

THE STATE'S LEGAL OBLIGATION IN THE PROMOTION OF ADEQUATE HOUSING: A CASE STUDY OF THE SELF-HELP HOUSING PROGRAMME IN SOUTH AFRICA

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“Housing, Land, and Property (HLP) rights crises are present in all conflicts and post-conflict settings, and their management by those engaged in peace efforts can often be decisive in determining the extent to which peace is sustained” (Scott Leckie and Chris Huggins, *Conflict and Housing, Land, and Property Rights A handbook on Issues, Frameworks, and Solutions*, 2011, Cambridge University Press, p.1)

Abstract

One of the major roles of the State is to secure citizens' welfare by providing an institutional and legal framework which promotes and protects human rights, notably the right to food and adequate housing. This paper looks at the State's legal obligation to promote the provision of adequate housing by means of a case study of the self-help housing programme in South Africa.

Section 26 of the Constitution of the Republic of South Africa provides that citizens have a right to have access to 'adequate housing' and obliges the State to 'take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right'.

In order to fulfill these constitutional imperatives, South Africa's self-help housing program needs to be in line with the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) criteria for adequate housing.

The accelerated recent urbanization trend illustrates that South Africa's citizens are willing to go the self-help housing route. However, regardless of its long history, the programme has not been effective. It has reached only a small proportion of those in need of housing, despite active support from international and local organizations which could increase its effectiveness. The State has assumed direct control over self-help housing beneficiaries, instead of handing over control to them and creating enabling conditions under which they can operate.

Key words : *State's legal obligation, right to adequate housing, self-help housing programme*

Résumé

L'un des principaux rôles de l'État est de garantir le bien-être des citoyens en fournissant un cadre institutionnel et juridique qui promeut et protège les droits de l'homme, notamment le droit à l'alimentation et à un logement décent. Le présent article examine l'obligation légale de l'État de promouvoir le droit d'accès au logement décent au moyen de l'étude de cas du programme de logement autonome en Afrique du Sud.

L'article 26 de la Constitution de la République Sud-africaine prévoit que les citoyens ont le droit d'avoir accès à un "logement décent" et oblige l'État à "prendre des mesures législatives et autres raisonnables, dans la limite de ses ressources disponibles, pour parvenir à la réalisation progressive de ce droit".

Afin de répondre à ces impératifs constitutionnels, le programme d'auto-assistance en matière de logement au Sud Afrique doit être conforme aux critères du Comité des droits économiques, sociaux et culturels des Nations Unies (CESCR) en matière de logement décent.

La tendance récente à l'urbanisation accélérée montre que les citoyens sud-africains sont disposés à opter pour la voie du logement autonome. Cependant, quelle que soit sa longue histoire, le programme n'a pas été efficace. Il n'a atteint qu'une faible proportion de ceux qui ont besoin d'un logement, malgré le soutien actif des organisations internationales et locales qui pourraient accroître son efficacité. L'État a exercé un contrôle direct sur les bénéficiaires de logements autonomes, au lieu de leur céder le contrôle et de créer des conditions favorables dans lesquelles ils peuvent fonctionner.

Mots-clés : Obligation étatique, droit au logement décent, programme de logement autonome

Classification JEL H 00

I INTRODUCTION AND BACKGROUND

I.1 INTRODUCTION

One of major roles of the State is to secure citizens' welfare by providing an institutional and legal framework which promotes and protects human rights, notably the right to basic needs.¹ These basic needs characterize human beings' living conditions.² One of the most important of these needs is access to adequate housing. In South Africa access to housing poses a problem in general due to limited resources and the high level of demand. Self-help housing offers an opportunity to close the gap. This study is a desk top research exercise; it has utilized the socio-legal studies methodology, which is complementary to doctrinal research or the 'black-letter law' approach³. This paper examines the legal obligation of the State to promote adequate self-help housing practice in South Africa.

This research paper is divided into the following sections:

- Introduction and background

¹ S. J., HACKER, 2006, "The Welfare state", in (eds.) R.A.W. , Rhodes, Sarah A., Binder, Bert A., Rockman, *The Oxford handbook of Political Institutions*, 385- 406.

² C., KABATI & O. OYEYEMI, 2012 "Impact of the African court of justice on the promotion of human rights", (un published paper in monograph by the institute for Security studies) unpublished.

³ M., MCCONVILLE & W., HONG CHUI, (1988) "Introduction and Overvie" in *M McConville & W Hong Chui Research methods for law* 3-4.

