



Migrants and Housing

1. Introduction

The question of housing in South Africa has been a thorny and urgent issue for decades. Post-1994, there was an attempt at dealing with the problem through the RDP (Reconstruction and Development Programme).¹ This was meant not only to provide social housing for the poor, but also to stimulate economic growth and to bring many people from informal settlements into the housing market. Most fundamentally, it was also an attempt to fulfil the requirements of section 26 of the Constitution, which says that:

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right

Though the RDP was meant to build social housing for poor South Africans, and even though one needed to be a South African citizen to receive an 'RDP house', the question of the constitutional imperative for housing for all, is much more complex. It is clear that the Constitution does not say that all have a right to state social housing, but rather that everyone, irrespective of citizenship, has the right to access housing. But what does this mean for migrants, poor or not? Do migrants in South Africa actually have access to adequate housing?

2. Migrants' Housing Obstacles

There is a small minority of very wealthy foreigners that is often blamed for buying up property and inflating house prices especially in

the major cities. They have access to large financial and legal resources that enable them to access housing and property fairly easily. Most migrants in South Africa, on the other hand, are ordinary hard-working people, who do not depend on state support for housing or resources. However, though they can afford to pay for adequate housing, their uncertain legal status often leaves them living in totally inadequate housing and struggling to access the 'adequate' housing that the Constitution guarantees.

At a recent roundtable discussion in Cape Town on the question of *Migrants and Social Housing* hosted by the Catholic Parliamentary Liaison Office, it was noted² that the question of public housing in South Africa has been a difficult and conflicted one, with many South Africans living in shacks and overcrowded spaces in townships and informal settlements. The situation of migrants was found to be even more precarious and difficult. It became obvious as the discussion unfolded that there were three pillars which underpinned the problems migrants faced in accessing not just social housing, but housing in general.

2.1. Legal documentation

Many of the problems migrants face start with problems around documentation. The Department of Home Affairs is often quite inefficient in processing and providing appropriate documents for migrants in a timely and proper manner. This has meant that huge numbers of migrants either have no documents at all; have incomplete documents; have temporary documents; or have the wrong documents.³ To compound the problem, most South Africans, such as bank staff, landlords, police officers and municipal officials, have little understanding of what the various migrant documents are and what

they mean. This leads to problems with police; problems with access to banking; problems with access to social services; and difficulties with landlords, who all expect a South African identity document for all transactions, while migrants often have other forms of legal documentation.

2.2. Asylum Seekers or Refugees?

The vast majority of migrants in South Africa are considered by Home Affairs as asylum seekers and not refugees. Only fewer than 10% are given refugee status, which in turn grants all the rights of a citizen except the right to vote.⁴ However, asylum seekers get temporary documents valid from around a month to three or four years. This makes it difficult for them to get access to services such as banking, which is required for renting or buying housing. It is also almost impossible to get a lease if one's documents are still temporary. In many cases the situation is even worse: if the documents have expired and the application is still being processed by Home Affairs, the migrant is without any documents to contract anything.

2.3. Poverty

Because of the difficulties that migrants have in accessing housing legally, many South Africans offer them housing at much higher prices;⁵ others refuse to give back their deposits at the end of the lease, and many other forms of exploitation of migrants take place. This exploitation exacerbates the conditions of already poor migrants. Poverty also means that people end up living in shacks, abandoned buildings or other dangerous spaces because they cannot afford to live anywhere decent. Poverty also means many are forced to find places closer to work, and these are often expensive or overcrowded.

Given all these problems, the option of accessing social housing becomes close to impossible, making migrants even more vulnerable and poor. The result is that the major source of housing for migrants becomes private rental housing, and this has its own challenges.

