffs, Estate Agent and SAPS;
- Sale in execution;
- Conduct of Estate Agents i.e. bulk buying, selling properties while aware of illegal occupation and selling the same properties to more than one buyer;
- Criminal proceedings following eviction should complainant remain in illegal occupation.



Post Eviction

- Rehabilitation process;
- Rightsizing;
- Illegal reoccupation

'I moved into my house in 1994 as a bond house. I lost my job in 1998 and then discovered that the house was on auction. I got some part-time jobs so agreed to rent the property. From 1998 to 2004 the house was on sale. In between, every Jack and Jill can saying that they had bought the house and were demanding rent.' This resident from Lawley owed R40 000 on the house when it was repossessed. A bulk buyer purchased the house and offered to sell it back to him at R200 000.
Lawley Housing Crisis Committee

3.3. Pre-default Stage

Historical Factors

Community inputs at the Public Hearings spoke of how communities such as Kathorus and Ennerdale were affected by violence in the early 1990s. Property was damaged, and in turn this led to displacement as people fled the area. These 'vacant' houses were then illegally occupied.

After the new government came into power, a special presidential project was launched to normalise the area. With government support, houses were repaired. Community representatives at the hearings alleged that there was poor workmanship and that some of the repairs were not completed. In addition, people whose houses were illegally occupied during the violence were not given their properties back. Further confusion was created with the perception being that banks have claimed houses that were repaired by the government.

Lack of understanding of legal documents and processes

As people are desperate to obtain mortgages and to become homeowners, documents are signed even if the implications and the fine print are not fully understood. The documents are often in languages that the purchaser does not understand. Documentation of payments made is often not retained and thus there is no proof when disagreements emerge.

A number of instances emerged where community members were under the impression that they had purchased houses only to find themselves facing eviction. In Kathlehong, the community believed that houses previously owned by Transnet had been bought by the employees, but some are now facing eviction.

Confusion also emerged with mortgages held by SAAMBOU. When SAAMBOU collapsed it was not clear to many bondholders which bank they had to service their bond with.

Insurance terms are not always understood. This is particularly the case when there is a death of the homeowner. Other family members assume that the property is paid off, but later discover that the bond payments are in arrears.

The legal process is complicated and often not understood by communities. Community representatives complained that poor and unemployed people are not always aware of their rights, alternatives and recourse. Legal aid is not easy to access in civil claims.

Some community leaders have advised people facing eviction proceedings to ignore court processes. This is poor advice as it undermines their position in any legal process.

Reasons for defaults

The rising interest rates have been a factor in defaulting on mortgages. Some banks offer fixed rates for a certain period of time, but most are charging variable rates which have risen consistently in the past few years. Emerald van Zyl, a financial consultant, is of the opinion that the inability to afford bonds is linked to banks sometimes charging consumers 6% to 7% above the interest rate. In his presentation he said that calculating the interest in advance contravenes the law, but was still in practice in some banks. He added that some banks increase the bond when the interest rate increases, but do not decrease it again when the rate decreases.

The communities allege that the most commonly cited reason for defaulting was unemployment and/or reduced income. Other factors leading to defaults include medical expenses, increased living expenses, death, divorce and disability.

Over-extending

Some people were given houses by the municipality and then took out loans to build extensions or outbuildings. Upon inability to pay the loans, they have lost their houses. This has affected elderly people whose younger children have secured the loans by using their elderly parent's house as collateral. In some instances, the Gauteng Department of Housing has intervened to prevent elderly people from losing their houses.

Another factor raised by community representatives was that occupants invest in home improvements which are not factored in when the houses are repossessed.

Vulnerable groups

The eviction of vulnerable groups such as orphans, people with disabilities and the elderly emerged at the hearings. With many children losing their parents to HIV and AIDS, they are losing their inheritance as they are not aware of their rights. Other family members try to possess the houses.

Attempts made by complainants to settle

Community submissions reported on confusion over settlement agreements. Some indicated that even when payment arrangements had been made, the houses were put up for sale in execution. Others did not realise that they had entered into a rental agreement and were under the impression that the payments being made were towards

a bond. Some of the community submissions implied that banks are not operating on good faith and that they say one thing and do another. Community submissions were concerned that eviction proceedings will begin while tenants are still in negotiation on their arrears.

3.4. Institution of the Legal Process

Legal Notices

Communities reported that they often did not receive legal letters and notices. Others reported that community members did not understand the content of the letters. Community submissions raised concern at the manner in which attachments are delivered. Although it is legal to attach them to an exterior door, this was cited as the reason that many do not receive notification of legal action against them. It was also mentioned that it was unlikely that there would be no one at the house to receive the notices, particularly if the owner was unemployed.

