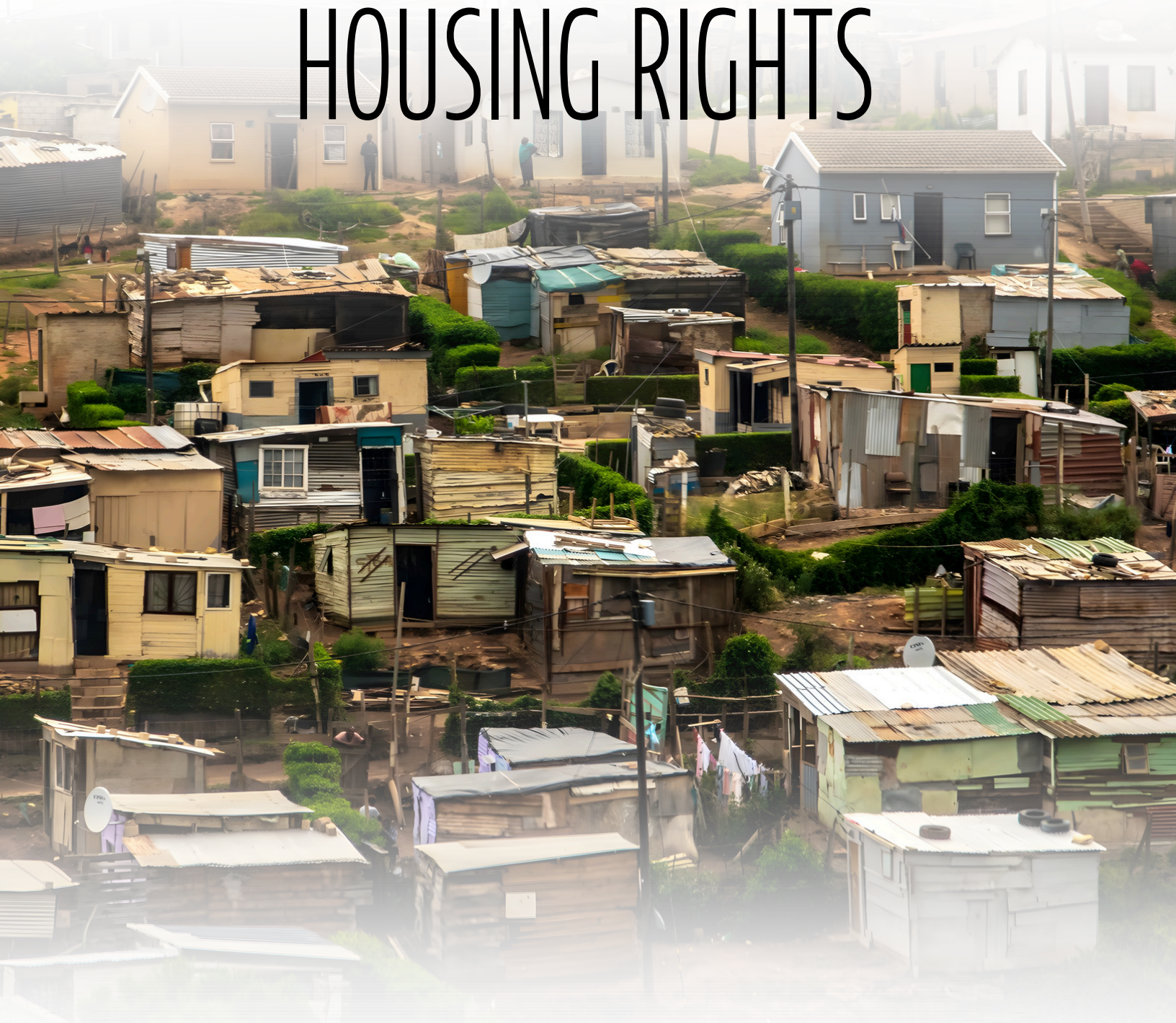




# STATE CAPTURE AND BEYOND

# HOUSING RIGHTS



# State Capture and Beyond

## Housing Rights

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Written by Jonathan van der Walt

With thanks for feedback, support, and additional research to Eldonna Muhwava, Moray Hathorn, Anita Khanna, Pashkar Moodilar, Rehad Desai, Rashaad Dadoo and Claire Rankin



## Background

The State Capture and Beyond (SCAB) project is a collaboration between Brot für die Welt (Bread for the World [BfdW]), the Human Rights Media Trust (HRMT), and the Legal Resources Centre (LRC) with co-funding from the European Union (EU). The purpose of SCAB is to address corruption in South Africa based on the recommendations from the [Commission of Inquiry into State Capture \(CISC\)](#). To do this, it is bringing together Civil Society Organisations (CSOs) and Community-Based Organisations (CBOs). The desired outcome is to create a national movement against corruption, empowering individuals to understand, demand, and assert their rights. Addressing the deep wound of corruption directly helps the wound to scab over and heal.

[Brot für die Welt](#) is the largest Protestant non-governmental development and human rights organisation in Germany. Active in almost 90 countries with more than 60 years of experience, it aims to empower poor and marginalised groups to improve their living conditions. This organisation has a long history of working with the EU and has coordinated many projects across South Africa. For SCAB, BfdW brings a wealth of experience with worldwide connections and partners, making it the perfect fit in the role of coordinating and monitoring the project.

The [Human Rights Media Trust](#), a non-profit organisation founded in 2004, partners with social justice initiatives to operate throughout South Africa. HRMT focuses on media, non-extractive filmmaking methods, and social impact campaigns to amplify calls for justice while promoting a culture of democracy. HRMT spreads information with an innovative use of media and creative narratives to empower marginalised community voices.

The [Legal Resources Centre](#), founded in 1979, is a non-profit human rights law organisation with offices in Johannesburg, Cape Town, Durban, and Makhanda. The LRC actively defends the Constitution and rule of law in South Africa, encompassing diverse areas of the law: land, housing, health, education, equality, and socio-political rights. With a long history of providing legal services, the LRC has a deep understanding of human rights law and has developed longstanding alliances with grassroots movements.

## Summary

South Africa's housing challenges escalate year on year. The right to housing, as enshrined in the Bill of Rights, has been dogged by political and economic problems from day one, which have only served to enhance the inadequacies and backlog in housing supply inherited by the democratic government in 1994. It is trite to state that a house or shelter is vitally important for protection from the elements, for safety, comfort, and as a hub for accessing services. This is what made the displacement of entire communities during apartheid so distressing and underpinned the need for dignity and equality in the democratic era. The apartheid government dictated where people could reside based on race and only provided service delivery to the white communities. This disparity persists in many areas through a spatial apartheid based on wealth that still follows the old racial lines.

The right to housing is a fundamental legal right recognised at all levels of law. The United Nations' International Declaration of Human Rights recognised the importance of housing in 1948. This right became binding on member states in 1966 through the adoption of the International Covenant on Economic, Social, and Cultural Rights. In the case of *SERAC v Nigeria* (2001), the African Union also interpreted the 1981 *African Charter on Human and Peoples Rights* to include a right to housing.

The South African Constitution includes a progressive right of access to housing. In section 26(1), the Constitution states that "Everyone has the right to have access to adequate housing." This is an example of a progressive right that first provides immediate protections to help individuals keep access to their housing. It also has a progressive aspect that requires the government to promote access to housing within its available means. Several statutes give meaning to the right of access to housing, which include:

- **Housing Act 107 of 1997.** The Housing Act provides a structured approach to housing development, ensuring that all levels of government have clearly defined duties.
- **Extension of Security of Tenure Act 62 of 1997 (ESTA).** ESTA provides measures to secure land tenure while regulating conditions of residence and circumstances that allow for the termination of land tenure.
- **Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act).** The PIE Act gives meaning to s 26(3) of the Constitution on evictions, prohibiting unlawful eviction and setting out a process for lawful evictions.

- **Rental Housing Act 50 of 1999 (RHA).** The RHA outlines the responsibility of the government with respect to rental housing.
- **Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA).** SPLUMA provides a framework for spatial planning and land use management.

Under the Housing Act, the National Housing Code, 2009, is the guiding regulation on the South African housing programmes. It provides the policy principles, guides, norms and standards for the various housing assistance programmes. It also includes a comprehensive list of all the subsidy and assistance programmes that South Africa offers to help residents access their right to housing. The National Housing Code aims to simplify the process of implementing housing projects. This regulation ensures that the right to housing is progressive.

The interpretation of the right of access to housing is also developed extensively through case law, especially with cases based on evictions. Several important eviction-related cases expand on the right of access to housing and the duty placed on the state to realise this right:

- *Government of the Republic of South Africa and Others v Grootboom and Others* (2001) places an obligation on the government to ensure evictions are humane; to provide emergency basic housing; to include basic services with housing; and to regularly examine and remove hurdles that restrict access to rights.
- *Port Elizabeth Municipality v Various Occupiers* (2005) found that PIE requires a careful balancing of competing rights where the state must consider relevant circumstances when carrying out evictions.
- *Charnell Commando and Others v City of Cape Town and Another* (2024) requires municipalities to provide temporary emergency accommodation based on the “as near as possible” principle while communicating with residents to find equitable solutions.

Despite this progressive legal framework, the government has failed to keep up with the demand for housing. In fact, the demand for housing, due to a combination of factors, continues to far outstrip the supply. This requires us to look back on the goals of the white paper on the Reconstruction and Development Plan (RDP). The plan presented in the RDP was to provide housing to create communities focused on upskilling residents so that they could be economically empowered. This would serve as a foundation for upliftment, allowing them to move into better housing.

