

CHAPTER EIGHT

THE RIGHT TO HOUSING IN GAUTENG PROVINCE

8.1 Introduction

In rights discourse the hegemonic position is that state delivery capacities, actions and processes are vital to the realisation particularly of socio-economic rights. Since the rationalisation of the plethora of housing departments, and the devolution of this authority to provincial authorities, the *Housing White Paper* identifies the respective responsibilities of provincial and local authorities to deliver housing, within the framework of national policy. In Berger and Luckman's (1966:79-82) approach to the social construction of reality and how ordinary people develop a knowledge of how society is kept together, the institutions which humans create tend to develop a life of their own and humans are socialised into an acceptance of "this is how things are done". The institutional world is legitimated by explanations and justifications of its mechanisms, and this has a social control effect which restricts deviance; language plays a key role in the legitimation of institutions. But humans are not always such oversocialised beings that passively accept dominant norms and perspectives about the operation of institutions; Foucault's notion of discourse and the insurrection of subjugated knowledge is about political practice, intervention, challenging, and practising power (Dant 1991:129-131; Foucault 1988:109). In this chapter, I discuss the workings of institutions involved with realising housing rights, the language they use to explain and legitimise their actions given people's belief they possess such rights, and views of people's appropriate behaviour and engagement with these institutions. My specific focus is on debates about housing policy processes in Gauteng province and gives attention to issues such as: the calculation of the backlog in the province; the use of available budget resources; the allocation of housing to applicants;

matters affecting the operation of the housing subsidy scheme; the allocation of funds to rural and urban housing development; issues of size and quality of houses; relations with banks and home-loan financing institutions; the acquisition of land for housing development; housing and service provision; housing development and infrastructure, that is roads, shops, schools, type of electricity supply, proximity to jobs.

The latter issues form the backdrop to the reality of housing protest in the province. In the last section of this chapter I also include narratives describing events and investigating issues in peri-urban land occupations at Bredell and Modderklip, in inner city evictions, and in the court contestations that followed these events. These are defining moments pertinent to understanding the unfolding dominant position in housing rights discourses as well as the challenges thereto within the province and nationally.

8.2 The housing need in Gauteng province

Post-apartheid housing policy is obviously affected by the end of influx control policy and legislation, and the reality of an accelerated urbanisation process accompanied by a constitutionally legitimated demand for housing. The legacy of the last few years of apartheid has been squatter or informal settlements around urban areas since pass laws were no longer enforced. Cohen (1995:140-1) observed that by 1994 about 13.5 percent of SA households or 1.06 million households were living in informal settlements on the periphery of cities and towns, and, with the national and provincial government changes of 1994, people saw the new government as sympathetic to the homeless. At the time of the political transition, Gauteng, the smallest province in land surface size measuring 1 percent or 1 694 400 hectares of South Africa's total 121 906 900 hectares (Department of Land Affairs 2003:3), already had the highest population density at 365 persons per km² in 1993, followed by KwaZulu Natal with 93.5 persons per km² (Lester, Nel & Binns 2000:29), and the restricted land

space for housing is worsened by the fact that about twenty percent of the province is underlain by dolomitic formations (van Schalwyk 1998:167) that cause sinkhole threats to human lives and property damage as well as constrain housing development. Nonetheless, between 1996-2001 nearly 1.4 million people migrated to Gauteng and caused the province's population to increase by 20 percent; and, one-third of the 1.3 million households living in informal settlements across the country are in Gauteng causing the province to also have the highest number of informal settlements (The Star 3 November 2004; Pressley 2002a). Of the total national population of 40 648 574m in 1994, 6 946 953m (17.09 percent) people were settled in Gauteng (SAIRR 1996:8), but the SAIRR claims a total of 7 514 831 people (Table 8.1) were settled in the province by 1995. Information in Table 8.1 shows Gauteng is essentially an urban province; the distribution of the province's population indicated the greater majority of these people sought livelihoods in the metropolitan and urban complexes. The general in-migration to the province is not the only sign of the challenges for housing policy, the phenomenon of building occupations is another. A year after the first inclusivist democratic elections, Cohen (1995:141) reported that building occupations in the Johannesburg city centre increased: the militant Johannesburg Tenants Association (JOTA) invaded 40 unoccupied flats in 6 separate blocks in order to alleviate the housing crisis and to draw attention to the exploitation of inner city residents by unscrupulous landlords.

