

RIGHTS, ROLES AND RESOURCES:  
An Analysis of Women's Housing Rights – Implications of the  
Grootboom case

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## List of abbreviations

|        |   |
|--------|---|
| ANC    | African National Congress   |
| CESCR  | Committee on Economic, Social and Cultural Rights                       |
| CMIP   | Consolidated Municipal Infrastructure Programme                         |
| DA     | Democratic Alliance   |
| DP     | Democratic Party  |
| ESTA   | Extension of Security of Tenure Act                                     |
| EXCO   | Executive Committee   |
| ICESCR | International Covenant on Economic, Social and Cultural Rights          |
| IDP    | Integrated Development Plan   |
| MEC    | Member of the Executive Council   |
| MTEF   | Medium-term Expenditure Framework                                       |
| NNP    | New National Party  |
| NdoH   | National Department of Health   |
| PAWC   | Provincial Administration of the Western Cape                           |
| PLAAS  | Programme for Land and Agrarian Studies                                 |
| PLS    | Project-linked schemes  |
| PIE    | Prevention of Illegal Eviction from and Unlawful Occupation of Land Act |
| SAHF   | South African Housing Fund  |
| SAHRC  | South African Human Rights Commission                                   |
| WCPHP  | Western Cape Provincial Housing Plan                                    |

# 1 Contextualising women's access to housing

## 1.1 Introduction

In 1997, it was estimated that 2,2 million families in South Africa were without adequate housing. It was further estimated that this figure would increase by 204 000 every year because of population growth barring any effective intervention (National Housing Code, 2000:2). Research by the National Housing Department also indicated that, due to high levels of unemployment and relatively low average wage levels, it would be difficult for most people to provide for their own housing needs. The 1996 census revealed that 80% of all families living in South Africa had monthly incomes of R3 500 or less. More than 50% had monthly incomes of R1 500 or less (National Housing Code, 2000:2).

Factors such as rapid urbanisation, rising levels of poverty, the HIV/AIDS epidemic, lack of experience as consumers within the current housing framework, lack of legal knowledge, limited access to the legal system as well as discriminatory practices in the private housing market have also increased the need and demand for state provision of housing. The housing crisis has particularly devastating consequences for vulnerable and disadvantaged groups, such as women living in poverty. Some of these consequences will be explored in the course of this study.

Women's access to adequate housing in South Africa is informed by the historical, social and economic context within which women seek to access housing. Discriminatory laws and practices have limited women's access to housing and other socio-economic rights. They have disproportionately affected black women.

The country's commitment to addressing the housing crisis is reflected within its legal framework. The Constitution protects a right of access to adequate housing in section 26 (Act No. 108 of 1996). It also endorses the right to equality. Non-racialism and non-sexism are among the foundational values of the Constitution (s 1(b)). Section 9(1) of the Constitution recognises that everyone is equal before the law and has the right to equal protection and benefit of the law. Section 9(2) expressly recognises that equality includes the full and equal enjoyment of all rights and freedoms. In addition to section 9(3) prohibiting unfair discrimination on a host of grounds which includes sex and gender, section 9(2) specifically recognises that special measures may be adopted to promote the achievement of equality amongst previously disadvantaged groups. When we read section 9 with section 26, it is clear that the state has an obligation to prohibit unfair discrimination in respect of housing rights, and that it can adopt special measures to promote equality for women in the housing sector.

In the groundbreaking decision of *Government of Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC) (hereafter *Grootboom*), the Constitutional Court sought to give effect to housing rights as provided for in section 26. In doing so, it pronounced on key principles. These principles specifically relate to people "who have no access to land, no roof over their heads, for people who are living in intolerable conditions and for people who are in crisis because of natural disasters such as floods and fires, or because their homes are under threat of demolition" (para 52). Because women are more likely than men to be living in intolerable conditions, the case provides a useful framework for an analysis of women's housing rights.

The aim of this paper is to analyse the implications of Grootboom for women and housing policy and budgets. This chapter examines the need for a gendered analysis of housing rights in terms of the realities of women's access to housing. Chapter 2 analyses the Grootboom judgment, and the mesh highlighted by the court. Chapters 3 and 4 analyse the housing programme and budget against the background of the previous two chapters. The study concludes with recommendations that seek to give effect to the Grootboom case for women and housing and so advance women's access to adequate housing in South Africa.

As will be discussed below, national, provincial and local governments spheres all have a role to play in providing access to housing. In this paper we use the Western Cape as a case study when looking at sub-national levels, as it was in this province that the Grootboom case occurred.

## 1.2 The Grootboom case

Before proceeding, we provide an overview of the facts of the Grootboom case.

Irene Grootboom and about 900 other people had initially lived in Wallacedene, an informal squatters settlement in the municipal area of Oostenberg. A quarter of the households of Wallacedene had no income at all, and more than two thirds had incomes of less than R500 per month. About half the population were children. All lived in shacks. They had no water, sewage or refuse removal services and only 5% had electricity. The area is partly waterlogged and lies dangerously close to a main thoroughfare.

Many of the residents of Wallacedene had applied for low-cost housing. Most had been on a waiting list for a long time. As a result of their situation, many began to move out of Wallacedene and onto adjacent vacant privately owned land that had been earmarked for low-cost housing.

The private landowner applied to the local magistrate's court for the community's eviction from the land. The court granted the eviction order and the sheriff was ordered to dismantle and remove any structures remaining on the land. The magistrate also said that the community and the municipality should negotiate to identify alternative land which the community could occupy on a temporary or permanent basis.

The Grootboom community had nowhere to go as their former sites in Wallacedene had been taken over by others. As a result, they attempted to erect temporary structures on the Wallacedene sports field. The community's attorney wrote to the municipality informing it of the situation and demanding that the municipality meet its constitutional obligation and provide temporary accommodation. The Grootboom community was not satisfied with the response of the municipality. It therefore launched an urgent application in the Cape High Court.

The Grootboom community based their case on two constitutional provisions:

- Section 26 of the Constitution provides that "everyone has a right of access to adequate housing." It says that the state "must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right."
- Section 28(1)(c) says that children have a right to shelter.

The Cape High Court rejected the first argument. It said that government's housing programme was rational and thus fulfilled the requirements of the Constitution. In terms of section 28(1)(c) the court said that parents are primarily responsible for providing shelter for their children. If, however, they are unable to do this, section 28(1)(c) places an obligation on the state to do so. Further, the parents should be able to live with their children in the shelter as it was not in the best interests of children to be separate from their families.

Government took the decision of the High Court on appeal to the Constitutional Court. The Constitutional Court affirmed that national government bears the overall responsibility for ensuring that the state complies with its section 26 obligations. It further noted that the recurrent programme fell short of the state obligation to provide relief to people in desperate need. It said that a reasonable part of the national housing budget should be devoted to providing relief for groups in desperate needs such as the Grootboom community. It said that if this was not done, the state's housing programme could not be considered reasonable for the purposes of section 26(2).

In contrast to the High Court, the Constitutional Court said that there is no primary state obligation to provide shelter on demand to parents and their children. It said that the state's direct obligation would apply when children were removed from their families, orphaned or abandoned.

The court's reasoning in respect of children has serious implications for women. We do not want to perpetuate stereotypes. However, as the next section illustrates, women bear a disproportionate responsibility in respect of childcare. The court's interpretation therefore has a disproportionate impact on women. It offers no assistance to women who, in addition to the many other challenges they face, bear the added responsibility of childcare.

The court did, however, recognise the closer relationship between the right to equality and socio-economic rights, including housing rights. It noted as follows:

There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied to those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enable them to enjoy the other rights enshrined in chapter 2. The realisation of these rights is also key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential. (Para 3)

### **1.3 Why women and housing?**

The court made repeated reference to the need for the housing crisis to be addressed in light of the historical, social and economic context. This section briefly examines the historical, social and economic context within which women seek to access housing. We do not argue that housing is exclusively a "women's issue". But we do argue that the realities of women's lives must be addressed in housing policies, programmes and budgets.

#### **1.3.1 Historical context**

Both colonial and apartheid laws and policies restricted black urbanisation, particularly African urbanisation. These laws disproportionately affected women's access to housing. In particular, influx control resulted in African men having easier access to urban areas as their labour was required on the mines and in industry. Women's labour in urban areas was meanwhile largely limited to domestic work.

Explicit laws and policies to control the mobility of African women were enacted from the 1930s. These laws made women dependent on their male partners or fathers for their right to remain in urban areas. In 1964 African women who were not employed or legally resident could only enter white urban areas with a visitor's permit. The application for a visitor's permit required the permission of male relatives.

In addition to the explicit legislation and policies, officials had vast discretionary powers, which they exercised in an arbitrary manner often with negative consequences for women. For example, the allocation of housing to families via male household heads was the norm. This historical legacy has resulted in insignificant numbers of women residing in informal settlements.

The overall result has been that many women have been denied housing rights. Where they have been able to find housing, they have been relegated to the outskirts of economic centres, and have been disadvantaged by the poor quality of their housing.