There is a damaging mix of reasons for the continuous failure to provide an adequate supply of houses. Five challenges continue to stand out in this mix:

- **Spatial Apartheid.** A legacy of the apartheid government was the separate development of areas based on race. This would involve rewarding favoured groups, usually white and Afrikaans, with better funding and development, creating privilege. Wealth disparities from this historic privilege mean that these divisions remain prominent despite changes to law and policy.
- **Rapid Urbanisation.** South Africa is highly urbanised, with over two-thirds of the population living in urban areas. Many people from rural areas move towards cities for better opportunities, putting a heavy strain on urban infrastructure.
- **Informal Settlements.** Informal settlements usually develop close to cities and towns as part of urbanisation. These settlements lack service delivery infrastructure and consist of shelters that are built with whatever material is available. This creates a burden on urban areas while leaving people suffering in squalid conditions.
- **Evictions and Temporary Housing.** Evictions present a conflict between the right of access to housing and the right to property, where property owners usually have more resources than occupiers. This can create a need for temporary housing, which is not always available or of sufficient quality.
- **Crime, Corruption, and Construction Mafias.** Criminal activity is a serious concern that interrupts, delays, and increases the cost of housing construction. This can reduce access to housing while taking funds away from other important projects.

When problems occur with the supply of housing, the quality of housing, and service delivery, it becomes worthwhile to know how to hold government accountable. There are steps that anyone can take to improve accountability, including voting for a change in leadership. Following these steps while keeping notes also allows for building a docket of information that can become valuable evidence for court cases, presentations to the government, or gaining media attention.

- **Gather Information.** By law, government departments must maintain public websites that host useful information, including contact details, available housing assistance programs, and reports on various topics. If information is missing, it is possible to request the details using PAIA (Promotion of Access to Information Act 2 of 2000) requests.
- **Report Directly.** A good starting point is to use government-provided online systems, email addresses, and hotlines to report problems.

- Escalate Communication. If there is no response to a direct report of a problem, escalate by communicating with officials in higher positions or politicians, such as ward councillors.
- Take Part in Local Government Decision-Making. There are legal obligations on the government to encourage public participation, including hosting public consultations with communities.
- Use Social Media. Posting about housing quality, housing availability, service delivery, and any other related issues on social media can be a powerful way to raise public awareness.
- Blow the Whistle. Blowing the whistle can be dangerous, but it is often the only way for others, including those with the authority to investigate, to learn about a problem.
- Get Organised. Joining or starting a community-based organisation can be a powerful tool for change by grouping resources and increasing awareness.
- Write Submissions. Writing directly to the National Assembly can draw the government's attention to municipalities failing in their duties.
- Create Petitions. A petition, signed by supporters and endorsed by a National Assembly member, can show widespread interest in finding solutions.
- Inspire News Articles. Writing news reports for publication or contacting journalists to request they cover specific topics can raise awareness.
- Take Part in Protests. A group protest, which is protected by the Constitution, shows solidarity to powerfully force attention onto housing issues.
- Litigate. While expensive and requiring legal expertise, litigation can be a powerful tool in demanding the right of access to adequate housing.
- Vote. In a democracy, voting is the most powerful tool for holding the government accountable. Voting in national and local elections provides valuable opportunities to replace government officials who may not be fulfilling their constitutional duty.

Using one or a combination of these methods helps to promote governmental accountability. These methods should allow all people, regardless of resources or time, to play a part in improving accountability. All residents in South Africa deserve the right of access to adequate housing, and this is what makes it so important to hold the government accountable for fulfilling this right.



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## Introduction

Although the government has provided over 5 million subsidised housing opportunities since 1996,<sup>1</sup> the number of households in informal settlements has remained around 1.5 million.<sup>2</sup> Access to housing remains one of the greatest challenges facing South Africans. It has led to large informal settlements, especially in metropolitan areas. Informal settlements are a horrifying example of injustice as South African residents become economic refugees in their own country, building shelters out of whatever scraps of material they can find. Housing has immense value as it provides a place of stability and serves as a secure sanctuary for social, emotional, and economic lives.<sup>3</sup> Adequate housing provides shelter from the elements and a safe place to sleep, while also enabling access to necessities such as water and electricity.<sup>4</sup> Adequate housing, as a basic necessity, therefore creates a secure foundation that promotes equitable development. South Africa needs to rethink its efforts by fostering collaboration among the different levels of government, consulting communities, and using alternative measures to provide an effective right of access to housing.

The history of housing in South Africa is a sorry tale. Along with colonisation and the displacement of indigenous groups, South Africa also experienced 46 years of legislated apartheid from 1948.<sup>5</sup> The ideology of apartheid centred around the separate development of different racial and cultural identities. The best areas and the right to move around freely were reserved for the white population. One of the first legislative products under apartheid was the Population Registration Act 30 of 1950. This Act grouped South Africans into four racial categories: white, black, coloured, and Indian. Additional legislation was created to segregate the races in public and private spaces, such as having separate white or non-white toilets, beaches, restaurants, schools, stairways, entrances, and sports grounds.

Apartheid had a particularly traumatic effect on housing through a series of laws that began with the Group Areas Act 41 of 1950. This legislation enabled the government to designate geographical areas as exclusive living spaces for specific racial groups, in line with the stated goal of separate development. However, this process was anything but peaceful as it involved multiple forced removals, moving 3.5 million black South Africans against their will.<sup>6</sup> Particularly heartbreaking was the destruction of two vibrant, multi-racial communities: Sophiatown in Johannesburg and District Six in Cape Town. Black, coloured and Indian people were often moved to distant areas that lacked the same level of infrastructure.<sup>7</sup>

This forced separation of communities was accompanied by radical differences in treatment. Well-positioned, white-only areas often received the best resources and attention, with sufficient infrastructure and well-funded municipalities. Black townships, on the other hand, lacked basic infrastructure, and were overcrowded, and under resourced. These townships were often on the outskirts of towns and cities making it hard to access jobs and services.

Black people remained a useful source of labour for menial and dangerous tasks. Pass laws would require “non-whites” attending work opportunities in white areas to carry identification and present it upon request. For mining jobs, this could involve separating families to have the men live in prison-like hostels under the supervision of the mines. For domestic workers, apartheid architectural design kept them out of sight in tiny single room living spaces on the top floors of apartment blocks or in the backyards of luxurious houses.

Apartheid influences remain despite certain efforts made by the democratic South African government. There are still remnants of spatial apartheid in the form of informal settlements that still line the outskirts of metropolitan cities. Since 1994, the South African government has presented various measures to address the challenges of having adequate housing. A big part of this was to include the right of access to housing in the Constitution. There are also several large-scale development programmes aimed at uplifting South Africans, starting with the provision of housing. The first of these, presented in 1994, is the Reconstruction and Development Programme (RDP), which aimed to provide housing and infrastructure to help uplift poor Black South Africans. The Finance Linked Individual Subsidy Programme (FLISP) is a government initiative to provide subsidies to first-time purchasers of homes. The Upgrading of Informal Settlement Programme (UISP) focuses on improving living conditions in informal settlements by formalising housing through on-site upgrading or relocation. The Emergency Housing Programme (EHP) is a subsidy tool that allows the government to respond to emergencies by providing temporary housing.

Unfortunately, the programmes for development have lacked effective, lasting success despite their promising and idealistic beginnings. Corruption within the government is a notable contributor to these failures, stripping the programmes of necessary funding while delivering substandard or zero houses. Poorly made, run, or malicious tenders can grind construction to a halt without delivering houses, evident in the hundreds of housing units left unbuilt in KwaMashu, KwaZulu Natal<sup>8</sup> or in Matatiele, Eastern Cape.<sup>9</sup> Whereas the South African government was building around 200,000 houses a year in the 2000s, it only built about 42,000 subsidised houses in 2024.<sup>10</sup> This has left many South Africans with little hope of accessing their right to housing if the situation remains unchanged.



# STATE CAPTURE AND BEYOND

# LEGISLATIVE FRAMEWORK

## Legislative Framework

### International Law

Countries around the world recognise the value of including housing as a right to ensure an adequate standard of living.<sup>11</sup> International law places external pressure on member states to make housing accessible. South Africa is part of several international organisations, including the United Nations (UN) and the African Union (AU). Both organisations have adopted international agreements that present housing as a fundamental right. These agreements usually provide leeway for how member states integrate this right within their domestic frameworks.

The UN first recognised housing as worthy of being a right in 1948 with the Universal Declaration of Human Rights (1948).<sup>12</sup> Article 25 states that:

*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

This Universal Declaration was not binding on member states but did form a guide for later agreements. In 1966, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) created a binding right to housing. Article 11 states that:

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.*

The UN also provides guidance on how to interpret the right to housing. The UN Committee on Economic, Social, and Cultural Rights defined the right to housing in General Comment no 4 (1991) on Adequate Housing and No. 7 (1997) on Forced Evictions. The UN interprets the right to housing to include freedom from forced evictions, arbitrary loss of the home, arbitrary interference and the right to choose where to live. Some entitlements include security of tenure, restitution, equal access to adequate housing, and the ability to participate in housing-related decisions at national and community levels. For housing to be

adequate, it should be affordable, habitable, and accessible, and near to job opportunities and basic infrastructure.<sup>13</sup>

The Organisation of African Unity, which later became the AU, did not explicitly include the right to housing. The 1981 *African Charter on Human and Peoples Rights* includes many rights that indirectly support a right to housing. The case of *SERAC v Nigeria* (2001)<sup>14</sup> was a critical step that identified the African Charter as including a right to housing. In this case, a large oil company in Nigeria was polluting the environment and putting people's lives and homes in danger. This provided an opportunity for the court to interpret the 1981 African Charter to prevent people from losing adequate housing to environmental damage. The court identified the right to housing as implicit in the Charter: "It is thus noted that the combined effect of articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing."<sup>15</sup> A resolution of the African Commission on Human and Peoples' Rights in 2012 accepted this finding.<sup>16</sup>

International laws, such as those mentioned above, bind member states and oblige them to create and implement domestic laws to realise rights and also include discussions on how to best achieve these rights. Discussing interpretations, like the meaning of adequate housing, provides a guide for what to include in these laws to realise the right effectively.