- Literature review;
- Result and finding of research;
- Conclusion & Recommendation.

1.2 BACKGROUND TO THE STUDY

The State's obligation to respond to citizens' housing demands is hindered by historical housing backlogs.¹ Land claims, land redistribution, and land restitution are at the core of the housing debate.² The fundamental rights set out in South Africa's Constitution and the Millennium Development Goals oblige the State to provide answers to housing demands.³ Section 26 of South Africa's Constitution makes the following provisions :“(1) everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right”. The obligation to promote adequate housing constitutes a positive duty on the State to advance the right to housing.⁴

As Manisuli Ssenyonjo points out:

It is important to recall that the right to adequate housing, like other human rights, impose three types or levels of obligations on SADC Member States:(a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfill [...] The first obligation to respect requires States to refrain from interfering, directly or indirectly, with the enjoyment of the right to adequate housing by for example abstaining from forced evictions. The second obligation to protect requires States to take steps to prevent third parties (who instruct or carry out forced evictions) from interfering in the right to adequate housing by protecting the tenure of existing housing against interference or forced evictions by third parties and to enforce such measures. Lastly, the obligation to fulfil requires states to take appropriate legislative, administrative, judicial, budgetary, promotional and other

¹ South African Human Rights Commission, 2002, *The Right of Access to Adequate Housing*, 5th Economic and Social Rights Report Series 2002/2003 Financial Year, 5th Report, 1

² See *Mike Campbell (Pvt)Ltd v Minister of National Security Responsible for Land, Land Reform and Resettlement*, Judgement No SC 49/07, Supreme Court of Zimbabwe, 22 January 2008 and Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR1169(cc). For a detailed list of some important cases on Property, Land and Housing Rights, see, B., CHIGARA (ed) 2012, *Re-conceiving Property Rights in the New Millenium Towards a New Sustainable Land Relations Policy*, ix-xii see also MUNYARADZI SARUCHERA & SIBONGILE MANZANA, 2012, “Land and resource rights, tenure arrangements and reform in community-based natural resource management in the Southern African Development Community” in (ed)B.CHIGARA *Re-conceiving Property Rights in the New Millennium Toward a new Sustainable land Relations Policy Land*, 73-76.

³ See, Goal 7, Target 7d of the *Millennium Development Goals* which aims by 2020, to have achieved a significant improvement in the lives of at least 100 million slum-dwellers; The Millennium Development Goals and targets come from the Millennium Declaration, signed by 189 countries, including 147 heads of State and Government, in September 2000 (<http://www.un.org/millennium/declaration/ares552e.htm>). See <http://mdgs.un.org/unsd/mdg/host.aspx?Content=indicators/officialist.htm> consulted on 16/05/2013

⁴See Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR1169(cc)[24], T. KATE, 2011. *A resource guide to housing in South Africa 1994-2010: legislation policy programme and practice*, 42.

measures aimed at the full realization of the right to adequate housing by facilitating the opportunity of everyone to find affordable housing and to provide necessary housing to particularly vulnerable individuals and groups.¹

This requires that the State puts conducive conditions in place to promote adequate housing and the self-help housing program.

1.3 THE PROBLEM STATEMENT

The State has a legal obligation to promote adequate housing by means of measures to make housing accessible, address the housing backlog, confront evictions, address disparities in the type of housing provided, and overcome inequality.² Apartheid dispossessed the majority of South Africans of their land, thereby denying them the right to housing.³ The constitutional right to housing is hindered by many interpretations and applications.⁴ The international experience has shown that there are different forms of state intervention in response to backlogs or inadequacies in housing. Three forms of State intervention can be identified: 1) as a providence state, the State aims to provide everything; 2) as a participant state, the State provides shelter or housing; and 3) as a regulator state, the State lays down rules and regulations to guide the housing process.⁵ The type of intervention adopted impacts on the promotion of adequate housing to different degrees under changing living conditions.

As in other countries, South Africa has witnessed an influx of people from the rural areas who move to the urban areas in search of better living opportunities. Accommodation in the urban areas is expensive. Self-help housing presents itself as a viable solution to this situation. South Africa's self-help housing program takes many forms, including people occupying land and building shelters, in other words, slums; buying a piece of land and building houses; or being funded and assisted to build houses⁶

II LITERATURE REVIEW

This section reviews the literature on the State's legal obligation to promote adequate housing and a self-help housing program. It focuses on the legal understanding of the promotion of adequate housing, the background to self-help housing in South Africa and elsewhere, the complexities of providing adequate housing and, finally, practices in this regard.