### **1.3.2 Economic context**

Women's economic realities have implications for their right of access to housing. The 1996 census revealed that 26% of female heads of households had incomes of less than R500 per month compared to 13% of male heads of households. In 2001, two-fifths (40%) of all employed women worked in unskilled jobs (Budlender, 2002:44). Close on one-fifth of employed women earned R200 or less per month, compared to only 9% of employed men (Budlender, 2002:46). The situation is particularly bad for African women, who have a higher unemployment rate, and earn less when employed.

Interrupted work patterns result from women's childcare and other care-giving responsibilities. These responsibilities involve work, but the work is unpaid and generally unrecognised. South Africa's first time use study revealed that women aged 10 years and above spend an average of 216 minutes per day on unpaid housework, carework, and community work, compared to an average of only 83 minutes for men (Budlender, Chobokoane & Mpetsheni, 2001:36). The need to undertake this work prevents many women from finding and taking up paid jobs. The interrupted work patterns also negatively impact on mobility and earnings in the workplace and ultimately on women's access to credit and ability to afford housing.

### **1.3.3 Social context**

The social context within which women seek access to housing is informed by factors such as patriarchy, customary and religious laws and practices, domestic violence, and HIV/AIDS.

#### *1.3.3.1 Patriarchy*

In most societies, including South African society, patriarchal norms and values underpin gender relations. These norms can have serious consequences in the area of housing. For example, most male partners register homes in their own names. This forces women to forge and remain in relationships to meet their housing needs. Further, housing policy often favours couples. Single female-headed households are often excluded or discriminated against in housing practices, as they do not fit the traditional concept of a family.



### 1.3.3.2 Customary and religious laws and practices

Discriminatory customary and religious laws and practices often work to the detriment of women's housing rights. In particular, patrilineal succession under customary law has had serious implications for women's rights to land and housing. In addition, customary and tenure practices are based on communal tenure with rights vested in male traditional leaders. The allocation of land and housing by traditional authorities is to heads of households, who are almost always male. Women's right to land and housing is, as a result, dependant on their relationship to male heirs.

Historically, the minority legal status of women under customary law (regardless of age or marital status) has resulted in women not being able to own property except with the consent of a male relative.

Polygamy, whether formal or informal, also has an adverse impact on women and housing. A 1997 study by the Development Action Group revealed that male hostel dwellers were accessing subsidy schemes with women in urban areas and then bringing wives from rural areas to live with them. The consequence was that the urban women were forced out of the common home and did not qualify for a further subsidy (Community Law Centre et al: Joint Submission on Housing Bill).

### 1.3.3.3 Domestic violence

Domestic violence has a profound effect on women's housing rights. It can result in:

- Women stay in an abusive relationship as they have nowhere else to go;
- Child care and custody of children in such cases vesting in the mother, resulting in a heightened need for secure housing;
- Loss of housing as a result of separation or divorce.

The fact that housing is usually in the name of the man makes women's housing situation particularly tenuous in instances of domestic violence. Shelters for battered women are limited to some urban areas. In addition, most shelters only provide accommodation for a limited period of time. Hence, fleeing from an abusive situation brings with it the impossible choice between homelessness and staying in an abusive relationship.

### 1.3.3.4 HIV/AIDS

Women are disproportionately affected by HIV and AIDS because:

- Biological factors render women more susceptible than men to infection;
- Social factors result in women often not being in a position to negotiate the terms on which they enter into sexual relationships;
- Women generally constitute the majority of carers for people living with HIV/AIDS as well as for children orphaned as a result of the virus.

Women's increased susceptibility may impact on women's housing needs in the following ways:

- Stigmatisation and rejection can often occur on disclosure of HIV status;
- Domestic violence, abuse and abandonment may also ensue;
- Once the virus moves beyond the asymptomatic stage, it may place women in increasingly dependent positions, particularly in respect of their child care responsibilities. Illnesses women are subjected to at this stage often result in restricted mobility, depleted energy levels and inadequate support structures, thereby making their roles as care-givers increasingly difficult;

- Once women have AIDS symptoms, they are often precluded from formal work. This, in turn, adversely affects their financial position and ultimately their housing needs;
- Women's caring responsibility for those living with HIV/AIDS limits their employment prospects and renders access to housing increasingly unaffordable.

The full and equal enjoyment by women of their housing rights requires that account be taken of women's historical, social and economic realities as described above.

## 2 The constitutional right of access to adequate housing

### 2.1 Introduction

This chapter provides a brief overview of the constitutional provisions relating to adequate housing and extracts relevant themes and principles from Grootboom that should inform an analysis of women's housing rights in South Africa.

Section 26 of the South African Constitution provides as follows:

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

The Constitution does not specify the exact mechanisms and strategies for the effective realisation of housing rights. However, the Constitutional Court in Grootboom pronounced on the interpretation of key elements of section 26. International law, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR), also assists in interpreting section 26.

Section 7(2) of the Constitution mandates the state to respect, protect, promote and fulfil the rights in the Bill of Rights, including housing rights. Other parts of the Constitution make it clear that national, provincial and local spheres of government all bear some of this responsibility in respect of housing. This was also made clear by the Constitutional Court in Grootboom where it noted:

In the case of housing, it is a function shared by both national and provincial government. Local governments have an important obligation to ensure that services are provided in a sustainable manner to the communities they govern (Para 39).

It is accordingly clear that all three spheres of government bear certain obligations in realising housing rights in general and for specifically complying with the Constitutional Court's framework as set out in Grootboom.

The National Department of Housing (NDoH), fulfils its objectives in respect of the realisation of housing rights by ensuring an efficient national housing policy framework, managing national housing programmes, monitoring and assessing the impact of housing delivery, managing housing information, and providing the necessary support to housing institutions. Through the Housing Development Funding Programme, the NDoH allocates funds to the provincial governments to finance national and provincial housing programmes. Provincial housing departments are thus the implementers of housing policies, mainly through the housing subsidy and human settlement programmes. Local government meanwhile acts as developers and providers of internal bulk and connector infrastructure. The performance of these functions is discussed further below where we look at budgets.

## 2.2 Key principles and themes

Certain key principles or themes can be extracted from the Grootboom judgment in respect of the interpretation of section 26. This section analyses the application of these principles to women and housing.

### 2.2.1 The context within which section 26 should be interpreted

The Court noted that an interpretation of section 26 requires a consideration in both its textual and social and historical contexts. The textual context requires a recognition of the close relationship between housing rights and other rights. The social and historical context requires that housing rights be seen against the legacy of deep social inequality.

The gender factors which impact on women's access to housing have been described in detail in Chapter 1. The context within which women seek to access housing must inform at least the following aspects of housing rights:

- Costs of housing, financing options and access to credit available for housing;
- the design and type of housing;
- the location of housing;
- the different family forms within which women seek to access housing; and
- the provision of "emergency housing" where women are forced to leave their homes as a result of domestic violence.

Because women do not constitute a homogenous group, the particular context within which different groups of women claim access to housing rights must also be acknowledged. For example, housing for women with physical disabilities might require a particular design and form. The housing needs of women living with HIV include locating housing to ensure easy access to health care services, other amenities and broader support structures.

### 2.2.2 What constitutes "adequate" housing?

The term "adequate housing" envisages a particular standard and quality of housing. Although the court in Grootboom did not attempt a comprehensive definition of "adequate housing", it did make the following points:

For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling. (Para 35)

The court's guidance can be supplemented by General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights (CESCR). The CESCR is the supervisory body in terms of the Covenant on Economic, Social and Cultural Rights. In line with this role, through its General Comments it attempts to give guidance to governments on the content of particular rights, state obligations in respect of their implementation, and possible violations. For example, in respect of adequate housing, it notes that cultural, climatic and contextual factors are important in determining what is adequate, but that there are certain core factors. These include the legal security of tenure; availability of services, material and infrastructure; affordable housing; habitable housing; accessible housing; appropriate location of housing and culturally adequate housing. Many of these aspects of adequate housing are particularly important for women.

Chapter 1 discusses why women are particularly vulnerable to a lack of security of tenure. It also highlights that women are more likely to be poor, and why the issue of affordability is

thuskey. The Court emphasised that access to housing must be enjoyed by everyone at all economic levels of society. It notes that the “poor are particularly vulnerable and their needs require special attention” (Para 36)

In terms of services, materials and infrastructure, the CESCR suggests that these include access to clean drinking water, energy for cooking, heating, lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services. These services are particularly relevant for women because many of the tasks associated with these services have traditionally been and continue to be undertaken by women.

The time use study revealed that women spend an average of 1101 minutes per day in their own dwellings, compared to 960 minutes for men (Budlender et al, 2001:43). This is so because, in addition to household and childcare responsibilities, women often engage in income generating activities from home. The element of habitable housing thus has particular significance for women. Further, the poverty hearings suggested that inadequate space can result in increased levels of sexual violence (Liebenberg & Pillay, 1998:15).

Similarly, the appropriate location of housing is particularly important for women in light of their childcare responsibilities. The location of housing in an area that is safe, well-lit and established is also of special significance for women given the high levels of gender-based violence.

Finally, given that cultural adequacy is often determined by a male standard, it is important that a woman's perspective is reflected in a determination of the type of housing that is appropriate.

