Calibrating the promises of constitutional right to access to housing in South Africa: Hurdles and prospects

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Admittedly, by virtue of Section 26 of the South African Constitution, everyone has the right to have access to adequate housing which includes development of socially inclusive housing projects, an informal settlement upgrading program, and provision of infrastructure and services especially for the previously disadvantaged population. However, the majority of South Africans continue to live in defective and badly constructed houses without access to basic services such as water and sanitation because delivery of adequate housing is failing to keep pace with the demand despite the fact that the right is firmly embedded in the Constitution. It is against this background that this article examines how and whether the State is fulfilling its constitutional obligations to deliver adequate housing to the citizens. The article highlights that sub-standard State-led housing delivery is usually plagued by corrupt practices such that over the last few years, many communities have shown their growing dissent over the government's perceived poor levels in service delivery in housing due mainly to the use of emerging contractors resulting to various degrees of corruption, poor planning and monitoring on the part of the government. The article points out that, failing to deliver has constantly resulted to an increasingly antagonistic relationship between the State and communities and the growing dissonance between expectations and public service at the local level, as well as the heavy-handed way in which law enforcement is used to silence dissent and protest about the capacity of public officials to deliver services in these areas. The article also highlights the importance of housing delivery in safeguarding social liability and concludes that the government stance on service level agreements should be strictly implemented in order to remove non-performing officials based on delivery against the agreed targets.

Key words: Right to have access to adequate housing, previously disadvantaged population, defective and badly constructed houses, lack of access to basic amenities, violent protests, failure of public servants to deliver services.

INTRODUCTION

These days, the issue of the right to access adequate housing is increasingly featuring on international and national agendas (Chenwi, 2009) and recognized by more than one hundred national constitutions throughout the world (Golay and Özden, 2007). While there have been considerable efforts to provide and deliver housing to the citizens, supply is not keeping pace with the demand thereby creating inequalities and violation of housing rights to the majority of the population (Lalloo, 1998). With regard to the provision of adequate housing, the South African Housing Code (Part 2 Chapter 2.3) defines the responsibilities of the various players in the housing sector, and reiterates the vital responsibility of the local government because the people who live in the rural areas are the hardest hit and deprived when it comes to the provision and delivery of adequate housing (Solomon, 2008). Adequate housing therefore means housing that is befitting and dignifying. It is in this regard that the public officials should ensure that conditions not conducive to the health and safety of the inhabitants of their areas of jurisdictions are prevented or removed (South African Housing Code Part 2 Chapter 2.3). Similarly, a defective or badly constructed house is tantamount to violation of the right to adequate housing.
The concern is that, over the years, majority of the houses built by various contractors were defective and they have started cracking and falling apart thereby forcing inhabitants to abandon the houses so as to safeguard themselves from the catastrophes and disasters that may occur. The Congress of South African Trade Unions (COSATU) has been consistent in criticising and pointing out the condonation by the government officials responsible for the housing fiasco that are happening on a daily basis (Property24.com, 2011). Recently, it was reported that it will take R58-billion to fix all the poorly constructed housing (Housing Corruption: millions recovered, 2010). This was shocking news for COSATU and other NGOs hence they have called for thorough investigation and accountability (COSATU, 2011). Apart from this, going forward, COSATU emphasised that measures must be taken to stop the abuse of tendering procedures that allowed incompetent builders to secure government contracts and fail to deliver proper houses to the people (COSATU, 2011).

BACKGROUND

When the Government of National Unity took office in 1994, it inherited a country with severe inequalities in resource distribution and land ownership (Kruuse, 2008). In particular, it inherited a housing crisis which was, to a large extent, caused by apartheid legislation and policies (Kruuse, 2008). In 1994 the African National Congress (ANC) adopted the Reconstruction and Development Programme (RDP) as a policy framework to guide it in transforming South Africa from a divided society to one that provides equal opportunities for all its citizens (Democracy, 2011). The four main principles of the RDP are: meeting the people's basic needs, such as housing, water and electricity; developing the country's human resources; building the economy; and democratising State institutions and society (South Africa.info, 2011).