Court proceedings

It was found that in most instances, the person being evicted does not appear in court. This is due to a number of factors, including the above mentioned issue of not receiving notices. In addition, most community members are unable to access legal representation and are thus at a disadvantage.

Eviction proceedings

The community submissions spoke of the manner in which evictions are conducted. Often the community mobilise in support of the occupant. This can lead to violent altercations between occupants, new buyers and those doing the evictions. These submissions included allegations of gross misconduct by Sheriffs, the red ants and SAPS. It was alleged that hostel dwellers and private security companies are involved in evictions.

Additional allegations included selling houses at nominal amounts and selling houses to the Sheriffs. Sheriffs were accused of not allowing the original owners to buy their houses back.

Community submissions painted a concerning picture of the role of the SAPS. It was alleged that those being evicted were not treated humanely and that their belongings were stolen and sold by SAPS members. Community submissions alleged that SAPS members are rewarded for conducting evictions by new homeowners.

Conduct of Estate Agents and Bulk Buyers

Allegations against bulk buyers were that they refused to offer occupants the right to repurchase their homes. Bulk buyers seemed to change regularly and created confusion amongst occupants as to who rental should be paid to. Alleged bulk buyers were attributed with taking illegal measures to ensure evictions.

According to the Ennerdale Crisis Committee, 'the biggest devils are the bulk buyers. They need to be regulated.' Bulk buyers were described as 'white guys with money' who 'use black brothers as Estate Agents.' Bulk buyers were described as companies that buy up many properties. It was alleged that bulk buyers forge eviction documents. A SAPS speaker affirmed that when all documents were verified with the courts, the eviction rate decreased.

The conduct of Estate Agents came under scrutiny with community representatives alleging that Estate Agents are selling occupied houses. It was alleged that bogus Estate Agents collect rentals without the occupant knowing who the correct owners are and who rent should indeed be paid to.

Evictions where there is no consultation on the alternatives being offered

In Protea Glen it was alleged that there was no consultation on where the community would be moved to in the event of evictions.

Criminal proceedings for those remaining in illegal occupation

As many families have nowhere else to go, some return to the property from which they have been evicted. It is then that they are often arrested for trespassing and imprisoned. At the hearings, it emerged that some community members did not understand that it is legal to get arrested for trespassing, even from a house considered one's home.

3.5. Post Eviction

Consequences of evictions

Those who have been evicted were described as traumatised, particularly children. Community submissions identified evictions as contributing to poverty, crime and homelessness. Families are often separated. With evictions contributing to the cycle of poverty, it was identified that they could contribute to increased demand for government grants, medical services and shelters.

As most community members have not been offered alternatives such as rightsising,³⁶ the only inevitable consequence of such an eviction is living in an informal settlement or being left homeless.



Chapter 4: Role Players



This chapter outlines the issues that emerged in the Public Hearings as they relate to particular role players in the process. The chapter includes the responses by each role player to the allegations against him/her.

4.1. Role of Banks

The Pre-Legal and Legal Process

All of the banks that made submissions at the Public Hearings emphasised that they focus on making arrangements to make up the arrears rather than pursue the legal avenue, as substantial losses are incurred during the repossession and resale processes. The process prior to a sale in execution or eviction for most banks was fairly similar.

A default client is regarded as one who is in default of one or more instalments. An account that is 90 days in arrears is regarded as a non-performing loan. During this phase, a 'soft' collection process is undertaken. This is done mostly on the telephone. Arrangements include:

- a moratorium on bond instalments if a valid reason exists;
- higher instalments to make up the arrears;
- for a limited time, partial or interest-only payments can be made;
- reduced instalments by extending the terms of the loan.

If the person is unable to make an arrangement with the bank, they are encouraged to sell the property voluntarily to realise the market value, rather than an auction sale value which is not concluded under normal market conditions. This is promoted to avoid the costs of the legal process, listing with credit bureaus and accrued interest.

According to bank submissions, it is important to begin the collections process as soon as distress is detected due to the extent of the loan. The condition of the asset can deteriorate as the borrower's financial position worsens. The resale value declines, rates and taxes fall into arrears and the legal costs incurred are added to the borrower's account.

The bank's legal process involves it to the point of the sale in execution, and for most banks this is where they depart. The banks' submissions indicated that it is largely third parties in the form of new owners and bulk buyers who institute eviction proceedings to ensure vacant occupation. The banks indicated that they try to encourage bulk buyers to sell the properties back to the original owners, but that it was difficult for previous owners to refinance the property.