TABLE 8.1: Settlement classifications of Gauteng population: 1995

rural	urban	metropolitan	total
229 743	403 817	6 881 271	7 514 831
(3.1 percent)	(5.4 percent)	(91.6 percent)	100 (rounded)

(SAIRR 1996:25)

Housing development in Gauteng also inherited the NP's continuation of urban segregation when in 1992 the Department of Regional and Land Affairs released a document *A spatial development framework for the PWV complex*, which the Urban Foundation (UF Focus 1992) argued was to make available land for low-

income housing settlements and industry far away from existing development. The document referred to geological constraints and environmental quality, and justified the identification of land for industrial development in proximity to some of the most peripheral township settlements, consequently identifying new land for residential development in these peripheral areas. The UF proposed that low-income residential land be identified closer to existing core areas.

Tokyo Sexwale, Gauteng's first provincial premier, stated in the provincial legislature that about 300 000 houses were needed in SA annually, but, half of the need was in the Pretoria-Witwatersrand-Vereeniging region, thus the provincial government budgeted for 150 000 houses per annum (SAIRR 1995:526-7). Against the background of this demographic profile and housing demand, pursuant to the promises of the RDP, Gauteng was one province in which the ANC leadership was impressed with its pace in using its resources to embark on a low-income housing programme, even though the Final Constitution which recognised housing as a right was not yet drafted. President Mandela acknowledged the enthusiasm of Gauteng's housing programme to use its available fiscal resources at the opening of a housing complex in Protea Glen, south of Soweto:

“When the people of South Africa voted in 1994 for a better life for all, a massive housing programme was central to the mandate which they gave the country's first democratic government.”

...

“The housing ministry is likely to have spent all its budget by the end of this financial year. Rolling over funds are a thing of the past, Three provinces have already spent their budget - Free State, Western Cape and Gauteng - and more may do so by the end of the financial year.” (Mandela 1996b)

Notwithstanding the accomplishment of spending a tremendous R5 billion between 1994 to 2002 to house about 2.5 million, the province's backlog

continues with the provincial housing MEC blaming the problem on the development of rural areas being curbed, thus exacerbating urbanisation (Mail & Guardian 11 September 2002). These urbanisation trends had the further consequence of stimulating the phenomenon of post-apartheid land occupancies, which, for the new government, effectively, were land invasions. The resulting mushrooming of new informal housing or squatter settlements came into conflict with the authorities' attempts to control the process of negotiating with communities and providing housing. Housing Minister Joe Slovo declared no tolerance for this phenomenon:

“land being invaded had in many cases been set aside for communities involved in negotiations and that the government will not legalize any actions that will undermine the rights and expectations of such communities.” (Joe Slovo quoted in Cohen 1995:141)

But, despite the authorities speaking in terms of actions that are impediments to their delivery of services aimed at the realisation of socio-economic rights, Gauteng province has witnessed legal battles following land invasions in the Ekurhuleni municipality and inner city evictions in Johannesburg and Pretoria which have been prominent events in the unfolding discourse and challenges on the constitutional meaning of the right to housing. These have also been focal events in the organisation of civil society groups mobilised around housing, such as the Landless People's Movement, and the attempts of public interest litigation organisations, such as the Centre for Applied Legal Studies, to reshape the discourse about housing rights.

Indicative of the pressure on delivery of services in urban areas are the trends in population growth. SA's population is growing at an annual rate of 2.1 percent but the urban population is growing at a rate of 3.2 percent per year (Fast Facts no.8 2000:1-2). Gauteng province has the highest level of urbanisation or 98.1 percent; it has a high proportion of employed people earning less than R500 per month, calculated in 1996 to be around 15.5 percent of the province's

population; at 25.6 percent of the province's population, it has a high percentage of people living in poverty and qualifying for the subsidy scheme for households earning under R2, 500 per month (Fast Facts no.8 2004:6). On the surface, it appears to have a "small" housing shortage. We see in the figures for 2003 that 73.3 percent of households lived in formal dwellings, while 20.1 percent of households lived in informal dwellings.

