

# POOR PEOPLE'S RIGHT TO THE CITY:



Realizing Constitutional rights to  
access land and housing

## ACKNOWLEDGEMENTS:

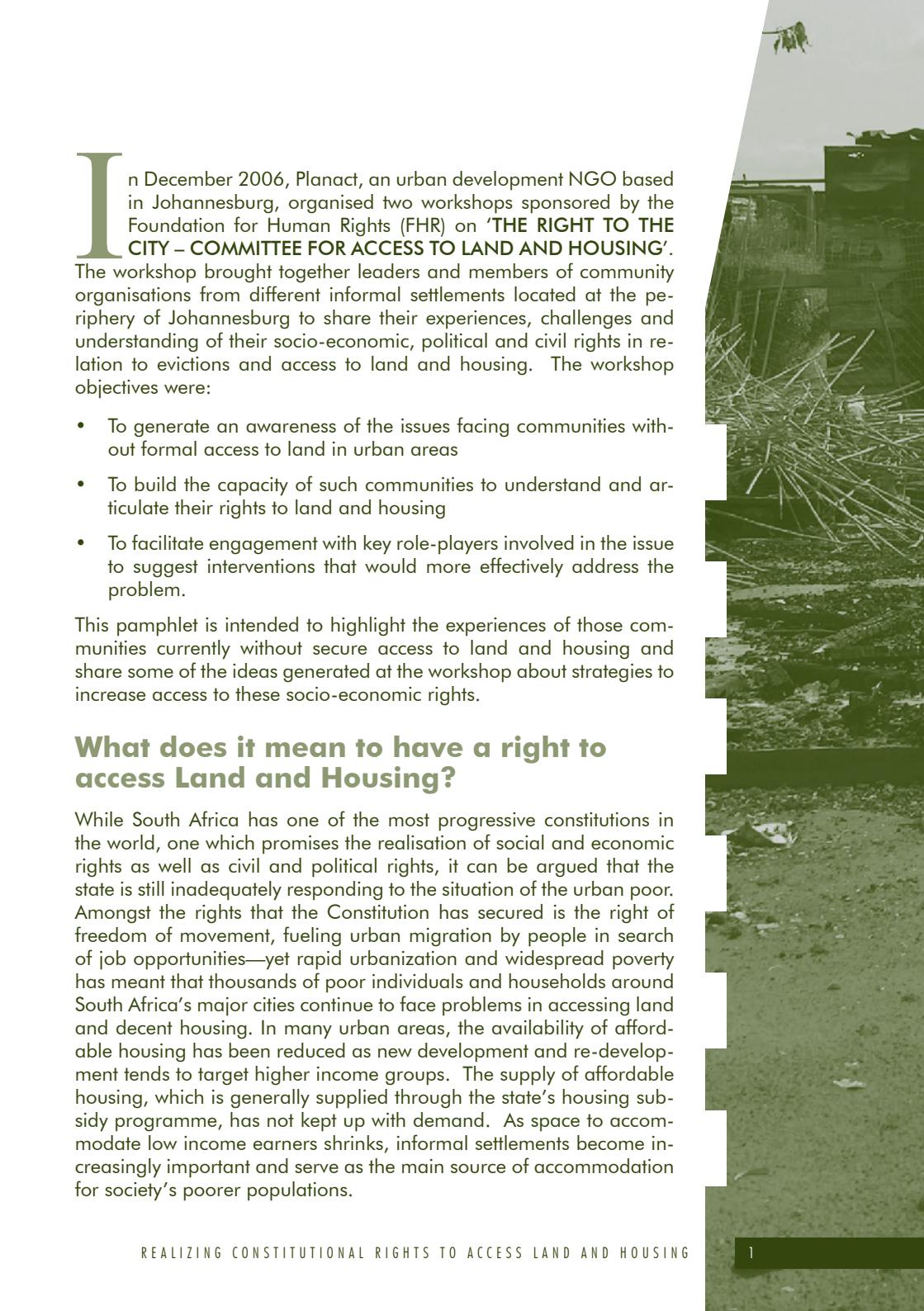
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### Foundation for Human Rights

The Foundation for Human Rights is one of the primary indigenous grant-makers to the Human Rights sector in South Africa. Established in 1996 through a cooperation agreement between the European Union and the South African government, the Foundation receives funds primarily from the European Union as well as other donors such as DCI, Mott Foundation and Care International.