¹MANISULI SSENYONJO, 2012, "Land ownership and economic, social and cultural rights in the southern African development community", in *Re-conceiving property rights in the new millennium. Towards a new sustainable land relations policy* Ben Chigara(eds),16-17.

² Government of the Republic of South Africa and Others v Grootboom and Others (note 5 above).

³ South African Human Rights Commission see (note 3 above).

⁴See, Government of the Republic of South Africa and Others v Grootboom and Others (note 5 above), The Housing Act, 1997 (Act No 107 of 1997 as amended in 1999 and 2001), Social Housing Act, 2008 (Act No. 16 of 2008), National Housing Code of 2009.

⁵L. J. NTEMA 2011. Self-help housing in South Africa: paradigms, policy and practice. Doctor of Philosophy Degree in the Faculty of the Economic and Management Sciences (Centre for Development Support) University of the Free State, 18; Chang, 2001, *Globalization economic development and the role of the State*, 36-37.

⁶ L. J. NTEMA, (note 4 above)

II.1 LEGAL UNDERSTANDING OF PROMOTING ADEQUATE HOUSING

According to Gillian promoting adequate housing refers to “Increasing understanding of housing rights includes activities to ensure that NGOs, Community-based organizations, government agencies, development partners and the general public have a better understanding of housing rights; persuading the government authorities to realize their obligations; and working with communities or specific marginalized groups to exercise housing rights directly”.¹ This emphasizes that, in self-help housing, people work in communities such as Community-based organizations, etc in order to improve and promote their right to adequate housing.

The legal understanding of promoting adequate housing is understood to refer to seven criteria advocated at international level by the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR).² These criteria are: legal security of tenure, affordability, availability of services, habitability, accessibility, location and cultural acceptability. The fulfilment of these criteria empowers people to defend and promote self-help housing rights. South Africa is in line with the international instrument as committed to ensure adequate shelter for all and making sustainable human settlements safer, healthier and more liveable, equitable and productive.³

To understand housing rights, the Community Law Centre states that, firstly housing "entails more than bricks and mortar".⁴ It requires land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself. For a person to have "access to" adequate housing, all of these conditions must be met: "there must be land, there must be services, and there must be a dwelling." In addition, according to Jabir et al a house with the basic amenities of water, sanitation and domestic energy, offering a sense of privacy, safety and dignity, is the right of every individual in society.⁵

Furthermore, King⁶ philosophies housing concept stating that housing is a familiar space, full of familiar things. He sees it as the place where people seek to avoid the exceptional and the surprising. King argues that Housing, it is both needless and essential to say, is something we live in. It does not consist of policy documents, strategic plans or best value inspections. He thus based his definition addressing housing policy as something completing different from the activity of housing and needs to be kept separate.

Turner, who has made important contributions to housing discourse, defines housing as a

¹G., NEVINS, 2010. *The Haki Zetu Our Rights: the right to adequate housing*, 41.

² See Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 ; UN Doc.E/1991/23. (1991) UNCESCR. General Comment No. 4. The Human Right to Adequate Housing.

³ South Africa Human Right Commission

⁴COMMUNITY LAW CENTRE, 2005. *Promotion and protection of economic, social and cultural rights enshrined in the Bill of Rights and other African and International Human Rights instruments*.

⁵ JABIR et al .2012 .“A Comparative Analysis of Housing Shortage and Levels of Deprivation in India”. *European Journal of Social Sciences*, Volume 27. Issue 2, p 194

⁶P., KING (2005) *The common place. The ordinary experience of housing*,

process rather than a product.¹ While king² argues that there are three qualities of housing: first housing need is permanent, as we must always have suitable dwelling. Second, our housing need is predictable, thereby allowing for a more regular pattern of provision. Interestingly this second quality of housing needs change slowly to the extent that changes can be readily accommodated.