### **2.2.3 Who has the duty to realise housing rights?**

The Court noted that section 26(1) gives everyone the right of “access” to adequate housing. This means that the state must create conditions through laws, budgets and other measures that enable individuals and groups to gain access to housing. Further, both the state and private actors such as banks and landlords must not prevent access to housing rights. The CESCR recognises the particular vulnerability of women in forced evictions because of lesser property rights and vulnerability to violence.

### **2.2.4 What measures must be adopted and what standard must be satisfied?**

Section 26(2) of the Constitution obliges the State to take “reasonable legislative and other measures” to progressively realise the right of access to adequate housing. The terminology implies that, in addition to legislative measures, administrative, judicial, economic, social and educational measures must be taken.

In Grootboom, the Court indicated that the measures adopted must establish a coherent public housing programme directed towards the progressive realisation of the right of access to adequate housing within the State's available resources. The Court noted that “legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive.” (para 42) Policies and programmes must thus be reasonable both in their conception and their implementation.

## **2.3 The Court's Interpretation of Section 26(2)**

### 2.3.1 What constitutes “reasonable” measures?

In interpreting the term “reasonable”, the Court paid particular attention to the housing needs of those living in extreme conditions of poverty, homelessness or intolerable housing. It noted that a programme that excludes a significant segment of society cannot be said to be reasonable. It said:

It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right... If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test. (Para 44)

This interpretation is clearly relevant in discussing women and housing given women’s disproportionate vulnerability to poverty.

### 2.3.2 “Progressively realising” housing rights

The Court understands the term “progressive realisation” as acknowledging that the right to housing could not be realised immediately for everyone, but that the state must take steps to achieve this goal. Housing must thus be made more accessible not only to a large number of people but to a wide range of people as time progresses.

The Court also endorsed the view of the UN Committee on Economic, Social and Cultural Rights that “retrogressive measures” should not be taken without justification. These are measures which, for example, cut back on housing programmes without putting other measures in place to facilitate access to housing by the poor. Again, this has specific implications for women given their likely greater reliance on the state for access.

### 2.3.3 Determining resource availability

The qualification of “within its available resources” acknowledges possibly budgetary constraints on what can be provided. On this point, the UN Committee stated that even where available resources are demonstrably inadequate, the states should still strive to ensure the widest possible enjoyment of the right under the prevailing resource constraints (General Comment No. 3, para 11). Further, available resources must be effectively and equitably utilised.

Unfortunately, in *Grootboom* the Court gave minimal attention to the issue of resource availability. It also failed to address some of the thorny issues in respect of how the availability of resources is determined.

The following two chapters focus on housing legislation, policy, programmes and budgets that have been adopted by the South African government to give effect to housing rights. These measures are analysed against the framework above in order to assess the extent to which they further women’s access to adequate housing.

### 3 Analysing the implications of the housing programme for women

Post-apartheid South Africa has a range of laws which affect housing rights.

The Housing Act (No. 107 of 1997) is a key piece of legislation in the housing sphere. It includes a number of principles that underpin the realisation of housing rights in South Africa. These include meaningful consultation; prioritising the needs of poor; the promotion of education and consumer protection, and the promotion of tenure options.

While the Act does not use the Grootboom terminology, it does exhibit a sensitivity to vulnerable groups. Included amongst the general principles that should inform housing development in South Africa is a specific obligation on all three spheres of government to:

- Give priority to the needs of the poor in respect of housing development;
- Promote the effective functioning of the housing market while levelling the playing fields and taking steps to ensure equitable access for all to that market;
- Promote measures to prohibit unfair discrimination on the ground of gender and all other forms of unfair discrimination by all actors in the housing development process;
- Promote the housing needs of marginalized women and other groups disadvantaged by unfair discrimination.

The Act thus specifically notes the particular needs of women and the need to “level the playing fields”.

Although the Housing Act does not define “adequate housing”, it does include the following definition of the term “housing development”:

The establishment and maintenance of a habitable, stable and sustainable public and private residential environment to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will on a progressive basis, have access to –

- permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and
- potable water, adequate sanitary facilities and domestic energy supply.

(Section 1(vi))

This definition has several positive implications for women. These include:

- The commitment to the standard and quality of housing;
- Express reference to convenient access to amenities;
- The extension beyond national to permanent residents;
- Security of tenure;
- An implicit acknowledgement of the significance of ensuring privacy;
- Protection against the elements;
- Access to water, sanitation and domestic energy supply.

In terms of privacy, however, this could be a double-edged sword if it is understood as preventing interference by “outsiders” in what happens inside the home.

Although the legislative definition is impressive, it is not necessarily reflected in the actual quality of housing development. Depending on the cost of land and infrastructure funded

through the housing subsidy, the end product may be incomplete or fitted with the barest of necessities. The policy of incremental housing often results in a scenario where it could take years to complete a house if one relied purely on government assistance. This has particularly serious implications for women in light of the challenges they face in accessing credit and finance. Recent interviews of groups of women by the Community Agency for Social Enquiry resulted in the recommendation that access to basic services and security of tenure be considered key priorities for women's housing (Marshall et al, 2000: 115).

The Housing Act recognises the following housing assistance measures:

- The housing subsidy scheme, now incorporated in the housing development funding programme;
- the discount benefits scheme; and
- the hostels redevelopment programme.

In 1994, the housing subsidy scheme replaced all previous government subsidy programmes, other than where commitments under previous schemes had already been made. Today it provides the bulk of the housing funds of provinces. Beneficiaries with a household income of not more than R3500 per month, who have not owned fixed residential property previously, and who satisfy a range of other related criteria, can apply for the subsidy.

The programme is used mainly to fund the acquisition and servicing of stands and to erect top structures. It facilitates access to tenure, provision of services and building of housing units. The current subsidy level (2002) is R16000 for first-time homeowners. The subsidy scheme represents an important measure through which women are able to access housing.

The hostels redevelopment programme provides grant funding of R16000 per family or R4000 per individual living in a hostel owned by a municipality or provincial government. The grant is to be used for the upgrading or conversion of hostels to create suitable living conditions which can be rented out or sold to single persons or families, or used as schools or community centres. This programme goes some way in addressing the disadvantages suffered by single women. However, because men have historically inhabited hostels and largely continue to do so, its impact for women is generally limited.

The Housing Act mandates the Minister to publish a National Housing Code. This Code was adopted in March 2000 and reflects guiding principles that should inform housing policy and legislation. These refer to both the qualitative aspects of housing as well as the housing process that should be adopted. The Code states that the country's housing policy is based on the following seven key strategies:

- stabilising the housing environment;
- mobilising housing credit;
- providing subsidy assistance;
- supporting the people's housing process;
- rationalising institutional capacities;
- facilitating speedy release and servicing of land; and
- coordinating and integrating public sector investment.

The People's Housing Process Projects support home building initiatives by individuals, families or communities. The Project's components include the accessing of housing subsidies through the housing subsidy scheme; technical, financial, logistical and administrative support, through support organisations; funding via the Facilitation and



Establishment Grant projects and capacity building via the People's Housing Partnership Trust. The development of this project was heavily influenced by the experience of the South African Homeless People's Federation. The Federation has over 70 000 very poor members, almost all of whom are women. The project's success in addressing the plight of shack dwellers and helping them to build houses themselves inspired government in its formulation of the People's Housing Process Project.

On a provincial level, the Western Cape Housing Development Act sets out general principles applicable to housing development and spells out in great detail the role of provincial government as well as the role of local government in respect of housing development.

A prerequisite for housing is the availability of land. The speeding up of government's land release programme is thus critical. This is particularly true for the City of Cape Town, where land is expensive and several stakeholders, specifically the private sector, have vested interests. The Development Facilitation Act (No. 67 of 1995) has as one of its central objectives the speeding up of land release especially for the purposes of low-income housing, although it gives no particular priority to women in doing so.

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (No. 19 of 1998) (PIE) offers further protection to existing housing arrangements by stipulating the circumstances under which evictions by both private persons and the state may occur. It specifically provides that where a private person seeks to evict, a court may only grant an order where it is satisfied that it is just and equitable to do so after considering all the relevant circumstances. The Act provides guidelines of what relevant circumstances can include. These include the rights and needs of "the elderly, children, disabled persons and households headed by women" (section 4(6) and 4(7)).

Further, the Extension of Security of Tenure Act (No. 62 of 1997) (ESTA) aims to facilitate the long-term security of land tenure, to regulate the conditions of residence on land, and to regulate the circumstances under which people may be evicted from land. It provides that tenure may only be terminated where it is just and equitable to do so, having regard to all relevant circumstances. However, in terms of gender, no reference is made to the continued right of occupation of the spouse or dependants of the occupier. As men usually acquire the right of occupation through labour on farms, which is where this legislation focuses, this absence is detrimental to the interests of women.

The Recognition of Customary Marriages Act (No. 120 of 1998) has also to some extent ameliorated the position of women in respect of ownership of property. Section 6 of the Act grants equal status and capacity to spouses, including the capacity to acquire assets and to dispose of them. The Act also makes community of property the default position in African customary marriages. Though not specifically aimed at housing, this Act is likely to impact positively in this area.

The Rental Housing Act (No. 50 of 1999) recognises housing rental as a tenure option. Though somewhat delayed in its adoption, this Act reflects a recognition that ownership is not appropriate for all persons in the country given the high level of poverty. It states that all three spheres of government have an obligation to promote a rental housing market through the introduction of incentives, mechanisms and other measures. Tenant and landlord rights and responsibilities as well as the enforcement of these via rental housing tribunals are

provided for. The Act has positive implications for women given that, due to their low economic status, the home ownership model is often not an option.