## Constitution

The Constitution of the Republic of South Africa (the Constitution) is the highest legal authority in South Africa. It presents the country as one governed under the principle of the Rule of Law. Part of the Rule of Law requires South Africa to be compliant with international law. The Constitution matches international law as it explicitly provides a fundamental right to housing:

26. (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.
- (3) 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 right to housing, as presented in the Constitution, leaves room for multiple interpretations of what is inherent in the term "access". In a narrow interpretation, access means that there should be no discrimination in who can own a house, and the government

should not prevent people from enjoying the use of their housing. The wider interpretation, which is preferred by South African law,<sup>17</sup> acknowledges that the needs of individuals differ when it comes to accessing housing. Whereas some may require subsidies to purchase houses, others may require access to land to build their houses.

The right to housing is also an example of a progressive right. There is an immediate aspect that entitles everyone who owns or lives in a house to enjoy their right to housing with minimal interference. The other aspect is progressive realisation, which requires the state to take positive steps to make housing accessible to all. Progressive realisation acknowledges that the state may not have the funds necessary to provide everyone with access to housing immediately. However, the state should always be developing and acting on plans to increase the number of available housing opportunities and eventually ensure all residents have access to housing.

The right of access to housing enshrined in the Constitution also emphasises the importance of adequate housing. Adequate housing is more than just four walls and a roof. Adequate housing includes key considerations such as the location and security of the housing, and its proximity to jobs, transport, and the community. However, the Constitution leaves the precise definitions and interpretation of what *access* and *adequate* mean to legislation, such as in statutes.

## Statutes

The Housing Act 107 of 1997 (Housing Act) is the primary statute that expands on the right of access to housing. The Housing Act aims to create a sustainable development process for accessing housing that involves all spheres of government. It recognises that housing should fulfil a basic human need that is a vital part of integrated developmental planning and the socio-economic wellbeing of South Africa.

The Extension of Security of Tenure Act 62 of 1997 (ESTA) acknowledges that many South Africans lack secure tenure, which leaves them vulnerable to unfair and harmful evictions. ESTA aims to provide measures that increase the long-term security of land tenure while regulating the circumstances that allow for the termination of land tenure. It also focuses on identifying fair eviction procedures if land tenure is terminated. ESTA applies to individuals, usually farmworkers, who have consent to live on rural and agricultural land.<sup>18</sup>

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) gives meaning to s 26(3) of the Constitution. The PIE Act prohibits unlawful eviction and sets out the process for lawfully evicting unlawful occupiers. The aim is to ensure that eviction takes place fairly and equitably, while upholding the rights of both landowners and occupiers.

The Rental Housing Act 50 of 1999 (RHA) creates mechanisms that promote the provision of rental housing property, access to adequate housing, and the proper functioning of rental housing. It also creates and regulates rental housing tribunals that oversee complaints, provide information, and resolve disputes.

The Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) provides a framework for spatial planning and land use management. It aims to undo the ongoing effects of apartheid spatial planning and promote equitable and efficient spatial planning in all spheres of the government. Part of this involves creating and regulating Municipal Planning Tribunals to monitor and coordinate spatial planning.

## Regulations

The National Housing Code, 2009, is a set of regulations created under the Housing Act. It provides the policy principles, guidelines, norms and standards for the various housing assistance programmes that South Africa has introduced.<sup>19</sup> There is an array of housing assistance programmes that necessitate the regulations. The National Housing Code aims to simplify the process of implementing housing projects. It is meant to help South Africa progressively realise the right of access to adequate housing within the available resources.

Part B of the National Housing Code lists and explains the programmes that it regulates:

- Integrated Residential Development Programme
- Upgrading of Informal Settlements
- Provision of Social and Economic Facilities
- Housing Assistance in Emergency Circumstances
- Social Housing Programme
- Institutional Subsidies
- Community Residential Units Programme
- Individual Subsidy Programme
- Rural Subsidy: Communal Land Rights

- Consolidation Subsidy Programme
- Enhanced Extended Discount Benefit Scheme
- Rectification of Certain Residential Properties Created Under the Pre-1994 Housing Dispensation
- Housing Chapters of an Integrated Development Plan
- Operational Capital Budget (Ops/Cap)
- Enhanced People's Housing Process
- Farm Residents Housing Assistance Programme

Part C of the Code contains the technical and generic provisions. These provisions outline the minimum standards that the programmes should comply with. Among other things, the programmes should provide secure tenure, be transparent, and comply with national norms and standards for construction.

## Case Law

There is substantial case law around the right of access to housing. Evictions are an area of specific concern, and there are many cases focusing on the constitutionality of eviction processes. Evictions can easily lead to disputes as they present a conflict between rights: the right to property and the right of access to housing. The PIE Act attempted to reduce conflict around evictions by providing legal certainty about the process of evicting unlawful occupiers and requiring the provision of alternative housing. A sample of these cases illustrates that South African courts recognise the need to protect the most vulnerable in housing conflicts.

*Government of the Republic of South Africa and Others v Grootboom and Others* (2001)<sup>20</sup> (*Grootboom*) is one of the earlier cases that tested the constitutionality of eviction processes and the right to housing. In this case, a community of squatters was evicted from private land earmarked for low-cost housing. Following the eviction, they were left in appalling conditions without even materials to build simple shelters. They applied to the Cape High Court seeking relief in the form of alternative, government-funded shelter. The Constitutional Court found that the government has an obligation to ensure that evictions are executed humanely and to provide emergency basic housing. The case also identified that adequate housing requires more than brick-and-mortar buildings, as it includes access to basic services.

Part of *Grootboom's* importance is defining “progressive realisation” in section 26(2) of the Constitution, and the right of access to housing. Progressive rights have two aspects: an

immediate protection and a duty to expand upon the right to ensure that a larger number and wider range of people can access the right. As discussed in *Grootboom*, the right also imposes a duty on the state to regularly examine and try to lower legal, administrative, operational, and financial hurdles that restrict access to rights.<sup>21</sup> The limitation, which the state should alleviate over time through careful planning and budgeting, is that the realisation of rights should be “within available resources.”<sup>22</sup> *Grootboom*, therefore, requires the state to be reasonable when providing housing by examining the needs of the community, the hurdles preventing access, and the resources that are available.

*Port Elizabeth Municipality v Various Occupiers* (2005)<sup>23</sup> started as an eviction application in the Southeastern Cape Local Division of the High Court. Port Elizabeth Municipality sought to evict 68 people, who had been living on the land for between two and eight years, using section 6 of the PIE Act. The unlawful occupiers were willing to vacate the property if they were provided with an alternative with secure tenure. The Municipality argued that providing housing would amount to queue-jumping and violate the rights of others awaiting housing. In its judgment, the Constitutional Court focused on how to interpret just and equitable decisions in eviction processes. The Court found that the eviction could not go ahead and that “PIE expressly requires the Court to infuse elements of grace and compassion into the formal structures of the law.”<sup>24</sup> This requires a careful balancing of competing rights where the state must consider relevant circumstances.<sup>25</sup>

*Charnell Commando and Others v City of Cape Town and Another* (2024)<sup>26</sup> (*Commando*) addresses the question of evictions and spatial justice. In *Commando*, long-term and low-income renters in Woodstock, Cape Town, faced eviction after a development company, Woodstock Hub, bought the land to develop middle-income housing. The City of Cape Town planned to relocate the families to emergency housing far from Woodstock and their places of work, education, healthcare, and recreation. While the court found it would be unreasonable for evicted individuals to demand a specific area for relocation, there was a duty to provide accommodation as near as possible to their former accommodation. The City’s proposed location was unconstitutional as the city made no plans to provide temporary emergency accommodation within the inner city, compounding the legacy of apartheid. *Commando* requires metropolitan municipalities to ensure the provision of temporary emergency accommodation within cities on the “as near as possible” principle. To ensure reasonable solutions, municipalities should communicate with residents to balance what is possible within available resources without entirely uprooting people’s lives.<sup>27</sup>



# STATE CAPTURE AND BEYOND

# HOUSING JUSTICE



## Housing Justice: Rethinking Access to Housing

The challenge of effectively providing enough houses in South Africa to fulfil the right of access to housing necessitates a change in method. Currently, the government's interpretation of the right of access to housing focuses on trying to ensure that every citizen in South Africa has access to a house. This means building as many cheap or subsidised houses as possible. These houses are colloquially referred to as RDP houses. However, this undermines the original purpose of the RDP: to deconstruct the divisions created by the apartheid government. The White Paper on the Reconstruction and Development Plan presents an entirely different purpose than just building cheap houses. Providing a home is meant to be a first step. Returning to the goal of providing housing as a step towards reconstruction would help to achieve the right of access to adequate housing in a meaningful way.

The number of people living in informal housing that desperately need formal housing, such as the housing provided by RDP and BNG, although fluctuating dramatically, has remained nearly the same. The demand continually outstrips the supply for a multitude of reasons. These include massively increased urbanisation, increased birth rates, improved healthcare, and migration. Table 1 illustrates huge increases in both formal housing and population, marked decreases in traditional and other housing, and informal housing staying nearly the same. Focusing on building and supplying subsidised or free housing is not an effective solution to the housing crisis in South Africa.

