

# BACKYARD HOUSING

## AN ESSENTIAL PART OF THE SOLUTION TO SOUTH AFRICA'S HOUSING CRISIS

A submission into the proposed  
New Human Settlements Policy  
and Human Settlements Bill

September 2022



## Acknowledgements

Backyard Matters is a partnership initiative between Development Action Group (DAG) and Isandla Institute. The project is aimed at strengthening the backyard rental market and contributing towards well-managed, quality rental stock that provides affordable, dignified and safe housing solutions. Backyard Matters is funded by Comic Relief.

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## Introduction

### The unfulfilled promise of housing

**While the right of access to adequate housing is an entrenched and justiciable socio-economic right, the impact of apartheid segregation laws and urban planning practices is still overwhelmingly evident today. The Constitutional Court recently recognised that ‘abysmal living conditions which are reflective of the great disparities in wealth in our society persist, manifesting in despair in almost every corner of South Africa.’ Despite the right to housing being the most litigated socio-economic right and despite the passage of almost 22 years, the Court further held that ‘If anything, [conditions] have likely worsened over the last two decades since this Court’s pronouncement in *Grootboom*, thereby lending a hollow ring to our constitutional aspirations, so powerfully espoused by this Court...’<sup>1</sup>**

**The cumulative result is that housing insecurity has increased, exacerbating the mismatch between housing programming and housing realities.**

The housing crisis which we face today therefore has its roots in two key circumstances. The first relates to inherited historical housing backlogs. Despite initial gains made in mediating the insecurity of tenure faced by the majority of the population at the end of apartheid, housing legislation and programming has not kept pace with the housing need in practice, thus compounding backlogs (DHS 2015). The second relates to new and evolving challenges. In recent years, and more particularly since 2019, there have been many intervening ‘major’ events such as the Covid-19 pandemic and the increasing economic insecurity occasioned by lockdowns intended to mitigate the spread of the disease. Increasing incidents of natural disasters, such as drought and floods, and continued risk of fires in informal settlements remain a significant risk to tenuous housing security. The cumulative result is that housing insecurity has increased, exacerbating the mismatch between housing programming and housing realities.

The national Department of Human Settlements (NDHS) recognises this disjuncture between policy and practice, describing how ‘human settlements patterns in South Africa remain dysfunctional across the country, [with] the housing market fractured with inequitable access to its workings and benefits, and an on-going housing affordability problem across various submarkets particularly the gap submarket’ (DHS 2015: 6). The result is that the many vulnerable in South Africa have had to rely on their own resourcefulness (and limited resources) to meet their housing needs. A significant proportion of the population therefore continues to live along a continuum of housing insecurity, most often characterised by conditions of informality. Informal settlements are an established and growing element of the human settlements landscape of South Africa. However, even here, in the context of increased insecurity, evictions from informal settlements and increased land occupations have become common place. In the context of informal backyard housing due to economic insecurity, we also see a transitioning of backyard residents along a spectrum of tenure insecurity, often following a trajectory from paying tenants to evictees, to land occupiers in need of ‘emergency accommodation’ because they have no alternatives.

<sup>1</sup> *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others (CCT 157/20) [2021] ZACC*, para 6.

**The NDHS recognises this disjuncture between policy and practice, describing how human settlements patterns in South Africa remain dysfunctional across the country.**

The NDHS has taken steps to evaluate and assess the various challenges which face the human settlements sector, including a review of existing policy and legislative instruments and programmes (DHS 2015). In keeping with the objectives of the UN Sustainable Development Goals, which includes 'a people-centred approach' to understanding and responding to the housing needs of communities, principal documents such as the National Development Plan 2030, the Integrated Urban Development Framework (IUDF) and the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) all agree that this must not only include an acceptance of informality, but must extend to *engaging* informality and the housing opportunities that exist in the informal sector (Cape Town NGO Collaborative Initiative 2019: 18).

Building on this principle, in 2019 the Cape Town NGO Collaborative Initiative<sup>2</sup> leveraged their collective experience in the human settlements sector to make a submission to inform the human settlements policy and legislative review process. The focus of the 2019 submission *Informal Settlement Upgrading Matters*, with its emphasis on participatory and incremental informal settlement upgrading towards neighbourhood development, was thus crucial to ensuring that we move beyond formal recognition of informal settlements to substantively engaging it as an essential component to realising housing rights.

In 2021, the then Minister of Human Settlements, Lindiwe Sisulu, in reflecting on housing delivery to date, acknowledged that the large-scale provision of individual title housing, the ideal of 'bricks and mortar housing' and 'housing for all' is not sustainable in South Africa (DHS 2021). There has rather been a clear policy shift from the delivery of top-structure and individual title to upscaling the delivery of serviced sites to individuals, embracing what is referred to as 'partnership with communities' and the 'do-it-yourself culture' (DHS (Budget Vote) 2022a). While we advocate for and recognise that this may be a relevant contribution to the realisation of the 'right to build' as part and parcel of the right of access to housing, as will be discussed below, key questions remain as to how the needs of the most vulnerable will be addressed in this approach and what duties this engenders for government.

This becomes increasingly important in the context of the financial austerity measures adopted by government. The current NDHS budget sees an allocation to human settlement programmes that simply provides for inflation-related increases, which is insufficient to address expanding and historical housing backlogs (Eglin 2022; Isandla Institute 2022a).<sup>3</sup>

<sup>2</sup> The Cape Town NGO Collaborative Initiative is a collective of urban sector organisations with a wide range of expertise and experience in progressive practice around participatory and incremental informal settlement upgrading, and human settlements development more broadly, in South Africa. It was comprised of the Community Organisation Resource Centre (CORC), Development Action Group (DAG), Habitat for Humanity South Africa, Isandla Institute, People's Environmental Planning (PEP), Ubuhle Bakha Ubuhle (UBU) and Violence Prevention through Urban Upgrading (VPUU).

<sup>3</sup> More recently, the 2022 Division of Revenue Act does indicate that a portion of USDG funding is required to be used towards increasing municipal bulk and link infrastructure, and construction/provision of internal engineering services, including to backyarder residents and densification overlay zones (National Treasury 2022(a): 628).

<sup>4</sup> At the start of the review process a structured engagement process with civil society was in place. Civil society engagement has since been ad hoc.

<sup>5</sup> Afesis-corplan; Built Environment Support Group (BESG); Community Organisation Resource Centre (CORC); Development Action Group (DAG); Habitat for Humanity South Africa; Isandla Institute; Legal Resources Centre (LRC); Ndifuna Ukwazi (NU); People's Environmental Planning (PEP); Planact; Socio-Economic Rights Institute of South Africa (SERI). These organisations have expertise in various aspects of human settlements and housing rights, which they bring to bear through various modalities and in different platforms.

Earlier this year, Minister Kubayi announced in her Budget Vote Speech that a draft Human Settlements Bill will be introduced in Parliament at the beginning of 2023 (DHS 2022a). We welcome the renewed energy to get the policy review process finalised following a long hiatus. We are, however, concerned that there is no clear strategy for engaging the communities directly impacted by human settlements policy and programmes, nor is there a clear indication of how civil society organisations working within the sector will be able to contribute their expertise to the review process.<sup>4</sup>

In an effort to make a substantive contribution before new human settlements policy and legislation is largely settled, a group of civil society organisations<sup>5</sup> (comprising of many of the organisations who collaborated on the 2019 Cape Town NGO Collaborative Initiative) have chosen to identify one aspect of the sector that has not been well-represented or considered in human settlements policy and programmes. Building on the core arguments presented in the *Informal Settlement Upgrading Matters* submission (which we believe still stands as a valuable contribution to the policy review process), the focus of our submission is on that of the rights and needs of residents who live in what is colloquially referred to as 'backyard housing.'

**There has been a clear policy shift from the delivery of top-structure and individual title to upscaling the delivery of serviced sites to individuals.**



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## Outline of submission and core principles

As the 2015 NDHS discussion document – and, more recently, the reports of the Special Rapporteur on the right of access to adequate housing – recognises, informality is an intrinsic part of human settlements (UN 2022). There are certain core principles which we as civil society believe should inform the substantive underpinnings of the human settlements review process and the content of the revised legislative and policy framework, namely the recognition that:

**There are certain core principles which we as civil society believe should inform the substantive underpinnings of the human settlements review process.**

- Housing is a multi-faceted, incremental process, and not simply the delivery of a product.
- The section 26 right of access to adequate housing is a composite right, integrally linked to the realisation of every other socio-economic right in the Constitution, including the right of access to water, sanitation, electricity and other key basic services.
- Case law has established that the right of access to housing is inextricably linked to the civil and political rights of dignity, safety and security, privacy and family life.
- The evolving legal framework (informed by case law) recognises that a diversity of needs exist and requires corresponding obligations and nuanced programmatic responses.
- Significantly, housing rights include the duty of substantive community engagement, especially by municipalities. This extends to the duty of 'meaningful engagement' between municipalities and communities particularly in the context of rights limitations, including eviction situations that may lead to homelessness.
- Housing is central to the 'place-making' function of local government and gives rise to both individual and communal rights to dignified lives and neighbourhoods.

We believe that these principles apply unequivocally to backyard housing. Following this introduction is a brief overview of the backyard housing sector. There are four key aspects that need to be addressed to strengthen the sector's role in providing affordable, dignified housing, including access to basic services; security of tenure; enabling housing solutions through self-build; and, improvements in the public realm through a neighbourhood (including a violence prevention and safety) approach. The submission primarily focuses on these aspects and concludes with key recommendations to take forward.



Access to basic services



Security of tenure



Enabling self-build



Creation of safe neighbourhoods  
(violence prevention and safety)

## Backyard housing: An invisible housing market

### Backyard housing as one of the fastest growing subsectors in human settlements

Backyard housing has formed part of the landscape of South African communities for many years. It emerged as a necessary form of community-driven 'self-help' for many vulnerable households who are unable to access housing options via the private market and/or who often fall within the cracks of state housing programmes or are frustrated by long housing waiting lists. It is accepted that this form of housing exists 'largely without any government intervention/support' and 'successfully provides accommodation to non-qualifiers, migrants or temporary workers not seeking home ownership, and any other households wishing to rent but who cannot afford the formal rental accommodation' (Tshangana 2014: 2). While there is increased recognition of the backyard housing sector, many commentators agree that there is a paucity of in-depth research and disaggregated data that can inform state provision and decision-making in relation to backyard residents (Lategan et al 2020; Isandla Institute 2020a). This is disconcerting given the fact that it is one of the fastest growing subsectors within human settlements in South Africa, even outpacing growth in informal settlements (Isandla Institute 2020b, Scheba & Turok 2020).

The backyard housing sector therefore fills an important gap in the context of compounded housing backlogs. While this is true, it is also clear that there are elements of this form of accommodation which inhibit the ability of occupiers to access basic services and lead dignified lives in an 'environment that is not harmful to health or well-being.'<sup>6</sup>

Research suggests that the population of backyard residents is not a homogenous group (Scheba & Turok 2020, DAG 2022 – see **Table 1**). Backyard residents can range from middle income residents, who use backyard tenancy as an opportunity to access neighbourhoods and amenities that are well-located without having to commit to the permanency of property ownership, to poor residents living on social security. For backyard residents who live in middle income neighbourhoods, conditions of residence are more regulated, including access to basic services. These backyard structures are generally formal structures that are compliant with building regulations. The narrative around this type of backyard resident is different, positive and seen as a valuable contribution to the housing sector and local economic development (Isandla Institute 2020a).