Despite being the smallest province in land mass, Gauteng province is the economic hub of the country, and it is this economic status which is probably the most important factor in any explanation of its population trends. In 1998 Gauteng contributed 42 percent of SA's Gross Domestic Product and in 1999 employed 3 416 000 of the country's labour force (Fast Facts 2000 no.8:2), consequently placing lots of pressure on a small amount of land. Pursuant to concerns about job creation and losses since the adoption of GEAR, the Bureau for Market Research at the University of South Africa argues that although improvements in employment creation are very slight, nevertheless, Gauteng creates more jobs in the formal and informal sectors than the other provinces and there have been increases in wages which have pushed up real incomes in the province (Business Day 6 July 2004). These economic factors certainly contribute to three of Gauteng's municipalities, Johannesburg, Tshwane and Ekurhuleni, being the most rapidly urbanising, heightening officials in the national housing department's sense of their experiencing exceptional housing shortages (News24 14 October, 2005).

The calculation of population growth trends and the housing backlog is crucial to a provincial authorities' rational planning for the use of available resources for the progressive realisation of housing rights. Housing Minister Sisulu may have exaggerated about the future population size of Johannesburg when she spoke at a housing summit in July 2005 and elaborated on the province's population trends and the extent of its squatter problem. Using a 2004 report done by the University of Cape Town, she claimed that in-migration would make Johannesburg the world's twelfth largest city by 2015, considering trends which

showed that one-third of Gauteng's population was born outside the province and another 5 percent were born outside the country (The Star, 15 July 2005:2); furthermore, her department's registration of the 1 176 informal settlements nationwide, established that 392 were in Gauteng. However, projections of population growth and concern as to what this may mean for service delivery demands and the allocation of resources must take into cognisance the impact of HIV/AIDS related mortality, which may account for more than half of deaths by 2015. Consequently, researchers at the Centre for Urban and Built Environment Studies (CUBES) of the University of the Witwatersand project that Gauteng's population is likely to be about 9.8 million around 2015 and begin declining; this is in contrast to the 15 million projection of researchers working for the mass transportation Gautrain project (Tomlinson 2006). In my opinion, the CUBES projection has factored in an important variable, making their figure more reliable. The Gautrain's researchers' projection may be higher because it is a business project that requires immense state and private financing, and must validate its reason for being and a large financial outlay on the basis of high projections of future demand for mass transportation services.

Table 8.2 shows the classification of 1 964 169 Gauteng households counted in 1996. The province's housing shortage was claimed to be about 836 784 in 1998 (Fast Facts no.2 2000:4); in November 2004, the provincial housing minister MEC Nomvula Mokonyane claimed there was an increase of the proportion of people living in informal settlements from 1998 to 2001.

TABLE 8.2: Classification of Gauteng households in 1996

- (i) formal dwellings 62 percent
- informal dwellings 23.8 percent (about 467 472)

(Fast Facts no.2 2000:4)

- (ii) percentage of people in informal settlements

1998	2000
24.98	27.68

(Malefane 2004)

In its own research, the Gauteng Housing Department (2005:23, 24, 27, 31) registered a total of 488 594 shacks in a total of 405 informal settlements (a figure higher than the 392 referred to in *The Star* newspaper report cited above); 89 percent of the respondents earned between R0-R1000 per month (a matter that goes back to discourse on the “affordability” of housing raised in the *Housing White Paper* of 1994); and, only 4 percent of the respondents’ names appear on a 1996/7 housing waiting list. Some journalists’ reports differ with the official report on the number of informal settlements in each municipality (see Cox 2002; Jeffreys et al 2003). The extent of housing need in three of the province’s major municipalities can be seen in the number of informal settlements registered in each municipality: the housing department reports Johannesburg (south and north) has 124 informal settlements, the City of Tshwane has 54, and Ekurhuleni has 103. These figures only make up 281 settlements. That would suggest the existence of an additional 111 informal settlements in the rest of the province, when we compare the figures with Minister Sisulu’s speech, cited above, but an additional 124 when compared with the housing department’s survey. Journalists Cox (2002) and Jeffreys (et al 2003) claim that Ekurhuleni has 112 informal settlements and Tshwane has 117. The foregoing figures form the basis of further calculations which assert that rational planning by Gauteng’s housing authorities mean 423 000 low-income houses must be built per year to clear out its housing backlog (Dlamini 2003). This far exceeds Premier Sexwale’s (SAIRR 1995:526-7) confidence that a budget for 150 000 houses per annum could deal with the province’s backlog.