2.4. Rental housing

With state housing unavailable to migrants, and because banks do not readily give home loans to migrants due to their lack of stable domicile, the only option left is rental accommodation. But this brings further challenges. In a study entitled *Migrant Access to Housing in South African Cities*, Jennifer Greenburg and Tara Polzer note that:

In the private sector, migrants face wide-spread discrimination and xenophobia on the part of

*landlords and estate companies, some of whom are unaware of who constitutes a legal migrant and whether it is legal to rent to refugees. These constraints often lead migrants to informally sub-lease, live in overcrowded and unsanitary conditions and pay bribes to access accommodation. Volatility is another key characteristic of housing histories: many migrants and refugees describe histories of continuous displacement from one temporary form of accommodation to the next.*⁶

All these issues persist and make the housing condition of migrants extremely unstable and definitely inadequate, falling far short of what is required by the Constitution.

2.5. Social housing

According to the South African National Housing Code⁷, citizens and those migrants with specific permits are eligible for social housing.⁸ However, even for such migrants, their eligibility is on a case by case basis, unless they have a permanent residence permit. This has caused much confusion about who is entitled to social housing and who is not. The problem is compounded when South African citizens, who do not understand what the law says about entitlement to social housing, see any social housing provision to migrants as either corruption or as taking housing away from deserving locals.⁹ In one of the recent xenophobic events in Johannesburg's Alexandra township, some locals saw migrants occupying social housing, and demanded that they vacate those houses, claiming corruption. When it turned out that the houses had been acquired legally, the locals still demanded that the migrants be deprived of the houses by the council. Such events discourage many deserving migrants from seeking social housing, and instead they end up in informal housing and overcrowded, degraded inner-city buildings. To make things worse, the record of police intervention in support of the migrants leaves a lot to be desired; they are mostly left unprotected.

Because of all these obstacles and a general lack of civil protection, many migrants end up being exploited by all manner of unscrupulous landlords and criminals. It is not uncommon to hear of a migrant renting out or even buying an RDP house, only to be evicted by the owner after money has been paid. Since these RDP houses cannot be sold for a certain period of time, the police consider the sale to be criminal activity, and so the migrant will not get police protection to regain the monies paid. Or the migrant simply gets threatened with

violence if they do not vacate the house and forfeit all moneys paid. This situation has become a breeding ground for criminals and criminal syndicates to take advantage of people.

3. Economic Activity

The objectives of the Department of Human Settlements' *Comprehensive Plan for the Development of Sustainable Human Settlements* include:

- Utilising housing as an instrument for the development of sustainable human settlements, in support of spatial restructuring;
- Combating crime, promoting social cohesion, and improving quality of life for the poor;
- Leveraging growth in the economy; and
- Utilising the provision of housing as a major job-creation strategy.

If the failure to provide migrants with access to adequate and safe housing is leading to criminal behaviour, to people living in dilapidated conditions, and to social exclusion driven by greed and xenophobic activity, then the Department is failing in three of its four objectives.

Part of the contribution of migrants in seeking rental accommodation has been the promotion of the rental market in the country. If this sector is also failing to provide safe, secure, and reasonable access to rental housing, that also begins to undermine what is potentially a huge zone of economic activity, leading to a fourth failure in the Department's objectives. Given all the challenges that migrants are facing with regard to housing, the question must be asked as to why the state, and specifically the Department of Human Settlements, is not intervening to radically realise, not just its own objectives, but also the demands of section 26 of the Constitution?

4. Numbers Matter

It might be argued that with millions of South Africans living below the poverty line; with almost 17 million on social benefits and needing state support to survive; and with the state also having provided around five million 'housing

opportunities' for its citizens, migrants are an insignificant number and, thus, this issue is irrelevant.

However, even if there were only 100 migrants needing housing, the Constitution asserts that everyone has rights, and these are just as important for one person as they are for the millions. At present there are around three million migrants in South Africa.¹⁰ Many of these are located in urban areas and especially in Gauteng province. In Gauteng, many of the migrants, who are not wealthy, are located in informal settlements and inner city places such as Diepsloot, Ivory Park, and Jeppestown. Acquiring space in informal settlements and inner city buildings is an informal process; what is required is a relatively small amount of money and knowing the right people, and not necessarily any legal documentation.