If the property goes to a sale in execution and does not fetch the reserve price determined by the bank, the bank will buy the property in. This is called a Property in Possession (PIP). Contrary to what was alleged by community voices, all of the banks alleged that evictions by banks are an exception to the rule.

Default rates in the areas under inquiry

For Nedbank, in the areas mentioned in the inquiry, there is a 10-15% default rate. Standard Bank reported that the default rate in the areas under inquiry were higher than other areas. ABSA reported that 34% had defaulted, which is higher than the national average of 12%. For Standard Bank, about 10% of the loans in the areas under inquiry had led to legal proceedings being initiated. FNB reported that about 30% of loans in the areas had been in arrears, but that most were resolved. According to ABSA, 'affordable housing customers do meet their obligations ... the average value of property bought in by the bank is R800 000 to R1 million. It is not the low income market where properties are bought back.'

Reselling to previous owners/occupants

As many previous owners have difficulty in securing finance, reselling the property back to them can be difficult. Some banks claimed that occupants are uncooperative. They allege that banks illegally repossess their homes. Another inhibiting factor can be outstanding rates, taxes and municipal services bills. ABSA, through its Instalment Sale product, is facilitating ex-owners to repurchase their houses and restoring their relationships with municipalities by arranging for occupants to sign an acknowledgement of debt to restore services.

Effective consultation

The Banking Association acknowledged that there is a lack of understanding on issues of borrowing and lending, financial planning and awareness of channels of redress. To address this, an educational programme was funded by the industry in the form of a SETA³⁷ programme to train banking staff on the low income housing market.

Lack of consumer protection

Under the Usury Act, the Directorate of Licensing and Inspections is required to undertake proactive inspections on financial institutions to ensure consumer protection. According to Emerald van Zyl, this has not happened.³⁸ The focus has been on complaints lodged. Government views banking issues as affecting a small well-educated minority group. However the new group of low income mortgage holders accessing finance has not been taken into consideration.

Initiatives to improve lending to low income homeowners

Project Sizwe is a partnership with government to facilitate market penetration. The project has looked at the possibility of creating a long-term fixed interest rate underpinned by a government or private sector non-commercial risk. It looked at providing life or disability cover policies to HIV/AIDS positive applicants with access to anti-retroviral medication. It was expected that 850 000 families will benefit by means of purchase or improvements to their homes from 2004 to 2008.

The Code of Practice for Emerging Home Loan Markets emerged when it was identified that there was a gap in providing a transparent, caring and standardised approach by banks in respect of default and repossessions. The code is specifically aimed at households in financial hardship. Banks started implementing the code from January 2006.

The Loss Insurance Project was initiated in July 2007. The project includes possibly establishing a government or private sector non-commercial risk which would underpin home loans within the Financial Sector Charter target market. It may also lead to the creation of an affordable long-term fixed interest rate for the Financial Sector Charter target market and an affordable retrenchment insurance policy to assist homeowners in the event of job loss. A life, disability or retrenchment insurance policy may be embedded within a borrower's home loan repayments.

Banking terminology for defaulting

Although the banking industry claims to follow the letter of the law, banking terminology related to defaulters is value-laden. Terminology such as 'rehabilitation', 'curing' debts and 'delinquency' would indicate that defaulting is viewed either in medical or correctional terms. This could indicate a lack of understanding of the deep-seated poverty facing many households and the daily struggles to survive that have little to do with 'bad behaviour' associated with delinquency. It is possible that this language could contribute towards negative attitudes to low income customers. The Banking Association's research has found that low income housing applicants were not satisfied with service levels. It was this research which led to the development of the Code of Practice for Emerging Home Loan Markets.

Consequences of evictions

According to Standard Bank, the low income housing market is not normalising. Low income communities are not seeing an escalation in their property prices and this is impacted on by evictions. ABSA's submission indicated that most properties sold to bulk buyers are those with uncooperative occupants.

A consequence for other low income purchasers is the inability to obtain vacant possession. ABSA assists some new homeowners when the delay in obtaining vacant possession becomes protracted and the new homeowners are unable to afford both the mortgage and the rental costs of living elsewhere. ABSA has also assisted purchasers by buying the property back and attempting to renegotiate with the occupants.

The Banking Association concluded that a lot had been achieved since 1994 and that there were political, moral and social reasons to make the emerging market work. It reiterated that banks are businesses and are not in a position to deal with issues of unemployment and affordability. According to Cas Coovadia of the Banking Association,

‘we must move away from the perception that banks give away housing finance without making a profit. They are not going to do that.’

4.2. Role of the courts

Although there was no representative from the courts at the hearings, the role of the courts was identified as key to ensuring fairness in these processes. It is the court that makes the eviction decision based on the relevant legislation.