**The backyard housing sector therefore fills an important gap in the context of compounded housing backlogs.**

Table 1. Diversity of tenants and landlords in the backyard sector

Tenant types	Landlord types
<b>Backyard owners:</b> Tenant households which own their own structure and rent space in the yard from the landlord.	<b>Landlord owners:</b> Landlord households which own the property and live in the main house. They rent out rooms and/or structures and space in the yard.
<b>Backyard tenants:</b> Tenant households which rent both the structure and the space in the yard.	<b>Landlord tenants:</b> Landlord households which rent the main house themselves and sublet rooms and/or structures and space in the yard.
<b>Backyard residents:</b> Households which live in a structure in the yard under some other form tenure.	<b>Landlord residents:</b> Landlord households which have some other kind of tenure and rent out room and/or structure and space in the yard.

Source: Isandla Institute 2021c: 19-20.

<sup>6</sup> S 24 Constitution of the Republic of South Africa, 1996 (hereafter Constitution).

**Backyard housing remains largely invisible in legislation, policy frameworks and programmes at national, provincial and local level.**

While backyard residents are often employed and engage in income-generating activities, many backyard residents fall within a spectrum of economic vulnerability. The focus of this submission is on economically vulnerable backyard residents, living on both public and private land. While anomalous, backyard residents can also be found in informal settlements.

There is increasing recognition that backyard housing is not transitory. Many who themselves have considered backyard dwellings as a temporary solution until they 'finally get their home' have lived their entire lives in backyard housing (Isandla Institute 2020b: 2). It is therefore imperative that the rights of backyard residents are protected and progressively realised beyond traditional barriers based on the notion that only holders of recognised title, i.e. residents of the 'main house', are entitled to 'recognised standing' as members of the municipal community.

### **A legislative, policy and research gap**

Informality in South Africa has traditionally been met with negative or reactive approaches (Cirolia et al 2016; Isandla Institute 2020a). Concerns relate to overcrowding, the eradication of 'slum-like conditions' and non-compliance of structures with formal planning requirements. There has, however, been a shift in how government perceives informality and the recognition that informal housing fulfils a vital role in mediating housing need. The Upgrading of Informal Settlements Programme (UISP) as a pillar of the National Housing Code is evidence of this. The National Development Plan as well as SPLUMA and respective Spatial Development Frameworks recognise that densification is important 'to reduce the significant backlog in housing provision and to mitigate dysfunctional housing provision for low-income households and high levels of informality' (Hofer et al 2021: 2). We argue, however, that while these planning instruments acknowledge and even encourage densification as a key mechanism to realise the right of access to adequate housing, the type of densification envisioned is forward-looking, in the context of state-led programming, and does not take into account the organic, existing densification which takes place often as a result of necessity and of which backyard housing is a good representation.

An evaluation of the Housing Code reveals that there is no specific housing programme that caters for the needs of backyard residents. While backyard residents are found in informal settlements, the application of the UISP specifically excludes 'persons currently occupying informal houses/dwellings in the backyards of formal settlements' (DHS 2009: 16). Despite limited examples in practice where municipalities choose to include backyard residents in upgrading programmes, there is a clear legislative and generally a *de facto* exclusion of backyard residents from benefitting from basic service provision in upgrading of informal settlement programmes. No coherent policy framework exists at national or provincial government to address the needs of backyard residents. As discussed below, certain metropolitan municipalities roll out basic services on public land only, to the exclusion of backyard residents on private land. We argue that case law has clearly established, however, that the exclusion of a vulnerable group from housing programming is unconstitutional.

In view of the above, we advocate that what is required is a multi-stakeholder approach that begins to address the complexities of the sector in an incremental way (Isandla Institute 2020a). A dedicated programme focussing on interventions into the sector may need to be considered, but also existing programmes and funding instruments need to be appropriately adapted to ensure that the rights and needs of backyard residents are addressed. We believe that interventions in the four key areas discussed below are crucial to ensuring that this takes place.



## Key arguments

- 1 Degrees of tenure (in)security exist in communities, with informal settlements and informal backyard housing (and homelessness) on a continuum of housing informality.
- 2 Backyard housing makes a valuable contribution to realising the housing rights of those who fall between the cracks of state housing programmes and private market provision.
- 3 For many residents backyard housing is not a short-term, interim or transitory housing option.
- 4 Research suggests that backyard residents face a number of mutually-enforcing vulnerabilities because of their status and association with informality.
- 5 Despite the sector's contribution to urban housing and the specific vulnerabilities affecting backyard residents, backyard housing remains largely invisible in legislation, policy frameworks and programmes at national, provincial and local level.



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## Access to basic services for backyard residents

**There is a clear constitutional and legislative imperative to deliver basic services to all municipal residents including backyard residents. The Constitutional Court has described the provision of basic municipal services as ‘a cardinal function, if not the most important function, of every municipal government’ with the central mandate of local government ‘to develop a service delivery capacity in order to meet the basic needs of all inhabitants of South Africa, irrespective of whether or not they have a contractual relationship with the relevant public service provider.’<sup>7</sup>**

**There is a clear constitutional and legislative imperative to deliver basic services to all municipal residents including backyard residents.**

This duty to provide basic services is sourced from the constitutional objectives of local government entrenched in sections 152 and 153 of the Constitution, which not only emphasise the provision of basic services in a sustainable way, but also encourage communities and community organisations to be part of municipal decision-making. Equally important are the rights entrenched in the Bill of Rights which bind all spheres of government. Sections 26 and 27 provide that everyone has the right of access to adequate housing and sufficient water, while section 24 provides that everyone has a right to an environment that is not harmful to health or well-being. These imperatives are echoed in the Municipal Systems Act (32 of 2000) with emphasis on equitable provision of municipal services to all residents [S4(2)(f)] with special provision made for the indigent.<sup>8</sup> These legislated duties are further supplemented by the national policy on free basic services, funded by the equitable share allocation in the annual Division of Revenue<sup>9</sup> and elaborated on in key legislation such as the Water Services Act 108 of 1997 and Electricity Regulation Act 108 of 1997. For example, the Water Services Act defines a ‘basic water supply’ as ‘[t]he prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene.’<sup>10</sup> Free basic services comprise allocations of water and sanitation, energy and refuse removal and should be accessible to all who need them.<sup>11</sup>

### Impediments to accessing basic services

Backyard residents face a range of problems when accessing basic services. Landlords are most commonly the intermediaries of this access, with backyard residents sharing basic services with the main house or in certain instances accessing communal services on the erf, such as water from a shared tap or communal

<sup>7</sup> *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30, para 39.

<sup>8</sup> Ss 4(2)(d); 73 (b) & 74 (2) (c) *Municipal Systems Act*.

<sup>9</sup> *Water, sanitation and energy, and refuse removal comprise the basket of free basic services identified as basic services to be supported by government’s programmes in respect of poor households. See Cogta ‘How do I access free basic municipal services?’ (2021) available at <https://www.cogta.gov.za/index.php/2021/04/11/how-do-i-access-free-basic-municipal-services/>.*

<sup>10</sup> S 1 ‘Definitions’ *Water Services Act*.

<sup>11</sup> *This includes at least a basic amount of 6 kl (6 000 l) of water per month per household; free basic electricity of 50kWh per household per month for a grid-energy system and sewerage and sanitation as well as solid waste management subsidised up to R50 per month or 100% subsidy to indigent households. (Cogta 2021).*

'outdoor' sanitation facilities. In this context, a significant source of conflict relates to uncertainty about the usage of basic services and shared billing between backyard residents and occupants of the 'main house.' In other instances, landlords may leverage access to services as a means of imposing surcharges on rental income or as a tool to enforce rent payment. A recent example cited the inverse impact on a landlord, where unregulated use of basic services by backyard residents led to exorbitant water bills and subsequent electricity disconnections for the main household (Damons 2022). More concerning than billing disputes is the fact that there is no clear allocation of free basic services for the main household as well as backyard residents, depriving them of much-needed and constitutionally guaranteed basic services. An obvious solution to this problem would be for the municipality to provide separate infrastructure for backyard residents allowing for separate billing. As Jeanefer Visser, a landlord and the chair of the Eersteriver Backyarders Association motivates, 'If we look into separate billing [for backyard tenants], then the tenants will be obligated to pay for their own water and electricity. This way no one can claim to be crooked. If the backyarder doesn't have money, the landlord shouldn't have to foot the bill either...'. (Damons 2022).

**In the absence of a coherent approach and policy framework, the basic needs of a significant number of vulnerable backyard residents remain unmet.**

### **The recurring debate: Service provision on public versus private land**

In asserting the argument in favour of extending basic service infrastructure to backyard residents, a recurring argument encountered at various spheres of government is that 'service infrastructure (which often requires capital investment) cannot be provided on private land.' Municipal officials in particular have raised the argument that the legal framework regulating the financial decision-making of municipalities, more specifically, the provisions of the Municipal Financial Management Act 56 of 2003 (MFMA), prevents municipalities from investing in the necessary infrastructure on private land that is needed to facilitate such access. This is relevant for those backyard residents who live on publicly-owned land (which typically takes the form of backyard residents living within the perimeter of municipal housing rental units), but even more so for those backyard residents living on privately-owned land. So, while there have been examples of municipalities providing services to backyard residents living on public land, the provision of services on private land has remained a grey area and sometimes contentious issue. For example, while the City of Cape Town is proud of being 'the first city in South Africa to introduce basic services to backyarders residing on Council-owned properties', it argues that '[t]he [MFMA] determines that public money may not be used for enhancing private properties... [and] [t]herefore, much work still needs to be done to see how backyarder services will be rolled out to those residing on private properties within the framework of the law.'<sup>12</sup> Similar arguments have been raised by other metropolitan municipalities and even other organs of state, such as Eskom in justifying why service provision cannot be extended to backyard residents (Lali 2022).<sup>13</sup> What is concerning is that in the absence of a coherent approach and policy framework, this means that the basic needs of a significant number of vulnerable backyard residents remain unmet.

<sup>12</sup> City of Cape Town 'Only one in three backyarders are registered on Housing Database' Media briefing 15 January 2020 <https://www.capetown.gov.za/Media-and-news/Only%20one%20in%20three%20backyarders%20are%20registered%20on%20Housing%20Database>

<sup>13</sup> The City of eThekweni was similarly faced with concerns about the legality of service provision to informal settlements located on private land. They commissioned two legal opinions on the matter in 2018 and 2019, respectively, that were recently made public. See: Senior Counsel Opinions Regarding the Provision of State-funded Services on Private Land in eThekweni Municipality (2022).

