Insecurity of tenure among street homeless and poorly housed people in Johannesburg: Some Planning Responses

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Introduction

“Homelessness represents the most obvious and severe manifestation of the unfulfilment of the human right to adequate housing. While estimates on scale of homelessness are invariably difficult to ascertain with precision, it is generally mentioned in the UN documents that there are about 100 million homeless persons in the world. Few if any, countries have entirely eliminated homelessness and in many nations, this phenomenon is clearly increasing rather than declining and further action is clearly required to eradicate homelessness” (UNCHS, 1999d, para.30).

With regard to the housing situation of the street homeless, the feeling or experience of insecurity is even more pronounced when they move from one location to the other (street homeless people are highly mobile or street homelessness is transitory in nature) because of constant harassment by the “committee members” who are street homeless themselves (Olufemi, 1998), crime or by natural forces of rain or winter and poor access to adequate housing as reiterated by a homeless woman below:

“...We still live as destitute with no roof over our heads, living in fear of rain or too much sun and being mugged and constantly haunted by the street life sub-culture...”.

For those poorly housed, the insecurity has to do with the type of materials (informal/informality of building, makeshift, scavenged) used to put up the shelter, crime, violence and illegality (occupation of land) that has to do with the land invasion and the fear of eviction/relocation/displacement.

Development Planning responded to the issue of illegal land occupation and tenure through the Development Facilitation (DFA) Act 67 of 1995. The DFA Act has as part of its sub-principles the promotion of secure tenure and discouraging illegal occupation of land. The DFA forms the foundation for the new, normative based planning system for the country.

This paper explores the insecurity of tenure among street homeless and poorly housed people using three case studies from Johannesburg. The paper also examines the various policy and programme initiatives, and, planning responses to address the insecurity of tenure among the homeless and poorly housed people.

Contextual background

Definition

UN (1998:50) defined homeless households as, “households without a shelter that would fall within the scope of living quarters. They carry few possessions with them, sleeping in the streets, in doorways or piers or in any old space, on a more or less random basis”.

The poorly housed could be recognised based on their dwelling circumstances, which manifests in forms of: squatting, irregularity; transient/transitory (short term, not lasting
long, highly mobile); pavement/street dwellers; temporary shelters; sharers; unserviced housing; shacks; insecure housing (no tenure, not safe structurally or otherwise, hazardous conditions); itinerant; backyard shacks; hostel (Bolnick, 1996; Olufemi, 1997; UNCHS, 2000).

Street homeless on the other hand could be defined as, “those who lack basic needs (safe water, sanitation); those who lack real homes; those living in bad housing; those sleeping on pavements, sidewalks or kerbs; those who lack personal needs (voice, expression, dignity, self-determination)” (Olufemi, 1997:10).

There are about 8 million shack dwellers and 3 million street homeless people in South Africa (Mohamed, 1997:101). Homelessness in South Africa is one of the manifestations of the housing crisis rooted in the economic, political, social and behavioural factors. “Shacks refer to houses on land to which the owner has no legal title; such houses are built on planks, corrugated iron, plastic and mud” (Magebhula 1994:61).

“Homeless people are generally insecure in their circumstances. They are insecure on the basis of life, often not knowing where their next meal will come from. In addition, their goods and persons lack the protection provided by a locked door and even rudimentarily built dwelling. They are vulnerable to robbery, mugging and sexual abuse “(UNCHS, 2000:62).

DPC (1999:61) defines tenure as a bundle of rights, which regulate access, use, and ownership over land and other resources (water, trees, and crops). Land tenure refers to arrangements or rights in terms of which the tenure holder uses or owns land.

The squatters have temporary/partial/no tenure while the street homeless have no tenure or in few cases temporary when they are in organised shelters for a period of time as reflected in table 1. Table 1 reflects in content the informality of living and planning; the illegality of land acquisition and the insecurity of housing manifested in the precarious tenure situation of the street homeless and poorly housed (squatters).