According to the New Housing Policy and Strategy for South Africa, the recognition of housing as a key and priority component of the RDP under a new democratic order should secure the necessary political will and fiscal support to enable the successful launch of sustainable housing programmes meeting the needs arising from inherited backlogs and new family formation (A New Housing Policy and Strategy for South Africa: Opportunities Prevalent in the Housing Environment, 1994). This will require two main approaches: first, securing for housing an adequate contribution from the national budget and, second, establishing multi-sectorial and multi-departmental coordination as an urgent matter of policy and reality. Despite these lofty policies, there have been abysmal failures on the part of the government and public servants to translate the policies into reality by delivering housing to the people. Presently, the failure of the housing policy is also a cause of growing political alienation in the country and may have an impact in the voting patterns of the electorates (Bond and Tait, 1997). It is contended that the laws and policies regulating housing delivery are adequate and sufficient to enable government, public servants and service providers deliver to the people provided there are genuine political and administrative wills to implement and perform various tasks and responsibilities prescribed in the legal and policy frameworks. Against this background, this article accentuates the promises of the housing delivery by discussing the laws and policies relevant to the provisions of and delivery of adequate housing, examines the hurdles to the promises, analyses the prospects made so far in and examines their sustainability which is being threatened by lack of oversights, conflict of interest and so on by the public servants (Tissington, 2011).

METHODOLOGY

This article concentrates on the observation and systematic processing of knowledge, hence the legal positivist research method was used to do a critical exposition of the constitutional promises of right to housing. The traditional method of citation, analysis of cases and other sources are the main scientific methods in legal scholarship. The methodology for this article involved the application of qualitative but not necessarily quantitative data that are illustrative of the concerns that form the crux of this study. Therefore, analysis of and engagement with contemporary literature in the field of law are used. The South African Constitution, Commission reports and governmental initiations formed the basis and the crux upon which the argument for the promises of right to housing is advanced. Other relevant statutory, legislative and policy frameworks are also thoroughly examined and used. A legal comparative research method stimulates thought on legal research and can lead to a new insight and significantly contribute to new knowledge. This research method plays an important role in this article.

CONSTITUTIONAL PROMISES AND OBLIGATIONS OF THE STATE AND PUBLIC SERVANTS

The constitutional right to have access to adequate housing is well articulated in Section 26(1) of the Constitution and provides that everyone has the right to have access to adequate housing. Section 26(3) reinforces the promise in Section 26(1) and provides that “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.” These sections reflect on and confirm the current values and supremacy of the Constitution, equity and the rule of law as well expressed in Section 1(c) of the Constitution. Section 26(3) therefore, protects people considered to be illegal occupants of buildings and land and those in shacks, squatters and so on, majority of whom are indigents, previously disadvantaged and less privileged in the society. The right to access to adequate housing is
synonymous to the right not to be evicted from one’s home irrespective of the reason or circumstances of how possession or occupation secured as expressed in Section 26(2). It is pertinent to mention that the ironing is that the government, the public servants and officials who are under constitutional obligations and responsibility to protect, promote and pre-vent evictions are the major violators and perpetrators.

Suffice it to mention that the Constitution recognised that there were injustices in the past, this is the reason why it laid a solid philosophical foundation in its preamble for the prohibition and outright eradication of injustices of the past such as the displacement of the people from their homes and forcefully driven to the arid and mountainous areas in different parts of the country making them to wander about and in most cases rendering them homeless. Sometimes wherever they found refuge and settled, this did not guarantee them security of tenure as they were constantly subjected to evictions. Happily, the democratic Constitution contains various provisions that addressed these injustices and also provides various remedies.

The constitution expressly provides in its preamble that South Africa belongs to all who live in it and that they should all be united despite the diversity. The significance of this is that the constitution recognises the right to adequate housing to all irrespective of colour, race or sex. This promotes sense of belonging among the rank and file because the indigents and deprived in the society would be seen to be benefitting from the dividends of democracy in terms of befitting, dignified access to housing. It is therefore not surprising that the constitution makes provision for this healing therapy and explicitly encourages the need to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights. Another important provision of the constitution that supports citizen’s right to access to adequate housing is, “to improve the quality of life of all citizens and free the potential of each person.” Important to note is the fact that the right to housing impacts on all other rights such as food, sanitation, water, health, dignity and so on.

