

# **Analysis Of The Impediments To The Realisation Of The Right To Access To Adequate Housing In South Africa**

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## **ABSTRACT**

*In South Africa, the right to access to adequate housing is one of the socio-economic rights guaranteed in the 1996 Constitution and every citizen is entitled to this right. Legislation and policies were enacted to realise and fulfil the constitutional mandate of providing access to adequate housing to the poor, disadvantaged, and the vulnerable people in the country. Government is mandated under the Constitution to provide and deliver adequate housing to needy citizens. Those entrusted with the responsibility to deliver adequate housing should do the right thing and be corrupt free. This article seeks to analyse the impediments to the realisation of adequate housing guaranteed in the Constitution. To address this problem, the article sourced and used qualitative literature review research approach such as journal articles, government policies to address the problem. The paper found that corruption, nepotism and maladministration are impediments to the realisation of the right to access to adequate housing by the poor, indigents and vulnerable people. It was recommended that there should be proper oversight and that corrupt officials should be brought to justice.*

**Keywords: Substandard housing, Malfeasant and Nepotism, Public officials, Eviction, vulnerability, Indigents.**

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## **Introduction**

The 1996 Constitution of the Republic of South Africa 1996 (Constitution), provides for access to adequate housing to everyone in South Africa. The duty is on the state to progressively realise adequate housing using available resources. Adequate house should promote privacy, safety and freedom of occupiers of houses. Even though the Constitution provides for the progressive realisation of adequate housing, this cannot be achieved overnight but through gradual process that the state has to undergo to make resources available. However, when resources are made available or eventually sourced, social vices such as corruption, nepotism, lack of planning and delivery of substandard houses by the government impede the provision, delivery, and realisation of access to adequate housing in South Africa (Yitay, 2011). Corruption is identified as major impediment to the provision of adequate housing in the sense that resources earmarked for building dignified and befitting houses to indigents are usually diverted for personal purposes by those who have been saddled with the responsibility to provide housing. The implication of this is that poor quality housing would be erected and within a short period of time, they shall become ravaged and dilapidated. Also, reports of government officials selling houses built by government for the indigents to unqualified persons abound and this is another form of endemic housing corruption in South Africa.

## **The notion of corruption and adequate housing**

According to Ubasi (2012: 13355-13369) South Africa is faced with corruption and it manifest in a form of “fraud and bribery, mismanagement of government funds, abuse of government resources, identity document fraud and procurement irregularities. Corruption is a major hindrance to good governance, having a negative impact on the realisation of adequate housing to poor communities.” The concept of progressive realisation as defined by Chenwi (2010;742-743) in

context of the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) refers to achievement of rights over time subject to availability of resources. Availability of resources such as land upon which the houses will be erected, human capital for construction and building of houses, funding and the willingness of the government to make resources necessary to achieve and deliver houses determines the progressiveness of government in realising adequate housing (Chenwi, 2008: 105-137).

Due to corruption, the resources that should be used for the progressive realisation of adequate housing have constantly been misappropriated or corruptly siphoned by those who were entrusted with the responsibility of implementing the constitutionally guaranteed right to access to housing (Rotberg, 2019). Most of the disadvantaged and vulnerable groups that the Constitution specifically mandated that should be given dignified houses are still not provided with befitting housing. What is worrisome is that they continue to live in informal settlements and are exposed to living conditions that are not healthy and conducive for human well-being (UN-Habitat, 2004).

Adequate housing as enshrined in section 26 of the Constitution entails that occupiers of houses should be afforded ample protection, safety, security, comfort, and unhindered access to socio-economic amenities that are required for living in a dignified house (Galtung, 1978). Adequate housing is defined as a right that encompasses freedom and entitlements (UN 2009). The protection of dignity and privacy are at the hearts of the founding principles of the Housing Act and the Constitution which mandates that the government should provide adequate and dignified housing to those that are without adequate housing.

It is pertinent to reiterate that the provision of shelter and basic amenities should make a house adequate for its occupier(s) in

order to be able to enjoy human rights such as the rights to dignity and privacy (Chenwi, 2008: 105-137). Lanrewaju (2012: 422-429) succinctly describes what an adequate quality housing entails as embracing many factors which include the “physical condition of the building and other facilities and services that make living in a particular area conducive.” Furthermore, for Lanrewaju (2012) the condition of an adequate house should satisfy minimum health standards and good living standards.