<table>
<thead>
<tr>
<th>Indicators</th>
<th>Squatter</th>
<th>Street homeless</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Type of settlement</td>
<td>Spontaneous/informal</td>
<td>Spontaneous</td>
</tr>
<tr>
<td>2. Access to land</td>
<td>Invasion(legal/illegal)</td>
<td>Invasion/illegal</td>
</tr>
<tr>
<td>3. Permanence</td>
<td>Permanent/impermanent</td>
<td>Not permanent/itinerant</td>
</tr>
<tr>
<td>4. Organisation</td>
<td>Organised</td>
<td>Semi/not organised</td>
</tr>
<tr>
<td>5. Physical planning</td>
<td>Quasi/informal planning</td>
<td>Not planned</td>
</tr>
<tr>
<td>6. Location</td>
<td>Urban periphery</td>
<td>City centres more often</td>
</tr>
<tr>
<td>7. Growth</td>
<td>Increase/expands in density over a limited area</td>
<td>Expands without control</td>
</tr>
<tr>
<td>8. Type of building materials</td>
<td>Wood, iron sheets, sometimes mud walls are built</td>
<td>Scavenged cardboard boxes/blankets, plastic</td>
</tr>
<tr>
<td>9. Life span of housing</td>
<td>Under 5 years</td>
<td>Weekly or monthly</td>
</tr>
<tr>
<td>10. Security of tenure</td>
<td>Partial or temporary</td>
<td>None</td>
</tr>
<tr>
<td>11. Safety</td>
<td>Minimum safety</td>
<td>Not safe</td>
</tr>
<tr>
<td>12. Employment</td>
<td>Full time in most cases</td>
<td>Unemployed/very erratic</td>
</tr>
</tbody>
</table>

Source: Olufemi 1998
**Issue of land**

South Africans hold land in a variety of tenure systems ranging from freehold to customary tenure. According to the National Department of Housing (cited in Royston, 1999), about 58% of all households (4.8 million) have secure tenure (ownership, leasehold, formal or informal rental contracts); about 9% of all households (780000) live under traditional, informal, inferior and/or officially unrecognised forms of tenure, primarily in the rural areas; an estimated 18% of all households live in squatter conditions, backyard shacks or in overcrowded conditions in existing formal housing areas in urban areas with no formal tenure right over their accommodation.

The land tenure reform is intended to establish legally enforceable rights to land and to build a unified non-racial system of land rights. The process of establishing and consolidating the homelands and informal settlement development has generally resulted in a *de facto* situation of overcrowding and overlapping of land rights. Attempts to secure tenure based on *de jure* situations lead to conflict or failure (Royston, 1999).

**Policy and programme**

It is the policy of the South African government to eliminate homelessness and provide adequate housing as indicated in the White Paper on housing. Section 4.4.2 stipulates that government is under a duty to take steps and create conditions, which lead to an effective right to housing for all. It is also under a duty to refrain from taking steps, which promote or cause homelessness. It is held that a person has a right to live in dignity, in habitable circumstances (Department of Housing, 1995:22).

The 1996 Constitution of the Republic of South Africa chapter 2 states the fundamental rights of all South African citizens. The right to dignity, right to freely choose a place of residence and rights to hold or acquire property and the right to have access to adequate housing.

Other policy and legislation include the Housing Act of 1997, Housing Rental Bill (1999), Local Government Transition Act, Environmental policy, Landlord/Tenant relations, Municipal Systems Act etc.

In an attempt to resolve the housing crisis and ensure adequate housing for its citizens a number of programmes have been developed by the South African government. The Reconstruction and Development Programme emphasised the right to housing (ANC, 1994). It recapitulated that all South Africans have the right to a secure place in which to live in peace and dignity. Housing is human right and one of the first priorities is to provide for the homeless.

The housing delivery programme of the South African government are informed by these policy initiatives and driven in part by the following programmes:

- **Project-Linked**: to deliver serviced stands with houses to beneficiaries within a project Focus area: to achieve economic benefit of delivery at scale
- **Mayibuye/upgrading**: release land for settlement to address landlessness
and upgrade informal settlements; extension of tenure (family, individual, group); real rights over land; provision of land rights in informal settlements.

- **Essential services**: to provide a service stand with toilet structure
- **Rural housing**: to improve the housing conditions of rural settlers
- **People’s housing process**: to give people an opportunity through support mechanisms such as training, capacity building, technical advice, to actively participate and make key decisions and choice regarding the construction of their houses.
- **Hostel redevelopment**: to improve the living conditions of hostel dwellers
- **Consolidation**: provide houses to beneficiaries who own or have security of tenure of serviced stands without top-structures.
- **Institutional housing**: facilitate housing delivery through institutions e.g. social housing
- **Subsidy programme**: Four main types of subsidy have been developed and implemented namely: Project linked; Individual; Institutional; and, Consolidation. The subsidies are in three categories based on income earned (table 2).