More importantly, Section 25(5) promotes citizens rights to gain access to land on an equitable basis. This provision also protects illegal occupants because the constitution places a burden on the State to provide these illegal occupations with land so that they can also enjoy their right of access to land and housing. In terms of 25(6): "a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress". The State is under obligation to ensure that whichever piece of land it may allocate to the illegal occupants must be one that will give them security of tenure. They should therefore not be relocated to a place where they would be facing any possibility of further eviction in the future.

Against the aforementioned backdrop, in order to improve the standard and quality of life of the citizens, the starting point would be to provide and deliver adequate houses that guarantee safety, a safe and clean environment, right to life, human dignity, food, water, social security and social economic rights and developments. By so doing, the delivery of these basic social economic goods and services will motivate and serve as an incentive to the needy and the poor such that they will have sense of belonging and feel that they are an integral part of a large whole. This might serve as an impetus to realise their full potential and ginger them to do their bit in development initiatives. Government should therefore ensure that while providing and delivering houses, security of tenures of the beneficiaries are guaranteed as this will make evictions impossible.

Section 1 of the Constitution supports this approach and provides that: “The Republic of South Africa is one, sovereign, democratic State founded on the following values: Humanity dignity, the achievement of equality and the advancement of human rights and freedoms.” In light of this provision, it is imperative that they should live in dignified homes and surroundings that will afford them an opportunity to enjoy their rights. In the subtopics below, in perspectives, we shall distil the constitutional promises to access to adequate housing, examine whether the government and public officials are taking effective measures to deliver and fulfil these promises to the citizens.

The Bill of Rights

According to Section 7(1), the Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. Provision and delivery of adequate housing are therefore a step towards fulfilling these democratic dividends particularly to the previously disadvantaged groups and afford them an opportunity to better their circumstances by prioritisation the delivery of housing in any housing plan by making them have equal access to housing. The State is therefore obligated by virtue of Section 7(2) to respect; protect, promote and fulfil the rights in the Bill of Rights and access to adequate housing is prominent amongst these rights.

In Section 7(2), the drafters of the Constitution used the word “must” thereby compelling the State to fulful by delivering and where there is non-delivery; the affected citizen has a right to enforce the right. Furthermore, the word “must” indicates that the provision creates obligations for the State and also places a duty upon it to take positive steps towards the realisation of the right.

Applying this to the delivery of housing to the citizens, it is incumbent upon the government to ensure that this right is fulfilled by ensuring access to adequate housing.
It is also incumbent on the government and public servants and other related organs of government to ensure that people are not evicted in any dwelling house. The right to access to adequate housing is tantamount to the right not to be evicted from any dwelling house being occupied by human beings. Consequently, by attempting or out rightly carrying out any eviction without providing alternative accommodation will constitute flagrant violation of Sections 26(1) (3) and 7(2) in the Bill of Rights.

**Meaningful engagements before evictions**

Even where eviction is imminent and inevitable, the Constitution, case law and various government policies and other statutes provide for the need for meaningful engagements that will ensure that both the State and public officials still comply and adhere to the fundamental rights that are well articulated in Sections 26(3) and 7(2). Therefore, it will make good administrative judgment and strategy to ensure that government and its officials engage meaningfully with any person whose right would be adversely affected by any act on their part or that of a private individual when it comes to issue of housing. The State should be seen to be having the best interests of any concerned victim at all times as this is in line with the constitutional promise of right to adequate housing.