The SA Board of Sheriffs, acting as messengers of the court, suggested that the legal process is procedurally correct but questioned whether it is fair to everybody involved. They follow the rules of court but the results are often harsh to the disadvantaged. When the person is not present in court, a default judgment is awarded with far-reaching consequences. In a criminal matter, if the accused is not in court, the matter is postponed, but in a civil matter decisions are made in the absence of the defendant. Legal assistance is not afforded to civil matters by the state and yet can be extremely technical and difficult to understand. The unrepresented defendant is at a disadvantage.

Prior to 1994, there were legal advice offices in communities, but these are no longer there. The SA Board of Sheriffs allege that presiding officers often do not consider whether municipalities are providing alternative accommodation.

4.3. Role of Sheriffs

Once the court has ordered the eviction, it is handed over to the Sheriff to implement the court decision. There were numerous allegations against Sheriffs, with some community members describing Sheriffs as, ‘a law unto themselves.’ In Ennerdale, it was alleged that sheriffs accept bribes to allow people to reoccupy their houses once they have been evicted.

Additional allegations included selling houses at nominal amounts and selling houses to the sheriffs. Sheriffs were accused of not allowing the original owners to buy their houses back. In the written submission from FNB, it was pointed out that Sheriffs’ earn 10% on the sale of an auction up to the maximum fee of R7 000 (an implied value of R70 000). Beyond the price of R70 000, the Sheriff has little incentive to promote the property, thus properties may not fetch their true market value.

The SA Board for Sheriffs responded to the allegations and suggested that the problem resides in the legal processes not being understood by the public. Sheriffs find themselves at the intersection of the courts, SAPS, the new owners and occupants, all of whom have different needs and interests.

Sheriffs face a difficult situation as they become the face of the eviction at the community level and are held responsible for the misery caused through evictions. Submissions

from Sheriffs' working in the areas under inquiry spoke of violence and intimidation being experienced by Sheriffs trying to execute their duties. Respondents often refuse to accept the documents, believing that they will then not be affected. Upon completing an eviction, Sheriffs often found the houses immediately reoccupied.

Relying on the SAPS is an additional challenge as it was alleged that some SAPS members tip off the community, thus allowing the community time to mobilise resistance. Because SAPS members live in the community, they are reluctant to be associated with evictions; this in turn has led to delays. This has led to some Sheriffs using the Red Ants.

The SA Board for Sheriffs was aware of people pretending to be Sheriffs and was also aware of people taking the law into their own hands in an effort to reclaim their property and save costs.

The SA Board for Sheriffs recognised that properties can be sold for as little as R100, but this was usually when the municipal rates, taxes and service arrears were very high.

Attempts to improve relationships with communities have been undertaken through community meetings. In Protea Glen, this has resulted in Sheriffs no longer using the Red Ants.

4.4. SAPS

Community submissions painted a picture of an insensitive SAPS where they alleged that those being evicted were not treated humanely and that their belongings were stolen and sold by SAPS members. Community submissions alleged that SAPS members are rewarded for conducting evictions by new homeowners.

On the other hand, the SA Board for Sheriffs reported that the SAPS is reluctant to get involved in evictions as members live in the community and do not want to be associated with the suffering caused by evictions.

The SAPS submission indicated that the role of the SAPS in evictions is to facilitate law and order during the often tense eviction process. The Sheriff approaches the SAPS to assist with the implementation of the court order. Evictions done by the SAPS and the Sheriffs are conducted during the day and thus the community's allegations of evictions conducted by the SAPS at night would relate to illegal evictions.

Community submissions alleged that arrests for trespassing would take place on Fridays to ensure that the person will be jailed for the weekend. SAPS responded that arrests for trespassing were done when people had moved back to the property after already being evicted.

The SAPS submission acknowledged that they are aware of illegal evictions taking place, as homeowners get frustrated that they were paying bonds for homes that they were unable to occupy. The SAPS was also aware that some Estate Agents have used hostel dwellers to assist in illegal evictions.

False documents have been presented to the SAPS where the original was scanned and the names and dates changed. Since the SAPS started verifying the case numbers, the eviction rates have dropped. The same has been found with trespassing cases where Estate Agents made up of false trespassing warrants.

The SAPS has found that in most eviction cases, occupants have never been to court, did not know the date of the hearing and had not been given a chance to state their side of the story.

It was alleged that the SAPS are rewarded for assisting with illegal evictions. According to the Protea Glen Resident's Association, 'the police are talking with sweet tongues here, but not on the ground.' The SAPS encouraged community members to report any unlawful conduct by SAPS members.