Table 1: South African Housing Types from the 1996-2022 censuses<sup>28</sup>

Year	Formal	Informal	Traditional	Other	Total
<b>1996</b>	5,211,727	1,453,015	1,644,388	750,441	9,059,571
<b>2001</b>	7,147,438	1,836,232	1,654,787	567,249	11,205,705
<b>2011</b>	10,677,413	1,962,733	1,139,916	670,099	14,450,161
<b>2022<sup>29</sup></b>	15,776,130	1,435,535	560,415	56,698	17,828,778

Importantly, this does not mean the South African government should stop building low-cost housing to provide for those in need. Providing the basics is an important foundation for

improving the lives of the residents in South Africa. When residents have their primary needs met, they can focus on securing economic opportunities. A stable foundation allows individuals to seek jobs and focus on upskilling through education and experience.

The White Paper on the RDP fully acknowledges this. The creation of houses was only ever meant to be a first step in the process. This would allow the population to develop through educational programmes and other infrastructure and grow a skilled, multicultural population. Once individuals had jobs and could start earning more, they could afford improvements of their own. They would then, likely, start moving out of RDP houses and integrating into middle- and upper-class communities. This would also create better lives for their children, allowing the next generation to move away from the injustices of the past.

What has happened instead is stagnation. This starts with how “RDP houses” have become synonymous with “free houses provided by the government under a subsidy programme.”<sup>30</sup> The focus shifted to a shallow type of justice, where policymaking gives the appearance of achieving rights without effectively fulfilling those rights. The current aim is to placate the poor with a trickle of free houses without actually addressing the causes of the continually increasing demand for housing. This is rapidly leading to a situation where the rate of construction is dropping while the demand for housing is increasing, as illustrated by the estimate that it would take 158 years to address the housing backlog in Gauteng alone.<sup>31</sup>

Recently, the ANC celebrated the delivery of 42 subsidised houses in Johannesburg while conveniently ignoring the shortage of over a million houses in 2023.<sup>32</sup> The delivery of housing provides a powerful, emotional propaganda tool to drum up support while remaining vastly insufficient to meet the needs of the majority of people living without permanent shelter.

To effectively achieve the right of access to housing, there should be a continuous focus on addressing the lack of housing on multiple fronts. Instead of just building more houses, it is necessary to identify the causes for such an increased need for housing. This would require collaboration between the spheres of government and various organs of state. For instance, it may be necessary to ramp up programmes distributing farmland to those who desire careers in farming. It may also be important to encourage the opening of more mines. Providing rural work opportunities could reduce urbanisation and the burden placed on metropolitan cities to constantly identify land for housing and build cheap houses.

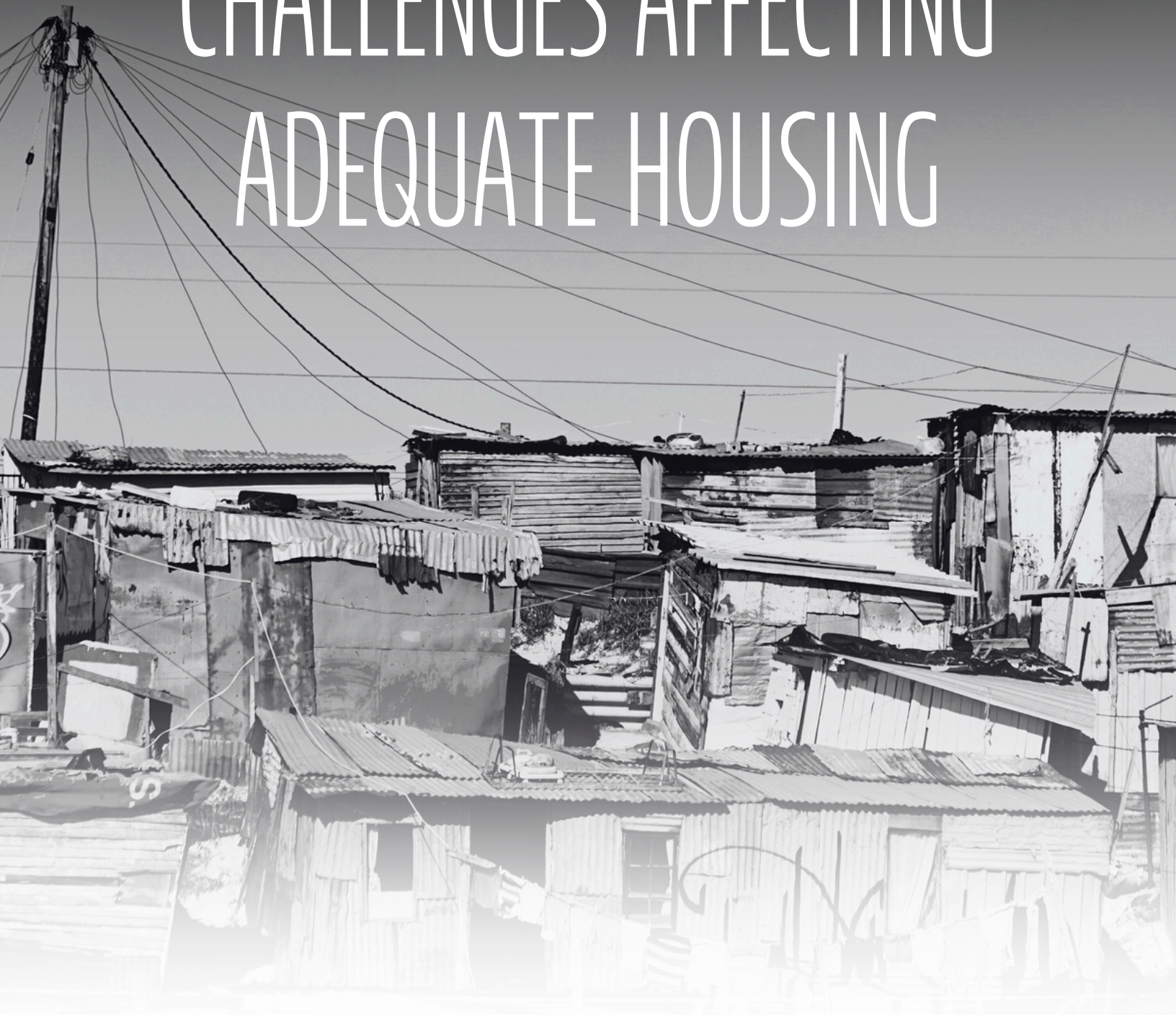
It is also vital to include the communities themselves in discussions about the development of formal settlements or the upgrading of informal settlements. It is often the individuals in

communities who can best speak on what their needs are. Inclusivity and transparency will support the creation and implementation of remedies that adequately address the issues faced by communities.



# STATE CAPTURE AND BEYOND

# CHALLENGES AFFECTING ADEQUATE HOUSING



## Challenges Affecting Adequate Housing

The lack of adequate housing is particularly complex, as there are many distinct and interrelated reasons why South Africa is not providing sufficient access to housing. These challenges occur throughout South Africa, with most areas displaying a combination of several different problems. However, some challenges appear to be particularly acute in certain areas. Five broad challenges appear to stand out throughout South Africa.

### Spatial Apartheid

Apartheid, which aimed to enforce separate development, divided people geographically according to race. This included reserving the best areas, such as suburbs near metropolitan centres, for whites only. As mentioned above, the apartheid government supplied these areas with the best infrastructure and support. It was easier for the people living there to accumulate wealth as they were closer to better economic opportunities. Although apartheid officially ended over 30 years ago, its legacy persists in the form of identifiable, affluent, white-majority areas. Although legal racial restrictions no longer exist, the wealth gap now serves as a powerful barrier, often replicating the effects of past segregation. This gap reflects a racial divide that, despite the best efforts of government policy, has changed very little. Relatively few black South Africans have managed to cross the divide.

Cape Town, located in the Western Cape, exemplifies spatial apartheid in a particularly stark way. The city is a popular tourist destination renowned for its natural beauty and historical significance. The natural landscape, dominated by Table Mountain, limits the number of residential areas near business hubs. Many people who work in the city live on the outskirts and have to travel long distances to get to work. These factors, combined with a history of particularly aggressive relocations during apartheid, created distinct areas segregated based on wealth and race. Popular residential areas, such as those near beaches and the central business district (CBD), are some of the most expensive in the country.<sup>33</sup> The cost of housing in Cape Town is often so high that only the very wealthy, often white or foreign, can afford it.<sup>34</sup>

Efforts to address spatial apartheid in Cape Town have shown some progress. Several civil society groups are advocating for the construction of affordable housing within the city. The City of Cape Town Municipality appears to be responsive to these suggestions and has

started considering how to create low-cost housing in the inner-city.<sup>35</sup> However, concerns remain about the long-term effectiveness and sustainability of these housing initiatives.

## Rapid Urbanisation

Urbanisation places extreme pressure on the availability of housing in metropolitan municipalities. Urbanisation happens when people migrate from rural areas to cities, leading to rapid city expansion. One of the most common reasons for this is to find employment opportunities. With approximately 67% of its population living in urban areas, South Africa is one of the most urbanised countries in Africa.<sup>36</sup>

According to the 2022 census from Statistics South Africa,<sup>37</sup> there are five metropolitan municipalities with at least 4 million people. Three of these are in Gauteng: the City of Johannesburg, City of Ekurhuleni, and City of Tshwane. The other two are the metropolitan municipalities of the City of Cape Town in the Western Cape and eThekweni in KwaZulu-Natal. Other cities are far smaller but still contain a significant number of residents. This means that over 35% of South Africa's 62 million residents live within the bounds of five municipalities. As a result, metropolitan areas become overpopulated while rural regions experience depopulation.