Meaningful engagement as a strategy in eviction situation serves two prominent roles that are benefiting to both parties as it allows those about to become homeless and those that will effect eviction to talk to each other meaningfully in order to achieve certain objectives (Chenwi and Tissington, 2010). This process is supported by Section 26(2) where it provides that the State must act reasonably to ensure realisation of the right to housing. The courts have been pro-active in this respect by considering meaningful engagement before any eviction order is granted. In the case of Occupiers of 51 Olivia Road, Berea Township, and Others v City of Johannesburg and Others (2008) (5) BCLR 475 (CC) it was pointed out that the Constitution places a duty on a municipality to engage meaningfully with people who would become homeless if it evicts them. Therefore, when a municipality is trying to evict people, a court must take into account whether there has been meaningful engagement to comply with Section 26(3) of the Constitution (Olivia Road, 2008).

In the same vein, Section 7 of PIE provides that the municipality must at all times facilitate mediation between any parties that are going to be affected by any order of eviction. This then emphasizes the importance of engagement and adds the State as a third party to an eviction involving private land as it must ensure that the parties’ dialogue and such dialogue can only be effective if the State is part of it as it is the one responsible for providing any alternative accommodation (Chenwi and Tissington, 2010). Section 6 of PIE lists various relevant circumstances upon which meaningful engagement should take place before evictions such as the manner in which the occupation took place, its duration and the availability of suitable alternative accommodation or land, but the list is not exhaustive (Wilson, 2007). Other circumstances that may be important include: the particular vulnerability of occupiers (the elderly, children, disabled persons and households headed by women); the extent to which serious negotiations have taken place with equality of voice for all concerned; the reasonableness of offers made in connection with suitable alternative accommodation or land; the timescales proposed relative to the degree of disruption involved; and the willingness of the occupiers to respond to reasonable alternatives put before them (Port Elizabeth Municipality 2005). Meaningful engagement is an important requirement when evictions are sought under the PIE Act.

More importantly, all levels of government are required to consult meaningfully with individuals and communities affected by housing development especially when it involve the issue of eviction; and municipalities are required to promote the resolution of any conflict in order to ensure that citizens’ rights are not violated regarding housing development process (Grootboom, 2000). The various departments in a municipality have to work together. They cannot function separately, “with one department making a decision on whether someone should be evicted and some other departments in the bureaucratic maze determining whether housing should be provided” (Olivia, 2008).

A municipality that evicts people from their homes without first meaningfully engaging with them acts in a way that is against the spirit and purpose of its constitutional obligations (Olivia, 2008). Section 26(2) of the Constitution says a municipality must respond in a reasonable way to potentially homeless people with whom it engages (Olivia, 2008). However, despite the progress made since 1994, levels of dissatisfaction with services and with local government are high (Rakodi, 2011). A recent Institute for Democracy in South Africa (IDASA) citizen satisfaction survey revealed very high levels of dissatisfaction, with poor municipal performance blamed on corruption, nepotism, poor management, and failure to listen to residents or keep them informed (Radoki, 2011). The State of the Cities report released in April 2011 observed that local government is one of the least trusted public institutions: it is considered to be remote, unresponsive, poorly managed, and riddled with internal political party factionalism (Radoki, 2011).

According to the ‘Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements (The policy became operational in August 2004), it talks about the need for consultation and community participation as important parts of housing development. This process is also supported by
international standards and law by requiring that there must be extensive genuine consultation when it comes to the right to adequate housing and in respect of proposed evictions and proposed resettlements. Representations from affected persons and communities must be invited and considered.

It is apparent that the issue of non-delivery of housing is also more prevalent and more felt at the local and municipal levels. The reason is that local government and municipalities deal with the majority of the indigents and previously disadvantaged groups at grass root level. The constitution, in terms of Section 152 provides that the local government must provide services to communities in a sustainable way, it must promote social and economic development, and it must encourage communities and community organisations to be involved in the matters of local government (Chenwi and Tissington 2010). The Constitution establishes that municipalities are now required to be developmental in their approach and activities in order to give priority to the basic needs of the community one of which is to address housing poverty, inequality and promoting social development (Gray and Maré, 2002).