The rural housing subsidy is another example of a measure likely to advance women's housing rights. It was introduced to eliminate discrimination in accessing the subsidy on the basis of the type of land rights. It extends housing subsidies to those who did not have secure land tenure before the adoption of the Interim Protection of Land Rights Act.

The adoption by the national Department of Housing of the National Norms and Standards in respect of Permanent Residential Structures is a further encouraging initiative. The norms and standards aim to promote affordable and quality housing. They include rules relating to services such as water, sanitation, and roads and the size of a top structure. Further infrastructural policies and standards governed by other government departments are also applicable, for example, a minimum supply of water. The norms and standards also protect housing subsidy beneficiaries against exploitation by developers who delivered unacceptably small and poorly constructed houses and local authorities that disregard the principle of affordability and demand unreasonable standards and expensive engineering services.

The Housing Consumer Protection Measures Act (No. 95 of 1999) provides protection for all new housing consumers. It ensures that builders comply with prescribed standards. Similarly, the Home Loan and Mortgage Disclosure Bill aims to promote fair lending practices by financial institutions thereby addressing one of the key constraints that women face in accessing housing, namely access to credit.

The Accelerated Managed Land Settlement Programme is another positive initiative aimed at providing land and progressive access to basic services for people in crisis situations. However, research has revealed that although the programme is still official policy, the restructuring of local government in the Western Cape has resulted in it not being implemented. Instead, reaction to crises on the part of the City of Cape Town is on an ad hoc basis but modelled on the Accelerated Managed Land Settlement Programme. Although the programme was also adopted by the Western Cape provincial government, its implementation by that body is constrained by a scarcity of resources (Pillay, 2002: 19).

In 2002, the Ministry of Housing tabled the Community Reinvestment (Housing) Bill in Parliament. The Bill aims to provide for minimum targets for financial institutions' lending to low and medium income level households for housing purposes. This Bill might assist some households but it will not assist the poorest and the homeless. To meet their needs, the national Department cannot rely on private institutions such as banks.

The national department does, reportedly, have plans for a new housing programme to be termed the "National Housing Programme for Housing Development in Emergency Circumstances" (Pillay, 2001: 21). This initiative will provide for dedicated funding and shortened development processes. It is of concern that this programme is still in the planning stages, while provision for those who are better off has advanced much further.

The above legislative and other initiatives represent some positive steps. However, the Department has not adopted measures to address other hurdles identified by the South African Human Rights Commission (SAHRC), Commission on Gender Equality (CGE) and NGOs. For example, the Surplus People Project and the Centre for Rural Legal Studies identified the issue of titled deeds not being registered in the name of the woman in a study undertaken in

1998(SurplusPeopleProjectandCentreforRuralLegalStudies,1998: 48).Similarly,the CGEinitiatesLegislativeAudithighlightedthefactthatveryfewstate-fundedwomen'sshelters exist(CommissiononGenderEquality,1998: 33).Theabsenceofanycomprehensivepolicy thatresultsinadequatesheltersforwomenwhosetoevadesituationsofdomestic violencepointstoahousingprogrammethatisnotsufficientlyequippedtodealwithoneof themostpressingcrisesexperiencedbywomen.Also, theSurplusPeopleProjectidentified theproblemthat,becausethehousingssubsidyschemeoperatesonaonce-offbasis,many womenareforcedtostayinabusiverelationshipsinordertoretaintheirhousing(Surplus PeopleProject,1997:7).Hence,despiteanarrayoflegislativeinitiatives,thereare stillcertainlarngapsinfacilitatingwomen'saccessstohousing.

Theabsenceofappropriateandadequatemeasuresisparticularlyacuteinrespectofwomen incrisissituationsintheWesternCape.TheWesternCapeProvincialGovernment'sinability orunwillingnesstodealwiththeplightofpoorpersonsincrisiswasseenwhena freak tornadohitthecommunitiesofManenberg,NyangaandGugulethuontheCapeFlatsin August1999.Fivepeoplewerekilled,closeto200injuredand5000lefthomeless.The DepartmentofPlanning,LocalGovernmentandHousing'sreactionwastowaitforanational intervention.

NeithertheCapeTownCityCouncilnorthe provincialgovernmenttookdecisiveaction until thePresidentdeclaredtheareaadisasterzone.Thisdeclarationenabledvictimstoclaimrelief fundsfromnationalgovernment.Afterthisdeclaration,theAfricanNationalCongress (ANC)-dominatedCapeTownCityCouncilandtheNewNationalParty (NNP)-dominated provincialadministrationsetuptheirowndisasterfunds.However,theiractionsprovidedas muchevidenceofpoliticalinfightingasofrealconcernforthoseaffected.Thereweremuch publicisedreportsofargumentsbetweenthe thenMayor,NomandiaMfeketo,theMECof LocalGovernment,PierreUysandPieterMarais,then MECofSocialServicesregarding protocolandproceduresindealingwiththeemergency.Therewereclaimsfrombothsides thattheothersidehadviolatedprotocolandprocedures.

TheWesternCapeProvincialGovernment'spoorhandlingofthissituationraises serious questionsaboutitsabilitytohandleothercrisis situations.WhilsttheimpendingDisaster ManagementBillisanencouraginginitiative,it isunclear to what extent it will result in immediatetangible relief for women experiencing housing crises.It should benoted that althoughnatural disasters affect all people in disadvantaged communities,they have particularlyharshconsequencesforwomeninlight of theirchildcareresponsibilities,the generalrolemanywomenassumeinensuringtheirfamiliesarefedandshelteredandtheir increasedsusceptibilitytoviolence.

In assessing the housing programme and its implications for women, one must also have regard to the pace of delivery as well as the housing backlog. In its report to the South African Human Rights Commission, the national Department of Housing noted that in the five years after the housing programme was introduced, a total of 745 717 units were either completed or under construction. The government reached its target of 1 million houses in April 2000 (SAHRC, 2001: 295).

This apparent progress must be measured against the housing backlog and absolute need. Thus the SAHRC noted that there were "about 2 778 000 households living in conditions of inadequate shelter and about 595 900 households qualifying to receive housing subsidies." (South African Human Rights Commission, 2001: 289). The allocated budget is insufficient to

cover the demand for subsidies. At a local level, in early 2001, the housing backlog in the City of Cape Town amounted to 270 500 housing units, which was 69% of the backlog in the entire province. (Western Cape Provincial Housing Plan, 2001).

The table below demonstrates that almost half of the households affected by housing backlogs in 2001 were within the lowest income bracket, having an income of R1 000 or less a month. Further, the table shows that the backlog is likely to increase in the future. Although the table does not provide any gender-specific data, women will obviously be affected by the deterioration in the situation.

**Table 1: Distribution of housing backlog by income band in the Western Cape**

| Income band (per month) | Backlog in 2001 |            | Projection for 2006 |            |
|-------------------------|-----------------|------------|---------------------|------------|
|                         | Number          | %          | Number              | %          |
| R2 500–R3 500           | 44 640          | 14         | 59 040              | 14         |
| R1 500–R2 500           | 69 099          | 22         | 91 430              | 22         |
| R1 000–R1 500           | 64 139          | 21         | 84 870              | 21         |
| R0 –R1 000              | 132 122         | 43         | 174 660             | 43         |
| <b>TOTAL</b>            | <b>310 000</b>  | <b>100</b> | <b>410 000</b>      | <b>100</b> |

Source: Western Cape Housing Consortium, 2001

According to the Western Cape Provincial Housing Plan, the delivery of 18 800 housing units per annum would address the current demand for housing. It would not, however, reduce the backlog to zero. In addition, the tendency for people to migrate from rural to urban areas in search of employment and better access to basic services is likely to exacerbate the problem. These patterns of migration point to an increased need to develop rural areas.

In light of the above, it can be concluded that although there is in fact an impressive array of legislation in place, women's access to adequate housing is still constrained by the failure on the part of the state to address certain glaring gaps that have already been identified as well as the housing backlog that it is grappling with.

## 4 Analysing the implications of the budget for women

### 4.1 Introduction

Section 26(2) of the Constitution requires that the state take reasonable measures to realise housing rights “within its available resources”. Although budgets are not the only resources, they are a key resource without which the desired housing access will not be possible. This chapter therefore provides an overview of the housing budgetary framework within each of the three spheres of government.

Unfortunately, as will be seen, analysing the housing budget from a gender perspective is very difficult. Recent reforms have stressed the need for measurable output to assess performance. For example, the 2002/3 budgets and strategic plans submitted to national government by provinces should now include measurable objectives, service delivery measures and targets for each programme over the three-year medium term expenditure framework (MTEF) period. Within the housing sector, it is proposed that delivery indicators include subsidies approved, serviced/unserviced sites allocated, housing units built etc. However, to date, both provincial and national departments have concentrated mainly on developing targets and have been much less diligent in terms of reporting on past delivery. Further, neither the targets nor proposed delivery measures are gender-disaggregated in any way.