**Municipalities are bound to 'take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of rights'.**

### **In search of legal certainty: Legal opinion on service provision on private land**

While the issue of legal impediments is frequently raised in response to requests to extend service provision on private land, government functionaries, including municipal officials, often fail to provide a coherent legal argument (with reference to the *specific* provisions of the MFMA) to justify this interpretation. It was for this reason that Isandla Institute commissioned a legal opinion by Senior Counsel to obtain legal clarity and certainty on the matter.<sup>14</sup> The legal opinion focusses on two key questions: firstly, whether municipalities have the power to provide basic services to backyard residents living on private land and, secondly, whether they have the obligation to provide these services. It also evaluates if indeed there are any specific impediments within the MFMA that prevent municipalities from fulfilling their duties to backyard residents on private land.

#### *The power and obligation to provide basic services*

Municipalities, together with the other spheres of government are bound to 'take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation' of the rights of access to housing and water entrenched in the Bill of Rights.

In evaluating the powers of municipalities to provide basic services, the Constitution is clear: the functions of municipalities are listed in Schedule 4B and 5B of the Constitution and include basic services such as water and sanitation services, energy and refuse removal, amongst others. Municipalities furthermore have legislative and executive authority to provide services and introduce bylaws for the purpose of service provision provided that it is consistent with the Constitution and provincial and national legislation.<sup>15</sup> Our courts have provided further guidance as to what 'reasonable legislative and other measures, within available resources, to achieve the progressive realisation' of rights' entails. The Court in the *Grootboom* judgment stated that a reasonable programme is comprised of the following elements – the programme must:

- be reasonable in both its conception and implementation;
- clearly allocate responsibilities and tasks to the different spheres of government;
- ensure that the appropriate financial and human resources are available; be comprehensive, coherent and well-coordinated;
- be capable of facilitating the right in question even if on a progressive basis;
- be balanced and flexible (capable of responding to short-, medium-, and long-term needs and responding to the urgent needs of those in desperate circumstances); and,
- not exclude a significant segment of society.<sup>16</sup>

It is thus clear that municipalities have entrenched constitutional duties to provide basic services and the accompanying powers to fulfil them.

<sup>14</sup> Isandla Institute. 2021a. 'The obligations and powers of municipal governments to provide basic services for backyard dwellers on private land'. Legal Opinion by Advocate Budlender, G SC. [https://isandla.org.za/en/resources/item/download/244\\_4e9c0176c8666ba24fd88d2386d4f7f0](https://isandla.org.za/en/resources/item/download/244_4e9c0176c8666ba24fd88d2386d4f7f0).

<sup>15</sup> S 156 (1) - (3) Constitution.

<sup>16</sup> *Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC. (Grootboom), paras 39 & 41-4.*

<sup>17</sup> *The conclusions of the Budlender legal opinion commissioned by Isandla Institute (2021a) echo those of the legal opinions commissioned by the City of eThekweni (see footnote 13).*

<sup>18</sup> *Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) [2009] ZACC 28, para 1 (hereafter Mazibuko).*

<sup>19</sup> *Mazibuko, para 67.*

### Impediments to service provision in the MFMA

An evaluation of the provisions of the MFMA as well as other key legislation that governs local government, like the Municipal Systems Act, reveals that there is nothing (no specific provision) that prohibits the investment in infrastructure on private land for the purposes of basic service delivery.

One of the key arguments which municipalities raise is that the funds of a municipality should not be used to increase the value of privately-owned land. The legal opinion posits, however, that there are many municipal processes that add value to private property. For example, the courts have established that any service provision to the erf already adds value to property. Other examples of decisions that 'add value' include zoning decisions or granting of development rights, all of which may increase the value of land.

Municipalities also argue that spending on infrastructure on private land goes against the principles or 'spirit' of the law (MFMA), which is aimed at avoiding 'wasteful and fruitless expenditure.' We are in full agreement that inefficient and wasteful expenditure must be avoided. Municipalities must ensure coherent and sustainable service delivery. However, if the end-goal of fulfilling constitutional rights and duties in extending basic services to backyard residents is accomplished, then marginal increases in the value of private property is surely justifiable. We argue that similar trade-offs that benefit the private sector happen frequently in practice.

The legal opinion concludes that nothing in the framework of the MFMA or Municipal Systems Act prohibits the investment in infrastructure on private land. On this basis, we argue that any concerns about the 'spirit' of the MFMA can never trump the clear, undisputed constitutional provisions and legislative framework unequivocally mandating the provision of basic services.<sup>17</sup>

### Evaluating the standard of reasonable action in fulfilling the rights of backyard residents

The Court in *Mazibuko and Others v City of Johannesburg and Others*<sup>18</sup> provided a compelling summary of the standard of reasonableness for municipalities and how municipal programming can be evaluated:

'Thus the positive obligations imposed upon government by the social and economic rights in our Constitution will be enforced by courts in at least the following ways:

- If the government takes no steps to realise the rights, the courts will require the government to take steps.
- If the government's adopted measures are unreasonable, the courts will similarly require that they be reviewed so as to meet the constitutional standard of reasonableness.
- From *Grootboom*, it is clear that a measure will be unreasonable if it makes no provision for those most desperately in need.
- If the government adopts a policy with unreasonable limitations or exclusions, as in *Treatment Action Campaign No 2*, the Court may order that those are removed.
- Finally, the obligation of progressive realisation imposes a duty upon the government continually to review its policies to ensure that the achievement of the right is progressively realised.<sup>19</sup>

**If the end-goal of fulfilling constitutional rights in extending basic services to backyard dwellers is accomplished, then marginal increases in the value of private property is surely justifiable.**

**We argue that, similarly, distinctions between backyard residents that live on public and privately owned land are unconstitutional and failure to include them in human settlement planning and execution processes at every level of government is unconstitutional.**

In the recent judgment in *Mshengu and Others v Msunduzi Local Municipality and Others*<sup>20</sup> the Court fundamentally reiterated the importance of ensuring the progressive realisation of the right of access to water and other fundamental basic services for all members of the municipal community, including those who access services via intermediaries such as landlords, or, as in this case, farm owners. The case concerned the rights of farm dwellers and labour tenants who did not have access to sufficient water, basic sanitation and refuse collection services.

The Court significantly found that even though the farm occupiers were living on privately owned land, the obligation to provide water and sanitation rests on the municipality which had failed to meet the constitutional needs of this vulnerable group. The Court then provided structural relief to ensure basic water, sanitation and refuse removal services.<sup>21</sup> The Court even went one step further by requiring the municipality to embark on an enumeration exercise to identify other similarly-situated farm occupiers and labour tenants residing within their municipal areas with the purpose of preparing a comprehensive plan detailing the steps that they would take to provide this group in the community with access to basic services.<sup>22</sup>

We argue that, similarly, distinctions between backyard residents that live on public and privately owned land are unconstitutional and failure to include them in human settlement planning and execution processes at every level of government is unconstitutional.

#### **Progressive realisation: Extending water and sanitation services to backyard tenants**

We acknowledge that the extension of water and sanitation infrastructure to accommodate backyard residents creates multi-layered obligations for municipalities. This requires an assessment of the capacity of existing infrastructure to carry additional loads, the commitment of appropriate funding and progressive realisation of these rights through dedicated municipal processes and programming over time.

Research on the capacity of existing systems to accommodate the additional needs of backyard residents has to date been limited. Isandla Institute undertook research within a limited study that started to engage key stakeholders at the municipal level on the different theoretical and technical requirements that these engender (Isandla Institute 2022b).

We acknowledge that these processes are complex and take time, yet advocate for the progressive realisation of these rights. As case law has shown, there must be inclusive planning and budgeting for all municipal consumers, including backyard residents. Technical and financial resources and capacity must be committed to the maintenance of basic services and investment in infrastructure for the roll-out of basic services on private land. The research revealed that while complexity exists, so do opportunities. Progressive realisation requires that solutions (in varied forms) be found to extend basic services (Rodina and Harris 2016).

<sup>20</sup> *Mshengu and Others v Msunduzi Local Municipality and Others* (11340/2017P) [2019] ZAKZPHC 52 (hereafter *Mshengu*).

<sup>21</sup> *Mshengu*, para 62.

<sup>22</sup> *Mshengu*, para 46.

<sup>23</sup> City of Cape Town. 2022. *Integrated Development Plan (IDP) July 2022–June 2027* (hereafter *IDP*) [https://resource.capetown.gov.za/documentcentre/Documents/City%20strategies,%20plans%20and%20frameworks/IDP\\_2022-2027.pdf](https://resource.capetown.gov.za/documentcentre/Documents/City%20strategies,%20plans%20and%20frameworks/IDP_2022-2027.pdf), pg 38.

<sup>24</sup> *Mshengu*, para 62.

<sup>25</sup> *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33, para 47.

An example of initiative taken by a metropolitan municipality is seen in the Integrated Development Plan (IDP) July 2022–June 2027 for the City of Cape Town, which provides that:

‘the City will ensure that each property is connected to water, sanitation and electricity, with the property owner carrying the responsibility for the further connections and infrastructure required on the property to provide services to additional dwellings. In all areas of Cape Town, consumers will pay for the municipal services they receive, with the exception of indigent residents.’<sup>23</sup>

We argue that this provision shifts the onus of additional connections to the owner, which is contentious particularly when owners are not primarily responsible for fulfilling the constitutional obligations to the backyard tenants. The courts have confirmed that the state is primarily responsible for fulfilling these rights.<sup>24</sup> That does not mean, however, that intermediaries like landlords have no duty towards residents. Municipalities can play a facilitative role to assist in the roll-out of infrastructure without shifting the constitutional onus to landlords.

In finding solutions to extending infrastructure to backyard residents there is a concern that basic entitlements are not compromised. So for example, while in terms of the free basic service policy a minimum of 6 kl (6 000 l) of water per month per household is recommended, certain municipal policies may differ drastically according to the respective applicable indigent policy (Schoba 2021).

### 3.3.5 ‘Available resources’

In *Blue Moonlight v City of Johannesburg (CC)* the Court held that:

‘Local government can be held liable for its own misinterpretation of its duties... ‘it is not good enough for the City to state that it has not budgeted for something, if it should indeed have planned and budgeted for it in the fulfilment of its obligations.’<sup>25</sup>

We argue that certain financial instruments exist within the intergovernmental financial framework for human settlements and can be leveraged to assist in funding the roll-out of infrastructure.

For example, the current national budget for the Department of Human Settlements provides that:

‘A further R23 billion over the MTEF period through the Urban Settlements Development Grant is earmarked for metropolitan municipalities to undertake bulk and related infrastructure projects.’ (National Treasury 2022a: 628).

In the Division of Revenue Bill (National Treasury 2022b: 230) provision is made for ‘construction/provision of internal engineering services, including backyarders and densification overlay zones’ which can also be utilised.

### Key arguments

- Access to basic services is a basic human right, and a core municipal function.
- Municipal programming must be 'reasonable' and cannot exclude those considered vulnerable, including the indigent and backyard residents.
- Administrative targeting mechanisms related to free basic services do not consider backyard residents as individual/additional households and they are thereby de facto excluded from the right to free basic services.
- The distinction between the provision of basic services on public versus private land is a fallacy; there are no legal impediments that prevent municipalities from providing services on private land.
- Technical and financial resources and capacity must be committed to roll out and maintain engineering infrastructure on both public and private land.