<table>
<thead>
<tr>
<th>Income (Rand)</th>
<th>Subsidy</th>
</tr>
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<tbody>
<tr>
<td>0-800</td>
<td>16000</td>
</tr>
<tr>
<td>1501-2500</td>
<td>9500</td>
</tr>
<tr>
<td>2500-3500</td>
<td>5000</td>
</tr>
</tbody>
</table>

Source: Department of Housing, 1999.

In all these policies and programmes, security of tenure and the habitability of housing is implied. For the street homeless and poorly housed, the issue of secure tenure is still unresolved and this is manifested in the high incidence of land and building invasion both in the innercity and the peri-urban areas referred to in the case studies.

**Case Studies**

**Methodology**

This paper is descriptive and based on phenomenological methododology of allowing original experiences to be seen. It draws from three case studies from Johannesburg namely; street homeless in the inner city of Johannesburg; people living in dolomite area of Thembelihle; and upgrading site of Weiler’s Farm (figures 1 and 2). Thembelihle and Weiler’s Farm are both in the South of Johannesburg. Information was obtained through focus group discussions, interviews and observations conducted in 2000 and 2001. A detailed presentation of the case studies cannot be given in this paper but relevant synopsis and extracts as it relates to tenure, rights, informality, irregularity and illegality of the street homeless and poorly housed in the case studies will be dealt with.

**Case study 1: Street homeless people (inner city of Johannesburg)**

Quali-quantitative interviews, focus group discussion and participant observation were used to gather information from the street homeless in a 1995/1996 study and as a follow up in 2000, informal interviews were conducted among street homeless adults and
children in the inner city. 12 street homeless women were used in the focus group discussion while a questionnaire survey of 635 homeless people were conducted in 1995. The results of the interviews are presented here as it relates to secure tenure (Olufemi, 1997):

Living in shacks or unorganized shelters like Drill hall or Park Station (as seen in excerpts below) is an informal way of living for the street homeless and they do not have a secure tenure or any tenure at all.

Access and occupation of the unorganized shelters is illegal and the street homeless is not always sure of holding on to the small sleeping space for too long because of harassment from the committee members or police and fear of eviction or relocation.

“…..Drill hall is very appalling because there are no toilets and no place to cook and the whole area is dirty…”.

“….Now I have managed to build a shack (mekhukhu) outside the railway station and since there is no electricity, I use candle. I get water from Plein street, use the railway toilet and I bath inside a basin just before daybreak”.

”… I moved out of location because violence was a way of life there. I came to Joubert Park a year ago and I sleep on the pavement. Joubert Park is an open park and all kinds of activities take place here, e.g. selling and buying, drug use, cooking, etc. There are no toilets, no water, no electricity and the sanitation is an eyesore. People defecate all over the place and the stench and odour is unbearable. For lack of nowhere to go, you just adapt to the situation” (Olufemi, 1997).

The street homeless people live in uncertain, unstable and obscure situation for example sleeping rough on pavements with insecure/no tenure as indicated by street homeless:

”…With no money, inability to rent a house/flat, I came to live in Fitas. In Fitas there are no toilets and water. We defecate and wash in the bush near the cemetery. I managed to build a shack by scavenging for materials around the dumping ground”.

“I have been on the street for 13 years. Sleeping on bare floors, carrying plastic bag, which is my only property on earth. Life on the streets is no life. The perception of the people about you that you are a lunatic”.

”… I moved to Joubert Park, but it was just an open park and I was exposed to different kinds of sad experiences, like mugging, rape and I fell ill. So I left for Park Station and I sleep on the pavement inside the station. During the day, I roam about in Joubert Park. I am very poor - no job, no money, no house, no family”.

Living in organised shelter like Usindiso (A Christian based NGO shelter for the homeless) is partially having tenure as opposed to living on pavements, shacks or unorganised shelter. “….It gives you privacy”
"...I would say I was fortunate to get a place at the Usindiso Women's shelter and my child attends a nursery provided by the shelter administration. The shelter has all the facilities, water, electricity, laundry; they provide food, blankets and they take care of us. The sanitation is good and the environment is clean and conducive to living. I go out daily to pick up cans, which I later sell to recycling companies...".