To illustrate this definition and qualities of housing, Adebayo refers to the successful dweller transformation of informal settlements in Latin America into lower middle-class neighbourhoods.³ This demonstrates the possibilities and benefits of achieving housing incrementally, rather than instantaneously. The third quality of housing becomes apparent: housing, because of its permanence and its predictability, is more readily understandable in that we know we need it, that we will always need it, and to what standard we require it.⁴

The UNCESCR has devoted attention to defining the concept of adequate housing, a phrase used in South Africa's Constitution. Gillian points to the UNCESCR's general comment number 4, paragraph 8, on the seven criteria to clarify what adequate housing means.⁵ Legal security of tenure is fundamental to the right of access to adequate housing; availability of services refers to materials and facilities, including safe water and sanitation, and infrastructure such as roads and electricity; affordability requires that the State ensures that housing costs match recipients' income level and that the costs of low-cost housing, housing materials or rented accommodation should not prevent people from satisfying other basic needs; habitability includes safe construction, enough space, lighting, protection from the weather, ventilation and privacy; accessibility implies that disadvantaged or marginalized groups must be given full and sustainable access to adequate housing; and location means that there must be access to health centres, schools, employment, emergency services and other services. Housing should not be located in dangerous or unhealthy places. Cultural adequacy implies that the way houses are constructed should take cultural needs into account. All things being equal, if one of these criteria is absent, the housing provided is not adequate.

South Africa human rights commission⁶, emphasis is referred to adequate housing requirement: available land, appropriate services, including of housing itself. Access to adequate housing also suggests that it is not only the state who is responsible for the provision of houses, but that other agents within our society, including individuals themselves, must be enabled by legislative and other measures to provide housing. In contrast, Manisuli Ssenyonjo⁷ points out several human rights such as adequate housing, adequate food, work, water and sanitation that are affected by access to land. He also indicates that inequitable land ownership patterns and landlessness give rise to a host of interrelated human rights violations including hunger and inadequate food,

¹J.F.C., TURNER (1976) *Housing by People: Towards Autonomy in Building Environments*. Marion Boyars

Publishers, London. Quoted by ADEBAYO, P. W. 2011. "Post-apartheid Housing Policy and a Somewhat Altered State Role: Does Incremental Housing Still Have a Place in South Africa?" *The Built & Human Environment Review*, Volume 4, Special Issue 2, 6.

²P.,KING, (note above)

³ Idem.

⁴P. KING (note above) 68

⁵G. NEVINS (note above) 20.

⁶South Africa Human Rights Commission (note above)

⁷MANISULI SSENYONJO (note above) 3

inadequate housing, poor health, and extreme poverty. Manisuli Ssenyonjo thus based his argument on addressing a clear relationship between access to land and the enjoyment of economic, social and cultural rights.¹

From the above contrast, International covenant on economic, social and cultural rights (ICESCR) places a duty on State parties to progressively recognize or realize, within its available resources, the right of everybody to adequate housing.² Yet, The notion of provide property rights is viewed as the ideal tenure system, and as a result, land tenure arrangements have remained fixed and this extent, private property is too exclusive and insensitive to the changing social, economic and environmental realities of the region(SADC).³ It follows that, in the context of African communal tenure, there is a degree of community control over who is entitled to accessing resources and thereby qualified for allocation of land for residence and cropping, as rights to common property resources under the group's control.⁴ Therefore, Saruchera and Sibongile have focused their arguments on the main tenure systems currently obtaining in southern Africa are communal property, state property and private or free hold.

II.2 BACKGROUND TO SELF-HELP HOUSING IN SOUTH AFRICA

Self-help housing originated in Sweden in the 1940s. Ntema notes that self-help housing dates, particularly in developing countries, from the 1930s and 1940s when US-agencies like the Housing and Home Finance Administration and later the International Cooperation Administration introduced pilot projects in specific Latin American countries.⁵

While many scholars have contributed to the debate on self-help housing in different countries, the most prominent of these scholars is Turner, who put forward his theories on self-help housing in the 1960s.⁶ According to Turner, any housing programme may be capable of successful delivery, provided it allows dweller control.⁷ Therefore, he argues that “the best results are obtained by the user who is in full control of the design, construction and management (dweller control) of his/her own home”. In this regard, the cost of self-help housing becomes less than a house built by a developer or contractor.

In South Africa, the People's Housing Process is an official self-help housing mechanism which allows groups of people to work together to pool their resources and contribute their labour to build homes.⁸ Self-help housing is defined as a housing process that allows poor communities to act as key decision makers in project planning, design, management and implementation.⁹ However, Ntema points out that, from the perspective of the promotion of self-help housing, the State intervenes to fund the project, to empower people with management skills and monitor

¹Ibidem

²South Africa Human Right Commission (note above)

³SARUCHERA & SIBONGILE (note above) 76

⁴Idem

⁵NTEMA L. J. (note above) 21.

⁶J.F.C., TURNER, (note above)

⁷Idem 23.

⁸K., LANDMAN & M., NAPIER, 2009. “Waiting for a house or building your own? Reconsidering state provision, aided and...”. *Habitat International* (30)4.