Similarly, the rights in the Bill of Rights in the Constitution are interrelated and mutually supporting each other hence the right to access adequate house reinforces the right to dignity, privacy, and good health (Liebenberg and Goldblatt, 2007: 335-361). The right to the provision of adequate housing in South Africa post 1994 ensures that those who were historically denied and disadvantaged during the apartheid era and forcefully removed and dispossessed from their land and houses now have unrestricted access to adequate housing for themselves and their families under the democratic dispensation (Fourie and Valeta, 2008: 139-140).

However, access to adequate housing is hindered by lack of proper planning and monitoring of resources by the government and corruption resulting in the use of state resources for private gains (Dawson and McLaren, 2014). Adequate housing is more than a structure, it includes the structure, clean and conducive environment, services within and around the structure such as sewerage removal, access to sufficient water, health care facilities, and socio-economic amenities that promote human dignity and privacy (Lanrewaju, 2012: 422-429). It also includes those services and amenities such as compliant walk-way for people with disabilities, railing mounted at the stairs for the elderly, and the poor; all these are responsive to the needs of these vulnerable persons (Charlton, 2004).

Therefore, the aim of this paper is to articulate how corruption being perpetrated by those saddled with responsibility to provide have diverted resources for personal use. The implication of this is that poor housing were built using poor building materials. This defeats the spirit of section 26 of the Constitution.

### **Methodology**

This article utilised qualitative non-empirical contemporary literature review as the research methodology. Against this backdrop, existing relevant literature (secondary data) pertaining to the issues surrounding factors that are posing as obstacles to the realisation and fulfillment of the delivery of adequate housing to the poor and vulnerable were sourced, reviewed, and applied to bring to the fore impact and effect of socio-vices such as corruption, nepotism, misappropriation of funds are having on the provision and the delivery of housing in South Africa.

### **The building of adequate houses by government**

In terms of sections 40(1) of the Constitution, the government of South Africa is made up of three spheres namely, the national, provincial, and local sphere governments. In terms of section 41(1)(g) of the Constitution and section 2 of the Housing Act, 107 of 1997, the spheres of government have roles, functions, and responsibilities towards the achievement of progressive realisation of adequate housing. The Constitution places an obligation on the government to make resources available to provide access to adequate housing. The Housing Act defines the function of the spheres of government in respect of housing development. The social and economic development of poor and vulnerable people depends on the provision of adequate housing (IDASA, 2010).

Part of the responsibilities of the municipality, which is the local government as the sphere of government closest to the people is to facilitate the progressive realisation of adequate housing and

services such as sufficient water and sanitation (Du Plessis, 2010). The role of the provincial government is to ensure that the municipalities comply with national and provincial sustainable housing norms and standards in facilitating access to adequate housing (Ubisi et al., 2019: 13355-13369). The provincial government should protect the poor and vulnerable people against corruption and mismanagement of state resources intended to achieve access to adequate housing (Naidoo, 2012: 656-683). The abuse and mismanagement of state resources by the corrupt individuals or collective should be dealt with decisively.

The responsibility of the national government is to allocate sufficient resources for the provincial government to adequately realise access to adequate housing within its municipalities. However, the inadequate/insufficient resources from the national government play a significant part in delaying or hindering the progressive realisation of adequate housing (Reddy, 2010:49-50). In addition, the mismanagement of allocated resources for housing projects may also cause the municipality to fail in service delivery or provision of adequate housing (Dzengwa, 2010: 272-283). Another example of how mismanagement takes place was when those who were not in need of housing were allocated whereas those who were in need were overlooked and neglected by the officials.

The term “resources” in this study, refers to resources made available by the national government to the provincial and municipality to progressively achieve access to adequate housing and service delivery. The term “service delivery” in this study refers to the delivery of sufficient clean water, access to health care facilities, environmental protection, and socioeconomic amenities.