Access to housing for street homeless people who have no income and no fixed abode is difficult. They hop from one abode to the other on the street; their tenure is precarious and their unemployment situation excludes them from obtaining credit facility. The social housing programme of the government targets low income people who earn between R1500-R3500 while the subsidy programme targets earners from R0-R3500 (table 1).

The street homeless people who are unemployed or whose employment is erratic cannot provide any proof that they will pay back rents; neither can they provide ID or collateral for loan to own a house. They fall under the indigent group, who cannot pay for services let alone rent/buy/build a decent house.

The transitional shelters in the innercity are allocated on the basis that you get employment and move out of the shelter in six months (now extended to 18 months). Though in reality, street homeless people once they get access to the transitional shelters often don’t move out. The project is being reviewed and there is serious debate as to its continuity.

Not until very recently, that the South African Homeless People’s Federation (SAHPF) began to pursue the rights and involvement of homeless women living in shacks in the informal settlements. This effort is aimed at giving secure tenure to the homeless people and it is a People’s Housing Process (People-driven process). The SAHPF is a nationwide peoples housing movement and it consists of about 100000 households with more than 1200 savings collectives and over 1000 homeless communities. 85% of its members are women with average monthly household incomes of R700.

**Case study 2**

**Thembelihle (dolomite area)**

This is also a qualitative study exploring the perception of people with regard to the relocation process. Interviews were conducted among provincial and council officials and focus group discussions were held among residents and community leaders in Thembelihle between March and December 2000.

Thembelihle is an informal settlement south west of Johannesburg, with 40% of the area being on dolomite. Presently there are 4637 houses in Thembelihle with about 27822 people living in the area. Majority of the people in Thembelihle come from Soweto where they were living in backyard rooms and shacks.

Thembelihle was formerly an open space left vacant due to its problem of dolomite. People invaded this land when South Africa was experiencing political instability problems. The then Black councilors could not stop the rapid land invasion. The plan was
made to relocate them, but it was not carried out until the democratic government took over.

“Thembelihle began to emerge in 1983 when it was used as an informal business area to sell home-brewed beer to the domestic workers who worked in the neighbouring suburb of Lenasia. Mr PS Mathosa erected the first plastic shack in 1986. Within few days and weeks many people followed by erecting proper shacks as well” (Community report series, 2000:6).

Eviction/relocation based on the respondents perspectives is the:

Temporary or permanent dislocation of people or communities from their homes.
It could be forced, voluntary or assisted, depending on the context.
In the Thembelihle case preliminary process and plans seem to be a mix of assisted, forced and voluntary.
Assisted in the sense that provision of a site, bulk services and infrastructures, subsidy although, it is still movement from shack-to-shack and this does not please some residents but they are still happy because they will now have title deeds.
Forced in the sense that some residents’ perception is that they are being forced because they do not want to move and so they are putting up resistance.
Voluntary in the sense that some residents are already relocating to other settlements and other people are migrating to Thembelihle (Olufemi, 2001).

Relocation was supposed to be in three phases starting from the end of 1999 to the beginning of 2002. As at the time of survey in 2000, in practical terms, nothing has been done, nobody has been moved, a lot of promises have been made and uncertainty is the feeling among the residents.

Thembelihle based on the interview with SMLC official (2000) owe its existence to the Group Areas Act, which restricted Africans from places designated ‘white only’. It has a long history back to apartheid influx control, where virtually no land was allocated for the people from rural areas seeking employment in urban areas of the then apartheid cities.

In an effort to secure tenure, the government grants a subsidy of R16000 as well as title deeds to the land in which they were to be relocated. The subsidy was to be disbursed as follows: R1000 (planning); R5500 (essential services) and R9500 (top structure). The developer applies for the subsidy on behalf of the residents. The Council is the developer in Thembelihle.
The criteria for subsidy allocation are: the beneficiary must earn less than R3500 (this process is meant to benefit poor people not people who can afford to buy own houses). If the personal income exceeds R3500, the person will be encouraged to apply for a bank loan. The applicant should be a South African citizen (note the problem of illegal immigrants that do not qualify will be referred to Home Affairs to give direction on how to handle the situation).
There was a mixed reaction from the people about the relocation plan. There are two groups in Thembelihle, those who are eager to move (who have applied for subsidies) and those who reject the relocation plan. The latter group insists that the plan to relocate is politically motivated and linked to racial discrimination. They said, “Indians from Lenasia do not want to associate with poor people. Some are refusing to move because they already own expensive houses (e.g. a man with a double storey)”. “Surely this is an expensive investment that one cannot consider to leave behind for a two-room house”.