Despite this, there are reports of housing delivery backlogs in the municipalities and provinces created by government officials who had in one way or another compromised their positions by violating the Constitution and breaching the terms and conditions of the housing tenders. In order to achieve the housing delivery targets, there is need for aggressive intervention in curbing corrupts practices and compels performance thereby eliminating housing poverty caused by failure to deliver.

Obligations of the State and public officials

The State and its officials are under the constitutional obligations to provide and deliver houses to the citizens. It is due to this reason that each time a person is to be evicted, the State and its officials become respondents in the matter as they have the duty to protect such person from eviction. If eviction cannot be avoided then the State has a duty to provide that person with alternative accommodation so as to protect its right to adequate housing. In the case of President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd and Others (2005) the court pointed out that: “It is unreasonable for a private landowner to be forced to bear the burden which should be borne by the State of providing the occupiers with alternative accommodation. It is unreasonable for the State to stand by and do nothing where it is impossible for a private landowner to evict occupiers because of the size of the invasion and the particular circumstances of the occupier (Modderklip, 2005).

Therefore, in coming to a decision on whether to grant an eviction order or not one of the things that the court will take into consideration is whether the State has made provision for alternative accommodation or emergency housing for the illegal occupiers. Similarly, in the case of City of Cape Town v Rudolph and Others (2004), the court has given an insight on what ought to be done in the case of emergency or desperate situation by holding that the housing policy must make short-term provision for people in a crisis or desperate situation. The Court further held in the case of the Minister of Public Works and others v Kyalamile Ridge Environmental Association and others (2001 (3) SA 1151 (CC) that the obligation includes the need to facilitate access to temporary relief for people who are living in intolerable conditions and for people who are in crisis due to natural disasters.

Promotion of the inherent right to access to adequate housing

The Constitution explicitly guarantees the right to adequate housing and compels the State to take reasonable steps to achieve its progressive realization (The Right to Housing, 2011). It also prohibits the practice of forced eviction (The Right to Housing, 2011). Section 26 provides that the government must take steps to provide housing ‘within its available resources’. However, in the Grootboom case, where the applicant took the government to court to enforce Section 26 of the Constitution, the court denied the applicant the relief sought. The court’s reason for this was that provision of housing should be based on available resources hence the government is not compelled.

The afore decision is contrary to the spirit and purport of the promise in Section 26 of the Constitution. With regard to housing provision, delivery and administration, the Grootboom case might be used as precedent by the government and its officials as the reason to evade responsibility to perform. The right in Section 26 is well explicit and the Constitution mandates that it should be fulfilled, but in view of the court’s pronouncement, the right had been restricted and tied to available resources. These phrases are very subjective and can be manipulated by the government and public officials to deny the citizens the right to housing as done in the Grootboom case.

Furthermore, in South Africa, it is common knowledge that corruption is rampant in the housing sector particularly in the provision and delivery of housing to the poor. Interestingly, the court held in the Grootboom’s case that “the State must have and implement a reasonable programme to provide everyone with access to adequate housing” (Chenwi and Tissington, 2010). “This is its positive obligation” (Chenwi and Tissington, 2010). But this positive obligation was restricted by the same court by saying that “positive obligations depend on the State’s resources” (Chenwi and Tissington, 2010). It is therefore, pertinent to mention that the reality on the ground is that virtually all the programmes in this regard have failed because even where there have been
adequate and enough budgetary allocations for housing, public officials and administrators in charge of the budgets have been found to illegally siphoned the money for their personal aggrandisements and failed woefully to deliver. Worse still, available resources are being misused and not properly utilised due to lack of accountability in the housing sector; lack of proper oversight by the National government in the tendering process and construction itself. More often than not the tenders are inflated thereby dwindling the resources as those resources that are meant to construct 500 houses for instance will now only be used to construct a hundred. This is one of the reasons for poor services in housing delivery.

This is why the country is witnessing on a daily basis riots and protests attributable to failure to deliver housing as promised. It is therefore contended that if the court in the Grootboom case had applied its mind to the social malaise and various corrupt practices in the housing sector, it would have held otherwise. However, in the case of Port Elizabeth Municipality (2004) it was aptly observed that; “a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.” This decision accords with the spirit and purport of Section 26 of the constitution. It is preferred and definitely assists in provision and delivery of housings, where there is imminent danger of eviction, the decision provided for relief for the victims and talked about reasonable alternative accommodation.