### Recommendations for national policy and programmes

- NDHS to take the lead in creating legal certainty for all spheres of government on the provision of basic services to backyard residents, thereby facilitating an enabling framework.
- National Treasury and the NDHS to explore how existing grants in the intergovernmental fiscal framework for human settlements can be utilised as a source of funding to extend service infrastructure to backyard residents.

### Recommendations for municipal practice

- Municipalities to roll out free basic services to backyard residents, on both public and private land.
- Municipalities to commit funding and infrastructure to progressively achieve this and move from pilot projects to scale.



## Tenure: A continuum of (in)security

**Backyard residents experience a continuum of tenure (in)security. Research suggests that for many residents, the move to the erf outside of the main house (the backyard) was an organic and necessary move as a result of overcrowding in the main household and the inability of the home to accommodate growing families (Overstrand Municipality 2017). For many, the basis of the relationship between the backyard resident and landlord is a familial or social one.**

The result is what is referred to as 'generational leases'. Research indicates that there are often no formal lease agreements, and rental contributions are frequently based on affordability (Isandla Institute 2020b; DAG 2022). Despite the absence of formal lease agreements, the majority of tenants do not seem to feel insecure, which makes this a crucial form of housing for economically vulnerable populations.

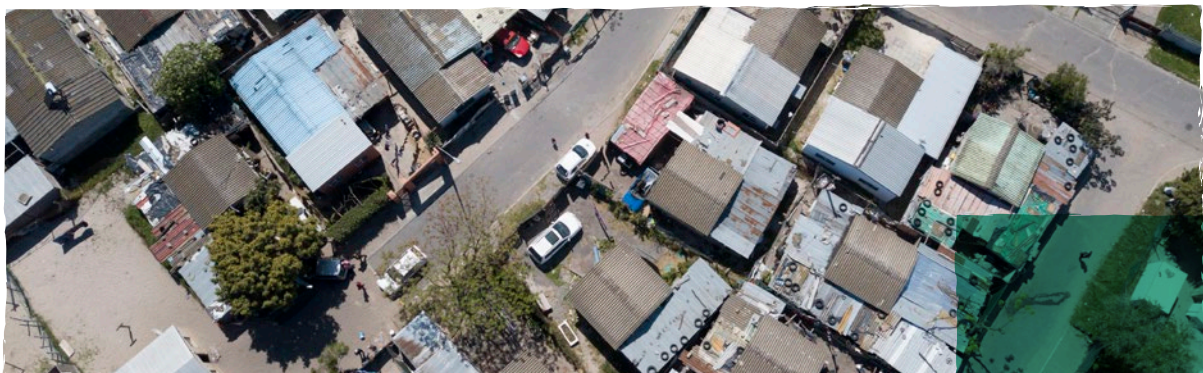
While, as described, there has been historical security of tenure in the backyard sector, there has also been a shift in this status quo, in large part due to increasing economic insecurity, some of which is occasioned by the impacts of Covid-19. While land occupations are not a new phenomenon, in the aftermath of Covid-19 there has been an increase in land occupations by backyard residents due to the inability to pay for rent. The inability to pay puts tenants at risk of eviction and homelessness, with land occupation a likely survival strategy.

The tension between backyard tenants' inability to pay rent and landlords' reliance on rental incomes for their livelihoods thus creates an impossible dynamic (Isandla Institute 2020b).

Tenure insecurity and association with 'informality' can in certain instances also shape the social/ community standing of backyard residents. Because they often lack formal tenure, there is a perception that backyard residents have no standing to enforce rights to basic services or to mediate conditions of residence with their landlords. It can also be seen in a lack of agency as overlooked members of the municipal community who should have equal say in the matters of local government and decision-making which impacts all residents at a municipal level.

This begs the question of how we strengthen tenure for backyard residents (landlords and tenants). We argue that simultaneous interventions must take place utilising different mechanisms, as outlined on the next page.

**The tension between backyard tenants' inability to pay rent and landlords' reliance on rental incomes for their livelihoods thus creates an impossible dynamic.**



Isandla Institute /Anotherlove Productions, Eerste River

**Prioritising rights education and capacitation for both backyard residents and landlords will strengthen landlord-tenant relations for mutual benefit.**

## Strengthening landlord-tenant relations for mutual benefit

Rights awareness campaigns and education about the rights and duties of both backyard residents and landlords is imperative. While civil society organisations working in the sector have played a vital role in this context, a key mechanism to shape the relationship between tenants and landlords is seen in the Draft Regulations issued in terms of the Rental Housing Act 50 of 1999 (DHS 2022b). In terms of the Act, the Rental Housing Tribunal has jurisdiction to mediate disputes between tenants and landlords.

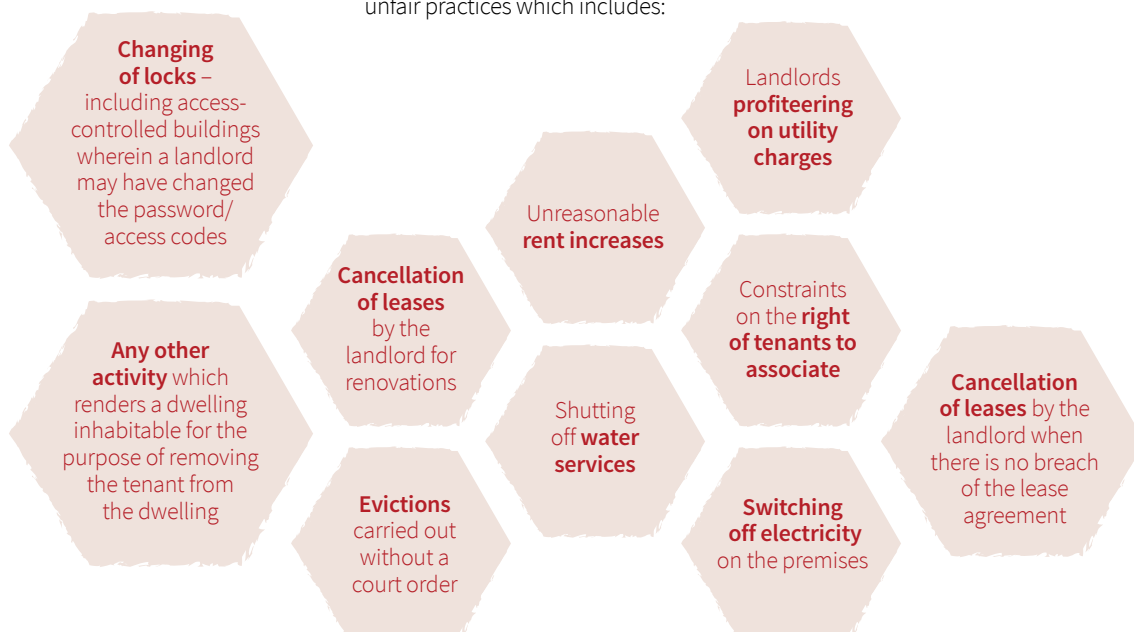
### Lease Agreements

For a significant proportion of backyard residents, lease agreements are not reduced to writing. The regulations direct that lease agreements should be reduced to writing with pro forma templates for such agreements. While existing verbal agreements still have standing, the regulations envision that future agreements should be in writing. The Legal Resources Centre (LRC) argues that while it is preferable for clear rights and duties to be reduced to writing, a prescriptive directive may have the impact of excluding vulnerable tenants from the jurisdiction of the Tribunal (LRC 2022a: Item 17 (pg5)).

### Dispute resolution mechanisms

The Rental Housing Tribunal is one of the chief mechanisms for dispute resolution. Both the LRC and Socio-Economic Rights Institute of South Africa (SERI) raise concerns about the accessibility of the Tribunal to vulnerable communities as well as its substantive power to deal decisively with recurring issues, including rights violations which take place in practice. For example, both submissions highlight the necessity of legal aid provision to ensure access to fair representation in the context of hearings (LRC 2022a; SERI 2022). Simplified processes would also assist in terms of greater accessibility. Also, drawing on existing conflict resolution dispute mechanisms in communities, such as those executed by community leaders in their day-to-day engagement with community representatives, would be important.

SERI and the LRC highlight the many unfair practices which occur, including disproportionate rental increases, which the Tribunal cannot make determinations on. They highlight the necessity of immediate, interim remedies that protect tenants from unfair practices which includes:



### 'Off-register tenure'

The former Special Rapporteur on adequate housing reported on and advocated for tenure diversity, or multiple tenure arrangements which characterise reality "on the ground" (UN Human Rights Council 2022). This moves away from the dominant narrative that property ownership is the only mechanism to exert a range of socio-economic and civil and political rights. In South Africa certain metropolitan municipalities have taken the lead in issuing 'certificates of occupation' as part of informal settlement upgrading processes. These certificates provide a sense of tenure and recognised identity within a community. An off-register tenure mechanism could also be explored for backyard residents (SERI and Nelson Mandela Foundation 2021).

### Title deeds to enable landlord investment in housing opportunities

As discussed, different categories of landlords exist within the backyard sector, ranging from individual, small-scale 'subsistence' landlords to entrepreneurial landlords and even micro-developers (see also **Table 1**). To strengthen the sector and enable property owners to leverage the asset of their house to create housing opportunities and additional sources of income, different interventions are required.

A recurring issue that the NDHS has acknowledged relates to the fact that housing beneficiaries (landlords) for varying reasons often do not have title deeds. These reasons may be due to administrative inefficiencies on the part of government or to unresolved issues related to bequests and inheritance, for example. Ensuring that property owners have title deeds is an important starting point for them to be able to access public support and funding to improve backyard structures. In an effort to improve performance in issuing title deeds, the NDHS has taken the significant initiative of establishing a national programme to achieve this. An allocation of R44.3 billion from the Human Settlements Development Grant has been designated to (amongst other things) fast-track the transfer of 388 104 title deeds to beneficiaries from low-income households (National Treasury 2022a: 628). Significantly, the issuing of title deeds is not solely understood as a NDHS priority. As part of Operation Vulindlela<sup>26</sup> three key strategic issues regarding title regularisation, title formalisation and title preservation have also been prioritised to deal with some of the complexities (beyond title deed backlogs) that create impediments to tenure security and the ability to leverage their asset for economic advancement.

Aside from these progressive initiatives aimed at tenure security, other supportive interventions can range from education to skills facilitation, fostering partnerships to grow the sector and facilitate compliance with legislative requirements. Initiatives such as the strategic partnership between DAG and other partner organisations to run a Contractor and Developer Academy (CDA) to strengthen micro-developers, has had significant positive benefits (DAG 2022), as discussed in section 5.

**Tenure security for backyard residents can be improved by exploring the option of 'off-register tenure mechanisms', while issuing title deeds can assist property owners to create dignified housing opportunities.**

<sup>26</sup> Operation Vulindlela was established in October 2020 as a joint initiative of the Presidency and National Treasury to accelerate the implementation of structural reforms (Department of the Presidency and National Treasury 2020).