“At the moment there is no strategy as to how to relocate the people for fear that once we start moving people out residents of Vlakfontein might invade the vacant land and retard the process. However, once the relocation starts it will begin at the periphery of Thembelihle so that vacant shacks cannot be replaced and it will be easier to spot new invaders. The relocation phase will need a strong political support to curb conflict”.

“The first 300 families will be relocated in April 2000 depending on the political climate”.

As at October 2000, relocation process has not been implemented. There is fear of invasion by people from Vlakfontein; therefore relocation has been suspended until 1000 stands are serviced. 1300 have already applied for subsidies. About 785 screened have been approved by Province and still waiting for 500 to be approved. There are only 4000 stands available in Vlakfontein extension one; 2000 families will be relocated in other projects. The relocation plan is based on the national and provincial government to ensure that people do not reside in dangerous situations. It is informed by the need to create sustainable development for the people.

The residents identified socio-cultural issues, proximity to work opportunities, movement from shack to shack, lack of understanding of the title deeds and inadequate subsidy as concerns to secure tenure (Olufemi, 2001). Below are some of the residents’ perceptions:

“…They say Thembelihle is not permanent because of the dolomite, they say it is dangerous and we have been living there for 10 years, no problem, really people don’t know dolomite”.

“I like it at Thembelihle because my family is in Soweto. I can even walk to Soweto from here”. “Dolomite is everywhere why are the Indians not told to move?”

“Peace of mind when you have your own house and own the land, access the services and not moving from shack to shack”.

“The subsidy of R16000 is inadequate to build a proper house for a household of 6 or 8. I am unemployed so how can I benefit? How can I afford to put up a decent, permanent house instead of a shack?”
“We don’t even understand this talk about title deeds. All we want is a plot and house we can claim and pass on to our children in future”.

“Nobody has moved yet. We have no choice”. “We were told they would start with shack we are not satisfied with that. We can’t move like that”.

“I need a permanent place to throw stones and talk to my ancestors”.

“We are just scapegoats of the Group Areas Act- take people away from where the economy is”.

Case study 3

Weiler’s Farm (squatter settlement upgrading)

Formal interviews were conducted with residents and officials from the provincial department of housing in 2000 on the situation of the upgrading programme.

Weiler’s Farm is 30km from Johannesburg CBD. Comprises of 2600 households with a total population of 13000. Began in the 1980s and land was owned by Mr Weiler a farmer who allowed 300 people to squat illegally on his farm in exchange for cash. Attempts to relocate squatters failed. Eventually the area was given a transit camp status in 1985. The settlement had a strong ANC base, which then formed the Masakhane Funeral Association. Mr Weiler abandoned the farm in 1985 but allowed the people to continue living on the farm. In 1986, the Weiler’s Farm Planning Team was established as the representative body of the community.

At the end of 1987, there were 1200 households due to lack of control mechanisms. Rental boycotts in the 1990s also led to more people moving from council owned formal townships coupled with violence in single sex hostels to Weiler’s farm. Further invasions occurred on the farm leading to the expansion of the settlement (Dlamini and Nkosi, 2000).

From the case study the following facts were established:

**Weiler’s farm after 1990**
- Attempted forced removals raised concern among NGOs and citizens
- WFPT was registered as a section 21 company known as Thuthuka Foundation, which oversees the overall activities of the community. SANCO-African national civics organisation was also an active body that ensured development took place.

**Weiler’s Farm 1995 to date**
- Thuthuka Foundation applied for funding from the provincial department of housing and land affairs to upgrade settlement
- About R2.8 million was approved for upgrading 3200 sites in 1996

Informal Settlements Upgrading programme’s milestones in Weiler’s Farm indicate that the area is well planned, sites have been allocated and transferred to individuals,
Title deeds have also been issued, the project is community driven, community centre was built in 1997 with funding from a University in Netherlands, school has been completed, and essential services are being installed. Relocation to permanent sites to date is 413 households in the northern part of the site and 96 households in the southern part; water is supplied by tankers to households occupying the permanent sites while bulk services are being installed and households were requested to build pit latrines.

The residents however, indicated that tenure is still a problem because:
“…We are been moved from shack to shack, though the roads are better and water is been supplied by water tankers, the prototype housing is too small and we are even better off with our shacks”.