Table 2: Populations of the Five Largest Municipalities

City of Johannesburg Metropolitan Municipality	Gauteng	4,803,262
City of Cape Town Metropolitan Municipality	Western Cape	4,772,864
eThekweni Metropolitan Municipality	KwaZulu-Natal	4,239,901
City of Ekurhuleni Metropolitan Municipality	Gauteng	4,066,691
City of Tshwane Metropolitan Municipality	Gauteng	4,040,315

Rapid urbanisation presents a serious housing challenge in metropolitan areas. With such a high rate of internal migration, metropolitan municipalities cannot keep up with the demand for housing. This is especially true with low-cost and subsidised housing, such as the RDP and now BNG programmes. A significant increase in the number of poor residents who come to the city seeking jobs but cannot afford housing leads to the expansion of informal settlements. This may damage the environment, create overcrowding, urban poverty, criminality, and urban congestion.<sup>38</sup>

## Informal Settlements

Informal settlements are densely populated and unplanned residential areas constructed without legal approval or compliance with regulations. This includes backyard dwellings, such as low-income rental units built behind formal houses, which are sometimes proposed as a solution to the housing crisis.<sup>39</sup> Informal settlements usually develop close to towns or cities throughout South Africa. Occupiers typically build shelters on privately or publicly owned land with whatever materials are available.<sup>40</sup> These informal settlements typically lack essential infrastructure such as piped water, paved roads, and electricity.

The largest informal settlements are near the three largest cities, namely Johannesburg, Cape Town, and eThekweni. The largest concentration is around eThekweni, with 540 urban informal settlements and an estimated 314,000 households that make it about a quarter of the city's population.<sup>41</sup> Throughout South Africa, 12,2% of the population lives in informal settlements.<sup>42</sup> Despite notable progress through housing programmes over the past three decades, a significant number of people still reside in informal settlements. This indicates that programmes like the RDP, BNG, and UISP may not be enough on their own.

Informal settlements present a serious challenge throughout the country. Access to transport, water, electricity, education, and employment is essential for residents to improve their circumstances and transition out of unsafe, substandard housing. However,

## Evictions and Temporary Housing

Evictions are the legal process of removing individuals from property, often against their will. Evictions often present a conflict between the right to housing and the right to property. Property owners typically have more resources than those occupying land unlawfully, resulting in forced removals and a lack of alternative accommodation. The South African government has acknowledged the harm this causes to the people who are evicted. Therefore, there are several laws related to evictions, like the PIE Act.

The PIE Act distinguishes between illegal occupiers who have lived in a space for less than six months and those who have lived there more than six months. After six months, the municipality has a duty to provide alternative, temporary housing. However, temporary housing often fails to meet adequate standards, as seen in the *Grootboom* case. Temporary shelters built after disasters can also be inadequate, as experienced by survivors of the Usindiso Fire.

Evictions in rural areas can be especially harmful, as housing is often tied to employment. In the event of a labour dispute between a rural occupier and landlord, the occupiers face both the loss of their jobs and their homes. Rural evictions often displace farmworkers, pushing them toward cities in search of better opportunities.

## Crime, Corruption, and Construction Mafias

Criminal activity in the construction industry, particularly corruption and extortion, disrupts housing delivery. Corruption involves exploiting or abusing one's position of authority to derive some kind of personal benefit. For instance, malicious tender practices could involve adjusting tenders to target specific companies in exchange for a reward or kickback. Growing concerns surround construction mafias that use threats and extortion to demand protection payments.

An area hit particularly hard by the construction mafia is the eThekweni Metropolitan Municipality. eThekweni is arguably the origin of the current trend of construction mafia with the Delangokubona Business Forum in Umlazi and the KwaMashu Youth in Action Movement KwaMashu around 2014 or 2015.<sup>43</sup> These two business forums later merged into the more legitimate Federation for Radical Economic Transformation (FFRET). Their tactics include arriving heavily armed at construction sites to coerce contractors into paying protection fees, hiring designated workers, using preferred suppliers, or relying on their transport services. These groups often demand 30% of the contract value, a practice likely influenced by National Treasury regulations promoting local participation in business ventures.<sup>44</sup> These practices have slowly spread throughout the country and affect many construction ventures.

Corruption and construction mafias form a particularly damaging combination, resulting in significant financial losses for the country. When the construction mafia targets construction projects, it can lead to increased costs, delays, damage, withdrawn investments, and unfinished projects.<sup>45</sup> Fewer companies are willing to take part in construction projects out of fear. This has a knock-on effect, leaving many areas without essential infrastructure such as housing, water, electricity, and roads. The Bridge City Housing development, for example, set to start in 2020 and be completed in early 2025, remains incomplete due to the original developers' withdrawal after facing threats from business forums. This incomplete development aimed to deliver 784 homes by February 2025 and has cost nearly R200 million.<sup>46</sup>



# STATE CAPTURE AND BEYOND

# HOLDING THE GOVERNMENT ACCOUNTABLE



## Holding The Government Accountable

Access to housing is a right. The government is responsible for progressively realising the right to housing through reasonable measures that expand access to adequate housing.<sup>47</sup> Housing must also be adequate in terms of construction quality, size, location, and access to essential services. If the government fails to deliver housing that meets adequate standards, is reasonably located, and includes access to services, residents must hold it accountable.

Providing the right of access to housing involves collaboration between the national government, provincial governments, and municipalities. The national government, through the Department of Human Settlements, develops housing policies, creates a funding framework, and monitors the delivery of adequate housing. Provincial governments account for the implementation of the housing policies and funding, while supporting municipalities. Municipalities, as the final leg of service delivery, share responsibility with provincial governments to develop and build housing.<sup>48</sup> All spheres of government share responsibility when there are failures to provide access to adequate housing.

Before holding the government accountable, it is often useful to gather information to understand the people involved, legal rights, and processes available. Improving accountability starts with the simple methods of reporting directly using hotlines, email addresses, or online reporting systems, giving the government a chance to correct itself. If there is no or a poor response, there is space to escalate through contacting councillors, creating petitions, protesting, and sharing information. These systems help build a record that can justify the use of stronger, more visible accountability measures. It is always important to track reports, such as taking screenshots and recording tracking numbers, to create a history that justifies actions taken.

### Accessing Further Information

Effectively holding the government accountable requires knowing what problems to report, to whom to report them, and how to report. This often makes it important to start by gathering information. Government should be transparent as enshrined in Section 217 of the Constitution and detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA). This transparency requires making information freely available and accessible, such as by maintaining government websites and creating regular reports. It can also be useful to access civil society websites as they often create guides and explainers that help with

understanding processes. When details appear difficult to access, there are also legal processes using PAIA to request access to information.

## Government Websites

A good starting point for finding information is on government websites. The [Department of Human Settlements](#) maintains a website: <https://www.dhs.gov.za/>. This website provides contact information, including phone numbers, the corruption hotline, email addresses, and the physical address on the "[Contacts](#)" page. The "About Us" section provides useful information that explains the different programmes implemented by the "provincial department". One can apply for housing assistance and subsidies on the provincial websites. The Department of Human Settlements currently offers a range of programmes to help a wide variety of people gain access to housing.

Table 3: Housing Assistance Programmes offered by the Department of Human Settlements

<b>Name</b>	<b>Definition</b>	<b>Who Qualifies</b>
<a href="#">Community Residential Units and Housing Programme (CRU)</a> <sup>49</sup>	Programme to upgrade government-owned communal rental accommodation (hostels).	Individuals or households with a monthly income of R800-R3500.
Each One Settle One <sup>50</sup>	A campaign to invite individuals and companies to donate to affordable housing or rentals.	Depends on the type of donation and the donor.
<a href="#">Social Housing Programme</a> <sup>51</sup>	Programme for subsidised rental accommodation. It can subsidise developers who supply affordable housing.	Households with a monthly income between R1,850.00 and R22,000.00.
<a href="#">First Home Finance &amp; Subsidy Assistance (FLISP)</a> <sup>52</sup>	A subsidy instrument that provides a once-off payment to help households who are purchasing a house for the first time.	Individuals earning between R3,500.00 and R22,000.00 qualify for a once-off payment.
Upgrading of Informal Settlements Programme (UISP) <sup>53</sup>	Programme to provide basic services to upgrade informal settlements in situ rather than relocating or building housing.	Municipalities decide on which communities to assist and consult community members.
<a href="#">Government Subsidised Houses (RDP and BNG)</a> <sup>54</sup>	Government programme to provide fully built houses free of charge.	Households that earn less than R3,500.00 per month and would be first-time homeowners.

People's Housing Process <sup>55</sup>	Subsidy given to people in organised community groups who want to build or manage the building of their own homes.	Households earning less than R3,500.00 per month that are in an organised community group housing project.
Integrated Residential Development Programme (IRDP) <sup>56</sup>	The programme uses a phased approach for creating mixed-income housing developments. These developments integrate several types of affordable housing and economic zones.	Households or individuals who earn less than R3,500.00 per month and have not owned a house before.