The Foundation supports civil society organisations and public institutions to promote and facilitate increased awareness, respect, protection and fulfilment of the rights contained in the Constitution. The Foundation uses a rights-based approach in addressing poverty and inequality. This means that its grantees should adopt an approach which ensures that priority be given to the most vulnerable groups in society, especially the poor, through participation, accountability, non-discrimination and direct linkages to the rights as set out in the Constitution. More information can be found on the website at [www.fhr.org.za](http://www.fhr.org.za).



**I**n December 2006, Planact, an urban development NGO based in Johannesburg, organised two workshops sponsored by the Foundation for Human Rights (FHR) on **'THE RIGHT TO THE CITY – COMMITTEE FOR ACCESS TO LAND AND HOUSING'**.

The workshop brought together leaders and members of community organisations from different informal settlements located at the periphery of Johannesburg to share their experiences, challenges and understanding of their socio-economic, political and civil rights in relation to evictions and access to land and housing. The workshop objectives were:

- To generate an awareness of the issues facing communities without formal access to land in urban areas
- To build the capacity of such communities to understand and articulate their rights to land and housing
- To facilitate engagement with key role-players involved in the issue to suggest interventions that would more effectively address the problem.

This pamphlet is intended to highlight the experiences of those communities currently without secure access to land and housing and share some of the ideas generated at the workshop about strategies to increase access to these socio-economic rights.

## **What does it mean to have a right to access Land and Housing?**

While South Africa has one of the most progressive constitutions in the world, one which promises the realisation of social and economic rights as well as civil and political rights, it can be argued that the state is still inadequately responding to the situation of the urban poor. Amongst the rights that the Constitution has secured is the right of freedom of movement, fueling urban migration by people in search of job opportunities—yet rapid urbanization and widespread poverty has meant that thousands of poor individuals and households around South Africa's major cities continue to face problems in accessing land and decent housing. In many urban areas, the availability of affordable housing has been reduced as new development and re-development tends to target higher income groups. The supply of affordable housing, which is generally supplied through the state's housing subsidy programme, has not kept up with demand. As space to accommodate low income earners shrinks, informal settlements become increasingly important and serve as the main source of accommodation for society's poorer populations.

It has become clear that solutions to this problem have been hampered by limited capacity within local government to strategically address the land and housing needs of its poor. There are regulatory and programmatic instruments available to municipalities, such as the Informal Settlement In-Situ Upgrading Programme of the Department of Housing, and the government has made political commitments to house the urban poor in line with the Millennium Development Goals, but often there is little strategic support and possibly real regulatory barriers that make implementation at scale difficult. Informal settlement residents are also not usually involved in the planning processes that would help create solutions that work for those communities, and they also receive conflicting messages from government about their fate, which in turn creates a large degree of conflict within communities and between communities and government. Where government decides to relocate a community, there are legal procedures for evictions that the government is required to use, and people can challenge their eviction in court, but the legal process is not always followed and communities may not have access to legal representation.

Test cases in the Constitutional Court have increased the sense of urgency for the government to more aptly demonstrate its commitment to realising the right to housing and other socio-economic rights. Most notably, in the case of Irene Grootboom and Others v. Oostenberg Municipality, the Cape Metropolitan Council, the Premier of the Province of the Western Cape, the National Housing Board and the Government of the Republic of South Africa (2000), the court ordered the state to provide a plan to house informal settlement dwellers that it had intended to evict from the land they were occupying. The Grootboom Judgement general order stated that “Section 26(2) of the Constitution requires the State to devise and implement within its available resources a comprehensive

and co-ordinated programme progressively to realize the right of access to adequate housing.”

While various commentators disagreed about the extent to which this order would work in favour of improving access to adequate housing, there is no doubt that the judgement has focused new attention on the issue and that policy makers are taking the rights issue more seriously. This does not mean that everyone will get land and housing immediately, as the judgement states that the measures adopted by the State must be ‘reasonable’ within their social, economic and historical context and within the availability of resources. But it does mean that the state needs to prioritise socio-economic rights when it draws up its budgets and its plans for development.

Yet the scale of the problem is immense. Gauteng, the most urbanised and most populous province in the country, and a magnet for the rural poor looking for the perceived greater opportunities for employment in the cities, has a large population living in informal dwellings. According to the 2001 Census figures, nearly a quarter of all households (24%) live in informal dwellings—7% in backyard shacks and 17% in informal settlements, representing over 600,000 households. This has undoubtedly increased in the past five years. Access to water and sanitation is also restricted in informal settlements as government avoids making capital investment when the future of a settlement is not yet determined. The 2001 Census indicated that more than 450,000 (17%) households in Gauteng have inadequate sanitation facilities.