**In the cycle of evictions and land-occupations, we advocate that municipalities engage in a cost-benefit analysis exercise.**

### **Cost-benefit analysis of facilitating tenure security for backyard residents in the context of increased vulnerability**

As described above, a significant number of backyard residents enjoy security of tenure on the erf. However, due to economic insecurity, we have seen the transitioning of backyard residents along a spectrum of tenure insecurity, often following a trajectory from paying tenants to evictees, to land occupiers in need of 'emergency accommodation' because they have no other alternatives. SERI describes for example how the notion of a "culture of non-payment" is applied to tenants who may simply need a month or two's reprieve in difficult times (SERI 2022: 3 (item 8)). For example, during the periods of lock down, the Department of Human Settlements introduced assistance in the form of 'Residential Rent Relief' to tenants in state social-housing institutions (Social Housing Regulatory Authority 2021). Backyard residents who are equally – if not more – vulnerable could have benefited from such an intervention.

In the cycle of evictions and land-occupations, we advocate that municipalities engage in a cost-benefit analysis exercise. Would timely interventions to assist backyard residents prevent their regression of security of tenure, and thus ultimately the amount of financial (and other) resources that municipalities may have to expend in providing alternate, short-term emergency housing?

Two examples from practice illustrate this in the difference of approach taken by the Saldanha Bay Municipality as well as the City of Cape Town in a similar context. In Saldanha Bay, faced with backyard residents that constructed shelters on land designated for other purposes, the municipality took a number of novel steps (Saldanha Bay Municipality 2021). It facilitated arrangements with property owners to accommodate the occupiers as backyard residents. It also leveraged private funding to assist them in paying rental. The result was less expenditure on emergency accommodation, better community relationships and increased security of tenure.

In the case of *Community of Hangberg and Another v City of Cape Town*<sup>27</sup> the City of Cape Town chose to repeatedly demolish an informal structure erected on private land. The occupier was unable to return to his mother's home due to reasons such as overcrowding exacerbated by the Covid-19 pandemic. He therefore chose to rebuild the structure with the physical and financial/material support of members of the community. The City proceeded to evict the occupier without an order of court and violated his constitutional rights. Beyond the unlawfulness of the City's actions, the Court made an interesting observation, describing how:

**'The City as a municipality is strained and under pressure to service in accordance with its constitutional obligations, amongst others, to provide housing. However, they need to go about their affairs and utilise the manpower and infrastructure in a constitutional and lawful manner to achieve their goals.'** (para 10)

It is arguable that the City under the circumstances, given the costs expended on the eviction and legal proceedings, could have chosen a course of action that was constitutionally compliant and more financially astute.

Table 2 summarises the different approaches, and resultant consequences, by the two municipalities to eviction situations.

Table 2. A tale of two municipalities' responses to backyard housing

Saldanha Bay Municipality (2022)	City of Cape Town (Hangberg case)
<ul style="list-style-type: none"> <li>• Pro-active, context based approach</li> <li>• Leveraged the agency of the evictees to find backyard accommodation</li> <li>• Accomplished the objective of increasing the tenure of residents who had no place to go (at a minimum preventing a land occupation)</li> <li>• Acted as a conduit to facilitate a partnership between private benefactors and the residents, saving municipal resources and fulfilling its relationship-building and public participation function</li> </ul>	<ul style="list-style-type: none"> <li>• Reactive, punitive approach</li> <li>• Repeated eviction and demolition of an informal structure</li> <li>• Made no effort to provide for the security of tenure of the resident</li> <li>• Ignited tension within the community</li> <li>• Chose to expend resources on an action that demolished the structures and increased tenure insecurity</li> <li>• City found to act in an unconstitutional manner at odds with its service delivery obligations</li> <li>• Resulted in litigation costs and the disabling of the anti-land invasion unit</li> <li>• Actions served to alienate the community polarising the municipality even further from the community it is mandated to serve</li> </ul>



### Key arguments

- The backyard housing sector plays a vital role in the realisation of housing rights for vulnerable populations.
- Notwithstanding relatively high perceptions of tenure security, the economic shocks associated with Covid-19 have resulted in growing housing insecurity of backyard residents.
- Government has indisputable housing obligations to backyard residents, including promoting security of tenure.
- Investing in tenure security of backyard tenants is an important strategy for reducing and preventing 'downstream problems', i.e. the risk of land occupation and homelessness.

### Recommendations for national policy and programmes

- Unblock the impediments to tenure security (as per Operation Vulindlela) and fast track the issuing of title deeds, particularly to landlords.
- Prioritise rights education and capacitation for both backyard residents and landlords.
- While formal lease agreements are stipulated in the draft regulations in terms of the Rental Housing Act, this is not always suitable for all contexts; there must be a measure of flexibility to ensure that vulnerable residents and landlords are not negatively impacted.
- The Rental Housing Tribunal must be capacitated to deal with and remedy many of the recurring rights violations which occur in practice, including unreasonable rent increases, constructive evictions through service restrictions and many other unconstitutional practices.
- The dispute resolution mechanisms provided for within the processes of the Rental Housing Tribunal must be more accessible, particularly to backyard residents and landlords; this may include access to legal aid and simplified, user-friendly processes.
- Encourage an active role for existing community-based dispute resolution mechanisms and processes and, where necessary, strengthen those mechanisms.

### Recommendations for municipal practice

- Consider using alternate or 'off-register' forms of tenure recognition for backyard residents.
- As certain metros are successfully doing, implement initiatives that strengthen the capability of landlords to invest in housing opportunities through, for example, the accelerated issuing of landlord title deeds, education, skills facilitation and encouraging legal compliance.
- Engage in cost-benefit analysis exercises in terms of providing support to backyard residents versus possible evictions to ensure that there is no regression of tenure security nor land occupation, which may ultimately create additional housing obligations for municipalities.

## Enabling the Right to Build and self-build top-structure construction and incremental housing consolidation

**A sometimes overlooked facet of the right of access to adequate housing and the jurisprudence emanating from the Courts in giving content to this right, is that the recognition of a right to build ('self-build') is at the centre of housing jurisprudence in South Africa.**

For example in the landmark *Grootboom* judgment, paragraphs 35-36 state that:

Section 26(2) places the duty on the state to adopt appropriate measures to ensure that the right of access to adequate housing is effectively realised on a progressive basis. However, the Court clarified that the state does not bear sole responsibility for the provision of housing. Individuals as well as other agents within society must be enabled by legislative and other measures to provide housing. As such, the state must create the conditions for access to adequate housing for people at all economic levels of our society.'

The Court further held that:

'For those who can afford to pay for adequate housing, the state's primary obligation lies in unlocking the system, providing access to housing stock and a legislative framework to facilitate self-built homes through planning laws and access to finance. Issues of development and social welfare are raised in respect of those who cannot afford to provide themselves with housing. State policy needs to address both these groups. The poor are particularly vulnerable and their needs require special attention.'

Therefore, there is a clear requirement for a legislative and policy framework to address 'the right to build', which is an integral part of the right to dignified, good quality, accessible and affordable housing. The right to build refers to allowing people to realise their housing rights by building their own homes, with the necessary guidance and support from the state and other role players (Cape Town NGO Collaborative Initiative 2019: 14). The right to build, as part of the right of access to housing, allows municipalities to tap into the latent willingness and agency of communities for incremental top-structure consolidation, and allows for the building of partnerships with stakeholders and role-players involved in the construction process. However, the right to build is premised on the right to occupy, and therefore tenure security for both landlords and tenants is critical.

Recognition of the right to build is not just a moral imperative, but presents an opportunity in a constrained fiscal environment. Housing should be viewed as a process, and not a product, and should be about giving households choice in how this process unfolds. Enabling and supporting self-build in all its varieties can allow for a more demand-led housing process that acknowledges choice, people's agency and incrementalism. The right to housing, encompassing the right to build, is enshrined in the Constitution, and there is broad acceptance of the importance of housing and sustainable human settlements in terms of poverty reduction and asset creation. In the context of fiscal sustainability, the acknowledged issues with large-scale subsidised housing provision, and the shift in focus to site-and-service, self-build must therefore be enabled, particularly in the context of backyard housing.

**Self-build needs to be enabled and supported through the development of an ecosystem that includes financial, technical and other dimensions that will benefit backyard tenants and landlords.**

In terms of backyard housing and the varied number of landlord types including subsistence landlords, homeowner landlords, and entrepreneurial landlords/micro-developers, the right to build/self-build can encompass improving and consolidating a top structure where it exists; creating an enabling environment for self-build incremental housing consolidation and regularisation; and support for those who want to leverage their housing asset to provide affordable rental units (entrepreneurial landlords/micro-developers). In respect of the latter, the significant work done by the Development Action Group in partnership with the Human Sciences Research Council (HSRC) to promote the enablement of affordable rental accommodation development by micro-developers should be applauded, but at the same time, it is important to note that this will not address the substantial housing need at the scale and speed required, nor is it appropriate/feasible for all tenants or landlords (especially those at the subsistence end of the scale).

### Housing Support Centres

With respect to a mechanism to enable self-build, Isandla Institute has conducted research into how Housing Support Centres (HSCs) can facilitate dignified housing (a quality and safe top-structure) in different contexts (e.g. townships/backyard housing and informal settlements) (see Isandla Institute 2022c and 2022d). In partnership with other stakeholders, municipal HSCs can offer construction training, access to basic building plans, access to information on subsidies and loan finance, assistance with building plan and land use applications, and other forms of socio-technical support (Isandla Institute 2022c). Secure tenure, and incremental improvement in tenure security, can be facilitated by HSCs through supporting occupancy recognition (in the case of informal settlements); providing pro-forma lease agreements to backyard landlords and tenants; assisting all spheres of government with title deed handover backlogs; and referring individuals to service providers for assistance in title deed and property-related matters. Self-build policy needs to have a gender-responsive approach in awareness-building and capacity development that includes the recognition of differences between women and men in their adaptation needs and capacities; gendered roles and responsibilities and differences in access to, and control over, resources; gender-equitable participation and influence in decision-making processes; and gender-equitable access to finance.

HSCs can facilitate access to basic services through providing information on basic service roll-outs in their area catchments; enabling and providing pro-forma service access agreements between backyard landlords and tenants or information on direct service provision; and collecting catchment area-level data to feed into municipal infrastructure and spatial planning. Neighbourhood improvement can be facilitated by HSCs through assisting municipalities with data, community preparation and implementation of area-based violence prevention interventions (ABVPI)<sup>28</sup> such as public infrastructure upgrades (e.g. parks, public open space, community halls, and libraries); social compacts and sustainable livelihood plans; and infrastructure and building plan support for ECDs.

Given the significant growth in backyard and micro-developer rental accommodation over many years, but the inadequate policy response to date, HSC enablement of backyard and micro-developer rental accommodation could play a significant role in providing much

<sup>28</sup> Isandla Institute. 2021b. *Embedding Area-Based Violence Prevention Initiatives (VPI) in Informal Settlement Upgrading in South Africa*. [https://isandla.org.za/en/resources/item/download/259\\_0d724e77aa9117baf60930b6d6757d21](https://isandla.org.za/en/resources/item/download/259_0d724e77aa9117baf60930b6d6757d21)

<sup>29</sup> The Peoples Environmental Planning (PEP) have conducted research and invested significant groundwork into potentially establishing a pilot HSC in Cape Agulhas Municipality. The lessons learned from such a pilot would provide valuable insight for future projects and the roll-out of the HSC model at scale.