The principle of co-operative governance places an obligation on

the spheres of government to hold each other accountable, to be transparent, and to practice accountable governance in service delivery and mechanism of gaining public trust (Mle and Maclean, 2011: 1364-1383). Accountability in the spheres of government ensures effective and corrupt-free service delivery. According to Mbaku (2008; 427-436), lack of political and economic development in Africa countries is hindered by corruption. Corruption and empty promises cause a loss of trust in the government. For example, Public officials using resources allocated for service delivery and realisation of adequate housing for personal benefits. (Ndletyana et al., 2006).

### **Planning for and monitoring resources to achieve adequate housing**

Planning, monitoring, and evaluation for the realisation of adequate housing are set out and carried out within the local government. Planning, monitoring, and evaluation in the local government are also necessary to assess the level of compliance with the provision of access to adequate housing and service delivery. In planning and monitoring funds to achieve adequate housing municipality, it is important to prioritise the needs of those that are less privileged or historically disadvantaged (Prinsloo and Roos, 2005). The planning and monitoring of resource with the local sphere of government should be promoted by those departments entrusted with the resources from national sphere of government. Therefore, the local sphere of government being the municipality should monitor the implementation of targeted delivery of adequate houses.

Whereas, the Free State provincial government enacted the Free State Provincial Housing Act 7 of 1999 (FSPHA) for the achievement of effective and progressive realisation of adequate housing within the province. The FSPHA provides for public participation to ensure transparency, accountability, and equality in the administration and provision of adequate housing. The

communities are involved in the planning for the achievement of progressive realisation of adequate housing and housing development. The involvement of the communities or stakeholders is to plan and create an environment where role players know their obligations in providing adequate housing to the people of South Africa, who are poor, vulnerable, and disadvantaged.

Monitoring should be done during the process of implementation and building of houses. Failure to monitor the use of funds and available resources in the building of houses might result in the misuse of resources. Maladministration, misuse of available resources to realise adequate housing, and corruption in the local government may be reduced by proper planning and monitoring of resources available and to be used to achieve adequate housing. Maladministration and misuse of available resources occurred when those who are saddled with the responsibility to provide and deliver dignified housing collude with service providers to build substandard and poor housing. To address this, there is need for effective planning for and monitoring of funds and resources allocated for the achievement of adequate housing leading to expeditious service delivery and provision of adequate houses (Bosch, 2011).

Lack of proper planning and monitoring of the provision of houses in South Africa cost taxpayers a lot of money (Munzhedzi, 2013:284). For example, in Port Elizabeth, the government built poor standard houses, some of which posed health risks and some collapsed even before occupiers moved in (Chirume, 2018). Those houses were built from taxes and revenues government collected, therefore, taxpayers lost monies that were used for a housing project that was not successful. Planning, monitoring, and evaluation should form part of sustainable development in the housing sector, in that houses should be built in such a way that they benefit both present and future generations. Moreover,



planning for the provision of housing should be for the promotion and restoration of human dignity, privacy, and security of those that are homeless or without adequate housing.

The municipality is obligated in terms of section 23(1) of the Local Government Municipal Systems Act 32 of 2000 to undertake “developmentally oriented planning” to achieve the objectives of the municipality one of which is to deliver services to the people. The development that the municipality is required to undertake should be planned. Planning is a process that should start from the moment the government secure resources until houses are being built. During the process of planning, people in need of adequate houses should be identified and be involved, the location where houses will be built should also be identified and time should be determined within which people will access adequate housing. Planning for the purposes of realising the Constitutionally guaranteed right to adequate housing should be done effectively and with transparency that guarantees delivery of service timeously and expeditiously (Mackay, 2006).

During the process of planning, the standard that is adequate for housing should be determined and the cost of the implementation thereof. The cost and standard of housing necessitate that a house should be affordable and adequate. The cost of housing should be inclusive of amenities that will make a house habitable and dignifying. Availability and access to socio-economic amenities form part of the factors necessary in considering whether a house is adequate.

The issues of monitoring and evaluation were given much attention during the first five years of the new democratic government in South Africa. According to Kayane (2014), during the first five-year period of democracy, few of government departments engaged in “systematic monitoring and evaluation of their policies and programs.” In 2009, the National Planning

Commission was established and in 2010, the Ministry for Performance Monitoring and Evaluation was established to perform in-depth monitoring and evaluation. Monitoring and Evaluation should be based or assessed on the outcome of the intended project (Bosch, 2011). Therefore, the outcome or result approach should be adopted in planning and evaluating the realisation of adequate housing to test whether houses are indeed well built and delivered to the rightful people or homeless people (Nel, 2005; 5-16).