## **Why and how do poor people acquire land?**

People build shacks in the city and its periphery because it is the only accommodation they can afford which allows them to

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live close to the job market. Some might afford better accommodation in outer parts of the city or in rural areas but the cost of daily transportation to and from town often outweighs the benefits. The poor acquire land in many different ways including:

- **Invasion**

Invasion can be organized or might simply occur through encroachment as households move onto an open field or vacant site, and begin to build shacks or houses without permission. This illegal occupation of land can lead to conflict between inhabitants and landowners, including the government. In addition, illegal land occupiers have little or no government support which hinders the provision of water, sanitation, refuse removal, road and electricity delivery.

- **Shack farming / informal renting and subletting**

Shack farming occurs when people receive permission from the landowner to occupy a site, often in exchange for labour or rental payments. Occasionally, more shacks are built on a particular piece of land and these dwellers pay a fee to the original person or family who acquired permission to build first from the land owner.

- **Natural disasters**

Occasionally natural disasters, such as thunderstorms, landslides, fires and earth tremors force people to leave their homes and settle elsewhere.

- **Government-Sanctioned Relocations**

This occurs when the government purchases or allocates land to re-settle particular communities, but this may be considered a temporary re-location (a transit camp) which does not give full rights to the residents to develop formal housing. Although there is an expectation that the residents of a transit camp will be provided with a permanent development solution, this can take many years. Meanwhile, the settlement may attract further residents looking for space and access to development opportunities and the settlement grows.

It is important to consider the differences in the history of various settlements in order to ensure that appropriate solutions are found to create a permanent development solution that works in favour of those residents. It is also important to realize that informal settlement residents mainly act out of the necessity to find some space to live, and they should not be criminalised for that.





## Challenges facing communities in the informal settlements

During the workshop, communities shared their day to day experiences and challenges related to accessing land and housing, as well as general problems faced due to living in poverty at the urban periphery. Participants mutually agreed that land is a valuable and important asset which can help one to access and protect other socio-economic, political and civil rights. It is important to note that issues such as high crime and violence rates, unemployment, and shortages of land for housing and economic development projects were mentioned as problems for every single community present.

The Impact of the Lack of Secure Access to Land and Housing:

- Lack of a physical address makes it difficult to acquire identity documents, birth certificates, bank accounts, and other important documentation. This may also hinder one's ability to participate in elections.
- People may be forced to live separately from their families as lack of adequate space and land in cities means that families are left in rural areas while certain members migrate to the city in search of employment.
- Land shortage results in overcrowding which has many consequences including the spread of diseases, lack of privacy and personal safety, and an inability for personal economic development. In addition, women and children may be exposed and forced to remain in abusive situations due to lack of space and options for other accommodation.
- Children are exposed to criminal activities as there is no clear parental guidance—parents who work or are in search

of jobs are often forced to leave children unattended. It is difficult to build a better future because there are no schools to teach future leaders.

- Service delivery such as roads, water, sewage, electricity and schools is very difficult, if not impossible in informal settlement areas. Attempts to access land through invasion can lead to instability.

### Political challenges

Political rivalries and self-appointed leaders can destabilize communities and hinder development efforts. In addition, politicians, once elected, may neglect the communities which they represent. Lack of education and knowledge amongst community members regarding their rights, the role of councilors and their duties as community representatives can result in abuse of power and corruption.

### Cultural challenges

Development can be interrupted by tribal and ethnic conflicts. Stereotyping, xenophobia and the belief of tribal or ethnic superiority can lead to community infighting and consequently community development becomes difficult to achieve.

### Socio-Economic challenges

Lack of education and economic power creates barriers for community self-development and improvement. Communities also struggle to gain political visibility and clout making it difficult to demand government support to improve livelihoods through proper service delivery.

## The voice of the voiceless: The experiences of informal settlement communities

Communities who participated in the workshop shared their experiences, challenges

and problems related to accessing land and housing within their settlements. Below are highlighted some of the specific circumstances each community is grappling with.

- **Sol Plaatjies community**

Sol Plaatjies is located in Ward 71 in Johannesburg, and was in part the result of a government eviction of the community from another location. The court, however, ordered development in Sol Plaatjie to take place with a specific timetable, as few services were available in the new location. Located in a former mine area, the community faces a big challenge due to insufficient space to accommodate its large population. In addition, mine owners have not been willing to release land to the community, although they have sold portions off to private developers. The community also has faced some confusion regarding how and who should be interacting with the mine owners regarding selling/releasing the property. Individuals living in hostels built by the mine to house workers when the mine was still operational have also faced evictions due to being unable to pay the high rental costs imposed upon them by the mine owners. The City of Johannesburg has considered helping this community by planning to build flats rather than building single detached homes as a way to accommodate a larger number of people.