The Department of Human Settlements develops the programmes on a national level, and the provincial governments have the administrative role. Therefore, applications for housing assistance depend on the provincial governments. The provincial governments' human settlements websites explain more about the available programmes in the provinces and how to apply for them:

- Eastern Cape <https://www.ecdhs.gov.za/>
- Free State <https://www.humansettlements.fs.gov.za/>
- Gauteng <https://www.gauteng.gov.za/Departments/DepartmentDetails/CPM-001007>
- Kwazulu-Natal <https://www.kzndhs.gov.za/>
- Limpopo <https://www.coghsta.limpopo.gov.za/>
- Mpumalanga <https://dhs.mpg.gov.za/>
- Northern Cape <http://www.coghsta.ncpg.gov.za/>
- North West <https://www.nwpg.gov.za/HumanSettlements/site/index.html>
- Western Cape <https://www.westerncape.gov.za/all-western-cape-government-services>

Municipalities are also responsible for providing housing assistance. Municipal websites, when they are well-maintained, are an important source of information on the assistance that the local government can provide. A useful website for information on municipalities, including links to municipal websites, is <https://municipalities.co.za/>. Through this website, it is possible to either search or use the map to locate specific municipalities. Selecting a municipality takes the user to an "overview" tab that describes the selected municipality. The tabs at the top of the page, under the name of the municipality, navigate to pages providing further useful information that includes how to contact municipalities, financial documents, employment, services, and management. In the "contacts" section, there is a link to each municipality's website.

Each municipal website is different, so it can be necessary to look through the various sections carefully to find relevant information. If resources are missing or incomplete, it may require requesting the government department to provide more information.

## Published Reports

Government departments and agencies frequently publish informative reports that offer valuable updates. The Department of Co-operative Governance and Traditional Affairs (CoGTA) has a very useful website that can be accessed at <https://nationalstrathub.cogta.gov.za/data-tools/dashboards/>. This website serves as a central hub for accurate data and information related to, among other things, municipal development. The data is meant to enhance decision-making in all government spheres and promote effective governance. The general public can also use this site to track the progress of government projects.

The treasury also publishes financial information about municipalities online. There is a dedicated national website, <https://vulekamali.gov.za/>, that provides access to national budgets. A website that helps with accessing information specific to municipalities is <https://municipalmoney.gov.za/>. This website also includes the treasury's reports.

Several housing-specific websites supply reports on the progress throughout the country in providing access to housing. The first is the Department of Human Settlements, which publishes annual reports, <https://www.dhs.gov.za/Annual%20Reports>. The "Resource Centre" section also provides access to evaluation reports, strategic documents, and publications. The Housing Development Agency is a national public sector development agency that acquires and prepares land for developing housing. It was established by Parliament and is accountable to the Minister of Human Settlements. As part of its role, it publishes annual reports, <https://thehda.co.za/index.php/multimedia/annual-reports>, to explain how well it has performed, its governance, financial details, and compliance. These reports can provide a more detailed understanding of the progress in developing human settlements.

## PAIA Requests

The Promotion of [Access to Information Act 2 of 2000](#) (PAIA) gives individuals the right to access information held by the state or private bodies upon request. PAIA is meant to enhance transparency in South Africa by expanding on the constitutional right of access to information.<sup>57</sup> While most information should be publicly available, a lot of it is either inaccessible or not publicised. When information is not freely available, individuals can use standard forms and methods, as outlined in PAIA, to request it.

When using a PAIA application to request information, the first step is to check the type of institution and the type of information you would like to request. Before drafting the application, find the relevant PAIA manual, which should be available on the relevant department website. These manuals provide details about the procedures and the relevant contact person. The Information Regulator Form 2 is the standard application document, <https://inforegulator.org.za/wp-content/uploads/2020/07/InfoRegSA-PAIA-Form02-Reg7.pdf>.

A PAIA application may be subject to a fee, which should be set out in the body's PAIA manual. After applying for the Information Officer of the relevant body, a response should be received within 30 days, with a maximum extension of an additional 30 days if the body sends a notice. If the body refuses the request for information or does not respond within 30 days, it is possible to appeal the decision. For more precise information, there is a South African Human Rights Commission (SAHRC) guide available here: [https://www.gov.za/sites/default/files/gcis\\_documents/SAHRC-PAIA-guide2014.pdf](https://www.gov.za/sites/default/files/gcis_documents/SAHRC-PAIA-guide2014.pdf)

## Methods of Reporting Problems and Corruption

### Dedicated Hotlines

Municipal fault reporting hotlines are a good starting point, as municipalities are responsible for service delivery at a community level. Hotlines provide a useful and affordable method that allows individuals to report any issues with service delivery. Depending on the size and technological expertise of the municipality, there can be several hotlines dedicated to specific types of problems. Municipalities should all have fault reporting mechanisms, and the municipality-specific websites should provide the necessary contact details. One can find municipality-specific websites at <https://municipalities.co.za/>.

The national and provincial governments also have important roles to play in housing supply and delivery. The National Department of Human Settlements and Provincial Departments of Human Settlements are useful avenues for reporting issues or asking questions related to housing. Hotlines are available at the national level for asking questions about housing and for reporting corruption:

- National Housing Enquiries Hotline: 080 014 6873 / 012 421 1915
- Department of Human Settlements Fraud hotline: 0800 204401
- National Anti-Corruption Hotline: 0800 701 701
- National Fraud Hotline: 0800 601 011
- Crime Stop: 0860 10111

Hotlines, emails, and online reporting tools can provide reference numbers and traceable details that allow for creating a record of interactions. Keeping a record of interactions is very useful for showing the history of the problem when escalating and demanding action.

## Direct Contact

Direct contact with the National and Provincial Departments of Human Settlements can be a useful step to escalating reports. Increasing awareness improves the likelihood that the government will act to resolve problems.

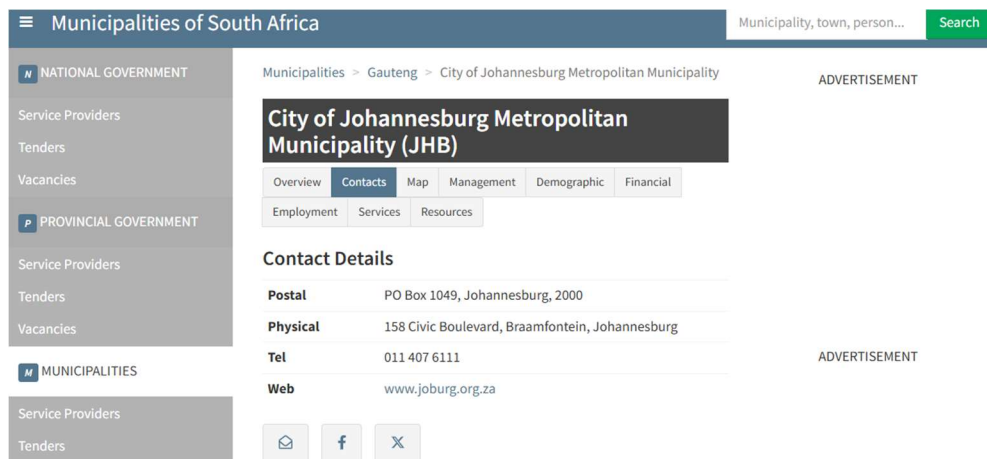
Table 4: Contact Details for Government Housing Assistance

Department	Phone	Email	Website
National	080 014 6873	<a href="mailto:info@dhs.gov.za">info@dhs.gov.za</a>	<a href="https://www.dhs.gov.za/">https://www.dhs.gov.za/</a>
Gauteng	011 355 4000	<a href="mailto:GDHuSInfo@gauteng.gov.za">GDHuSInfo@gauteng.gov.za</a>	<a href="https://www.gauteng.gov.za/Departments/DepartmentDetails/CPM-001007">https://www.gauteng.gov.za/Departments/DepartmentDetails/CPM-001007</a>
Western Cape	079 769 1207 (Please Call Me)	<a href="mailto:service@westerncape.gov.za">service@westerncape.gov.za</a>	<a href="https://www.westerncape.gov.za/all-western-cape-government-services">https://www.westerncape.gov.za/all-western-cape-government-services</a>
Eastern Cape	043 711 9901/2/3	<a href="mailto:info@ecdhs.gov.za">info@ecdhs.gov.za</a>	<a href="https://www.ecdhs.gov.za/">https://www.ecdhs.gov.za/</a>
KwaZulu Natal	033 392 6400 033 336 5300	<a href="mailto:fraudhotline@kzndhs.gov.za">fraudhotline@kzndhs.gov.za</a>	<a href="https://www.kzndhs.gov.za/">https://www.kzndhs.gov.za/</a>
North West	018 388 5403	<a href="mailto:mathibeditsholofelo@gmail.com">mathibeditsholofelo@gmail.com</a>	<a href="https://www.nwpg.gov.za/HumanSettlements/site/index.html">https://www.nwpg.gov.za/HumanSettlements/site/index.html</a>
Limpopo	015 284 5000	<a href="mailto:MotlatleRM@coghsta.limpopo.gov.za">MotlatleRM@coghsta.limpopo.gov.za</a>	<a href="https://www.coghsta.limpopo.gov.za/">https://www.coghsta.limpopo.gov.za/</a>

Northern Cape	053 830 9422	<a href="mailto:Info@nccoghsta.onmicrosoft.com">Info@nccoghsta.onmicrosoft.com</a>	<a href="http://www.coghsta.ncpg.gov.za/">http://www.coghsta.ncpg.gov.za/</a>
Free State	051 405 3883	<a href="mailto:hodhs@fshs.gov.za">hodhs@fshs.gov.za</a>	<a href="https://www.humansettlement.fs.gov.za/">https://www.humansettlement.fs.gov.za/</a>
Mpumalanga	013 766 6087	<a href="mailto:infordhs@mpg.gov.za">infordhs@mpg.gov.za</a>	<a href="https://dhs.mpg.gov.za/">https://dhs.mpg.gov.za/</a>

Another method of improving direct contact is to communicate directly with local councillors who are part local government. Cooperative Government and Traditional Affairs (CoGTA) recommend contacting local councillors with questions or requests.<sup>58</sup> To help with this, the South African Local Government Association (SALGA) provides useful contact details for local councils, <https://www.salga.org.za/Municipalities%20MCD.html>. CoGTA recommends submitting written questions or requests at least ten days before council meetings. However, it is also possible to contact council members directly, using email or phone calls, to ask questions or make requests. This is one of the immediate methods of informing the government and getting commitments to address problems.