⁹L. J. NTEMA (note above) 6.

the implementation of the project.¹

State-provided housing entails a direct role for the State as developer, financier and/or contractor in the housing development process.² This model has been criticized for a number of reasons. The first is the ensuing lack of social and economic opportunities, the second is the lack of adequate and affordable land, and the third is the lack of maintenance. Taken together, these factors increase inequality and the growth in housing demand by different classes, which push people into informal settlements.

In South Africa, self-help housing can be characterized as a formal model that is regulated or as an informal model that is unregulated. It can be identified in both rural and urban areas, when people respond to a lack of State intervention at a particular time.

In general, self-help housing is described as an adequate and direct response to the inability of the State to deliver. In South Africa, self-help housing has long history. During the colonial period, self-help housing was adopted by the African community to reduce the costs of construction.³ Different organizations became involved in this process in order to improve living conditions and empower people to take charge of their own lives.

II.3 INTERNATIONAL SELF HELP HOUSING

Many advocacies have contributed as pointed earlier to the debate on self-help housing in different countries. Latin America and Asiatic countries have pushed the bar far toward understanding of self-help housing debate and practices. Self-help housing occurs at a massive scale, as a consequence of population growth and simultaneous urban growth which pushes people running after better living conditions. Thus follows expansion informal settlement as mode of self-help housing.

Informal settlement as mode from which people use self-help housing, present different figures from continent to continent, with around 28% in South-East Asia, 78% in Sub-Saharan Africa and 39% in Latin America.⁴ According to Peter et al,⁵ in Latin America, governments intervene in two angles: first angle is to gradually provide essential infrastructure in an attempt to ensure that beneficiaries of self-help housing are more fully integrated into the city as working-class neighbourhoods. And the second angle underlines the illegal nature of land capture to be addressed by transferring full title to residents who were, in effect, affected by no developed site. In Mexico, Jan and Otto⁶ point out that at the beginning, the local governments provided land and land-titles, basic services, or even building support; later, a few state governments

¹Ibidem.

²Idem.

³K. LANDMAN, K. & M. NAPIER, (note above) 2.

⁴DEVISARI TUNAS & ANDREA PERESTHU, 2010, *The self-help housing in Indonesia: The only option for the poor?* Habitat International, 316.

⁵P. WARD et al, 2011, *Self-help housing policies for second generation inheritance and succession of "The House that Mum & Dad Built"*. Habitat International 35, 467.

⁶J. BREDENOORD & O., VERKOREN, 2010 *Between self-help e and institutional housing: A bird's eye view of Mexico's housing production for low and (lower) middle-income groups*. Habitat International 34, 360

stepped in self-help housing process, as well as a series of NGOs. Jan and Otto¹ argue that considerable success in developing efficient and low costs policies of land regularization from first generation owners in irregular settlement benefited from one or other of those programs as key factor.

In contrast, Self-help housing in Indonesia is related to being mostly a self-initiated and self-constructed urban settlement, with sometimes low housing qualities and always no security of tenure.² The issue in Indonesia as in other Asian countries is of a housing backlog, its population living in informal settlements and slum-like conditions (Bredenoord et. al, 2014). In these low-cost self-management residential areas, Devisari and Andrea argue and emphasis that the residents rely mainly on their own efforts and their social networks. These low-income Indonesian as other Asian get also supports from international development agencies in the co-productive or self-help for slum upgrading or site and service interventions (Galuszka, 2021). Devisari and Andrea thus, stressed that against all odds Indonesian makes a substantial contribution towards accommodating the urban underclass.

The practices of self-help housing of dwellers in Mexico moved towards a gradual upgrading of dwellings, following a step-by-step approach depending on the household's financial situation, dwellings were improved and expanded, using better building-materials.³ Angel,⁴pointed out that Inheritance and succession in Latin America and in Mexico, Societies have different traditions and laws property holding, gender, inheritance and succession toward success of self-help housing. In Indonesian City, Devisari and Andrea⁵ advocate Ford model of the Indonesian City, as a refined version of the South East Asian city model, has four characteristics: The first is the inner-city kampong; the second is the mid-city kampong, the rural kampong and the temporary squatter kampong. These characteristics lead thus Devisari and Andrea, to state that the profile of the inhabitants changes from time to time along with the city's social transformation.