The absence of gender-disaggregated data is of particular concern given that section 6 of the Housing Act obliges the Director-General to establish a National Housing Data Bank. One of the explicit objectives for the data bank and information system is to provide data categorised by gender, race, age and geographical allocation. Yet five years since the adoption of the Act, this information is still not available.

### 4.2 National Government

In addition to providing the legislative and policy framework for housing, national government's budgetary allocation is central to securing housing delivery. The Housing Act states that national government “must establish and facilitate as sustainable national housing development process”. In the Grootboom judgment, it was stressed that “ultimately, national government bears the overall responsibility for ensuring that the state's obligations under section 26 are fulfilled”. The court noted further that “effective implementation requires at least adequate budgetary support by national government” (para 68).

In response to the Grootboom judgment, the national Department of Housing made proposals to Treasury for at least 1% of the national housing budget to be allocated for contingencies. The response of Treasury was that any contingency allocation had to be administered at provincial level, as stated in the Division of Revenue Act. National officials felt that this approach was not practicable, as provinces would not all experience crisis situations to the same extent, if at all. However, the Treasury approach prevailed. The Intergovernmental Fiscal Review of 2001 reported that policy guidelines for the provision of emergency housing were being developed. In the interim, provincial housing departments were reserving between 0,5 and 0,75 percent of their allocations as a contingency fund.

### 4.3 The budget

The table below lists the past, current and projected expenditure of the Department of Housing between 1998/9 to 2004/5. The figures for 1998/9 to 2000/1 represent actual

expenditure, those for 2001/2 are the revised estimate, while 2002/3 to 2004/5 are the budget and MTEF estimates. The allocation for the human settlement developments sub-programme is shown in italics as the allocation is included in italics as it is an important initiative in terms of this paper.

**Table 2: Current and projected expenditure of the Department of Housing, 1998/9 - 2004/5**

| Programme (Rm)                          | 1998/9 | 1999/00 | 2000/1 | 2001/2 | 2002/3 | 2003/4 | 2004/5 |
|---|--------|---------|--------|--------|--------|--------|--------|
| Administration                          | 22.1   | 24.9    | 32.6   | 43.9   | 54.7   | 38.7   | 45.9   |
| Policy Planning                         | 2.9    | 3.6     | 3.5    | 6.9    | 14.2   | 13.9   | 14.9   |
| Human Settlement Policy and Integration | 1.0    | 1.4     | 2.0    | 2.7    | 4.6    | 4.9    | 5.1    |
| Program Management                      | 634.2  | 413.3   | 69.7   | 225.9  | 177.9  | 308.5  | 297.2  |
| Housing Performance                     | 54.0   | 298.9   | 193.3  | 172.9  | 177.9  | 308.5  | 297.2  |
| Communication                           | 1.0    | 4.1     | 4.2    | 7.5    | 13.2   | 10.2   | 11.8   |
| Housing Development Fund                | 3 033  | 2 750   | 3 026  | 3 254  | 3 768  | 4 167  | 4 375  |
| Total                                   | 3 747  | 3 494   | 3 329  | 3 711  | 4 245  | 4 663  | 4 899  |

Source: National Treasury, 2002a :373

The table shows a modest increase in the housing budget occurred. Adjusting for inflation of 6,9% per annum, the increase from R3,7 billion in 2001/2 to R4,2 billion in 2002/03 represents a real increase of 7.5%. This is to be welcomed. However, the 2001/2 figure is, in nominal terms, lower than that for 1998/9.

However, while the increase in funds could assist in increased housing delivery, the budget is still not sufficient to reduce the housing backlog significantly. The housing budget constitutes only 1,5% of total government expenditure, compared to the national housing goal of allocating 5% of government expenditure to housing.

By 2001 more than five million South Africans still did not have a roof over their heads, and many were living in houses of substandard quality. In her budget speech in mid-2001. The Minister of Housing said that between two and three million houses still had to be built to meet the need (31 August 1999, [www.anc.org.za/anc/newsbrief/1999/news0901](http://www.anc.org.za/anc/newsbrief/1999/news0901)). Yet, according to the Minister, the pace of delivery annually had decreased from 300 000 in 1997 to about 200 000 in 1998, and further slowdowns were foreseen.

#### 4.3.1 The SA Housing Fund

The Housing Development Fund programme is the source of transfers for housing subsidies. The table above shows that this increased from an estimated R3,2 billion in 2001/2 to R3,8 billion in 2002/3, a real increase of 8,9%.

The way in which housing subsidy money is dealt with has changed since the scheme was originally introduced. In the beginning, funds used to flow directly from the South African Housing Fund (SAHF) to the Provincial Housing Development Funds (PHDFs). The housing subsidy grant has now been converted into a conditional grant to each province. At least one of the reasons for the change was the Auditor-General's observations about the weak accountability of the South African Housing Fund (SAHF) (Auditor-General Report on the Financial Statements of Vote 18 — Housing for the year ended 31 March 1999:3)

The fact that the money comes in the form of a conditional grant rather than included in the province's equitable share means that the money must be used exclusively for housing subsidy purposes. However, all funds received by provincial housing departments must be deposited into the provincial revenue fund. All expenditure incurred with respect to housing is, therefore, included in the provincial budget and should be reported on in terms of delivery indicators.

Unfortunately, it is not easy to track provincial housing expenditure since most provinces have combined their housing function with either land administration or local government and traditional affairs. In each case one therefore needs to look at the particular department concerned, and the programme within that department responsible for housing. The Western Cape has placed the housing function under the Department of Planning, Local Government and Housing. The budget of that department is examined in more detail below in the section dealing with provincial functions and budgets.

Transfers by national government for the housing subsidy grant have been substantial. Between 1994 and 2001/2, more than R16 billion was allocated for this programme.

**Table 3: SA Housing Fund – expenditure and forward estimates**

| Province<br>(R million) | Actual |        |         |        | Medium-term estimates |        |        |
|-------------------------|--------|--------|---------|--------|-----------------------|--------|--------|
|                         | 1997/8 | 1998/9 | 1999/00 | 2000/1 | 2001/2                | 2002/3 | 2003/4 |
| Eastern Cape            | 245    | 378    | 341     | 470    | 498                   | 531    | 550    |
| Free State              | 123    | 184    | 88      | 218    | 241                   | 257    | 266    |
| Gauteng                 | 737    | 639    | 737     | 610    | 682                   | 727    | 752    |
| KwaZulu-Natal           | 800    | 628    | 471     | 560    | 618                   | 659    | 681    |
| Mpumalanga              | 157    | 100    | 118     | 153    | 208                   | 222    | 230    |
| Northern Cape           | 71     | 55     | 56      | 58     | 65                    | 70     | 72     |
| Limpopo                 | 173    | 231    | 228     | 272    | 335                   | 357    | 369    |
| North West              | 249    | 170    | 181     | 262    | 257                   | 274    | 283    |
| Western Cape            | 366    | 364    | 351     | 341    | 322                   | 343    | 355    |
| Total                   | 2950   | 2749   | 2571    | 2945   | 3226                  | 3440   | 3559   |

Source: National Treasury, 2001a: 74

At first glance the table seems to show increases each year, at least from 1998/9. However, real total provincial spending decreased at an annual average rate of 6% between 1997/8 and 2000/1. One of the main reasons for the decrease is that the Special Integrated Presidential Projects, which focussed on 13 violence-torn communities in the country, was completed at the end of 1999. The decrease means that effectively less and less money has been allocated to housing through this important subsidy over the years if one adjusts for the effects of inflation.

A further problem is that provinces do not always spend what is allocated to them in a financial year. Failure of a province to spend the allocation within the financial year usually results in the money being “rolled-over” to the next year. The following year's allocation is then calculated as the difference between the allocation and the money rolled over from the previous year. Effectively, the provincial department loses scarce resources that are critical to addressing the housing backlog.

According to the National Treasury, rollovers can be attributed to several factors. These include:

- a lack of incentive for developers to complete projects on time;
- unfavourable weather patterns that interfere with construction deadlines;
- weak capacity and poor planning within departments that slowed down spending; and
- the 2000 local government elections and restructuring towards newly demarcated municipalities which slowed down housing development.

These problems are, however, less of an issue in Western Cape, as it was one of the three provinces that was able to spend its entire housing budget, since 2000/1 (Intergovernmental Fiscal Review 2001:72 -74). Further, between 1997/8 and 2000/1, 12,7% of all houses built from funds allocated for housing subsidies were built in the Western Cape (Intergovernmental Fiscal Review 2001:77). This suggests that Western Cape has performed better than average in that it contains less than 10% of the total population. Further, its population is relatively wealthy when compared to the national average.

#### 4.3.2 Rental housing

The post-apartheid government inherited 384894 rental stock units, of which 77824 were in the Western Cape. After 1994, the housing stock managed by the previous Houses of Delegates (for Indian people), Representatives (for so-called coloured people) and Assembly (for white people) was transferred to provinces and municipalities, and managed by provincial housing boards and municipal housing departments. The properties include vacant serviced sites, houses, flats, and other properties.

Currently, subsidy mechanisms do not cover rental housing for the lowest-income groups. This goes against the spirit, if not the letter, of the Grootboom judgment in that it does not provide for those in desperate need. The rental mechanism is targeted at the R1200 -R3 500 per month income groups - a poor group, but not the poorest.