“…The Wonke wonke are still causing trouble and don’t want to move to the upgraded site because some of their shacks are big and they feel they have put in a lot rather than see it being knocked down”.
“…What we don’t understand is the demolition of very good structures and giving very small plots; they give a subsidy of R16000 to those who qualify to be disbursed as follows: planning (R1500), services (R5500) and top structure (R9000). What can you build with R9000 if it not a shack…?”

“… There is political division in this case and people are fighting with the Thuthuka Foundation who were suppose to be representing the community but in reality they are doing their own thing” (Field observation, 2000, Class project, 2000).

The officials are concerned about re-invasion of sites vacated already. Development in the informal settlement follows this pattern: when people invade they build with cheap, removable cardboard materials, when they settle they improve with iron, build mud structure and then plaster. All these point out to the informality and temporary nature of these settlements.

Discussion

The experiences and facts based on the case studies could then be described as follows (figure 3):
The need for housing and shelter has driven the street homeless and poorly housed to develop informal ways of housing irrespective of what the policy or law says.

From needs ➔ informality ➔ illegality ➔ control/regulation ➔ rights?
Where do you draw the line?
Figure 3: Needs versus tenure and rights to housing

Need for housing/shelter (poorly housed and street homeless)

Invasion (no tenure, no title deeds)

Illegal Informal/spontaneous

Inhuman living conditions

Control/regulation

Evictions/relocation: solution or panacea for development?

Legal Rights?
(Failure or success)

Status quo Re-invasion
Better/adequate housing/appropriate tenure options

Figure 4 indicates that the implementation at the local level of policies and programmes is incongruent with the international and national objectives. Tenure is still insecure in the case studies, poorly housed are still moved from shack to shack and the street homeless still move from pavement to unorganized shelters and back to pavement or chronic homelessness.
Figure 4: Influence of International convention on South African policy and programme to address secure tenure

**International:**

- Habitat 1, Vancouver 1976 *Needs-based*
- International year of shelter for the homeless, 1987
- Global shelter strategy 1988 *Housing for all by 2000*
- Habitat 11, Habitat Agenda, Istanbul 1996

**National (South Africa):**

- RDP
- Constitution
- White paper on housing
- Development Facilitation Act
- Habitat Agenda

**Local:**

- Implementation
  - (Insecurity of tenure among street homeless and poorly housed at the local level)

The White paper on Housing, The Constitution all indicate living in dignity, secure tenure, housing as fundamental human right and adequate housing for all but from the results in the case studies a lot of barriers still make it difficult to have secure tenure. For example, lack of recognition of the enormity of the problem in the case of the street homeless and for the poorly housed, race and socio-cultural factors lack of understanding, movement from shack to shack still constitute barriers to secure tenure and adequate housing.

Case study 1 (street homeless) is supposed to link to the People’s housing process but it is only the homeless living in informal settlements that are involved not the street homeless. Case studies 2 and 3 (Thembelihlke and Weiler’s Farm) are linked to the Mayibuye and Essential services programme of the government and the people were supposed to benefit from the subsidy allocation. The problem is that they still have to move from shack to shack thereby perpetrating tenure insecurity. Citizens who are unemployed do not qualify for the subsidy. Yet they need have rights to adequate housing with secure tenure.
The issues of race, culture, right and tenure raised in the case studies counters the objectives of the government programmes. Appropriateness of housing and tenure in terms of types and tenure options namely rental/ownership/communal/family/minor in the case of HIV/AIDS and child-headed households or orphans (which is now emerging among the homeless and poorly housed) has not been factored in these programmes.

Housing as a right is not even an issue in the three case studies (table 3). Legality is also not an issue because it is when you have a secure tenure that you can claim right of ownership or rental based on the status of occupancy.

Table 3: Housing tenure assessment in case studies

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<tr>
<th></th>
<th>Case study 1</th>
<th>Case study 2</th>
<th>Case study 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Living in dignity</td>
<td>X</td>
<td>XX</td>
<td>XX</td>
</tr>
<tr>
<td>Tenure</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Adequacy</td>
<td>X</td>
<td>X</td>
<td>XX</td>
</tr>
<tr>
<td>Right</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

XX: fair  
X: poor/non existent

Specific Planning response

Since 1994, the legal context has been influenced by the Constitution, the Development Facilitation Act (DFA), new planning laws passed by some of the provinces and various national pieces of sectoral legislation that have had planning implications (DPC, 1999:7).

