



The Future of Shack Housing in South Africa

1. Introduction

The number of households living in backyard dwellings increased by 55% during the previous decade, while the number living in free-standing shacks decreased by more than 120 000.¹ More and more people are moving into RDP houses, and many new owners of such houses take in 'backyard' tenants. So although the number of shacks visible in informal settlements may be decreasing, millions of poor and vulnerable people still face significant challenges in accessing adequate housing and other basic services including water, sanitation, electricity, and refuse removal; they continue to live in deplorable conditions, often without access to the economic opportunities required to escape from poverty.² The right to adequate housing is one of the most important of all basic human rights, and is recognised in a number of international human rights instruments and treaties. Adequate housing, or 'shelter', is made up of various elements: a place to eat; to sleep; to relax and to raise a family. Expanding the supply of such housing in low- and middle-income countries is important because of the wide-ranging consequences for living standards, social stability and economic progress.

2. The History of Shacks

Nearly 170 years ago the colonial state sought to force more people through the 'gate of misery' with the introduction of *isibhalo*.³ This plan took the form of a period of obligatory labour which forced unmarried men who were resident in the 'locations', and who did not possess a pre-existing employment contract with a white employer, to work for the colonial state on farms, mines, sugar estates, etc. Squatting, the popular appropriation

of land, became a widely used tactic both to gain access to arable land and to avoid taxes. The state responded to this form of insurgent communalising of land by giving magistrates the power to remove African trespassers from public and private lands.

According to Bill Freund, in 1950 the legal foundations for successful segregation of the cities were laid via the Group Areas Act, which eventually resulted in mass forced removals of blacks to segregated areas and townships on the peripheries of the cities. Cities often presented this project as the noble art of slum clearance,⁴ and black shack-dwellers were relocated to racially segregated townships far away from the city centre, such as kwaMashu in Durban, Langa and Nyanga in Cape Town, and Soweto in Johannesburg.⁵ All of these factors, together with accelerated urbanisation towards the end of the 20th century, helped to give rise to informal' or 'shack', settlements.

3. Housing Policy in South Africa

Section 26(1) of the Constitution provides that everyone shall have the right of access to adequate housing. The right of access means that the State must create conducive conditions for all its citizens, irrespective of their economic status, to access affordable housing. Section 26(2) goes on to provide that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. Section 26(3) of the Constitution prohibits evictions of persons from their homes and the demolition of their homes without a court order.⁶ Taken together, these provisions place a high priority on the right to adequate housing, and it is therefore arguable that the State should continue to offer subsidised housing

opportunities until the challenge has been met.

4. Current Issues Regarding Shack-Dwellers

Shack-dwellers are regularly under attack throughout the country in the form of evictions. The *Abahlali baseMjondolo* Movement SA, based in informal settlements in KwaZulu-Natal and the Western Cape, focuses on looking after the rights of shack dwellers and ensuring that they receive adequate housing. It has also started representing backyard dwellers. The movement has been in and out of court to fight the State in a number of applications around housing rights. One interdict in Durban was reportedly used by the State to evict shack dwellers in the Marikana Land Occupation settlement in Cato Crest at least 12 times. In the process, people's shacks were demolished and activists were shot at, resulting in several deaths of shack-dwellers. In Sisonke settlement in Lamontville, the same interdict was used to repeatedly evict and demolish shacks on a number of occasions.⁷

In its statement on these actions *Abahlali BaseMjondolo* asserts,

*"These evictions show how cruel our state departments are towards the poor. When evictions are carried out, people's homes are demolished and their possessions are broken and scattered in the mud. The perpetrators are members of the [South African Police Services], the City Police, private security companies and sometimes also structures of the ruling party. People, including the elderly and children, become the first victims when they lose every little thing at the hands of those who are supposed to be their protectors."*⁸

In some cases, the State has been accused of using innovative ways to get around the law to evict shack dwellers, for example by using interdicts instead of applying for eviction orders. The people in one Cape Town informal settlement were evicted by the city, and the eviction attempt was then challenged by these shack-dwellers in court. The city's lawyers argued that a shack was not home because of the temporary material used in its construction, and therefore the demolition of these shacks was lawful.⁹ However, the judge found this to be irrelevant because a home was a structure built for the purpose of domestic occupation. This made it impossible for the State to demolish any further shacks which had been built for the purpose of occupation as a home.

5. Challenges in Eradicating Shacks

RDP housing was supposed to be the answer for many homeless South Africans; a means to uplift themselves and enjoy a better quality of life. In some cases this was achieved, but sadly in many other instances there have been numerous problems. A huge number of houses have been built by government over the past two decades, but RDP houses have been under severe scrutiny. Stories are often heard about people struggling with the quality of the houses built, and there are some alarming statistics around RDP housing.¹⁰ Even though the minister of human settlements, Lindiwe Sisulu, has condemned the selling of RDP houses, beneficiaries continue to sell them and go back to living in shacks. In her statement, the minister says that,

"Our people must be cognisant of the fact that they only qualify once for housing assistance from government and therefore a decision to sell the houses we provide them should not be taken lightly, it should be driven by the fact that their economic conditions have changed for the better".