For the local government, a useful website is <https://municipalities.co.za/>, which can help with finding contact information. Through this website, it is possible to either search or use the map to locate specific municipalities. Selecting a municipality takes the user to an “overview” tab that describes the selected municipality. The tabs at the top of the page, under the name of the municipality, navigate to pages providing further useful information. This includes a “contacts” tab that provides contact details for the municipality, including the address, phone number, website, and further numbers for specific departments.



The screenshot shows the website interface for 'Municipalities of South Africa'. The main content area displays the 'City of Johannesburg Metropolitan Municipality (JHB)' page. The 'Contacts' tab is selected, showing the following information:

- Postal:** PO Box 1049, Johannesburg, 2000
- Physical:** 158 Civic Boulevard, Braamfontein, Johannesburg
- Tel:** 011 407 6111
- Web:** [www.joburg.org.za](http://www.joburg.org.za)

There are also social media icons for email, Facebook, and X (Twitter) at the bottom of the contact details section.

Figure 1: Screen Capture of the <https://municipalities.co.za/> Website

A website that is useful for reporting problems and faults is [www.fixlocal.org.za](http://www.fixlocal.org.za). This website, while still limited in its development phase, provides guidance on how to report, based on location, such as email addresses and call-centre numbers for municipalities. It also provides guides on how to escalate when reports alone did not solve the problem. This guidance extends from locating a ward councillor to how to create community action groups.

## Local Government Meetings

Local municipalities also have a legal duty to hold public meetings where they consult with their communities. Section 4(2)(e) of the Local Government: Municipal Systems Act 32 of 2000 states that municipalities are required to consult their local communities about “(i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and (ii) the available options for service delivery.” This is further strengthened by section 17(2)(c) of the Act that requires “public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when appropriate.”

Attending these meetings provides an opportunity for community members to make their voices heard. They form part of the mechanisms that municipalities should create to facilitate public participation. Some municipalities will post details about public meetings on their websites. If your municipality does not have an up-to-date website, it may be necessary to call or visit your municipality to enquire about upcoming public meetings.

## Social Media

Social media websites, including Facebook, X (formerly Twitter), Instagram, and others, are useful for reaching a wider audience and, in some instances, connecting with governmental departments and state institutions. Many of the departments have active social media accounts that provide useful information and, at times, respond to queries from the public. An example is the City of Tshwane X page. They are very responsive to queries relating to service delivery. These include water issues, power cuts, and leaking pipes.

On the other hand, social media platforms may not be suitable for whistleblowing. It can be dangerous to report instances of corruption, especially those involving money, on social media, as it is difficult to remain anonymous. Additionally, there are still relatively few protections for whistleblowers in South African law. Therefore, it is often best to report corruption from the safety of anonymity.

## Whistleblowing

Whistleblowing involves reporting corruption to an authority that can investigate and pursue action against corrupt individuals. Whistleblowing is vitally important for addressing corruption, as it is nearly impossible to address it without knowledge or evidence that it exists. However, it is also extremely dangerous to blow the whistle on corruption, as it can lead to retaliation in the form of threats to the whistleblower's personal safety and job security. South Africa does provide some legal protection to whistleblowers under the Protected Disclosures Act 26 of 2000. However, the scope of the PDA is quite limited. It only protects employees who have blown the whistle against their employer by prohibiting workplace retaliation. While it is a good start for employer-employee relationships, this Act has serious flaws that can leave other whistleblowers who do not fall into the employee category without the protection they need and deserve.<sup>59</sup> These flaws are discussed further in the SCAB video, "[How to Blow the Whistle](#)," also available in the films section of the SCAB website at <https://beyondstatecapture.org.za/films/>.

One of the most important safety precautions for whistleblowing is to remain anonymous. Anonymity may be preserved by creating a new email address without identifying details and using a Virtual Private Network (VPN).<sup>60</sup> Several government hotlines are presented as secure and anonymous, and these are listed on the government website at <https://www.gov.za/anti-corruption/hotlines>. It is also possible to blow the whistle to news outlets, but this makes the topic public and may expose the whistleblower to public scrutiny. Therefore, going to news outlets is not usually the best starting point.

Another method is to report corruption to civil society organisations that specialise in corruption. These organisations usually have protocols in place to keep whistleblowers anonymous and protect them from retaliation. These organisations include:

- [The Corruption Watch whistleblower platform](#)
- [Whistleblower House](#)
- [The Organisation Opposing Tax Abuse \(OUTA\)](#)
- [Open Democracy Advice Centre](#)
- [Platform to Protect Whistleblowers in Africa \(PPLAAF\)](#)
- [Office for Witness Protection](#)

There are also housing-specific civil society organisations that can provide valuable information and even legal support for housing concerns. These include:

- [Abahlali baseMjondolo](#)
- [Development Action Group \(DAG\)](#)
- [Habitat for Humanity South Africa](#)
- [National Association of Social Housing Organisations \(NASHO\)](#)
- [Ndifuna Ukwazi](#)

## Written Submissions to Government

The easiest and often least effective method of getting an opinion heard is to make written submissions to the government. Addressing a letter or written submission to the president, parliament, the council of provinces, or the local government can bring attention to pertinent issues. The South African Constitution makes provision for public involvement in lawmaking, oversight and other processes of Parliament. South Africa's democratic system not only requires citizens to freely elect their representatives but also allows them to have a say in matters that affect them.<sup>61</sup> Section 17(2)(a) of the Local Government: Municipal Systems Act states that local government must receive, process, and consider complaints lodged by members of the local community.

## Petitions

A petition is a formal written request by a group of people requesting an authority to address a particular issue. Petitions are a relatively low-cost method for large groups to express their opinions. Section 17 of the Constitution gives everyone the right to present petitions to all spheres of government. Sections 56(d) and 69(d) of the Constitution, read with the Rules of the National Council of Provinces and National Assembly, allow the National Assembly and the National Council of Provinces to receive petitions. Section 115(d) of the Constitution enables provincial legislatures to receive petitions. The Local Government: Municipal Systems Act section 17(2)(a) allows and requires local governments to receive, process, and consider petitions.

Before creating a petition, it is essential to have a clear goal or purpose. When drafting the petition, one must follow the relevant requirements depending on which sphere of government the petition is addressed to. Some of the requirements include outlining the purpose of the petition, adding accurate contact details, and leaving sufficient space for signatures. The next step is to gather signatures by finding people with a shared interest in the petition's goal. The petition can be shared at large gatherings, popular meeting places, on social media, in news outlets, or even door-to-door to request that people join the

petition. Another popular method is to have an online petition on popular websites such as <https://www.change.org/t/south-africa-en-gb>. The final step is to present the petition with the demand. The method of submission depends on which governmental sphere the petition addresses.

- National petitions to parliament are submitted by Members of Parliament (MPs), which means they require the support of an MP, and should follow the parliamentary procedure, as outlined in <https://www.parliament.gov.za/petitions>.
- National Council of Provinces (NCOP) petitions do not require the support of an MP or member of the NCOP.
- Provincial legislature petitions have separate methods depending on the province, governed by separate provincial statutes. The URL address, <https://provincialgovernment.co.za/units/type/3/legislatures>, provides links to the websites of the nine provincial legislatures.
- Local government level petitions depend on the municipalities, but the Municipal Systems Act does require municipalities to have processes in place for petitions. Local government websites should provide more information about petitions or include contact details for queries. A useful website for finding local government websites is <https://municipalities.co.za/>.

## Joining or Creating Organisations

When acting alone is not enough to gain attention, it is possible to join or create an organisation to strengthen advocacy actions. Organisations enable groups of people to collaborate and represent the interests of their community. There are many organisations, including more formalised civil society non-government organisations and grassroots community organisations. These organisations have shown success in organising public action through protests, petitions, articles, submissions to government, and even litigation.

## Protest Action

Protests, in the form of gatherings, demonstrations, and strikes, can be compelling ways to communicate problems and demands. Section 17 of the Constitution protects the right to assemble, demonstrate, picket, and petition for redress of grievances peacefully.

The Regulation of Gatherings Act 205 of 1993 regulates protest actions and applies only to gatherings in public places with 15 or more people.<sup>62</sup> Protests do not require permission.

However, the convenor is required to provide notification at least seven (7) days before the protest to the responsible officer, a person appointed by the local authority, for a protest of more than 15 people.<sup>63</sup> The convenor is the person who organises the protest. The convenor may give less than seven days' notice at the earliest opportunity available if they can provide a reasonable explanation. Protests without notice are illegal and, consequently, would lack protection. Municipalities typically have notice templates available at their municipal offices or online.

## Litigation

When all else fails or if there is a serious infringement on Constitutional rights, litigation may be the most appropriate accountability mechanism. However, there are several downsides to it. Litigation tends to be expensive and slow. A significant portion of the cost is attributed to the appointment and retention of legal representation. Courts throughout South Africa are also inundated with cases, which means that it can take years for non-urgent cases to be heard before a judge or magistrate. Because of this, courts recommend attempting every other method for resolving a conflict first, such as mediation, before turning to litigation. Courts may also refuse to accept a case if the applicants have not attempted to resolve the matter using other methods.