What the State could do to ensure the delivery of adequate housing is to create a conducive environment that will facilitate a continuous provision of access to adequate housing to the masses and those who are in need of housing in the country and ensure that those who have the responsibility to deliver actually perform. It should also be one of the State’s strategies to keep track of all the informal settlements as they emerge and to deal with them quickly before the population escalates to levels they will not be able to cope with. This presupposes that officials in the housing sector should be proactive and plan ahead of time in order to match supply with demand.

**Reasonable legislative and other measures**

Various statutes and government policies promote the right to adequate housing and have been well received as they cater for the needs of the people; one of these laws is the Housing Act 107 of 1997 which defines housing development as follows:

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

(a) Permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and
(b) Potable water, adequate sanitary facilities and domestic energy supply.”

This definition also places a burden on the State to ensure that any developments it seeks to establish are carried out with the need to protect all the other socioeconomic rights of illegal occupants. There is also The Emergency Housing Programme which was published in April 2004; the main objective is to provide temporary but secure access to land and basic municipal services to people who have been left without a home through no fault of their own such as evicted persons, victims of fire, flood or other natural disasters (Kruuse, 2008). Assistance is provided through grants to municipalities, administered, like all other subsidies, through provincial housing departments (Kruuse, 2008).

**THE EFFECT OF AND SANCTION FOR NON-DELIVERY IN THE HOUSING SECTOR**

The right to adequate housing is inherent therefore a failure to fulfil it is tantamount to acting in a manner that is inconsistent with Sections 2 and 7 of the Constitution as discussed earlier. There should be proper oversights in the housing sector, hence, the corrupt practices that are crippling the service delivery should be abhorred and not be tolerated because it impacts negatively on the constitutional promises too tight to access to housing. Where there is an allegation of and proof of corruption in award and execution of tender, such transaction should be declared invalid and rendered null and void. By virtue of Section 2 of the Constitution, it declares that, “law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.” This provision brings in an element of criminality into the poor service delivery by the State and its officials.

Consequently, both the criminal and civil responsibilities of the perpetrators should be explored and they should be made to refund money illegally received and pay compensations to the victims. In so doing, corruption would be punished and this will send warning signals to those who would want to engage in corrupt housing fraud by swindling housing funds (Kruuse, 2008). It is therefore commendable when the national audit task team appointed by the South Africa’s Department of Human Settlements recovered R44-million and arrested 1 910 government officials who were illegally benefiting from
housing subsidies (Housing corruption: millions recovered, 2010). The recovered money has been ploughed back into the department for use in human settlement grants (Housing corruption: millions recovered, 2010).

Another problem with the housing delivery system is the provision of sub-standard housing as a result of compromise, corruption and lack of oversight by those responsible to provide and deliver. For example, some houses would have started cracking before they are completed and defects could be multidimensional. Situations like this require that the responsible persons or companies should be informed to either reconstruct or return the money already paid and be compelled to pay for any alternative accommodation for the affected people if need be. Recently, the Human Settlements Minister Tokyo Sexwale confirmed numerous shoddy works done by various contractors and revealed how his department was compelled to rebuild 40000 defective low-cost RDP houses built by greedy contractors, some of whom have become instant millionaires (Housing corruption: millions recovered, 2010).

Another problem is the delay in delivery that is often experienced when these contractors are working. More often than not they were paid lump sum upfront but diverted and channelled funds received to personal uses. In order to curb this, the government payments of lump sum should be tied to performance bond so that the service provider is compelled to perform and where it fails, recourse will be on the bond to perform. This is a very good oversight as it helps in the administration and delivery of housing as promised in the Constitution.