- **Zandspruit**

Zandspruit includes various settlements including a government transit camp, and a number of settlements on private property surrounding the transit camp. Development plans for the community have not been well-communicated to the community over the past several years, and those living on the private property have little access to services. Zandspruit community members report that the community has been experiencing leadership problems, particularly regarding their relationship with the elected councilor in the area. This councilor is accused of dealing only with her own associates in community affairs, irrespective of their active participation in community activities. Community representatives believe that the divide between community members and their leadership impacts negatively on the development of the community as the leadership is not aware of community needs.

- **Thembelihle**

Thembelihle is an informal settlement in Lenasia, south of Johannesburg. Nearly three decades old, this community is now facing a forced removal at the hands of local authorities. Geological reports have found certain parts of Thembelihle to be predominately dolomitic; therefore, the government does not want permanent settlement on this unstable land. Planned relocation is to two areas, Vlakfontein and Elihae. Elihae is a new formal settlement with RDP houses 5km east of Thembelihle while Vlakfontein provides no improvement for those relocated there. Thembelihle residents feel that most won't be relo-



cated to Elihae as space is very limited and most will end up in Vlakfontien. They feel the move will impact negatively on their lives as it will be from 'shack to shack' as Vlakfontien has no better infrastructure, housing or services than Thembelihle and is further away from jobs and schools.

- **Zevenfontein**

Zevenfontein is an informal settlement on private land that resulted from a government agreement with the landowner to temporarily allow people to reside there—however, residents have been there for nearly 10 years while waiting for formal housing opportunities. Residents are now being moved to a new formal area called Cosmos City built to accommodate the Zevenfontein community as well as several other settlements. However, a scarcity of land is already causing some problems as this new development cannot accommodate everyone from the settlement. Fear of chaos during relocation caused the leadership in the area to recommend that the government regulate the process of identifying those who qualify for relocation and those who do not. The fate of those who will not be provided with housing remains unclear.

- **Diepsloot**

Established in 1994, Diepsloot is a low-income dormitory settlement with a mix of formal and informal houses located in an isolated area on the northern periphery of Greater Johannesburg. Although in the past ten years Diepsloot has managed to get a considerable number of houses for people, not everyone has been accommodated in the RDP houses to date. There was a time when issues such as ethnicity, tribalism, xenophobia and politics were obstacles for development in the Diepsloot, but leadership effectively managed to sort out the problems. Although there are still more serious challenges ahead, the Diepsloot community continues to move forward--most recently the community managed to secure land for a community graveyard.

- **Muldersdrift**

This area on the outskirts of Johannesburg within the Mogale City border, is a tourist location, and higher income landowners and residents have vigorously opposed development for Muldersdrift's poor communities; however, the Mogale City municipality and the provincial Department of Housing are in support of this goal. The community has achieved reasonable success at organizing itself-- for example, farm workers in the area worked together and established a joint fund, the Muldersdrift Housing Trust Fund, to which they contributed money for more than ten years in order to buy land to build their homes. There are also two housing projects in the pipeline although land constraints mean that demand continues to outweigh supply.

- **Finetown**

Although Finetown is a semi-formal settlement, problems such as lack of infrastructure, sewage systems, and inadequate housing are still causing problems as in other settlements. Participants in the workshop have claimed that in October 2002 people were forcefully removed from the area without any court order. Moreover people demanded to know the logic and legality of the removal and were told that people volunteered to be moved from their area.

## Looking forward: formalizing the informal settlement

Population increase and urbanization in South Africa is putting more pressure on the authorities to re-assess the question of land and housing for the poor. This is especially important as scarcity of land and adequate housing are preventing the realization of people's rights as accorded in the national Constitution.

Workshop participants presented some methods or actions which could be taken to



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help deal with some of the problems related to informal settlements or the violation of people's rights.

- The use of Chapter Nine institutions – independent state institutions supporting constitutional democracy in South Africa. Participants have recommended that more workshops be conducted in order to educate people about their rights and how to protect them.
- Working with advocacy groups – NGO's and other civil society groups are important for the enhancement of democracy. NGOs should be used to disseminate information and educate poor people about their rights and the proper channels to address their complaints.
- Communities have suggested holding joint workshops and trainings together with ward councilors on governance and how to best represent the communities' interests. The main reason to have joint workshops is to bring to the attention of the ward councilors the community's grievances. In addition, it is important to strengthen community leadership in order to promote more cohesion and less conflict within informal settlements.
- Create a wider movement – participants have recommended that to strengthen their voice, they should form an alliance between informal settlements in order to act in solidarity with one another and fight for their rights. Mass actions, petitions, and use of media are important where government is not responding to community needs.
- Moratorium on selling prime land to private developers – workshop participants have recommended that the government stop selling prime land to private developers. Private developers are seen as reluctant to develop areas for low income earners as their interest is to develop houses for middle- and higher-income groups.