<sup>30</sup> Zama Mgwaty, Programme Manager at Development Action Group (DAG), made reference to these programmatic boxes in a presentation at the launch of DAG's publication "Small-scale rental housing: Moving from the low to the high road" on 8 June 2022.



needed support to this vital mode of affordable self-build housing opportunities. HSCs could provide prototype housing design templates and pre-approved development plans, information on building materials, building support (e.g. a database of qualified local contractors) and capacity building targeted at both construction and property management skills. They could raise awareness and build capacity around planning and building regulations, and assist local municipalities with developing simplified development application and approval processes, targeted at backyard landlords and micro-developers – but also more broadly at self-build. After all, micro developers and entrepreneurial landlords are, at this stage at least, a relatively small proportion of backyard landlords; the HSC can play a vital role in supporting subsistence and homeowner landlords to make modest, incremental improvements to backyard structures.

Technical assistance with formalisation or regularisation of existing structures, and with submission of applications to enable regularisation, should also be provided. In support of tenure security, HSCs could provide pro-forma lease agreements (or less formal social recognition of occupancy), service access agreements between backyard landlords and tenants, or information on direct service provision to backyard landlords and tenants. Information and training regarding tenant and landlord rights and obligations should also be provided.

HSCs could popularise the role and functioning of, and provide referrals to, Rental Housing Tribunals. In relation to municipal planning for bulk infrastructure capacity improvements, HSCs could provide information and assistance to landlords and tenants regarding the extension of basic municipal services to backyard residents, while synergistically capturing data on local-level backyard densification, also through simplified planning and building regulations and application processes, to inform the planning of these extensions and improvements. Municipalities would need to simplify regulations, streamline procedures, and provide enabling support; while nationally, building regulations should be simplified, with health and safety a priority, and title deed registration addressed.

In terms of HSC support for backyard and micro-developer rental accommodation, municipal officials could partner with NGOs or other social/private sector partners. Contractor training and home-owner or micro-developer support could be supported by these partners, with DAG's Contractor and Developer Academy (CDA) serving as a template for the types and range of training and support provided. HSCs could provide office and meeting space for staff, as well as a multi-purpose space used for training, or potentially even as a meeting space for backyard landlord or tenant forums or micro-developer forums.

It should be noted that entrepreneurial landlords/micro-developers may need more city-level support via municipal units/offices set up specifically to cater to their needs, which differ from the needs of subsistence and homeowner landlords. Therefore, while self-build support to entrepreneurial landlords/micro-developers could be initially provided by a HSC, once municipal micro-development units/offices have been set up in the metros, they could take over the support and enablement role.

It will be important to harness the momentum in support of self-build and HSCs, and this must be encouraged by a focus on the operational and sustainability aspects of HSCs, such as purpose, funding, focus and scope. If these aspects can be addressed, self-build (via a HSC model) can play a vital role in systemic change in human settlements, regulatory reform and capacity building, while contributing to an increased housing supply to meet the urgent housing need and transforming and improving neighbourhood quality and safety. The HSC model, if tested, adopted and supported by vital changes to create an enabling environment, can act as a key institutional mechanism to enable 'the right to build' and advance housing rights.<sup>29</sup> The model has the potential to function as a mechanism to promote holistic and transversal working arrangements between departments and spheres of government, allowing the housing process to break out of the programmatic boxes<sup>30</sup> that human settlements policy and housing delivery mechanisms have created.

**Housing Support Centres can raise awareness and build capacity around planning and building regulations, and assist local municipalities with developing simplified development application and approval processes, targeted at backyard landlords and micro-developers.**

The variety of possible housing support that could be provided to backyard tenants, subsistence/homeowner landlords and entrepreneurial landlord/micro-developers is reflected in the last three columns of the matrix in Table 3, which includes informal settlements as well.

Table 3: Variety of possible housing support that could be provided to backyard tenants, subsistence/ homeowner landlords and entrepreneurial landlord/micro-developers

		Housing / settlement typology (and individual / community in need of support)			
		Informal Settlements (individual / community)	Backyard dwelling (tenant)	Formal house with informal backyard dwelling (subsistence / homeowner landlord)	Formal house with intention to build formal rental unit(s) (entrepreneurial landlord / micro-developer)
Housing support needs	Tenure security (occupation certificate or title deed)				
	Access to basic services (Preparation for and facilitation of incremental installation of bulk services and/or communal / individual connections)				
	Access to information on subsidies and loan finance				
	Information on building regulations and access to prototype building plans				
	Assistance with building plan and land use applications				
	Local contractor database and contractor regulation				
	Construction methods and contractor training				
	Information on or access to building materials (voucher scheme)				
	Access to building materials (materials production and/or management)		*		
	Construction quality monitoring (regular facilitative site inspections)				
	Retroactive building and land use regularisation				
	Assistance / referral to service providers for assistance in tenure security, title deed and property-related matters				
	Beneficiary education and capacity building (processes necessary to sell, rent, and incrementally consolidate/ extend their structures / houses)				
	Pro-forma lease agreements; tenant and landlord rights education; and referral to Rental Housing Tribunal	**			
	Neighbourhood improvement - assisting local government with data, community preparation and implementation of public infrastructure upgrades (e.g. parks, public open space, community halls, and libraries); social compacts and sustainable livelihood plans				

\*Backyard tenants who lease land and build their own structures will also need access to building materials

\*\*Informal settlement residents may prefer to make use of socially/community-recognised forms of tenancy

### Key arguments

- The right to build, as part of the right to housing, allows municipalities to tap into the latent willingness and agency of communities for incremental top-structure consolidation, and allows for the building of partnerships with stakeholders and role-players involved in the construction process.
- The right to build is premised on the right to occupy, and therefore tenure security for both landlords and tenants is critical.
- There is a variety of possible housing support that could be provided to backyard tenants and landlords via Housing Support Centres.

### Recommendations for national policy and programmes

- NDHS, in partnership with other relevant departments, to explore, develop and promote mechanisms to facilitate self-build, such as the Housing Support Centre model.
- NDHS, with other government departments, to commit capacity and funding to support the programmatic roll-out of such a model, including the provision of technical support and a performance monitoring system.
- NDHS, in partnership with relevant departments (e.g. DTI&C and DALRRD), needs to revise (or at least review) building standards to enable housing construction and self-build in the backyard housing sector, and assist local municipalities with developing simplified development application and approval processes, targeted at backyard landlords and micro-developers.

### Recommendations for municipal practice

- To pilot a Housing Support Centre model that caters to local need (and that enables self-build in the informal backyard housing sector and in informal settlements).
- Municipal HSCs to offer various mechanisms of support to the different categories of backyard landlords and tenants, such as:
  - training and technical support;
  - access to basic building plans, and assistance with regulatory compliance;
  - access to a database of local artisans and contractors;
  - tenure security assistance;
  - pro forma lease agreements;
  - support for entrepreneurial and micro-developers;
  - promotion of the services of the rental housing tribunals.

## The creation of safe neighbourhoods: Urban safety through area-based violence prevention

**The quality of the neighbourhood makes a difference to people's experiences and perceptions of safety.**

**As outlined upfront, the realisation of the right to housing is a composite right that embraces individual rights and the creation of sustainable, safe neighbourhoods, a core objective of local government. South African townships and low-income neighbourhoods are particularly impacted by insecurity, crime and violence in different forms (Breetzke 2020).**

Research suggests that backyard residents feel relatively safe on erven where they live, but they consistently identify crime and violence in the neighbourhood among their top three concerns and priorities (Isandla Institute 2021c). A neighbourhood-level focus on crime and violence is therefore vital.

### **The area-based violence prevention approach<sup>31</sup>**

Dealing with crime, violence and vulnerability at a neighbourhood level requires more than security-oriented responses, such as policing or neighbourhood patrols. While these can offer some level of protection and deterrence, particularly related to opportunistic crimes, as stand-alone interventions their effectiveness in crime and violence prevention is limited.

The quality of the neighbourhood makes a difference to people's experiences and perceptions of safety. The built environment plays a particularly important role in crime prevention and perpetuation. Issues such as inadequate lighting, poor visibility, lack of community surveillance, and unused and unmanaged public spaces and buildings all create opportunities for crime to thrive. Adapting the environment to reduce or stop crime is commonly known as crime prevention through environmental design (CPTED) (Kruger 2001) and is part of area-based violence prevention interventions (ABVPI). Improving the neighbourhood environment through planning and urban design interventions and activating unused spaces in the community that are hotspots of crime and violence can prevent crime and create sustainable safe spaces.

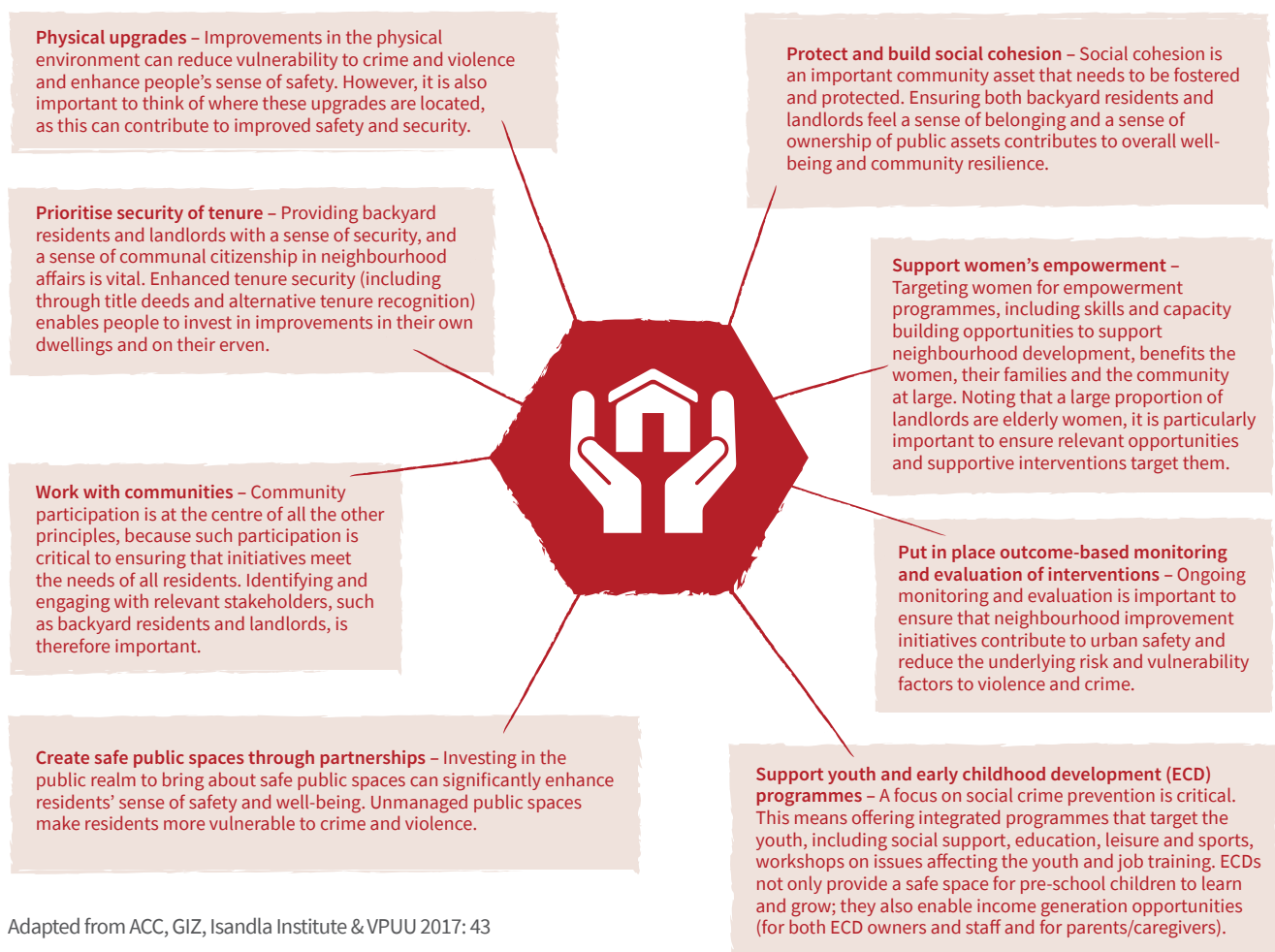
In addition to built environment interventions, development interventions that address the underlying factors of risk and vulnerability to crime and violence (such as a poor schooling environment, a lack of employment opportunities or sexist attitudes) and/or bolster protective factors (such as youth development programmes, positive peer relations or food security) are also critical in bringing about safer, more resilient and more vibrant communities.