In self-help housing discourse Devisari and Andrea⁶, argue that Indonesia is in a situation of very low-income for majority of Indonesians. While Jan and Otto⁷ advocate land problem tying Mexico to future urban housing market growth. In sum, an effective and expeditious titling and inheritance programs are an important policy issue, not only to provide security for the beneficiaries but also for the maintenance of the housing stock itself.⁸

II.4 COMPLEXITIES OF PROMOTING ADEQUATE HOUSING

The problem of evictions is compounded by the lack of security of tenure, which is an indispensable pillar of the right to adequate housing.⁹ Homeowners become reluctant to invest

¹J. BREDENOORD & O., VERKOREN, (note above) 362.

²DEVISARI TUNAS & ANDREA PERESTHU,(note above) 315.

³J. BREDENOORD & O., VERKOREN, (note above) 360.

⁴J. ANGEL 2008, *Inheritance in contemporary America: The social dimensions of giving across generations*, Johns Hopkins University Press. cited in P., WARD et all, (note above) 474.

⁵DEVISARI TUNAS & ANDREA PERESTHU, (note above) 316.

⁶DEVISARI TUNAS & ANDREA PERESTHU, (note above) 318.

⁷J. BREDENOORD & O., VERKOREN, (note above) 363-364.

⁸P. WARD, et all (note above) 484

⁹COMMUNITY LAW CENTRE (note above) 7.

in their homes if they face the possibility of eviction at some point.

The UNCESCR has emphasized the need to adopt strategies to define the objectives of the housing sector. Gillian identifies such strategies as the identification of the available resources; identification of most effective way of allocating or utilizing resources for better outcomes; and finally, accountability in the process as well as timeframes for effective implementation.¹ In this regard, South Africa presents a scenario where the resources are available, but the utilization of these resources for better outcomes is missing. In addition, efficient utilization of timeframes to respond to needs has yet to be achieved. Furthermore, there has been a failure to implement appropriate measures at each step of the housing process. These strategies can only produce better outcomes if beneficiaries are consulted and participate in the process. South Africa has yet to respond adequately to all these complexities in its self-help housing programme.

Article 17 of the Universal Declaration of Human Rights (UDHR) declares and provides simply the right to property that shall be guaranteed leaving States with a margin of discretion in determining the scope of the right to property² According to Ssenyonjo, implication of such article of UDHR is that states have a potentially wide margin of discretion to define public need and general interest of the community in a particular national context. Yet the discretion in SADC context is perceived not responding towards public needs and interests while SADC social charter protects the individual right to receive sufficient resources.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) states that if a State is unable to meet its minimum obligations due to a lack of resources, it must at least be able to demonstrate that every effort has been made to use all resources to satisfy those minimum obligations.³ Once again, the efficient allocation of resources comes to the fore. The better the resources are used and the higher the levels of accountability, the higher the odds that the needs of the people affected will be met. Given its limited resources, the State has an obligation to delineate its core minimum obligation to take some measures towards the realization of the right of access to adequate housing. Again, positive action and accountability in the realization of adequate housing are advocated on the part of the State. The above ideas are supported by Kate, with reference to the legal obligation of the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.⁴ In South Africa, efforts have been made to fulfil these requirements.

Above all, realization of the right of access to adequate housing faces difficulty based on housing policy for not having to be contemporary. King,⁵ states housing policy is always related to the current time and context. In this regard, king says that it is because policy and the study of housing policy, chases the immediate. Kind concludes that often housing is seen in terms of policy making and implementation.

¹G. NEVINS, (note above).

²MANISULI SSENIONJO (note above) 5-6.

³UN Doc. E/CN.4/Sub.2/1993/15. paragraphs. 54-57; PADRAIC KENNA, Housing Rights and Human Rights: Feantsa , Faculty of Law , National University of Ireland available at <http://ir.library.nuigalway.ie/xmlui/bitstream/handle/10379/1762/Housing%20rights%20and%20human%20rights.pdf?sequence=1> (accessed:06/04/2012).

⁴T. KATE, (note above) 27.

⁵P. KING, (note above) 66.