## **Contact information for rights-based organisations**

There are a number of organizations and structures in place to deal with specific types of human rights violations, free of charge. A human rights violation is when any of your rights in the Bill of Rights are abused or violated. Organizations that might be able to help you include:

## **The Human Rights Commission**

The SAHRC is a national institution established to entrench constitutional democracy through the promotion and protection of human rights by: addressing human rights violations and seeking effective redress for such violations; monitoring and assessing the observance of human rights; and educating and training on human rights.

**Tel: 011 484-8300**

**Website: [www.sahrc.org.za](http://www.sahrc.org.za)**

## **The Public Protector**

The Public Protector investigates complaints about government officials, such as pension payout clerks. If you have a complaint about a government official, you should contact the Public Protector.

**Tel: 012 322 2916**

**Website: [www.polity.org.za/html/govt/pub-prot/index.htm](http://www.polity.org.za/html/govt/pub-prot/index.htm)**

## **Commission for Gender Equality (CGE)**

This Commission investigates and challenges laws, practices and customs that discriminate against people because of their sex or gender. If you are discriminated against because of your sex or gender, you should contact this Commission.

**Tel: 011 403 7182**

**Website: [www.cge.org.za](http://www.cge.org.za)**

## **Commission on Restitution of Land Rights**

If you or your community lost land because of the apartheid laws of the past or through forced removals, you can apply to this Commission for your land to be returned. If this is not possible, this Commission may find other ways of compensating you.

**Tel: 012 312 8911**

## **The Independent Electoral Commission (IEC)**

This Commission makes sure that all elections are free and fair.

**Tel: 012 428 5700**

**Website: [www.elections.org.za](http://www.elections.org.za)**

## **Black Sash**

Black Sash helps all people to exercise their human rights. This organization strives for social justice for the good of all South Africans.

**Tel: 021 461 7818**

**Website: [www.blacklash.org.za](http://www.blacklash.org.za)**

## **Lawyers for Human Rights**

Lawyers for Human Rights ensure the enforcement of legal and human rights by providing legal services.

**Tel: 012 320 2943**

**Website: [www.lhr.org.za](http://www.lhr.org.za)**

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

The legal Resources Centre provides free legal services to disadvantaged communities.

**Tel: 011 403 1058**

**Website: [www.lrc.org.za](http://www.lrc.org.za)**

## **The AIDS Consortium**

The AIDS Consortium is made up of a number of civil society bodies that focus on HIV/AIDS related issues. They will give you free legal advice if you are living with HIV/AIDS and help you if you are discriminated against because of your HIV status.

**Tel: 011 403 0265**

**Website: [www.aidsconsortium.org.za](http://www.aidsconsortium.org.za)**

## **Education and Training Unit**

This unit provides free advice on laws and procedures that affect poor communities in South Africa and provides free materials to NGOs and CBOs.

**Tel: 011 648 9430**

**Website: [www.etu.org.za](http://www.etu.org.za)**

## This pamphlet was produced through a project of:

### Planact

Planact is a nongovernmental development organisation, incorporated as a Section 21 company in 1995, which seeks to bring about local development for the poor within an integrated framework. Planact's mission is to support and facilitate community processes that enhance good governance at the local level and to improve people's habitable environment in ways that alleviate poverty.

Planact's Community Development Programme is centrally focused on community/civic empowerment, helping to develop community-based organisations in poor, marginalised communities that can advocate for their socio-economic rights such as access to land, housing, and service delivery, as well as civil rights such as freedom from discrimination (especially as it relates to HIV/AIDS). Planact regularly undertakes awareness-building events in our communities and organises a Community Consultative Conference periodically where the different communities we work with come together to learn about and share experiences on current developments relating to their issues of concern. The last of these conferences focused primarily on land and housing rights and protection from evictions. Planact has also been involved in research on socio-economic rights, land, and housing for the poor. Through our Participatory Local Governance Programme, Planact works to train ward committees based on a comprehensive training manual, which includes education on the Constitution and the Bill of Rights and the role local government is meant to play in implementing these.

A full report of this workshop can be obtained upon request from Planact's offices.





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