In an attempt to avoid this problem, the department has amended the Housing Act 107 of 1997 to provide that a subsidy beneficiary "shall not sell or otherwise alienate his or her dwelling or site within a period of eight years."¹¹

On the other hand, urbanization also plays a big role in our failure to eradicate shacks. People move from the rural areas with hopes of finding jobs and better living conditions in the cities, and to be closer to resources such as electricity, education, water and sanitation. With the unemployment rate at 27% it is not surprising that, when people move to urban areas, not everyone can afford to pay rent. The percentage of the population living in urban areas has increased from 52% in 1990 to 62% in 2011. To deal with the consequent new demand for housing units would cost R35 billion per year over eight years, which is 'far beyond the state's fiscal capacity.'¹² People then resort to building shacks on public or private land. In doing so, the speed of people and the pace of Human Settlement plan to eradicate shacks to better people's lives is much slower than the pace in which shacks constructed.

6. Future of Shacks

The sad reality is that shack settlements will continue to grow as long there is movement of people from small towns and rural areas to big cities. Many people believe that government is neglecting the rate and scale at which these settlements are growing. Simple and inexpensive measures could be taken to make these structures more robust and to expand municipal services to them. (This is indeed being done in some areas.) On the other hand, it may be considered to be more cost-effective to densify existing townships and RDP settlements, rather than to undertake large-scale site and service schemes beyond the urban edge.

Furthermore, maladministration of the current RDP system still persists: "Approximately 10% of the complaints received by the Public Protector were about maladministration, often relating to waiting lists and irregular allocations."¹³ It has been reported that government has lost billions of rands on corrupt officials and shoddy construction. The tender process should ensure that it includes professionals and experts when judging the winning tenders, so that the housing delivery model remains competitive, as well as suited to the demands of the project.

Research conducted by the Human Sciences Research Council states that, amongst other

challenges, a differentiated phenomenon clearly requires a diverse policy response, rather than a standard approach. Careful consideration must be given to the principles that should underlie a national policy towards informal housing, as well as the practical complications of implementation in different localities, including dealing with privately-owned land.¹⁴

7. Conclusion

Since shack-dwellers have felt themselves to be under constant attack by the State, one of the largest social movements has emerged from their struggles across the country in recent years. Shacks will continue to be built due to high unemployment and urbanization. The National Housing Department needs to find a robust solution to make sure that the tender process and the pace in which houses are built for the poor is efficient and transparent, thereby avoiding both backlogs and corruption.

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¹See Backyard shacks and the urban housing crisis: stopgap or prototype solution?

<http://www.hsrc.ac.za/en/review/hsrc-review-january-2015/backyard-shacks-and-urban-housing-crisis>

² See Strategic Focus Area: The Right to Adequate Housing <https://www.sahrc.org.za/index.php/focus-areas/access-to-justice-adequate-housing/access-to-adequate-housing>

³ Keletso E. Atkins, *The Moon is dead! Give us our money! The cultural origins of an African work ethic*, Natal, South Africa, 1843-1900 (James Currey, Ltd: London, 1993) pg 48

⁴ Richard Pithouse. *A Rough Guide to Commons, Enclosure and Popular Insurgency in Durban* http://abahlali.org/files/Durban_commons.2.pdf

⁵ Bill Freund, *Insiders and Outsiders: The Indian working Class of Durban, 1910-1990* (Pietermaritzburg: University of Natal Press: 1995) pg. 3

⁶ Constitution of South Africa, 1996

⁷Sarah Benjamin, *CounterPunch: The Shack Dwellers Movement in South Africa*, <http://abahlali.org/node/14773/>

⁸ Ibid

⁹Ibid

¹⁰ The good, bad and ugly of RDP housing since 1994, <https://consumersurveys.co.za/the-good-bad-and-ugly-of-rdp-housing-since-1994/>

¹¹ See http://www.saflii.org/za/legis/num_act/haa2001187.pdf

¹² Financial and Fiscal Commission. 2012. *Housing Finance Options Analysis*. Available. [Online]: <http://www.ffc.co.za/index.php/media-aevents-interactive/public-hearings/housing-finance> (August 2013).

¹³Sondre Bailey, *RDP Housing: Success or Failure?* <http://www.cplo.org.za/wp-content/uploads/2017/02/BP-432-RDP-Housing-May-2017.pdf>

¹⁴ Dr Borel-Saladin, Backyard shacks and the urban housing crisis: stopgap or prototype solution?
<http://www.hsrc.ac.za/en/review/hsrc-review-january-2015/backyard-shacks-and-urban-housing-crisis>

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