### **Corruption as an impediment to the progressive realisation of access to adequate housing**

The government of South Africa through finance collected from South African Revenue service (SARS) and budget, procure finance to address inequality and empower the historically disadvantaged people and other vulnerable groups of people to access effective service delivery (Ababio, 2004:272-289). State funding for service delivery or procurement during the apartheid regime was based on discrimination and prejudice in favor of the minority (Munzhedzi, 2013:284). Procurement refers to the activities that the government undertakes to purchase goods and services that are necessary for service delivery such as adequate housing for homeless people (Arrowsmith, 2010).

According to Ababio (2004:272-289), in South African, procurement is central in the government service delivery system. The democratic government of South Africa reformed public sector procurement by introducing preferential procurements to address the social and economic imbalances to decimate apartheid era discrimination. In a narrow sense, preferential procurement aims to assist people living in South Africa who were historically denied access to housing and the less privileged during the apartheid regime by making funds available to secure available resources for the building and delivery of adequate houses. However, service delivery like the

provision of adequate houses is affected by mismanagement and corruption (Ambe and Badenhorst-Weiss, 2012:242-261).

The public sector in South Africa is faced with challenges such as lack of capacity to deliver needed services, and political stability. Corruption usually benefits few government officials, politicians, and tenderpreneurs, and hampers the ability of the government to alleviate poverty (Balkaran, 2013:129-145). Corruption and maladministration exist in all spheres of government but are rampantly widespread in the municipalities (Thornhill, 2006:322-332). Corruption most often occurs during the procurement and distribution processes of goods and services often as a result of poor procurement management and control (Madumo 2012:50). This happens as a result of the municipality and province senior administrative workforce being influenced by political affiliation in the African Nation Congress (ANC), the current ruling party (Reddy,2005:49-50).

Corruption and poor governance are worldwide issues, and their manifestations in the housing project in South Africa add more to the housing problems that the country is already facing (Manomano, 2016:111-117). In addition, an increase in corruption in South Africa is influenced by a lack of effective punishment mechanism. It is either that the prices of resources and amenities are inflated, contracts are awarded to friends or family, tenders are not advertised, bid committees are not properly constituted or that panel members did not declare their conflict of interest before the sitting of the adjudication committee (Munzhedzi, 2013: 284). Also, according to Ngobeni, some of the government administrators are corrupt and discriminate against people who are trustworthy and have the integrity to conduct proper allocation and instead favor their friends and relatives in allocating and providing low-cost government houses (Ngobeni, 2007). For instance, in the Limpopo province, many poor and vulnerable people who should

have been rightfully provided with adequate housing but are still homeless, thus endangering their lives, because of corrupt contractors bribed housing administrator to secure construction of low cost houses (Manomano, 2013:113).

Corruption depletes allocated funds and as such, results in poor construction and delivery of poor housing (Manomano 2016: 113-122). For example, as a result of corruption, the quality of low cost houses is compromised (Amandla, 2011:52). In addition, the size of some of the low cost houses does not promote privacy and human dignity and this plays a critical part in the upbringing and development of children living in such inadequate houses (Manomano, 2016: 113-122). For example, the low cost houses in Braamfisherville in Johannesburg and Amalinda in East London were perceived by the beneficiaries to be very small and the space inadequate for occupiers to enjoy privacy, dignity, and security (SHF, 2009). In Port Elizabeth, low cost houses are poorly built and water seeps out from the floors, this poses a threat to the health of the occupiers.

Constant monitoring of the implementation of housing by both the community members involved and the builders may help in the prevention of poorly constructed houses. For example, the low cost houses which were built for the Masekhane community were not allocated to the rightful owners and the rightful owners complained against those that were illegally occupying them (Mashaba, 2004: 84-87). Politicians such as municipal councillors facilitating service delivery were accused of being arrogant and ignorant to the need of the people as stated in Report of the Cooperative Governance and Traditional Affairs (CGTA, 2009).