ABVPI combine social, economic and institutional interventions within a specific geographic area (i.e. spatially targeted) to offer an integrated, inter-sectoral and community-centred approach to violence and crime prevention. Because ABVPI address both deficiencies in the physical environment and the key drivers of crime and violence, ABVPI represent a holistic approach to uplift a neighbourhood and its residents. Interventions range in scale and shape and include smaller interventions (e.g. increased lighting, dedicated pathways for pedestrians and cyclists, or safe bus/taxi stops), public space and urban design interventions, or specific infrastructure interventions (e.g. community centres, transport nodes with economic facilities for informal traders and SMMEs, or mixed-use precinct developments). The underlying question is how to create and support spaces that are safe, healthy and beneficial to the people that use them.

Given the contextual nature of crime, violence and vulnerability, the shape and form ABVPI take will differ depending on the context in which they are implemented. Subsequently, one of the most critical components of ABVPI is that it is evidence-led and co-produced with communities and other stakeholders. In this regard, it is critical to ensure that both backyard residents and landlords are included in community-driven initiatives to understand the specific manifestations of risk and vulnerability in their neighbourhood and to develop appropriate interventions.

## Key principles for promoting safety and violence prevention in township development

The guide *Promoting safety and violence prevention in informal settlement upgrading: Lessons from different informal settlement interventions for practitioners and policy makers* identifies eight principles, which can be applied to areas and neighbourhoods where informal backyard housing is ubiquitous:



Adapted from ACC, GIZ, Isandla Institute & VPUU 2017: 43

<sup>31</sup> This section draws on the work of the Safer Places: Resilient Institutions and Neighbourhoods Together (SPRINT) project, a joint initiative of the South African-German Development Cooperation with the support of the Violence and Crime Prevention (VCP) Programme, implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) as the commissioning party and Global Affairs Canada (GAC) as co-financing partner. The SPRINT Project is implemented by Isandla Institute and Violence Prevention through Urban Upgrading (VPUU). More information about SPRINT and access to useful resources on ABVPI can be found here: [www.isandla.org.za/en/projects/sprint](http://www.isandla.org.za/en/projects/sprint).

**Quality of public infrastructure and services is also determined by factors such as location, purpose/programmes offered and management and maintenance of relevant facilities.**

## **Neighbourhood improvement: Beyond access and looking at the quality of public services**

As the previous section has outlined, approaching safety and violence prevention in an integrated and holistic way means looking at the enabling conditions of crime and violence in communities and examining the different interventions that might help prevent crime, as opposed to a purely reactionary security response to managing crime.

Crime prevention can be about taking spaces associated with negative connotations and turning them into positive spaces, and taking ownership of places, e.g. open fields, and spaces associated with drug use or gangsterism. The quality of service provision is also important, as communities may have some access to services (e.g. police services), but the services may be unreliable or insufficient due to resource limitations. A significant concern is that the majority of social services at municipal and neighbourhood level have been planned for 'formal residents' (CSIR 2019), not taking into account the densities of backyard residents (Lategan 2020). Instead, the allocation of resources must be based on the geographical need of a service. For example, there are communities that will require government to support their Community Policing Forums (CPF) and communities who need more visible police presence (LRC 2022b).

Quality of public infrastructure and services is also determined by factors such as location, purpose/programmes offered and management and maintenance of relevant facilities. For example, a community sports facility on the outskirts of the neighbourhood which primarily offers soccer programmes to local youth will not provide accessible and quality services to other segments of the community.

### **Key arguments**

- Crime and violence in the neighbourhood (streets, pathways, public realm) is consistently identified as a key concern and priority for backyard residents.
- Public service provision at municipal and neighbourhood level often doesn't cater for backyard residents as they are not included in the assessment of geographical need.

### **Recommendations for national policy and programmes**

- NDHS to recognise that the right to housing includes the creation of safe neighbourhoods and to institutionalise this in legislative and policy frameworks.
- NDHS to give guidance to municipalities and other government departments to ensure that backyard residents are included in public service assessments and allocations.
- NDHS and other government departments to promote urban safety and embed a holistic violence and crime prevention approach in human settlements policy and programmes.

### **Recommendations for municipal practice**

- Develop and implement neighbourhood improvement initiatives that advance urban safety.
- Invest in public realm improvements, including streetlights, pedestrian walkways, bicycle lanes, safe bus/taxi stops and public space interventions.
- Involve local residents (including backyard residents) in contextual analysis (of risk and vulnerability to violence and crime) and in the co-creation of area-based violence prevention interventions (ABVPI).
- Identify hotspots of crime and violence (including unused spaces or derelict buildings) and transform these into positive and safe spaces.
- Identify partnerships (with private, social and government actors) to develop and implement inclusive place-making programmes and initiatives.

## Conclusion and recommendations

**In the context of economic shocks and stresses, which contribute to increased housing and tenure insecurity, realising the right to housing has become an even more challenging goal. Strategic, concerted and effective interventions are called for.**

The review of human settlements policy and legislation initiated by the NDHS provides a welcome opportunity to reassess the performance of the human settlements sector and to determine what programmes, instruments and capabilities are needed to be 'fit-for-purpose' in this new socio-economic context and address the unfulfilled promise of housing rights for many urban residents.

We believe that at this juncture, the right to housing is facing particular risks. The whittling down of the delivery of top structure, evident in the policy shift towards 'site and service' and the concomitant narrowing of the focus of subsidised housing to those deemed 'most vulnerable' (including the elderly, people with disabilities and military veterans), leaves other vulnerable groups, including backyard residents, at risk of being unsupported in their housing rights. While we understand the socio-economic and fiscal realities, we hold strongly that government has an obligation to ensure the progressive realisation of housing rights, which includes dignified homes and safe and healthy neighbourhoods. This requires government, together with other sector stakeholders and local communities, to re-think what a supportive and enabling policy and institutional environment for the right to housing and inclusive human settlements would encompass.

The 2019 Cape Town NGO Collaborative Initiative submission *Informal Settlement Upgrading Matters* offers valuable insights and recommendations for the policy review process on incrementally transforming informal settlements into vibrant, dignified neighbourhoods, which we support. As communities have often expressed, and as clearly articulated in case law (*Nokotyana, Melani, Thubakgale*)<sup>32</sup>, we advocate for all spheres of government to commit to implementing the legal framework and progressive programmatic responses on informal settlements timeously.

This submission focuses on the informal backyard housing sector, which has largely remained invisible to policy makers and practitioners, despite the crucial role it fulfils for the diverse spectrum of both tenants and landlords who face various degrees of vulnerability. While we appreciate the complexities and trade-offs involved in strengthening the backyard housing sector, and the roles different actors and stakeholders can/ought to play, we do believe that investing in this sector can support government in fulfilling housing rights.

This submission outlines four critical areas of intervention: access to basic services, tenure security, support for self-build and neighbourhood-level interventions to improve urban safety. These interventions primarily focus on government as a critical role player in ensuring that the backyard housing sector offers dignified, affordable and secure housing opportunities to urban residents who cannot afford formal private rental accommodation, who are unable to access a bond to purchase their home or whose housing rights are unmet by public housing programmes, regardless of potential eligibility.

**We believe that at this juncture, the right to housing is facing particular risks.**

<sup>32</sup> See: *Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others* (CCT 31/09) [2009] ZACC 33; *Melani and Others v City of Johannesburg and Others* (02752/2014) [2016] ZAGPJHC 55; *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* (CCT 157/20) [2021] ZACC 45.

**The interventions in the four key areas which form the basis of this submission have significant beneficial multiplier impacts.**

We appreciate that there are other role players, such as finance institutions, contractors, developers and other private and civil society actors who can make a positive contribution to the backyard housing sector in all its variety and complexity. Access to finance, materials, technical expertise and skills development opportunities are all critical levers to strengthen the sector's functioning. Nonetheless, to leverage these actors and their potential contributions, government will have to ensure that an enabling environment exists.

The interventions in the four key areas which form the basis of this submission have significant beneficial multiplier impacts. These include better-quality living conditions for backyard residents, improved relationships between tenants and landlords, increased availability of dignified housing, economic opportunities for landlords and local economic development in deprived urban areas, safer neighbourhoods and urban densification.

We thus reiterate some of the key arguments and advocacy positions in relation to the four areas of intervention discussed. Additional recommendations can be found in the preceding sections. In proposing actions in relation to these four domains, we argue in essence that government should take substantive steps which encourage the backyard housing sector as a *viable, integral* and *accessible* mechanism for realising the right of access to housing.

### Access to basic services

- The duty to provide basic services to all municipal residents is clearly articulated in the Constitution as well as local government legislation.
- A legal opinion based on a legislative review and the findings of leading case law, confirms that the public versus private land debate related to the provision of basic services is a fallacy; there are no legal impediments that prevent municipalities from providing services on private land.

We therefore advocate:

- For the national Department of Human Settlements, supported by National Treasury, to take the lead in creating legal certainty for all spheres of government on the provision of basic services and facilitate an enabling framework within which municipalities can achieve this, including relevant sources of funding.
- For technical and financial resources and capacity to be committed to the maintenance of basic services and investment in infrastructure for the roll-out of basic services on private land.
- For the provision of basic services to backyard residents on public land to be upscaled and go beyond pilot projects.

We acknowledge that these processes are complex and take time and therefore advocate for the progressive realisation of these rights, with clear timeframes and targets. As case law has shown, there must be inclusive planning and budgeting for all municipal consumers, including backyard residents.