The Western Cape aims to provide 45000 units by 2003/4 through rental housing (Western Cape Provincial Housing Plan, Western Cape Housing Consortium, 2001). As a short term and interim measure, the Western Cape Government has its inherited rental stock described above available to give effect to the Grootboom judgment. To date, it has chosen not to use this resource.

#### 4.3.3 The provision of emergency housing

The Intergovernmental Fiscal Review of 2001 makes specific reference to the Constitutional Court judgment in the Grootboom case. In particular, it states that government's housing programme:

should include reasonable measures to provide access to people without land or housing, or who live in intolerable conditions or crisis situations. *Policy guidelines for the provision of emergency housing are being developed and provincial housing departments are reserving between 0,5 and 0,75 percent of their allocation to provide for a contingency fund* .(emphasis added)(82)

For the Western Cape, this would mean an amount of between R1,9 -2,9 million should be reserved as the contingency fund. However, until the national policy guidelines are formally approved, there is little pressure on provinces to set these funds aside. No mention is made of a contingency fund for housing in the latest budget of the Western Cape.



Further, policy documents of both the Western Cape and the City of Cape Town refer to the desperate needs of the homeless and indigent citizens, but complain about the fact that the subsidy amounts from national government have been reduced (in real terms), and that these allocations are insufficient. (Western Cape Provincial Housing Plan, City of Cape Town Interim IDP 2001/2).

## 4.4 Western Cape Provincial Government

### 4.4.1 Budgetary allocation

In a sworn affidavit to the Constitutional Court in the Grootboom case, the Department of Planning, Local Government and Housing stated the following:

The Department remains unable to provide housing according to housing needs in the Western Cape and the limited funds at its disposal unfortunately cannot be used to provide temporary shelter” (Affidavit for Case No: CPD 6826/99, 10 March 2000).

In examining the role of the province in the provision of housing, it is important to understand how and why such a statement was made.

In the division of revenue between the three spheres of government, transfers to the provincial sphere take place in two ways. Firstly, there are the conditional grants, discussed above, which accounts for about 10% of the total provincial transfers. Secondly, there is the equitable share that accounts for approximately 90% of transfers to provinces. The equitable share component is allocated to the nine provinces by means of a formula. This formula consists of seven components (with the share of each listed in brackets):

- education share (41%);
- health share (19%);
- social security share (18%);
- economic output share (7%);
- basic (population of province) share (7%);
- institutional component (5%); and
- backlog component (3%).

Despite the method of calculation, the province receives the share as a single sum of money and can itself decide how much to allocate to each function. Although housing is not included in the calculation of the equitable share, the province is not prevented from using some part of the equitable share allocation for housing.

Table 4 shows, for 2001/2 and 2002/3, the transfers to the Western Cape from national government.

**Table 4: Transfers from National Government to Western Cape Province (Rm)**

|                   | 2001/2 | 2002/3 |
|-------------------|--------|--------|
| Equitable share   | 10 056 | 10 919 |
| Conditional grant | 1 997  | 1 969  |
| Health            | 1 381  | 1 425  |
| Finance           | -      | 96     |
| Housing           | 334    | 386    |
| Other             | 282    | 62     |

|                                |        |        |
|--------------------------------|--------|--------|
| Total transfers (Western Cape) | 11 915 | 12 889 |
|--------------------------------|--------|--------|

Sources: National Treasury, 2001b:247; National Treasury, 2002:157

The 2002 budget of the Western Cape government reflects conditional grants housing allocations of R372,8 million for the Housing Fund and R13,0 million for the Human Settlement Grant. The latter is a conditional grant from national government for facilitation of integrated housing. The funds were allocated by the province for development of the Wallacedene and Mooitrap areas and to recover outstanding and current debt. The Western Cape allocations amount to 10% and 13% respectively of the national allocations for these two grants.

In some respects, the affidavit is therefore correct. If one interprets the role of the province as merely being an agent of delivery of national government, then the allocation of funds for housing are indeed insufficient. However, this is only true if conditional grants are interpreted to be the sole source of funding for the poor. Within a broader understanding of cooperative governance and the autonomy of the different spheres of governance, the province could have found more creative means to address the backlogs and ensure the realisation of socio-economic rights.

One example for the short term is the use of existing rental stock to provide emergency relief for people, and especially women and children, who are homeless and destitute. A more sustainable alternative is increased support and liaison with successful cooperatives that have demonstrated the ability to save and build quality homes, such as the SA Homeless People's Federation. This is preferable to supplying commercially built houses to a select few who qualify for financing, but who are often left with an extremely small top-structure of dubious building standards and quality.

Table 5 shows the budget of the Western Cape Department of Planning, Local Government and Housing for the MTEF period 2002/3 to 2004/5.

**Table 5: Budget of Department of Planning, Local Government and Housing**

| Programme (R million)      | 2002/3 | 2003/4 | 2004/5 |
|----------------------------|--------|--------|--------|
| SA Housing Fund            | 372.8  | 412.5  | 433.4  |
| Human Settlement Programme | 13.0   | 13.5   | 14.3   |
| Total                      | 505.4  | 548.3  | 571.9  |

Source: Western Cape Provincial Government, 2002b:257

The allocation to the Department represents an nominal increase on the R489,2 million allocated in 2001/2 of 3,3%. However, if one adjusts for inflation, there is a decrease of 3,6% in real terms. The decrease per person or per household is even greater if one takes into account population growth and influx of people into the Western Cape.

The Human Settlement Programme has, as one of its objectives, the densification and formal development of several areas, including greater Wallacedene, in order to accommodate all the people living in these areas. It aims to establish 6 000 residential erven and the necessary community facilities. This is perhaps one of the few positive developments directly linked to the Grootboom judgment. This is perhaps one of the few positive developments directly linked to the Grootboom judgment. It does not, however, address the needs of other communities in the Western Cape facing similar situations. There is an urgent need for a coherent policy to prioritise the housing needs of the very poor, rather than a ad hoc

interventions such as this. The need for such interventions strengthens arguments that the Accelerated Managed Land Settlement Programme, which was meant to have started in 2000 in Cape Town, needs to be accelerated (Pillay, 2002: 19).

#### 4.4.2 Western Cape Provincial Housing Plans

The Western Cape Province's Department of Housing (WCPDH) has as its vision to "maintain its position as a leading Province in South Africa for the delivery of housing; and significantly establish initiatives to improve the quality of housing environment produced." (Western Cape Housing Consortium, 2001: 4). Yet, in its Provincial Plan, referred to almost immediately after this vision statement, it asserts that "in the light of the housing backlogs, a provincial housing plan was designed which aims to address these backlogs, *within the ambit of given resources*" (emphasis added). The latter phrase, drawn from the Grootboom judgment, is its Achilles heel, as discussed below.

The 2002 Budget of the Western Cape confirms the priorities of the Housing Plan, namely:

- to provide 20 000 housing opportunities;
- to implement the rapid land release programme; and
- to implement the Human Settlement Redevelopment Programme.

Within the context of national funding outlined above, the province projects three scenarios, which they term the low, medium and high road options. When examining these options, outlined in Table 6 we must remember that the current backlog of housing is estimated to affect 316 000 households in the Western Cape.

**Table 6: The three scenarios**

| Scenario and required funds | Delivery rate of housing | Backlog reduction                | Waiting period     |
|-----------------------------|--------------------------|----------------------------------|--------------------|
| Low road<br>R289 million    | 20 000 per annum         | Never reduced to zero            | More than 15 years |
| Medium road<br>R463 million | 32 000 per annum         | Reduced to zero in over 24 years | More than 10 years |
| High road<br>R589 million   | 40 000 per annum         | Reduced to zero in over 15 years | More than 8 years  |

With a budget allocation in 2001/2 of just over R321 million, the "road" we are currently adopting would lie somewhere between the low and medium roads. However, the 2002/3 budget's stated target of 20 000 housing opportunities per annum is squarely on the low road.

The province categorises its housing programmes as either primary or secondary. Primary programmes are those that are seen as the more urgent priorities, with committed funding allocated to them. The primary urban housing programmes include the Managed Land Settlement programme, Greenfields Project-linked schemes (PLS), a low cost, cement block housing development on the Cape Flat in Cape Town, in situ upgrading and top-down structure initiatives, allocation of subsidies to individuals, rent to purchase programmes, new rentals, hostels redevelopment and the reduction of backyard shacks (de-densification).

Secondary programmes include the People's Housing Process and housing support centres, disability allowances, relocation assistance and, lastly, emergency housing. The province's plan thus places the provision of emergency shelter as the last of its secondary programmes.

This suggests a willingness on the part of the provincial authorities to view the directive from the judiciary as a priority.

In its housing plan, the province makes repeated reference to the inadequacy of resources. It states that desperate needs require redress, and notes that the reduction in real terms of its subsidy allocation from national government is a problem. It claims that a "reality check" reveals that, according to the Constitutional Court ruling, the province is responsible for providing the "minimum core services" (31). This is the only reference in the entire plan to the Grootboom judgment and, in fact, reflects an inaccurate understanding of the Grootboom judgment. Further, the plan states that National Department of Housing's minimum standard is to provide a "subsidy house and a serviced site". It claims that, in order to meet the latter obligation, it needs to build approximately 40 000 housing units per year. This, it says, would cost R589 million per annum.