II.5 PRACTICES IN PROMOTING ADEQUATE HOUSING

In many developing countries, the main housing practice has been through self-help, driven by people who have moved from rural to urban areas. Bredenoord and Lindertnote conclude that the philosophy of self-help proponents envisages the State's role as the creation of the conditions that enables the urban poor to build their own houses incrementally.¹ Gillian points out that State planning processes are usually complex and busy, officials may have little time to undertake adequate research and consultation concerning housing projects.² She goes on to say that Community-based Organizations and NGOs can help the authorities by providing well-researched information about problems in the delivery of adequate housing and ideas about what might work better. King,³ argue the principal subject of housing research is housing policy, and instead proposes a focus on housing as an activity undertaken by households and individuals. He goes also on to say that the debate government, community-based organizations and NGO's is partly a question of scale, about whether housing should be seen as the preserve of government, planning agencies and large corporate landlords, or as an activity we all take part in as individuals and households. Furthermore, (Galuszka, 2021) substantiates that self-help approach has been earmarked mostly for slum upgrading or site and service interventions supported by international development agencies, while in the context of an active civil society, people's organisations emerge as an important. He goes on to say that self-help approach, represents a substitute to the conventional logic of informal spatial structures being merged and 'incorporated' into the city (Galuszka, 2021).

South Africa's Constitution lays down the right to 'adequate shelter' for all South African citizens within the means of the Municipalities to fund and deliver such housing opportunities.⁴ In practice South Africa as a State intervenes in terms of programmes and mechanisms to encourage self-help housing by increasing affordability.⁵ The State intervenes to allow individual or collective initiatives by households to house themselves, and supports such initiatives by providing inexpensive land, security of tenure, and basic services such as water, sewerage and electricity.⁶

There are three forms of housing provision: The first is houses that are built by a professional contractor, the second is houses built by the state (RDP) and the third is houses built by people themselves.⁷

In 1998 the People's Housing Partnership Trust produced policy guidelines that advocate "greater choice" and "increased input" by participants in the application and use of their subsidies.⁸ As people gather around a common value of having a house, they emphasize the

¹ J. BREDENOORD & P. V. LINDERT, 2010. "Pro-poor housing policies: rethinking the potential of assisted self- help housing". *Habitat International*, volume 34, Issue 3, pp 278-287.

² G. NEVINS (note above) 74.

³ P. KING, (note above) 58.

⁴ K. LANDMAN & M., NAPIER, (note above) 1.

⁵ Idem 3.

⁶ L. J. NTEMA (note above) 31.

⁷ Ibidem

⁸ L. J. NTEMA & L. MARAIS 2009. "Institutionalized self-help housing and state interference: case studies from the Free State". *The Southern African Housing Foundation international conference, exhibition & housing awards*. 11-14 October.

value of a house in terms of its function, rather than the type of material used to build it. Ntema observes that it is important to ensure that there is a close relationship and match between buildings, their users and the lives of the people using them.¹ According to Marais et al, the fact that housing will be upgraded over time ensures that the physical characteristics of the house will most likely improve, should people be given the “freedom to build”.²

People organize themselves around Community-based organizations and NGO’s to respond to their housing needs and changes in their living conditions. It has been demonstrated that the most effective way to improve lives is for people to organize and empower themselves. To Gillian, self-help activities aim at claiming rights directly, without relying on the government.³ In South Africa, the history and approach to planning and township establishment, the duplication of housing institutions and funding mechanisms, the plethora of legislation dealing with housing, land, services and the lack of unidentified land are constraints to solving the housing crisis.⁴ One of the hindrances is sections 10A and 10B of the Housing Amendment Act 4 of 2001, which restrict the voluntary and involuntary sale of state-subsidized housing, making it difficult to implement and promote self-help housing. In addition, beneficiaries are not involved in the planning and sustainability of housing programmes. Furthermore, the lack of information and inadequate communication between the State and beneficiaries affect the promotion of adequate self-help housing in South Africa. Moreover, in many settlements across South Africa, dwellers have attempted to consolidate their dwellings through self-help construction, relying on their limited finances and technical know-how (Ojo-Aromokudu, and Loggia, 2017). They go on to say that areas of concern demand a more regulatory framework to create an enabling environment for more sustainable self-help consolidation.

According to Adebayo⁵ the promotion of adequate housing proceeds from a market perspective, which is an inappropriate provider paradigm to satisfy the enormous demand for housing on the part of the poor as well as the market to meet their needs.⁶ While, Harris,⁷ supports Housing markets as much more dynamic because of interventions such as housing markets renewal and city region. He goes on to say private sector, are not driven by the need to promote community cohesion and mixed neighbourhoods. Rather, the overriding objective is to maximize profit. Whereas Turner suggests that government should stop providing housing and rather start supporting households to achieve housing through self-help.⁸ On the other hand, Marais et al argue that the state control over self-help beneficiaries has been central to the development and practice of a more direct policy on self-help in South Africa.⁹ The state should let the beneficiaries control themselves and help them by enabling the conditions under which they have to operate.