4.5. Role of Estate Agents

The Estate Agency Affairs Board reported that it received few complaints of Estate Agents being involved in evictions. This could be because communities do not know about the Board or that Estate Agents are not involved in evictions.

Complaints have been received when properties are bought but are already occupied. The new owner then has to pay the bond, rates and taxes and rental where s/he is staying, plus the expense of an eviction process. Some new owners were promised by the Estate Agent that the property would be vacant when transfer takes place, but Estate Agents are legally not able to apply for an eviction order in their capacity as agents.

The Estate Agency Affairs Board has limited powers. There is an Estate Agents code of conduct, but the recourse and compensation are minimal. The Board can withdraw the agent's fidelity fund certificate or impose a fine of up to R25 000.

The public is of the view that these sanctions do not offer them a solution.

4.6. Bulk Buyers

The issue of bulk buyers was raised consistently during the hearings. Although banks are aware of whom the bulk buyers are, they became a phantom presence, as they were not represented at the hearings.

Banks mentioned that they did set preconditions with bulk buyers to give the previous owners the option to repurchase their houses. There is however no mechanism to ensure that this is adhered to. It is also difficult to implement as those occupying the houses have difficulty in accessing finance as they are often listed on the credit bureau once their property is attached.

4.7. Role of Government

Although government has made enormous strides in housing delivery, the magnitude of the need was reflected through the hearings. Community submissions painted a picture of government as inaccessible and unresponsive.

Provincial Department of Housing

The Gauteng Department of Housing submission spoke of the challenges in dealing with the housing backlog. The Department should prioritise housing for the poorest of the poor – those who are unable to access bonds at all.

SERVCON

A programme that was designed to assist with bond defaults was Servcon. Servcon was established to normalise the housing market in areas that had faced rent boycotts and a breakdown in law and order. Its mandate was to provide exclusive management services with respect to 33 306 properties in possession and non-performing loans. Servcon covered a number of areas being addressed in the inquiry. Servcon's mandate was limited from 1996 to 2006.

Servcon Programmes included:

- Rescheduling programme (buyback) for those able to afford to buy the properties back;
- Subsidised Rental Programme – a rental amount to assist the occupant to repay after a period of non-payment;
- Rightsizing - offering the occupants Reconstruction and Development Programme (RDP) housing in exchange for them vacating their houses;
- Special assistance for the aged and the disabled – providing *in situ* rightsizing without the occupant having to relocate.

According to the Gauteng Department of Housing, the context that gave rise to Servcon no longer applies. Those able to afford bonds are not a priority for the Department. A bond was seen as a legally binding contract between the parties with rights and obligations on both parties. Many people, eager to get their houses, do not read or understand the implications of the fine print in contracts.

Protecting the Elderly

The Department has submitted that they have intervened in situations where the children of senior citizens have taken out bonds to build back rooms with the house of the older

person used as surety. When the children are unable to pay, the bank attaches the whole house. The Department is negotiating with banks in some of these instances to accept a limited subsidy of R25 000 and to write off the rest of the loan.

Preventing Evictions through Subsidies

Negotiations with banks are underway to prevent evictions by offering subsidies. The Department is also working with municipalities on arrears in rates and taxes. This approach is diverting funds from building new houses. The Department currently only provides subsidies to first time homeowners, but some of the criteria can be relaxed if the case has merits. Special cases include those affecting the elderly, child headed households and other vulnerable groups. Discussions are underway with Nedbank on deceased estates where there are child headed households or pensioners.

Conflicting Interests

The Department noted that it was important to address the differing needs of all stakeholders or there won't be private sector investment in the lower end of the market. The Department wants people to take responsibility for their own obligations, and is therefore reluctant to step in and take over their obligations. In the past, there were redlined areas which have now been normalised. The Department wants people to honour their responsibilities to ensure that the gains made in normalising the market are not lost. The Department did not concur with Standard Bank that the low income housing market is not appreciating in value.

The Department acknowledged that those with challenges on their bond repayments are exploited by Estate Agents, Sheriffs and other bond value chain participants. The Department expected that with the National Credit Act, cases of default and evictions would be minimised.

Municipalities

The role of municipalities was not explored in detail during the hearings. According to section 4 (2) of the PIE Act "the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction". Clarity on the role of municipalities in providing alternative accommodation was identified as an issue that requires attention.

The National Department of Housing

The National Department of Housing is key to these issues as it is at this level that policies are set.



Chapter 5: Findings and recommendations



The legal process provides a minimum standard, however in the spirit of Ubuntu, we expect the role players to do more to ameliorate the plight of the poor.