In the planning sphere, legislation has shifted from being control orientated towards being normatively based with the passing of the DFA. The law introduces substantive principles (norms) that must guide land development and decision-making. In addition to principles, the DFA introduces the concept of land development objectives (LDOs). These are plans approved by political decision-makers that set their objectives and targets for development and which inform the spatial and developmental imperatives of an area. The policy plans also referred to as Integrated Development Plans (IDPs) are normative in that they set out desired aims.

DFA Act 67 of 1995 and findings from cases studies

Five major concerns underpin the DFA chapter one principles. These are the need to:
1. Create new forms and structures for South African settlements to improve performance
2. Work harmoniously with nature- avoiding hazardous environments. The natural systems may contain conditions, which are hazardous to human settlement e.g. geological instability, floods and also dolomite in the case of Thembelihle, these conditions must be avoided.
3. Speed up the pace of development
4. Promote a better planning system- Integrated Development Planning, Public participation, local decision-making, public private partnership
5. Promote security of tenure (DPC, 27/99)- the principles recognise the importance of promoting security of tenure in urban and rural areas. Among other things security of tenure affects psychological health, the extent to which land and housing can be used as an economic asset, the extent to which they can be used as a place of production, levels of satisfaction with life generally and more particularly, with housing products (DPC 27/99).

The principles require that security be promoted in all forms of tenure (individual, ownership, various forms of collective ownership, rental or communal). They also suggest promoting the widest range of tenure options in order to maximise choice. In development projects such as settlement upgrade schemes, the principles make it clear that it is the development agency’s responsibility to reasonably accommodate households that have to be displaced in the interest of public good.

Specific clauses relating to the three case studies are discussed below.

1. Principle 3(1) (a): “Policy administrative practices and laws should provide for urban and rural land development of formal and informal, existing and new settlements”. (DPC 27/99:21-23)

This calls for equality for urban and rural land development to correct the urban bias in terms of land development procedures. It recognises that settlement formation and upgrading occurs in reality through a wide range of processes and in very different contexts. An outcome of this principle is that authorities preparing new plans (LDOs, IDPs, town planning schemes, development frameworks, structure plans) must consider how informal land development processes would be handled. This is lacking in the Thembelihle and Weiler’s Farm case studies. Conflicts have stalled the good intentions of the projects.

This principle draws an important distinction between illegal (negative) and informal (potentially positive) settlement processes (p.23).

It noted that illegal land occupation is still a percursor of informal settlement processes. This could be observed in the ways by which Thembelihle and Weiler’s Farm were occupied.

2. Principle 3(1)(b): “Policy, administrative practices and laws should discourage the illegal occupation of land, with due recognition of informal land development processes”.

This principle seeks to discourage illegal occupation of land. It recognises that the integrated and efficient development of settlement cannot occur when illegal occupation is a common settlement-formation process. It also recognises the conflicts as a result of erosion of legal ownership rights.

There is still no firm approach to dealing with invasion and re-invasion as seen in case studies 2 and 3 (Thembelihle and Weiler’s Farm).
3. Principle 3(1)(g): “Laws, procedures and administrative practices relating to land development should-
   i. Be clear and generally available to those likely to be affected thereby;
   ii. In addition to serving as regulatory mechanisms, also provide guidance and information to those affected thereby;
   iii. Be calculated to promote trust and acceptance on the part of those likely to be affected thereby;
   iv. Give further content to the fundamental rights set out in the Constitution’.

This principle sought to change the primarily regulatory land development into a user-friendly, facilitative and management-based. Seeks to break the ‘them’ against ‘us’ mindset. This mindset prevails in the informal settlements. As reiterated in Thembelihle,

“They tell we have to move but not ask us first. It is like medicine after death’.

In the responses “they” was used frequently and when asked who “they” was. The respondents replied,

“The technical persons like geologist, planners, surveyors, people that know more than us”.

With regards to rights, a street homeless said:

“I need a house or flat, even if it means sharing facilities like toilet, bathroom, kitchen. I need a decent roof over my head, after all housing is a fundamental human right”.