Regarding the practical implications of self-help housing, Marais et al (2008) turn to Turner’s

¹ L. J. NTEMA (note above) 25

² L. MARAIS et al. 2008. “State control in self-help housing: evidence from South Africa”. Paper presented at the European Housing Network Research Conference, Ireland, 6-9 July.

³ G. NEVINS (note above) 70.

⁴ COMMUNITY LAW CENTRE, (note above) 4.

⁵ P. W. ADEBAYO (note above).

⁶ *idem*.

⁷ H., BEIKER (2012) *Race, Housing and community: Perspectives on policy and practice*, 73

⁸ J.F.C. TURNER (1976) (note above).

⁹ L. MARAIS et al. 2008 (note above).

work, which suggests that governments should not provide those aspects of housing which people can provide for themselves.¹ To call on government, King² is of the view that government housing policies are about production and consumption, and are based on a material conception of housing, which sees things rather than activities and meanings. The government should only provide basic services and the beneficiaries should be responsible for building the houses.

In practice, one can advocate that housing as right lies in the State's legal obligation to promote the right to access to adequate housing as stipulated by the Constitution in section 26 of the Bill of Rights. The state cannot fall back on any excuses, as it is required to act positively within the confines of its limited resources. While one can consider a house as a commodity or product, the notion of the market implies the maximization of profit at minimal cost. Beneficiaries who are considered 'customers' (the poor), are neglected in the interests of making profit.

III RESULTS AND FINDINGS OF RESEARCH

The State's legal obligation to promote adequate housing in the case of self-help housing presents some interesting perspectives. The obligation to promote adequate housing requires the State to take action in furthering or advancing the right to housing. In practice, this obligation rests on the seven criteria advocated by UNCESCR to give meaning to adequate housing. These criteria include legal security of tenure, affordability, availability of services, habitability, accessibility, location and cultural acceptability. Incompatibility occurs when the state does not promote even one of these seven criteria. The best scenario for South Africa, in terms of available resources, is to promote self-help housing. However, the implementation of legislative measures poses a problem.

IV. CONCLUSIONS AND RECOMMENDATIONS

IV.1 CONCLUSIONS

This paper has examined the State's legal obligation to promote adequate housing in a case study of the self-help housing program. The results reveal that the practices of the self-help housing program have not been effective, regardless of its long history. Despite support from international and local organizations stated in previous section, self-help housing remains a small percentage of housing in South Africa.

In order to promote the right to adequate housing through self-help housing, changes in the rules and regulations that affect the way in which policy mandates are interpreted and implemented by the State are necessary. The self-help housing program appears to be the most viable alternative in terms of responding to the need for adequate housing.

¹ Ibidem

² KING, (note above) 2.

IV.2 IMPLICATIONS FOR PRACTICE AND FURTHER RESEARCH

The practice of self-help housing will impact on the living conditions of the beneficiaries. In the worst-case scenario, without self-help practice, the standard of living of those in need will not improve, given the ever-increasing growth of the urban areas as well as population growth. Self-help housing practice needs to be in line with the UNCESCR criteria for adequate housing. Turner's view that governments should not provide assistance beyond what people themselves are able to provide should be borne in mind.

Further research could focus on an increase in the provision of financial resources to those in need; an examination of land resources and how these could be made available; and research into training in self-help management and creating awareness.

IV.3 RECOMMENDATION

Self-help housing practices need to be promoted. First of all, planning process needs to be in place. Planning is considered as a process of dialogue between different systems of meaning in the search for areas of consensus, and should not be regarded as a technical procedure but as consensus building through communication.¹ Then comes community-based organizations, associations and Ngo's in housing discourse. Housing associations must demonstrate, when carrying out all their functions, their commitment to equal opportunity. They must work towards the elimination of discrimination and demonstrate an equitable approach to the rights and responsibilities of all individuals.² Secondly, the national department of housing must consider adopting a communicative action approach, which encourages the involvement of all beneficiaries and those affected in its planning in order to promote different and diversity while achieving integration.³ In practices, self-help housing requires careful planning, large amounts of capital, political consensus and dedication to design a low-cost public housing programme as well as a whole arsenal of skills to manage the different players and stakeholders, each with their own agenda and interests.⁴

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¹ South African Human Rights Commission see (note 4 above) 53.

²H. BEIKER, (note 70 above) 41.

³South Africa Human Right Commission (note above) 53

⁴DEVISARI TUNAS & ANDREA PERESTHU, (note above) 316

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