Service delivery is both an administrative and political process, politicians such as the municipal council, municipal mayors, and community councillors influence administrative affairs of the

municipalities. The municipal councils determine who benefits, receives what service, quality and where. Service delivery such as providing adequate houses for the homeless is the most essential part of restoring human dignity, uplifting, and rendering the lives of poor people meaningful (Nleya, 2011:3-13). Therefore, corruption should be prevented in all housing projects for the benefits of the poor and indigent citizens. Corrupt free housing projects entail that the resources allocated for housing will be used to build dignified and adequate housing conducive for human shelter and habitation. By so doing, this will improve and promote the dignity of the poor who depend on the government for basic services. For Tewary (2011: 20-22), political will and leadership are important in the realisation of the right of access to adequate housing. Therefore, government should insist that the personnel responsible for service delivery utilise public funds appropriately to achieve the intended goals of delivering basic services, in this instance, quality and high-standard housing.

Powell states that improving the quality of municipal administration is a key priority and will require: firstly, those competent professionals are appointed to senior management positions and; secondly, that municipal administration is insulated from undue party political influence and pressures (Powell, 2012:24). Trust in the ability of local government to deliver services needs to be restored. Several measures, including regular assessment of the councillor's performance should be undertaken systematically and transparently based on a set of norms and standard of indicators applied across all municipalities. This will facilitate and ensure that quality services are being provided and delivered to the poor and the needy. (Paradza et al., 2010).

Environment as a prerequisite for house to be adequate housing  
An environment in this study refers to the location and surrounding area where a house has been built. According to

Domanski (2007:69), the environment surrounding the housing areas plays a vital role in influencing the housing condition “for comfort and satisfaction of people and deficits in the local environment may act as a negative influence on the well-being and health of inhabitants.” An environment in which a house should be built should be spacious, and open space in order to promote and improve the quality of life Alberini et al., 2003: 193-213). For the wellbeing of people, the environment should not be overcrowded, exposed to noise and air pollution. (Orhan and Kahraman, 2017: 316-329).

The environment where a house has been provided or built affects the economic and social influence on the people living in the area (Eurostat, 2015). For example, rural areas that are in remote places are exposed to lack of service delivery such as access to roads, sufficient water, sewerage removal, and electricity required to make a house adequate (Kahinda, 2017: 1051-1062). An environment that is economically and socially friendly to the residents should have available and accessible facilities and amenities such as schools, clinics, police stations, and sports facilities (Selebalo and Webster 12:2017).

The right to the environment as stipulated in section 24 of the Constitution requires an environment that people occupy and/or reside in to be healthy and safe for their wellbeing. The concept of adequate housing incorporates a healthy and safe environment, in that, in the *Wildlife Society of Southern Africa V Minister of Environmental Affairs and Tourism and Others* [1996] 3 All SA 462, the court ordered the removal of people exposed to an unhealthy and unsafe environment. People to erect their shacks on the sensitive coastal area. The environment upon which the shacks were erected posed a threat to the lives of occupiers. The court declared what they did unsafe for purpose.

A house is important because of the safety they provide to people,

restoration of human dignity, and support livelihoods (Currie & De Waal, 2013). The safety of the environment and of the houses which are to be built should be of paramount importance in the planning and evaluation process. The right to have access to adequate housing promotes fundamental rights such as the right to life, privacy, and dignity. The standard of houses that the government provides to the people should ensure that the occupiers are safe. According to the report of David (2013), the safety of older women and women in Limpopo province were at stake, unsafe low cost houses made them vulnerable to sexual abuse.

Adequate housing is defined by the accessibility to areas of interest and that a house should be in proximity to economic opportunities and social services (UN-Habitat, 2009). Houses that are in close proximity to economic opportunities and social services empower the occupiers (Manomano, 2013). Accessibility to social services and the need for jobs influence most people to build houses or look for houses close to cities (Manomano, 2016: 113-122). The location or environment upon which adequate houses are provided or built should be accessible to places such as the workplace for the occupiers. Lanrewaju (2012) puts it thus “housing is a combination of characteristics which provide a unique home within any neighbourhood; it is an array of economic, social, and psychological phenomena. In other words, housing could be seen as a multidimensional package of goods and services extending beyond shelter itself.” Therefore, houses should be located or built in an environment where occupiers will have adequate access to schools, water, sanitation, hospitals, and socio-economic amenities in South Africa.