The representatives of the communities alleged that the service providers (banks, property agencies, Sheriffs, SAPS and the courts) lack this important value of Ubuntu. The concept of Ubuntu is premised on the principle of *'umuntu ngu muntu nga bantu'* which translates into, *'I am because you are or you need me in as much as I need you, therefore let us take care of each other so that we can continue to co-exist.'* This value is found in all South African ethnic groups and all South African languages.

To highlight this point an example shall be referred to now. The value of the house was R60 000 at the time when the owner became incapacitated and was unable to honour his/her commitments in terms of the bond. The service providers and state institutions evicted the family regardless of their circumstances. The issue that needed to be tested against the values of Ubuntu was whether the service providers considered Ubuntu when they evicted the family who has been loyal to them for the past fifteen years, but due to poverty and death was unable to pay the last R10 000 spread over five years after it succeeded to pay R90 000 spread over fifteen years.

The question is whether the bank, the court, the Sheriffs and the bulk buyers or property agencies can be credited with upholding the values of Ubuntu when they jointly colluded through lawful legal processes to evict the family from the house, regardless of their circumstances, and then sell the house to the bulk buyers for R11 000 even though the value of the house was R60 000.

The values of Ubuntu call the service providers to look beyond the R10 000 that is needed by the bank to meet its R100 000 debt; Ubuntu means that banks exist because of the community and the community exists because of the banks. It states that your neighbour may not go to bed on an empty stomach if there is food in your house, it is not about whether you paid for the food or not; it also asserts that the children and women are vulnerable and anyone who is dealing with them should apply special caution not to harm them or put their lives in danger, regardless of the relationship or circumstances. It is against these principles and values that the service providers were asked to explain their conduct when dealing with cases such as the one stated above where they would evict a family and dump children, sickly widows and grandmothers on the street and then sell their house for a paltry R11 000 to recover R10 000 even though the house was valued at R60 000.

The following findings and recommendations emerged from the hearings:

5.1. Government

- It is essential to ensure that legislation, policies and processes are correctly implemented;

- The issue of evictions through bond defaulting appears to be systemic and thus requires a creative government intervention. It is recommended that a programme similar to the Servcon programme (see paragraph 4.7) be re-introduced to deal with these issues;
- It may be necessary to review government's policy of only assisting first-time homeowners;
- Local government was viewed as a key role player in dealing with the issue at community level and that they should consider including the provision of alternative accommodation for those left destitute by evictions into their IDPs;
- Government should consider whether the suggestion by banks that a 'loss of income cover' be developed as a part of the social security system would be a viable option to ensure that a significant asset like a home is not lost during unemployment or retrenchment.

5.2. Banks

- Notwithstanding business and human rights being compatible, banks should ensure proper implementation of the triple-bottom-line approach, which ensures that the business considers the communities and the environment in which the business operates;
- Banks should consider whether the setting up of pre-conditions that would allow potential bulk buyers to give previous owners the option to repurchase their house is adhered to by putting mechanisms in place to ensure that this is indeed done;
- When dealing with customers, banks should do more to ensure effective interaction which could include face-to-face interaction with their customers, and not relying only on business-like telephonic communication;
- It is recommended that the Banking Ombudsman should be used more to deal with conflict. In order to ensure that this happens, they should put in a greater effort to be more accessible to the public;
- Banks should consider offering death insurance and retrenchment cover for their customers who fall within the lower income brackets;
- Financial Institutions should consider funding the Housing Consumer Protection Trust to ensure its re-opening;
- It is suggested that private auctioneers be given the opportunity to sell houses in sales of execution, as they advertise the sales, ensure that the property is presentable and do not have a limit to the auctioneers' fees;
- It is recommended that banks should interrogate the prospective applicant for financing so as to prevent situations of over-extending of older persons.

5.3. Courts

- It is recommended that the Legal Aid Board should offer legal assistance in civil cases such as evictions;

- The Rules Board should consider amending the rules of service relating to evictions to ensure effective service so as to address the current dissatisfaction;
- The legislature should furnish guidelines as to what it considers relevant circumstances, as this would assist presiding officers in making such determinations;
- It is recommended that in situations where defendants appear unrepresented in court, presiding officers should afford them an opportunity to address the court or, alternatively, obtain legal representation.

5.4. Sheriffs

- It is recommended that when executing their mandate, the Sheriffs should at all times not only treat the affected people with dignity and respect, but also ensure that they do not unreasonably cause damage to the property concerned. This of course should also apply to private security companies when operating as agents on behalf of sheriffs, banks, municipalities and/or private persons.
- The South African Board of Sheriffs should be more accessible to the public. This would assist the public in knowing how and where to lodge complaints of misconduct against Sheriffs.