It goes on to point out that since the conditional grant amount is only R321,6 million for 2001/2, there is clearly insufficient funding. It concludes that the maintenance of minimum standards and simultaneously addressing urgent needs is not fiscally affordable. It says that this is the reason, among others, for the housing crisis and land-grabbing phenomenon.

The province proposes, as a way forward, that the Housing Plan either receives an increase in funds for housing (presumably from national government), or that it delivers programmes subject to the available funding. It aims to address the mandate of ensuring the "progressive realisation of human rights" by making available the "phasing in of housing programmes". Expressed differently, it asserts that the constitutional requirement to ensure the basic socio-economic rights of all its citizens cannot be accomplished in the short term because of limited resources. Thus the right to housing needs to be phased in progressively, from a lower standard to the mandated minimum standard.

The Department argues that, with this approach it will be able to provide a wider distribution to the very poor through provision of a site and basic services. It proposes that the top structure (i.e. the dwelling) be acquired through savings or sweat equity. The latter term refers to the actual hands-on involvement of (future) homeowners in the construction of their housing, along the lines of how the People's Housing Federation operates.

#### **4.4.3 Prioritisation**

A senior Western Cape housing official noted that, while the living conditions of people in these informal settlements are similar to those of the Grootboom community, the funds received from national government "can at best only provide shelter for 21 000 families per year" (Esterhuizen, 2002, personal communication). He felt that the main challenge in dealing with the Grootboom case was addressing "the unreasonable expectation that is created, with potential beneficiaries threatening to take similar action if their needs are not immediately met. Obviously, there is no way that the State can provide for all the needs in the short term so it makes one's life just that much more difficult". The official estimated that the province would need to "receive" a total allocation of R3,3 billion to be able to address the needs of the informal settlements in three years. This estimate must be compared to the grants of just over R500 million for 2002/3 reflected in Table 5.

One of the problems, according to the authors of the provincial plan, is that there exists no unified waiting list, and no clear policy or criteria for being placed on the housing waiting list. The official says that if the province meets the demands of the Court judgment, this might be

interpreted by some of those already on the lists as queue jumping. This can cause conflict between and within communities in similar positions. It can also encourage protests and complaints when people observe that it is the squeaky wheel that gets the oil. One of the ways to address this “dilemma”, would be to implement the Accelerated Land Release Programme with transparent criteria as to who qualifies.

In terms of the allocation of housing resources and prioritisation of projects and of people on the waiting lists, the provincial plan refers to the need for criteria but remains vague about what these would entail. In particular, it is not clear what this would mean in terms of priority for lower income groups.

#### **4.4.4 Assessment**

In its conclusion, the province’s housing plan states that “There are no clear ‘best options’” (62) It reiterates that the “mix of funding scenarios chosen by government will however have very different outcomes for our human settlements in the medium to longer term”. In this statement, it seems the province is again suggesting that the province is wholly dependent on national government.

A planner who assisted the province in drafting the Western Cape Provincial Housing Plan was, however, of the opinion that delays in approving decisions toward effecting the Grootboom judgment were largely due to bureaucratic wrangling. He felt that housing subsidy funds, instead of being used to build houses, were used to fund events and activities such as planning and zoning. The result was that beneficiaries were left unsure whether or not they would be allocated a house or land on which to build one.

Overall, it seems the Western Cape Province Housing Department has adopted an “all or nothing mindset”. They have adopted an approach that requires all the necessary funds to be provided by national government.

The bottom line remains that the Grootboom judgment is being implemented too slowly or stalled and this mitigates against the effective, sustained and urgent delivery of housing to the indigent.

### **4.5 The City of Cape Town**

According to the Constitution, the local sphere of government is not directly responsible for the realisation of housing rights. However, it does have significant responsibilities in respect of related services such as land allocation and infrastructure provision. Local government is also responsible for the provision of basic services such as water, electricity and other services that are critical to fulfilling the standard of “adequate” housing. In light of the discussion in the previous chapter, it can therefore be said that local government directly plays a significant role in alleviating some of the gendered barriers for women and housing. It has particular significance in relieving burdens such as water collection for women and creating greater opportunities for profitable home-based work.

Local government funds its provision of these services through the collection of municipal rates, user charges and the equitable share it receives from national government. For home owners, the payment of rates and user charges are important, since they constitute a cost of housing. For those who rent their housing, rates will usually be built into rentals, while tenants will also pay for electricity and water either directly or through their rentals.

Oostenberg Municipality (now Oostenberg Administration) was the local authority directly involved in the Grootboom case and was consequently one of the institutions sued by the Grootboom community. Numerous attempts to gain the perspective of Oostenberg Administration officials on the court rulings and their responses were in vain.

#### 4.5.1 Budget priorities of the City of Cape Town

The City of Cape Town is one of the six municipalities in South Africa. Its budget is thus substantial. It is, in fact, more or less equal in size with the budgets of provinces such as the Free State and Mpumalanga.

Municipalities report their budgets in terms of operating and capital budgets. Acquiring detailed budgets of the municipality proved difficult since it was in the process of amalgamating the six metropolitan municipalities which existed before demarcation at the time the research was conducted. The information which follows is thus limited.

The operating budget of Cape Town is the one of the largest in South Africa. The draft operating budgeting for 2001/2 amounts to R7,1 billion. In nominal terms, this represented a 7,8% increase on the 2000/1 operating budget. In real terms, after taking inflation into account, there was no increase. Table 7 shows the functional classification of the municipality's operating budget for 2001/2.

**Table 7: Operating expenses: functional classification 2001/02**

| Functional operating expense   | Amount (Rm) | %    |
|--------------------------------|-------------|------|
| Electricity                    | 2 024       | 29.6 |
| Water and sanitation           | 1 054       | 15.4 |
| Finance and administration     | 507         | 7.4  |
| Public safety                  | 540         | 7.9  |
| Roads, stormwater and drainage | 473         | 6.9  |
| Housing                        | 216         | 3.2  |
| Health                         | 252         | 3.7  |
| Other                          | 1 775       | 25.9 |
| Total                          | 6 841       | 100  |

Source: National Treasury, 2001b: 160

From the table we can see that electricity distribution accounts for almost 30% of total operating expenditure. Water and sanitation is the next largest function, comprising 15% of operating expenditure. Housing accounts for only 3%.

The capital budget of the City of Cape Town is R1,27 billion for 2001/2. Of this amount, R835,5 million is reserved for committed capital projects and R300 million for ad hoc projects already approved by council. The fact that these two sub-categories exhaust the total suggests that no new major capital projects were envisaged for the 2001/02 year. Ad hoc items include R20 million for land and R35 million of housing. Very few details are supplied as to how these amounts will be utilised.

The capital budget for 2001/02 of the City of Cape Town records progress on many housing projects and related services. Several of the projects have as their source of funding the provincial department. In these cases the municipality is performing an agency function for the province. Significantly, there appear to be many projects with committed funding to upgrade and develop historically marginalised areas. One particular project involves 1 0000

units, at a cost of R61,4 million to be built in Wallacedene. This appears to be the same development referred to above, in the form of a collaborative effort implemented with funds from the provincial government. For 2001/2, this project was the single largest capital expenditure item within the housing vote of the City Council. This is a significant development. No further details with regard to starting and completion dates are available from the documentation.

#### **4.5.2 Recent infrastructural development and capital expenditure**

It is useful to compare the acquisition of funding for the promotion of business opportunities with funds received or generated for poverty alleviation and addressing the needs of the indigent communities.

In March 2002, it was reported that the City of Cape Town raised R520 million in municipal loans for an industrial and commercial complex near the Mitchell's Plain town centre. These funds were acquired from First Rand (R220 million) and Development Bank (R300 million) (City News, 28 March 2002, [www.capetown.gov.za/press/archive.asp](http://www.capetown.gov.za/press/archive.asp)). The construction of this South Park City project is due for completion in 2005. It will create at least 8000 direct jobs and possibly 25000 indirect development opportunities, according to the City's Executive Council or responsible for Economic Development and Tourism for the City.

In addition, in April 2002, approval was given to proceed with capital projects of R200000 per ward for the current financial year in all of the 100 council wards. A further R2,2 million was received from national government as seed funding for "transformation processes with a view to long term financial sustainability and development". (City News, 24 April 2002).

The City Council has also demonstrated its capacity to generate revenue in the recent sale of the old Power Stations site on the Foreshore to Boshard Construction for a record price of R19,5 million. The site is earmarked for the construction of an office block.

By comparison, the City's Executive Committee has given the City Manager the go-ahead to apply for a R8 million grant from the Department of Land Affairs, to be used for the purchase of private land in the Wallacedene area for the resettlement of the 2001 winter flood victims. Further, the construction of the bulk earth works for the Mfuleni Flood Relief Project near Delft will begin after the approval of a R6,5 million tender by the Executive Committee. The project consists of about 4000 sites for the resettlement of victims of the same floods.