### **Eviction and provision of temporary accommodation**

Section 26(1) of the Constitution guarantees everyone the right to access to adequate housing. Furthermore, in terms of section

26(3) of the Constitution everyone is protected against eviction from their home or their home demolished without the order of the court. The court in the case of *Port Elizabeth Municipality v Various Occupiers* 2004 12 BCLR 1268 (CC) on paragraph 17A house is a zone of personal intimacy and family security, the occupiers are constitutionally protected against forceful removal. On paragraph 39 of the *City of Johannesburg v Rand Properties (Pty) Ltd* [2007] 2 All SA 459 (SCA), the court enforces the Constitution and held that everyone shall not loss his/her adequate housing unless the court considered all relevant factors and considers eviction as just and reasonable. In terms of section 26(3) of the Constitution, the court must consider all relevant circumstances before granting an eviction order. In the case of *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) para 1, the court held that the City of Johannesburg Municipality has an obligation to provide houses to evicted occupiers.

The circumstance that warrants the granting of eviction order depends on the merits of every case. Some of the factors that the court may consider are to examine as to whether the eviction order will lead to homelessness of the occupiers of the property in question. Furthermore, the court should take into account as to whether the person against whom the eviction order may be issued against can afford reasonable accommodation or shelter. In the case of *Government of South Africa and Others v Grootboom and others* 2001 (1) SA 46 on paragraph 12 and 99, it was held that eviction should not result in homelessness, and that people should be provided with alternative accommodation by the relevant public authorities, usually municipalities. This is because eviction which might lead to homelessness involves the State and the protection of human rights, and the duty to provide emergency houses rests on the State (Langford at al 2014:60). Section 2(1) of the Housing Act 107 of 1997 places an obligation



on the national, provincial, and local governments to prioritize the basic needs of the poor community and to have budget in place for housing development. This obligation includes the provision of alternative or temporary accommodation to occupiers who are facing eviction orders. Municipality in terms of section 9 of Housing Act 107 of 1997 is obliged to take all reasonable and necessary steps for the members of the society to have access to adequate housing. In terms of Chapter 12 of the Housing Code 2009, the provision of alternative accommodation should be provided to those who find themselves in need of emergency housing as a result of situations beyond their control. Emergencies in Chapter 5 of the Housing Code is defined as “An Emergency exists when the MEC, on application by a municipality and or the provincial housing department, deems that persons affected,

- a. *Owing to situations beyond their control:  
have become homeless as a result of a declared state of disaster;  
are evicted or threatened with imminent eviction from land or from unsafe buildings, or situations where pro-active steps ought to be taken to forestall such consequences;  
whose homes are demolished or threatened with imminent demolition, or situations where proactive steps ought to be taken to forestall such consequences; or  
live in conditions that pose immediate threats to life, health, and safety and require emergency assistance.*
- b. *Are in a situation of exceptional housing need, which constitutes an Emergency that can reasonably be addressed only by resettlement or other appropriate assistance, in terms of this program.”*

In the case of the *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* CCT 37/11, Court neglected to consider the circumstances such as availability of accommodation or temporary accommodation. In the case of *Dladla v City of Johannesburg* [2017] ZACC 42 on paragraph 1, the Constitutional Court held that eviction should be coupled with alternative accommodation to avoid homelessness and occupiers were given 14 days' eviction notice.

The Court in the *Dladla case* emphasized that the concept of adequate housing entails access to basic services, protection of human dignity, freedom, security, and privacy on paragraph 1. Alternative or temporary accommodation required in an emergent situation should not infringe on constitutional rights (Langford, 2014:60). In the case of *the Dladla v City of Johannesburg*, temporary accommodation at Ekuthuleni Shelter was provided to the people who were evicted from the property they lived in. In the case of *Dladla* on paragraph 1, it is stated that “families were separated based on sex (terms of the family separation rule applied), prevented heterosexual couples from staying together and separated children over the age of 16 from their caregivers of the opposite sex and prohibited residents from being inside the shelter from 8h00 to 17h30 every day and required the gates of the Shelter to be locked again at 20h00.” The family separation rule was declared unconstitutional by the High Court in that the rules on the ground were “unjustified infringement of their constitutional rights to dignity, freedom, and security of the person, privacy and access to adequate housing” (*Dladla case* para 49-51).