5.5. SAPS

- In situations where the SAPS accompany Sheriffs to carry out an eviction order, they must ensure that they verify the authenticity of the eviction order with the court;
- In situations where the SAPS had to attend to the removal of people who are trespassing under the auspices of an eviction proceeding, they must initially verify the authenticity of the original eviction order. Should the order be verified, they should not only treat the trespassers in a dignified and respectful manner but also ensure that they do not unreasonably cause damage to the property concerned;
- In cases where misconduct by members of the SAPS is reported, the Independent Complaints Directorate should ensure effective resolution of the cases reported to it;
- It is recommended that the SAPS should remain vigilant in apprehending those conducting illegal evictions and impersonating law enforcement officials.

5.6. Estate Agents

- It is recommended that the Estate Agency Affairs Board should be stricter in enforcing its disciplinary code against both registered and unregistered Estate Agents who contravene the Estate Agency Affairs Act and its code of conduct;
- It is recommended that when registered or unregistered Estate Agents are found guilty by the Estate Agency Affairs Board of contravening either the Estate Agents Affairs Act or the code of conduct, the Estate Agency Affairs Board should ensure that the names of such registered or unregistered Estate Agents are published on a regular basis in a local newspaper.

5.7. Consumer Awareness and Understanding

- It is recommended that all stakeholders should play an active role in promoting consumer awareness and understanding of all aspects relating to the home financing process;
- Awareness and understanding should not only include clarification of the benefits contained in insurance policies and whether the house will be paid off if the bondholder dies, but also include responsibilities such as: advising the financial institutions when their financial circumstances change; disclosure of financial obligations and other expenses associated with home ownership such as rates and taxes;
- It is recommended that all documents relating to the proposed purchasing of property must be read and fully explained to the prospective purchaser in his/her language of choice.

5.8. Participation

- It is recommended that community structures be actively involved in playing a more constructive role in their interactions with the key stakeholders.

5.9. Monitoring

- It is recommended that an institution such as the Housing Consumer Protection Trust be revived so as, in addition to the other powers it had, to monitor and evaluate the housing industry, in particular when the rights of vulnerable groups are at stake.

5.10. Conclusion

Through this enquiry, the SAHRC tried to bring attention to the systemic problems of this aspect of housing. We are, however, not in a position to provide housing to the millions of people who have high expectations that they will be provided with housing. This inquiry specifically looked at the Lawley, Ennerdale and Kathorous geographic areas, but the Commission also received submissions from its Eastern Cape Provincial Office, Protea Glen and Geluksdal, which indicate that the problem is widespread.

The Public Hearing hearing on evictions, repossessions and housing revealed how complex this issue is and raised challenges on how best to ensure that rights are not infringed in the delicate balancing act of competing interests. The submissions outlined various processes already undertaken to address the housing issue in South Africa, yet people feel that their constitutional rights are not being realised.

The Public Hearings demonstrated the power imbalances between low income borrowers and the other players in the housing environment. This meeting of unequals is due to a lack of awareness, resources, understanding and confidence, which would include what recourse they may have, in situations of evictions and repossessions.

The Public Hearings revealed that a lot has been done in advancing the right to have access to adequate housing in South Africa, but a lot more needs to be done to achieve this constitutional objective. It is essential that close monitoring of the implementation of legislation is undertaken by all bodies to ensure that the spirit of Ubuntu prevails.

Acknowledgements

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Oral submissions

Day 1, 7th November 2007

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Mr Cas Coovadia and Mr Prince Maluleke, Banking Association of South Africa

Mr Fabian Mackou, Lesley Green and Willie Twala, Ennerdale Crisis Committee

Mr Eugene Drotskie, Divisional Manager, Nedbank Home Loans

Mr Johannes Makwe and George Mpokela, Lawley Housing Crisis Committee

Mr Owen Sorour, Director: Secured Lending Home Loans, Vehicle and Asset Finance (VAF), Standard Bank

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Day 2, 8th November 2007

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Mr Elton Anderson, Director of STRB Attorneys

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Mr B. Monama Head of Department (HOD) and Ms Petal Thring, Chief Director, in the Office of the MEC Housing Department, Gauteng