GOING FORWARD: ACCOUNTABILITY AND OPENNESS

According to the United Nations High Commissioner for Human Rights (UNHCHR) report on the implementation and monitoring of economic, social and cultural (UN doc. E/2009/90) implementation is defined as ‘the act of putting into effect a decision, or providing practical means to accomplish something. This implies moving from the acceptance of international human rights obligations to the adoption of appropriate measures and ensuring that the rights are enjoyed by all (UN doc. E/2009/90). Monitoring, on the other hand, is defined as ‘a systematic gathering of information with a view to evaluating compliance with human rights commitments’ (UN doc. E/2009/90). These concepts are interlinked. Implementation involves measures adopted and results achieved (process and outcome), while monitoring assesses whether appropriate measures have been adopted and applied and evaluates their results (UN doc. E/2009/90). Hence ‘monitoring provides feedback for implementation’ (UN doc. E/2009/90).

These approaches are germane in South Africa and necessary given the lack of existing accountability and measurement mechanisms for tracking the realisation of socio-economic rights particularly in housing delivery (Tissington, 2010). South Africa receives routine praise for having put justiciable socio-economic rights in its Constitution and for being one of the few countries in the world to do so (Tissington, 2010). Observers particularly commend the South African Constitution for imposing positive obligations on the State regarding socio-economic rights, requiring proactive policy formulation, budgetary allocation and effective implementation (Tissington, 2010). However, when it comes to implementation, performance and delivery, those who are entrusted with these responsibilities have dismally failed in all respects. This is now threatening the political landscape and the nascent democracy. Unless there is stringent application of meticulous oversight, the crisis in the housing sector will continue and implicate other fundamental rights like the right to life as recently witnessed in the country where police shot, wounded and killed citizens during protests in respect of poor service delivery or non-delivery of housing as promised.

RECOMMENDATIONS

There should be more oversight in the utilisation of resources in order to ensure proper allocation and effective, efficient spending so that all citizens have access to adequate housing. The State and officials should structure and manage their administration, budget and planning processes to give priority to the basic needs of the citizens, and to promote the social and economic development of the community. Thus, the State and officials must ensure that they respect, protect, promote and fulfil the equality rights in the Bill of Rights especially to the previously historically disadvantaged population and the vulnerable in the society.

Government should set up an independent body comprising of retired jurists and policemen to overlook the entire process of housing provision and ensure that it is properly delivered to the beneficiaries. These are citizens with high standing and credibility in the society, they would ensure they apply credible and diligent oversights in the awards and execution of housing tenders. This will discourage or out rightly curb corruption and encourage good service delivery in the housing sector.

Conclusion

Shelter is one of the essentials of human needs for existence. It is desirable and also compulsory that human beings should live in a home that is dignifying and befitting. Various national and international instruments support this as the normative standards that each country
should achieve and fulfil. The Constitution of South Africa in terms of Section 26 makes it a fundamental right and provides for various means to ensure that the right is enjoyed and fulfilled. However, various impediments are currently standing as obstacles against the realisation and enjoyment of this right. Corrupt practices by government, its officials and service providers have been the major obstacles.

This notwithstanding, with the proper political, administrative and judicial wills, corruption can be nipped in the bud thereby allowing for the realisation and fulfilment of the promises as well articulated in the constitution. Both Civil and criminal responsibilities of perpetrators of housing frauds should be explored, sanctioned and they should be held accountable. This will serve as deterrence to others thereby discouraging the culture of impunity Consequently, it is imperative that the government should provide leadership by upholding the rule of law, ensure housing are delivered in accordance with the tender’s terms and conditions, make housing accessible to the citizens particularly indigents and previously disadvantaged population.

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REFERENCES


Chenwi L (2009). Ensuring Rights Make Real Change. ESR Review/Community Law Centre, University of the Western Cape. 10:3

City of Cape Town v Rudolph and Others (2004) (5) SA.


President of the Republic of South Africa and Others v Modderklip Boordery (Pty) Ltd and Others (2005) (8) BCLR 786 (CC).


South African Housing Code: Part 2; Chapter 2.3 – “Role and functions of local government.” Available at http://www.housing.gov.za/Content/ The%20Housing%20Code/Part%202/Part%202- 20-%20Chapter%202.html#2.3.