Other projects aimed to address the needs of indigent communities of the City of Cape Town include R2 million for the conversion of the Lwandle Hostel Upgrade, near the Strand from 60 single room hostels into 720 family flats. Further, an amount of R180000 was allocated to a model community housing project involving 106 residents of the Smartie Town development at Macassar. This is to be used to complete the construction of houses which was temporarily halted when the building contractor was liquidated. (City News, 28 March 2002)

Some of the City's capital expenditure has thus been allocated to housing in the Wallacedene area, where the Grootboom eviction occurred. Further, both the Wallacedene and Mfuleni initiatives can be seen as constituting "emergency" relief of some sort. However, at the time of the 2001 floods, the actions by all three spheres of government seemed to be prompted as much by political rivalry as by concern over the needs of the victims, in that different political parties controlled the different spheres.

Overall, the examples quoted above demonstrate where the City of Cape Town's priorities lie. The City does not appear to have serious fundraising constraints. Yet, if one compares the amounts involved in the projects described above, the bulk of its funds are used for economic development and the promotion of business projects rather than more direct alleviation of poverty-related conditions.

#### 4.5.3 Previous budget commitments

The Grootboom case was not the first time that municipal resource allocation for housing hit the headlines. In 1997, reports of the city's housing committee included an update on expenditure for ad hoc projects, which had been drawn up to eliminate housing backlogs. These projects included initiatives in many low-income groups such as Vygekraal, Manenberg, Hanover Park, Mitchells Plain, Ikapa, KTC, Langa and Nyanga.

Reports to the City's housing committee showed that the council expected to spend nothing between June 1997 and June 1998 on 20 of the 24 projects identified. To make matters worse, three of the 24 projects, amounting to R9 million, had been abandoned because deemed "unsustainable". Figures for 1998 reveal that nearly R30 million of the R46,2 million that the city council had earmarked for priority housing projects for the year to June 1998 would not be spent. Many schemes were "snagged in a bureaucratic web or simply scrapped." (Mail and Guardian, 5 August 1998). In 1997, as several years later, many excuses were made for non-delivery. As later, most often the blame was placed on other spheres of government. Thus excuses ranged from "getting state subsidies through" to "insufficient state subsidies".

Billy Cobbett, the former head of the housing department of the City of Cape Town, and previously director-general of the national housing department, initiated bold attempts to address the housing backlog in Cape Town. These included the building of 36m<sup>2</sup> houses with self-financing and some assistance by the City Council. 36m<sup>2</sup> houses are significantly larger than the average of between 20 - 30m<sup>2</sup> built by commercial contractors with funds received from housing subsidies. This project was, however, shelved in 1998. Cobbett decided to leave for the United Kingdom with his family because of death threats from gangsters after he threatened to expose corrupt practices within the housing sector. He received no support from the Council in this regard.

At the time of writing, no response could be gleaned from enquiries regarding what happened to Cobbett's plans in respect of the Council assisting people with self-financing their housing.

Again the political tensions between the DA controlled Unicity and the ANC come to the fore. According to the ANC of the Western Cape:

the situation in Khayelitsha and other parts of Cape Town is explosive. The DA controlled Unicity Council has embarked on a massive round of evictions and water cuts. Water cuts are being carried out without heeding the basic minimum supply required nationally. The poor are being evicted from their homes as these are auctioned and meagre possessions sold to recover rates arrears. Debt rescheduling negotiations are inadequate and there are no clear criteria, time frames or oversight. ([www.anc.org.za/ancdocs/pr/2002/pr0325.html](http://www.anc.org.za/ancdocs/pr/2002/pr0325.html), 25 March 2002)



In its press statement, the ANC proposes that a basic minimum amount of water be provided free to all households after water cuts; that an indigent policy be drawn up after consultation, that a debt negotiation process be developed, that debt from before 1994 be cancelled, and that sales in execution of people's properties be immediately halted. Unions and anti-privatisation forums have supported this call.

The tardiness in addressing the Grootboom judgment needs to be seen within this context. Issues of corruption, victimisation of whistle-blowers, and lack of decisive action by the Council all contribute to non-delivery and non-realisation of socio-economic rights.

#### **4.6 The lack of a gendered perspective**

As has been argued elsewhere in this paper, women (and children in their care) have special needs in respect of housing. These special needs must be reflected in terms of both the policy and legislative framework for housing as well as the budgetary framework.

Sadly though, no mention of women or gender features in the budgetary documentation examined for this paper. This is a problem, as budgets need to include key performance indicators which measure physical delivery as well as money amounts. Further, these indicators need to be disaggregated by gender and other variables. Disaggregation by gender would enable provincial and local authorities to understand the implications of their plans in a more gender-sensitive manner. It would also allow public representatives and civil society to monitor what is happening.

## **5 Conclusions and recommendations**

In the course of this study we have argued the need for housing rights to be informed by a gendered perspective. The Grootboom case, whilst open to criticism in some respects, generally provides a good framework for an analysis of women's housing rights. Using this framework, we have assessed the extent to which the current housing framework, when applied to women, complies with the court's framework. While South Africa has made great strides in realising housing rights, our analysis suggests many remaining challenges. Before putting forward our recommendations for addressing these challenges, we highlight some of the constraints affecting housing delivery.

### **5.1 Constraints affecting housing delivery**

#### **5.1.1 Inherited backlog**

South Africa's long history of land dispossession, forced removals, and racially determined access to state housing has created a housing crisis of phenomenal proportions. This represents an enormous challenge in respect of the required pace of housing delivery.

#### **5.1.2 Political tensions**

In the Western Cape, housing delivery has to some extent been constrained by party political tensions. The fact that these tensions are ongoing does not bode well for serviced delivery. This is especially so for the majority of black South Africans who reside in informal settlements in the Cape Peninsula and elsewhere in the Province.

#### **5.1.3 Short-, medium-, or long-term**

All three spheres argued in their appeal against the Grootboom judgment that they were succeeding in providing housing opportunities 'on a phased basis with the provision of land and basic services as a first phase'. In other words, the urgency of delivery has been averted by the agreement that housing opportunities can be provided within a long time frame. While this gives the authorities more time, it provides no relief for the urgent basic needs of the indigent.

#### **5.1.4 Changes in local government**

Ongoing changes in the structure of local government have affected delivery. At the time of the Constitutional Court case, Oostenberg was a metropolitan municipality. It had both legislative power (the ability to formulate by-laws) and executive authority (the power to develop and implement programmes and legislation). After the local government elections in December 2000, with the amalgamation of several metropolitan municipalities to form the Cape Town municipality, the Oostenberg area now has the status of a municipal administration. It is thus subject to the decisions and directives of the new council of the City of Cape Town.

Preoccupation with the reorganisation of human, physical and financial resources, new systems of accountability, and the delegation of new lines of authority that resulted from the amalgamation have created additional reasons – or excuses – for delays in addressing the court judgment.

## **5.2 Recommendations**

There are a range of measures that can be adopted to advance women's access to adequate housing. We have, however, limited our suggestions to the following immediate measures that are likely to have a significant effect on women's housing rights.

### **5.2.1 Shift from gender -neutral to gender -specific housing programme**

Subject to a few notable exceptions which were highlighted in the course of this study, the current housing programme currently proceeds from the premise that men and women's housing needs are identical and that strategies to address them are accordingly identical. As argued, this is a highly flawed conceptual understanding of a gendered approach to housing rights.

Our first recommendation accordingly lies in a thorough gendered analysis of the current housing programme and the adoption of specific measures to address women's housing needs where necessary. Whilst we are not necessarily suggesting a separate housing programme for women, we are suggesting that issues pertaining to women's housing be integrated into the current housing programme. We further suggest that in instances where the programme does make reference to women, these provisions be implemented so as to ensure the advancement and protection of women's housing rights.

As noted, this is likely to have implications for:

- cost of housing, financing options and access to credit available for housing;
- the design and type of housing;
- the location where housing is situated;
- the different family forms within which women seek to access housing; and
- the provision of "emergency housing" for instances where women are forced to leave their homes as a result of domestic violence etc.

### **5.2.2 Disaggregated data**

We further recommend that a key strategy to meeting women's housing needs effectively is the collection of gender-disaggregated data that also reflects variables such as urban/rural, race and geographical location. This is fundamental to the effective monitoring of women's housing rights.

### **5.2.3 Challenging the "one size fits all" notion of housing**

We recommend tailored housing policies to meet the housing needs of different groups of women in society. One such example would require the adoption of special measures to meet the housing needs of people infected and affected by HIV/AIDS or people with disabilities.

### **5.2.4 Monitoring women's access to housing**

Critical to the effective realisation of women's housing rights is proper monitoring. Gender indicators should be developed in this regard. Given its constitutional mandate, the CGE seems ideally placed to take on this function. It should work in collaboration with the SAHRC in order to maximise scarce resources and avoid duplication.

### **5.2.5 Collaboration with civil society organisations**

Civil society organisations are often at the forefront of housing delivery and accordingly well placed to undertake assessments of the effectiveness of housing policies and well as their impact on women. Relevant organs of State should therefore collaborate meaningfully with such organisations.

### **5.2.6 Development of strategies to mobilise communities**

The Western Cape Provincial Government, in its report to the SAHRC for 1999/2000 identified a lack of assistance from communities in mobilising resources and facilitating delivery as one of its problems. The Western Cape Provincial Government should, among others, therefore adopt strategies to facilitate such mobilisation from communities.

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