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End Notes

1. The brief history is informed by COHRE (2005), *Any Room for the Poor? Forced Evictions in Johannesburg, South Africa*, draft 17 February 2005.
2. *Ibid*, page 18.
3. Carey Miller, D. L. (2000) *Land Title in South Africa* 1 – 42; Roberts M. (1990) ‘Dividing the Land: An Introduction to Apartheid Land Law’ in *No Place to Rest* Christina Murray and Catherine O’Regan (eds) page 122 – 36.
4. 1986 (3) SA 969 (T).
5. The possessor of an object is presumed to be the owner, if he is dispossessed against his will or without his consent by illicit means such as violence, fraud or stealth, he is then entitled to get a court order called a *Mandament van Spolie* which orders the dispossessor to restore the object to the applicant. A spoliation order is available to persons who have been deprived of their possessions or a part of their possessions or of their rights of possession thereof, only where the possessions have been transferred to the person responsible for such dispossession and who, accordingly, is in a position to restore such possessions to the person from whom it has been taken. See RD Claassen *Dictionary of Legal Words and Phrases* (1997) Butterworths, Durban.
6. An ouster clause is a provision in legislation excluding particular actions from judicial review.
7. Not having the necessary legal status, validity, or powers for the purpose in question.
8. *Silberberg and Schoeman’s: The Law of Property* (2006) Badenhorst, P J Pienaar J M, and Mostert, H (eds) at page 588.
9. Roux, T. (1997) ‘Constitutional Protection of Property and Land Reform’ in *Annual Survey of South African Law* page 332 – 55; Roux, T (1998) ‘Constitutional Protection of Property and Land Reform’ in *Annual Survey of South African Law* page 337 – 65; Roux, T (1999) ‘Constitutional Protection of Property and Land Reform’ in *Annual Survey of South African Law* page 318 – 46; Roux, T (2000) ‘Constitutional Protection of Property and Land Reform’ in *Annual Survey of South African Law* page 406 – 33; Euijen, M & Plasket, C (2001) ‘Constitutional Protection of Property and Land Reform’ in *Annual Survey of South African Law* page 438 – 55; Euijen, M & Plasket, C (2002) ‘Constitutional Protection of Property and Land Reform’ in *Annual Survey of South African Law* page 526 – 32; Euijen, M & Plasket, C (2004) ‘Constitutional Protection of Property and Land Reform’ in *Annual Survey of South African Law* page 391 – 395; Euijen, M & Plasket, C (2005) ‘Constitutional Protection of Property and Land Reform’ in *Annual Survey of South African Law* page 409 – 13.
10. 2003 (1) SA 113 (SCA).
11. 2004 (1) SA 502 (O).
12. *Op cit* note 7 at page 654.
13. *Op cit* note 8.
14. *Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others* 2000 (2) SA 67 (C) paragraph 13 (confirmed on appeal in *Cape Killarney Investments (Pty) Ltd v Mahamba* 2001 (4) SA 1222 (SCA) paragraph 17).
15. *Cape Killarney* paragraph 11.
16. *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 1999 (SCA).
17. [2002] 1 All SA 115 (C).
18. *Port Elizabeth Municipality v Peoples Dialogues on Land and Shelter & Others* 2000 (2) SA 1074 (SE).
19. 2000 (2) SA 1074 (SE).
20. 2005 (1) SA 217 (CC).
21. *Op cit* note 7 at page 660.
22. 2001 (1) SA 46 (CC).
23. Roux, T (2002) ‘Understanding Grootboom – A Response to Cass R. Sunstein’ 12 *Constitutional Forum* page 111 – 22.
24. 1931 TPD 476.

25. 1974 (3) SA 13 (A).
26. 2000 (1) SA 589 (C).
27. Van der Walt, AJ (2002) 'Exclusivity of Ownership, Security of Tenure and Eviction Orders: A Critical Evaluation of Recent Case Law' *SAJHR* 372 at page 394 – 6.
28. 2000 (4) SA 468 (W).
29. Op cit note 28 at page 397 – 8. 30. 2002 (4) SA 1 (SCA).
31. Op cit note 28 at page 403.
32. Ibid.
33. 2007 (6) SA 417 (SCA).
34. 2005 (1) SA 217 (CC).
35. Wilson, S. (2006) 'Judicial Enforcement of the Right to Protection from Arbitrary Eviction: Lessons from Mandelaville' page 535 *SAJHR* at page 536.
36. **Rightsizing is the official programme to assist people who have defaulted on their housing loans to relocate to alternative affordable houses. Government pays subsidy "relocation assistance" towards the new house.**
37. Sector Education and Training Authorities have been established to ensure that the skill needs for every sector of the South African economy are identified and that training is available to provide for these skill needs. Services SETA aims to provide comprehensive information regarding the Authority, its structure and its functions. The information is presented in an easily accessible manner, covering both general areas as well as information specific to Employers, Training Providers and Learners.
38. Emerald van Zyl Consulting, Submission to SAHRC Inquiry on Evictions, Repossessions and Housing, October 2007