4. Principle 3(1)(h): “Policy, administrative practice and laws should promote sustainable land development at the required scale in that they should-
   i. Promote land development, which is within the fiscal, institutional and administrative means of the Republic;
   ii. Promote the establishment of viable communities;
   iii. Promote sustained protection of the environment;
   iv. Meet the basic needs of all citizens in an affordable way; and
   v. Ensure the safe utilisation of land by taking into consideration factors such as geological formations and hazardous condemned areas”.

It was obvious that developing a dolomite area is very expensive and also not taking into account the needs of people could cost the government more as seen in Weiler’s Farm where people don’t want to move because the prototype houses are too small, smaller than the shack they are occupying.

5. Principle 3(1)(k): “Land development should result in security of tenure, provide for the widest range of tenure options, including individual and communal tenure and, and in cases where land development takes the form of upgrading an existing settlement, not deprive beneficial occupiers of homes or land, or where it is necessary for homes or land occupied by them to be utilised for other purposes, their interests in such land or homes should be reasonably accommodated in some other manner” (p.53).
The street homeless want a secure tenure whether ownership or rental as reiterated below:

“...Life on the streets is hopeless, you don’t own a house and you can’t rent because people think you are a hobo”.

“All we want is a place to live decently, a house to call our own, a home to belong to”.

This principle entrenches the fundamental importance of security of tenure, being able to defend tenure against third parties, communal tenure, which includes not only traditional or customary forms of land holding but also statutory form of communal tenure that might be made possible or facilitated in the future e.g. trusts, offering tenure choices or options, accommodating the rights of existing occupants in the case of upgrading, no involuntary removal except for public improvement.

So far the principles have had a disappointing impact on planning practice due to:

- Lack of knowledge
- Lack of a shared vision
- Difficulties in interpretation
- Lack of intergovernmental coordination lack of capacity
- Legal and procedural complexity
- Weak in terms of spatial recommendations
- Land development approval procedures are slow and cumbersome
- Large parts of settlements are largely unaffected in any positive way by the benefits of a spatial planning system. Little or no protection from the law in land related matters (DPC, 1999).

The above weaknesses have also impacted on the way the relocation and upgrading projects in the case studies were handled. There was no reference to the DFA principles throughout the interviews and focus group discussion. Apparently there is still a gap/ignorance in the knowledge of the principles and how to translate it in practice. For the street homeless people it is even a non-issue because they are excluded in most programmes and obviously the principles relate to them but they are still excluded in practice.

**Conclusion**

The street homeless and the poorly housed discussed in the case studies have used their ingenuity to provide housing for themselves. This has been done in an informal and illegal ways. Their housing is inferior, substandard, insecure and they have no housing rights.

It is also evident from the case studies that Government attempts are still inadequate in securing tenure for the street homeless and poorly housed. It might require further interventions or more practical approaches to achieve secure tenure for the poorly housed.
It is suggested that planners and policy makers should engage in the following to ensure secure tenure for the street homeless and poorly housed:

- Communication/information sharing to avoid conflict. New and appropriate forms of regulation
- New tenure options suitable for different housing contexts
- Build trust among the people
- Clear explanation of policy and programme in language which people understand
- Review of the DFA to be more user friendly
- Provide adequate capacity building for the local government officials
- Identify invaded land; identify potentially invaded land; conduct a land audit and audit of the poorly housed and street homeless; and effective monitoring of informal developments.
- Integrate consensus building and collaborative planning approaches in the upgrading and relocation process.
- Emphasis should also be placed on participatory democracy and a need to rethink community representation or representative democracy at least for processes of street homelessness, relocation and upgrading. Local political participation in decision-making and action in communities is also very crucial.
- The Planning for Real (Environment Trust Associates, 1994) model is a tool that is recommended to ensure adequate involvement of community residents in the developing appropriate tenure options.
- Redistribution of power (power relations) between ‘them’, the deprived or marginalized communities and their representatives as well as “us” (professional, policy makers) is paramount to minimize or completely eradicate resistance.
- Improve the quality, nature, civic engagement in governance structures.
- Maintain appropriate standards
- Discourage movement from shack to shack and build in cultural values within each context of programme formulation though to implementation.

This paper based on the above concludes by reiterating that a secure tenure and adequate housing is catalytic to a humane living environment as it gives people a sense of belonging, commitment to improving their home, neighbourhood and community. Legal tenure stimulates investment and growth because as a Yoruba adage goes, “Inu didun lo mu oriya” that is “emotional stability and an enabling environment serves as a source of motivation...
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