The Centre for Applied Legal Studies as the *amicus curiae*, “It argued that women's access to adequate housing is critical to their enjoyment of other human rights and a gendered perspective must be adopted to give effect to women's right to adequate housing.” Another *amicus curiae*, the Centre for Child Law (year??),

“argued that any accommodation provided short of a home fails to take into account the rights of children enshrined in section 28 of the Constitution, which are paramount in any matter in which they are concerned.”

The respondent in the case of *Dladla* argued that shelter is not home as such, and the applicant was deprived of their fundamental constitutional rights to dignity, freedom, and security of the person and privacy. Mhlantla J rejected the view of the respondent and held that "Constitution confers these rights on everyone, regardless of where they are at a given time, and can only be limited in terms of section 36 of the Constitution". The judge further held that the right to dignity, in this case, includes the right to family life and intimate relationship which are constitutionally protected. The right to lockout rules was regarded as coercive and demeaning as it violates the rights contained in section 10, 12, and 14 of the Constitution. As the ruling forces one to sleep on the street and it violates the right to privacy and security.

According to Cameron J, the standard of temporary accommodation is measured in terms of section 26 of the Constitution (*Dladla case* para 56). The standard requirements in terms of section 26 of the Constitution provides that temporary accommodation should be adequate and promotes fundamental constitutional rights. The court held that the City has no right to impose the impugned rules that violate the evicted people's constitutional rights (*Dladla case* para 56).

### **Impact of unemployment on access to adequate housing**

According to the White Paper on Housing policy, creation of job opportunities has the prospect of reducing poverty and the number of people without basic needs (Gilbert, 2014:13-40). However, 26 years after the acknowledgment of the importance of the creation of jobs as a solution to alleviate poverty, the

government is still struggling to create jobs (Coovadia, 2009: 1023-1031). The government is facing a high number of people in demand of access to adequate housing as a result of being unable to provide houses for themselves (Dawson and McLaren, 2014). For an individual to build a house, he/she should have access to money, infrastructure, and equipment necessary for building a house. A high rate of unemployment which as of 2020 stands at 29.1% increases the number of people who applied and/or waiting on government for social and economic assistance (Xweso, et al., 1-18). If a high number of people are unemployed, a huge amount of budget of the government will be spent on assisting those that are less privileged and/or without adequate housing. The government should perceive the creation of employment as an investment that has the likelihood of increasing the amount to be collected as taxes and revenues for the government. Also, a high employment rate may increase the number of people who would be able to afford to build or provide basic services for themselves and families, without depending on the government for social assistance.

The government, in other words, may decrease the number of people who are waiting to be provided with houses by creating employment opportunities. The government needs to create an enabling environment for people to be employed. This will make them have resources of their own and they can channel part of these in the building of adequate houses for themselves.

## **Conclusion**

Adequate housing has tremendous impact on the social and economic development of South Africa, such as accessible health care facilities, security facilities, and workplaces. The government initiated housing projects intended to provide people with houses and to promote and restore human dignity, privacy, and security. Corruption cause available resources to be redirected to corrupt individuals person instead of being used to

provide houses for the indigents in the society.

To be adequate, the location of the houses being provided should be near schools, hospitals, and playgrounds and with access to sufficient water and other basic amenities. The standard of house should not be compromised. More importantly, in the case of emergency, temporary accommodation should conform with fundamental principles in the Bill of Rights.

Unemployment has a negative influence on the revenue generated by government and service delivery, which means the high unemployment rate is directly proportional to a high number of people depending on the government for social and economic assistance. Hence, the creation of more job opportunities where people can earn their dignified incomes and be able to build their own befitting houses will reduce the number of people relying on the government for housing.

### **Recommendation**

The government, be it the national, provincial, or local sphere, should promote involvement and participation of those without adequate housing to take part in the process of realisation of adequate housing. Through participation of those without adequate housing in monitoring realisation and allocation of houses have the effect of reducing corruption and misuse of state resources. However, this may have effect on reducing corruption only when government is willing to hold its official and corrupt individual accountable. Therefore, those found to have engaged in corruption, misused, mismanaged or maladministered resources allocated to achieve adequate housing should be recovered from them and be utilised for realisation of adequate housing.

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