## Strengthening tenure for backyard tenants and landlords

- Government has indisputable housing obligations to backyard residents, including promoting security of tenure.
- Investing in tenure security of backyard tenants is an important strategy for reducing and preventing 'downstream problems', i.e. the risk of land occupation and homelessness.
- The transfer of title deeds to landlords does not only facilitate tenure security for them; it also unlocks opportunities for them to invest in housing opportunities for others.

We therefore advocate:

- For effective programmes and interventions aimed at unblocking the impediments to tenure security (such as Operation Vulindlela) and fast tracking the issuing of title deeds, particularly to landlords.
- For the Rental Housing Tribunal to be more active, visible and accessible in dealing with, resolving and remedying issues and rights violations affecting backyard residents and landlords.
- For municipalities to invest in alternate or 'off-register' forms of tenure recognition for backyard residents.
- For municipalities to engage in cost-benefit analysis exercises in terms of providing support to backyard residents versus possible evictions to ensure that there is no regression of tenure security nor land occupation, which may ultimately create additional housing obligations for municipalities.



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## Enabling 'the right to build' as part of the right of access to housing

- The right to build, as part of the right to housing, allows municipalities to tap into the latent willingness and agency of communities for incremental top-structure consolidation, and allows for the building of partnerships with stakeholders and role-players involved in the construction process.
- Self-build needs to be enabled and supported through the development of an ecosystem that includes financial, technical and other dimensions.

We therefore advocate:

- For NDHS, in partnership with other relevant departments, to explore, develop and promote mechanisms to facilitate self-build, such as the Housing Support Centre model and to commit capacity and funding to support the programmatic roll-out of such a model, including the provision of technical support and a performance monitoring system.
- For building standards to be reviewed so that housing construction and self-build in the backyard housing sector is enabled.
- For the Housing Support Centre model to be piloted in different settlement typologies, including informal settlements and townships where backyard housing is ubiquitous, and to offer a variety of housing support to support the different categories of backyard landlords and tenants.

## The creation of safe neighbourhoods through area-based violence prevention interventions (ABVPI)

- The right of access to housing is a composite right, which encompasses individual and communal rights and includes safe and dignified housing and neighbourhoods.
- Neighbourhood quality, and in particular crime and violence, is a key concern and priority for backyard residents and landlords alike.
- Public service provision at municipal and neighbourhood level often doesn't cater for backyard residents as they are not included in the assessment of geographical need.

We therefore advocate:

- For NDHS and other government departments to recognise that the right to housing includes the creation of safe neighbourhoods, to institutionalise this in legislative and policy frameworks, and to actively promote urban safety in their programmes.
- For holistic, spatially targeted, interdisciplinary and community-informed violence and crime prevention (ABVPI) to be promoted and pursued in all human settlements programmes, including in township areas where backyard housing is ubiquitous.
- For backyard tenants to be included in the needs assessment for and provision of public infrastructure, services and amenities in the public realm and to be directly involved in efforts to bring about improved safety outcomes in their neighbourhoods.

## On the human settlements policy and legislative review process

Over the years, there have been some efforts at engaging stakeholders, including CSOs, on the human settlements policy review. However, engagements have not been consistent nor sustained. As the review has been given renewed impetus and is seemingly accelerated (as per the intention to submit a new Human Settlements Bill to Parliament in the first quarter of 2023), no concrete opportunities for engagement have yet been provided.

We argue that the policy and legislative review needs to be informed by three key principles:

### *a) Engagement and co-production*

There is concern that the intended beneficiary communities and the CSOs that work in the sector are not part of the review process. It is important that opportunities for substantive engagement are created. Our concern is that if the content of the Bill (and/or policy) is already largely determined, we will not be able to leverage any real change on its content, nor will we be able to facilitate discussions within our networks and within the communities we work with on the substantive provisions of the Bill.

We recognise the significance of this process and the fact that legislative and policy reviews happen infrequently. If we truly want legislation and programmatic responses to be relevant and effective in meeting the very complex challenges in the human settlements sector, all sector stakeholders should be meaningfully consulted. We therefore urge NDHS to engage CSOs and leverage their expertise, community-driven insights and networks.

Our preference is substantive engagement above the rigidity of the accelerated timetable for the review process.

### *b) Evidence-based decision-making*

While research is on-going, we need disaggregated data to form the basis of appropriate planning at the national, provincial and, crucially, local sphere. Judgments consistently emphasise knowledge of vulnerability to ensure appropriate planning to inform public policy, allocation of basic services per competence and, subsequently, appropriate allocation of resources. This finding applies in equal measure to human settlements policy, legislation and programmes.

Furthermore, we want to stress that while the new policy/legislation should be normative and ambitious, it also needs to be grounded in institutional realities and experiences and, in as much as possible, seek to overcome the structural, organisational and behavioural issues that hinder the effective realisation of housing rights.

### *c) Intergovernmental, integrated, inter-disciplinary approach*

In keeping with the understanding that the realisation of the right to housing is not simply seen in the provision of a housing product, but rather in the realisation of dignified homes and safe and healthy neighbourhoods that are not only 'not harmful to health and the environment' but promote social and economic development, we advocate for a coherent, interdisciplinary and intergovernmental approach to inform the review process.

We are ready and willing to be active participants and co-creators in the review process.

**We are ready and willing to be active participants and co-creators in the review process.**

## Contributing Organisations



### **Afesis-corplan**

Afesis-corplan is a developmental non-government organisation based in East London, South Africa, whose work is aimed at strengthening good local governance and improving basic service delivery. Afesis-corplan prides itself on the transformative nature of its work over the more than 30 years of its existence. We design our interventions to be catalytic in nature, working in localised settings as a way of incubating, testing and learning, such that successful interventions are replicated elsewhere and at scale, thereby achieving systemic change. [www.afesis.org.za](http://www.afesis.org.za)



### **Built Environment Support Group (BESG)**

The Built Environment Support Group was established in 1983 within the former University of Natal Department of Architecture and Allied Disciplines, as a support group that defended communities against eviction from informal settlements in urban areas. In the early 1990s BESG became a key player in helping shape a new generation of urban planning and housing policies through its association with the Urban Sector Network. Over the last 10 years BESG has had interlocking programmes of Building Sustainable Human Settlements and Promoting Good Governance and Deepening Democracy, undertaken in targeted communities.

[www.besg.co.za](http://www.besg.co.za)



### **Community Organisation Resource Centre (CORC)**

The Community Organisation Resource Centre is a formally registered Non Profit Organisation (NPO) that supports the social, strategic and administrative practices of urban poor movements, the Federation of the Urban and Rural Poor (FEDUP) and the Informal Settlement Network (ISN). CORC's support to ISN and FEDUP includes savings, data collection, peer-to-peer learning exchanges, community-based planning for informal settlement upgrading and housing projects and engaging with government, funders and other actors. CORC's mission is to support poor communities that are willing and able to help themselves.

[www.sasdialliance.org.za/about/corc/](http://www.sasdialliance.org.za/about/corc/)



### **Legal Resources Centre (LRC)**

The Legal Resources Centre is an independent non-profit public interest law firm, established in 1979 which uses the law as an instrument of justice. The LRC operates throughout the country from its offices in Johannesburg, Cape Town, Durban and Makhanda. The work of the LRC includes litigation and advocacy on education and land rights, assisting vulnerable communities facing unlawful evictions; challenging failures to provide basic services including water, sanitation and refuse collection; spatial planning and just land use management; the right to affordable inclusionary housing; restitution of land rights that includes protection of labour tenant's rights and environmental justice. [www.lrc.org.za](http://www.lrc.org.za)



### **Development Action Group (DAG)**

The Development Action Group (DAG) is a leading non-profit, nongovernmental organisation based in Cape Town, South Africa. DAG's mission is to create, implement and support community-centred developments to address the economic, social, and spatial inequalities that characterise South African cities. Established in 1986 to resist apartheid spatial planning, DAG remains driven by a desire to facilitate the creation of inclusive and equitable cities for dispossessed communities through active citizenry. In doing so, DAG has been at the forefront of inclusive urban development initiatives for more than 35 years. [www.dag.org.za](http://www.dag.org.za)

### **Habitat for Humanity South Africa**

Habitat for Humanity works in over 70 countries in the world-wide, with a vision of a world where everyone has a decent place to live, and we do this by bringing people together to build homes, communities and hope. Here in South Africa, and actively building since 1996, we are dedicated to the long-term development and sustainability of South Africa's low-income households where we purpose to build thriving and sustainable communities. We are very intentional in scaling the work that we do whilst deepening our impact within the communities that we serve. We focus on interventions that deliver multi-generational and transformational change, and we believe that this is only possible through People-Public-Private-Partnerships, where we facilitate conversations that allow communities to take the lead in prioritizing and designing their development agenda while development partners like Old Mutual catalyse that development by injecting targeted and tailored support. As an organization, we would be unable to facilitate transformation of lives and communities without strong partnerships. [www.habitat.org.za](http://www.habitat.org.za)



### **Isandla Institute**

Isandla Institute acts as a public interest think tank, seeking to promote, and contribute to, systems and practices of urban governance that are just, equitable, inclusive, sustainable and democratic. Central to our work is the notion of urban citizenship, for current and future generations. We understand urban citizenship to be about the realisation of material outcomes necessary for dignity, well-being and inclusion; the recognition of political voice and agency; and, a responsibility or duty to act with respect towards the urban collective. We engage in policy research, knowledge sharing and dialogue facilitation, institutional support, advocacy and network politics to support urban development and transformation. [www.isandla.org.za](http://www.isandla.org.za)



### **Ndifuna Ukwazi (NU)**

Founded in 2011, Ndifuna Ukwazi is an activist organisation and law centre that advocates for access to well-located land and affordable housing for poor and working class families, communities and social movements. In our campaigns, we use a combination of community organising, research, advocacy and litigation to advance urban land justice and fuel systemic change. Our theory of change holds that leverage for social change is created by bringing together the use of the law, evidence-based research, media advocacy and, importantly, a movement of people. We believe that this convergence creates the right atmosphere for social change. [www.nu.org.za](http://www.nu.org.za)



### **People's Environmental Planning (PEP)**

PEP's vision is rooted in the practical and pragmatic. We champion a project-driven approach to catalyse change in informal settlements. Small upgrading projects gather people, foster innovation, and build community. Working with communities to plan and implement small projects such as toilet upgrades, drainage channels, pathway resurfacing, and solar lighting provides an opportunity to focus attention, ideas, and resources on a real and tangible outcome. [www.peoplesenvironmentalplanning.org.za](http://www.peoplesenvironmentalplanning.org.za)



### **Planact**

Planact is a public benefit organization established in 1985, whose aim is to enable good local governance processes reach the most vulnerable citizens within an integrated development framework. Planact develops and promotes strategies for participation of marginalized and vulnerable citizens, in the local governance processes, by providing these citizens with knowledge and techniques in amplifying their voice to address the long outstanding developmental needs they have faced and continue to face in quest for decent livelihoods. Planact advocates for well-designed municipal systems and programmes that provide citizens' genuine participation in local governance processes. [www.planact.org.za](http://www.planact.org.za)



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