It is also worth noting that in 2015 there were 29 million travellers¹¹ departing or arriving in South Africa, adding to the need for a more sensitive, efficient, clearer, and welcoming policy to non-South Africans, as they form a huge part of economic activity in the country, irrespective of how long they stay.¹²

5. Interventions

What is clear from all these issues is that one of the biggest problems with the question of migrants in general is the ignorance around who they are, what their place is in the country, what kinds of documentation they need, and crucially, what rights they have. This means that education and public awareness must be the first step in dealing with all these challenges. As the public campaign against xenophobia has shown, education plays a crucial part in dealing with how people relate to those whom they are not familiar with.

It is also vital that there is proper education of police and state officials about who migrants are, what their various legal standings are, and what rights they have. In addition, there needs to be a greater consciousness among police officers that everyone in the country, irrespective of who they are and even if they have no documents, has rights and deserves the respect and protection of the police.

Finally, direct intervention is needed by the various relevant government departments to bring migrants into the mainstream of the

economy so that they actually contribute directly to the growth of the economy and the wellbeing of the society through deliberate inclusive policies and programmes.

6. Conclusion

If indeed migrants are being pushed into informal settlements and unregulated, overcrowded and dilapidated inner-city buildings, then South Africa's immigration policy is indirectly determining housing policy, with migrant ghettos being created. Any policy or behaviour that creates or perpetuates social segregation between South Africans and migrants should be a cause for great concern. Squeezing migrants into informal housing spaces also has the effect of pushing them more into the informal economy, which is often prone to crime and also prevents them from making a full and meaningful contribution to society.

The South African government has a policy not to have refugee camps and to try to integrate

migrants into wider society. If migrants find it difficult, or close to impossible, to access adequate housing, then government's desire to integrate everyone becomes a hollow declaration. Even if government does not have the resources to provide housing for all migrants, with efficient access to proper and legal documentation for all migrants, and education and recognition of the positive impact of migrants on economic activity in the country, access to adequate housing will become less of a challenge and might even open up new economic opportunities.

At the end of it all, the right to housing is not a favour to anyone but a right granted and protected by the Constitution. Thus the task is to ensure that all policies and behaviour by everyone in the country, allow for the realisation of that right for all, citizens and migrants alike.

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¹ For further information about RDP housing in South Africa, see CPLO Briefing Paper 432: *RDP Housing: Success or Failure?*

² Tendai Bhiza of the migrants' organisation PASSOP.

³ <http://www.news24.com/SouthAfrica/News/900-immigrants-take-Home-Affairs-to-court-20140704>

⁴ http://sihma.org.za/news_item/2015-asylum-statistics-south-africa/

According to the Scalabrini Institute for Human Mobility in Africa, in 2015 South Africa's Department of Home Affairs had a 96% rejection rate of asylum applications,

⁵ https://books.google.co.za/books?id=ZzRSDQAAQBAJ&pg=PA30&lpg=PA30&dq=migrants+charged+more+for+rent,+south+africa&source=bl&ots=xyWwg1LpSI&sig=wdD0WXwa9dKmolNOU9Fgh6I1dNQ&hl=en&sa=X&redir_esc=y#v=onepage&q=migrants%20charged%20more%20for%20rent%2C%20south%20africa&f=false

⁶ Jennifer Greenburg and Tara Polzer, *Migrant Access to Housing in South African Cities*, Forced Migration Studies Programme, University of the Witwatersrand, Johannesburg. 2008, Pg 3.

⁷ <http://urbanlex.unhabitat.org/law/735>

⁸ <http://policyresearch.limpopo.gov.za/bitstream/handle/123456789/1084/National%2520Housing%2520Policy%2520and%2520Subsidy%2520Programmes.pdf?sequence=1>

⁹ <http://www.iol.co.za/news/south-africa/foreigners-shouldnt-qualify-for-houses-404272>

¹⁰ The actual number of migrants in South Africa is a contested number and has always been an estimate based on actual data and estimates by StatsSA and DESA. Africa Check has tried to put the various arguments forward: <https://africacheck.org/factsheets/data-migrants-numbers/>

¹¹ <http://www.statssa.gov.za/publications/Report-03-51-02/Report-03-51-022015.pdf> (paragraph 3.1.2)

¹² Travellers are not necessarily migrants, but all migrants are by definition travellers and should be given the same courtesy and welcome that we afford other travellers.