If litigation becomes necessary, there are public law and civil society organisations that offer support. Legal specialist civil society organisations, including the Legal Resources Centre, Section27, Corruption Watch, and ProBono.Org, offer legal assistance free of charge. University-based law clinics can also be a great source of support for those in need, free of charge. These organisations provide a variety of specialist legal services, including strategic litigation. The type of legal support required can determine whether these organisations can provide help. Even when a legal clinic cannot help with litigation, it can offer legal advice or direct individuals to other sources of legal support.

## Voting

Voting is potentially the most effective method for introducing change in a democratic state. Democracy has flaws, but its greatest strength is that it allows for peaceful revolutions through every vote. If the citizens of a country disapprove of how the government is leading the country, they can use their vote to change the government. Although it may often feel like a single vote counts for little, small changes add up. Voter apathy, where citizens do not

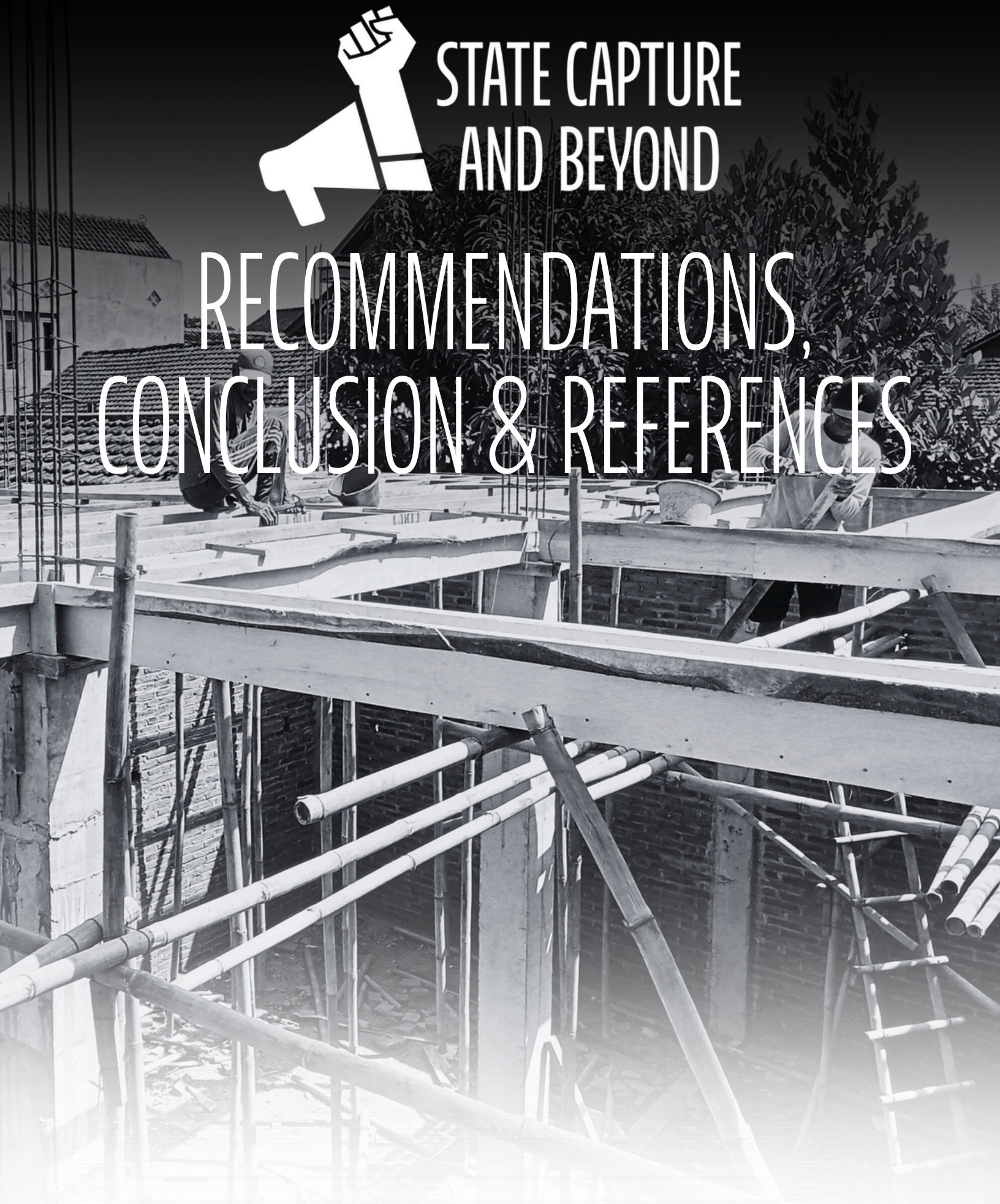
vote because they believe their vote is worthless, is one of the greatest dangers to democracy.

For local government, voting can be especially effective. While it can take tens or hundreds of thousands of votes for a party to gain a seat on the National Assembly, which has just 400 seats, it can take just a few thousand to change which party wins a local government ward. Each ward appoints a councillor to sit on the governing council for a local government municipality. This means that it is easier to achieve direct representation in local government elections. There are also many examples of small, local parties that obtain seats in local governments. Even if these parties do not achieve the majority vote, having seats at the table gives them the most direct method to raise local concerns. The Independent Electoral Commission (IEC) provides an online guide for how to contest municipal elections <https://www.elections.org.za/pw/Parties-And-Candidates/How-To-Contest-Municipal-Elections..>



# STATE CAPTURE AND BEYOND

# RECOMMENDATIONS, CONCLUSION & REFERENCES



## Recommendations

While the solution to the lack of housing appears simple- just build more houses and provide housing opportunities- simple solutions miss the complexity of the problem. Building housing without public consultation and collaboration would likely fail to alleviate the problem because it would treat distinct individuals as nothing more than numbers. These are individuals who have families, work to earn a living, purchase from shops, learn in schools, and partake in community events. Housing should be available where people need it rather than where the government wants it. Solving the housing crisis involves considering and consulting communities to ensure that houses are built where transport, facilities, and education are accessible. As such, the following recommendations are given.

### Strengthen Anti-Corruption Measures:

- Increase transparency at all phases of the procurement process.
- Crack down on construction mafias hindering construction companies.
- Ensure there are clear consequences for officials involved in wasteful expenditure.
- Perform regular lifestyle audits on officials leading departments.
- Empower communities by allowing participation in planning and decision-making.

### Improve Construction Quality:

- Require the employment of a minimum number of qualified professionals, such as engineers and architects, for construction and town planning.
- Consistently enforce clear standards for construction.
- Perform regular quality checks on construction projects.
- Include regularly updated information on government websites for tenders until the tender is complete.
- Ensure effective infrastructure that allows for consistent service provision.

### Address Spatial Apartheid:

- Focus more resources on integrating social housing into cities.
- Make space within cities available for affordable housing to give better access to socioeconomic rights and services.
- Include secure land tenure as part of housing provision.
- Ensure access to public transport services to connect marginalised communities.

- Simplify and streamline development approvals and processes to speed up housing delivery on social housing projects.
- Support backyard settlements as part of a more comprehensive approach to housing provision through planning, upgrading, and awarding subsidies.

#### Involve the Community in Housing Construction and Placement Decisions:

- Consult with communities on the placement of formalised settlements.
- Get input from communities on upgrading informal settlements.
- Invite public participation at the planning stages.
- Advertise the various housing assistance programmes more effectively.
- Create dedicated websites for the various housing assistance programmes to make information easier to access.

#### Collaboration Between Government Spheres to Address the Root Causes:

- Accelerate land distribution programs, such as for farming, to improve access to work.
- Welcome private sector and foreign investment for increased job creation.
- Create economic opportunities in disadvantaged communities.
- Ensure areas for relocation include access to work and other services.
- Strengthen local governance to improve service delivery throughout the country.

## Conclusion

The right to housing is entrenched in the South African Constitution. It is a basic and vital human right, which is inextricably linked to human dignity. However, the majority of South Africans still do not have access to this right. In the past, the apartheid government used access to housing as a means of separating people based on race and conferring rights to the white population. After the 1994 elections, the ANC government created ambitious goals to improve access to housing with the Reconstruction and Development Plan. Unfortunately, these plans have not achieved the desired success, as a lack of political willpower and corruption has sapped the funding necessary.

A house is a basic unit of accommodation for the family unit. While housing provides important shelter and safety, houses also serve as important hubs for receiving government services and creating communities. A house also provides a stable, permanent place where the government can ensure access to essential services like water, electricity, and sanitation. Receiving these services allows individuals to focus on economic growth, instead of struggling for basic needs. Along with essential services, houses are the building blocks for communities where people interact with each other. Individuals can only sustain themselves and flourish when their communities have access to work, education, healthcare, and the means to access these services. This makes it critical to integrate housing opportunities in spaces where individuals can access these needs.

The continued lack of access to housing means it is important to advocate for this right. While the government does have systems in place for transparency and accountability, these do not always work effectively. It therefore becomes necessary for individuals to stand up for their own rights and show the government where it is failing to deliver. This can start with reminding the government of its promises by reporting problems. If this does not help, there are avenues for taking more powerful action to force attention on the problems. Ensuring proper access to housing is of utmost importance as it provides a very strong foundation for improving lives.

## Endnotes

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<sup>15</sup> SERAC v. Nigeria, Decision, Comm. 155/96 (ACmHPR, Oct. 27, 2001) at 60

<sup>16</sup> Resolution on the right to adequate housing and protection from forced evictions - ACHPR/Res.231(LII)2012

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<sup>21</sup> Grootboom op cit note 22 at para 45

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# STATE CAPTURE AND BEYOND



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