Contrary to Sexwale’s confidence about a rational plan to use available resources to overturn the backlog, the provincial government’s official statements and archives is underscored by a discourse of limited resources that cannot keep pace with the growth in the backlog and a cognisance of a problem that is bound to persist for some time. The Gauteng Housing Department reported the following profile of its challenge:

“... Gauteng has a population of more than 7.3 million. Of these people about 3% live in non-urban areas. Approximately 19% of

these people are aged between 15 and 24 years old representing a challenge of new family formations over the next ten years - this works out to about 26 000 new families per year, thus compounding the existing backlog. In addition, there are approximately 24 000 households per annum that enter Gauteng as a result of influx due to urbanisation. Finally, the housing backlog is actually under-stated since the income ceiling has not increased from R 3 500.00 per month since 1994 while inflation has increased. This is termed the “fiscal drag” effect.”

“In Gauteng, about 28% of economically active people are unemployed. Of those who are employed and earn less than R3 500.00 per month, about 50% earn less than R1 500.00 per month. This means that at least 50% of the Gauteng population have limited ability to save and thus lack access to finance.”

“About 6% of the Gauteng population is over 60 years of age, while about 450 000 people have some form of disability or the other. This presents a challenge of facilitating access to housing for the aged and for the people with disabilities.”

“In terms of existing infrastructure backlogs, there are approximately 200 000 households without security of tenure, most of whom are located in informal settlements with no formalised access to electricity or social services. The current backlog in terms of households without water and sanitation is estimated at about 300 000 households. Most of the households mentioned lack access to basic social services. Taking into consideration the National Department of Housing minimum standard of 30m² for a house, there would be approximately 640 000 households without adequate houses. This figure of 640 000 households comprises of approximately 500 000 people registered

on the Gauteng Waiting List plus sites and stands developed under the previous dispensation in the informal towns.”

“The implication is that current funding levels and corresponding delivery remain insufficient to catch up with the backlog. At the current funding level, the housing backlog is likely to increase to 750 000 households by the year 2020.” (Department of Housing, Gauteng 2001:4-5)

The report that 500 000 persons have put their names down for state subsidised housing, and the total of 640 000 households living in inadequate housing, means that around 140 000 of the “inadequate” dwellings arose under the previous government. Some of the official statements, which touch on achievements in dealing with the backlog, appear ambiguous. Three years after the annual report of 2001 cited above, in November 2004, Nomvula Mokonyane cited a waiting list figure of 440 500 heads of households which suggests that the backlog was drastically reduced, although still large at around half-a-million, and, that it was being worsened by factors like the subsidy system’s inability to keep up with inflation as well as migration (Malefane 2004). These figures can be further challenged by claims that urbanisation had raised Gauteng’s population to 8,8 million in 2001 (The Star 2004). Understanding the migration patterns to the province can be a complex matter for the calculation of the size of the fiscal resources it should claim. For some, the migration pattern is described as “fluctuating”, and, for others, apparently it is still increasing. For instance:

“Gauteng’s provincial government plans to eradicate informal settlements through various housing development and rental schemes by 2014, says housing MEC Nomvula Mokonyane.”

“The province has an estimated backlog of 440000 housing units - down from 620000 units in April last year - due to the fluctuating

influx of people who come from other provinces in search for work and a better life.” (Radebe 2005)

In contrast to:

“...[B]ased on high levels of in-migration trends identified by the 2001 census, Gauteng’s ability to budget for and deliver efficient services to its citizens is likely to attract thousands more people from other provinces. This is in addition to the fact that the province is also the preferred destination of most illegal immigrants and refugees.” (Radebe 2005a)

Similar to the earlier annual reports I quoted in my ‘methodology’ chapter, the province’s recent annual report resorts to a discourse which identifies fiscal constraints as being behind the persistent housing backlog: “funds are limited”, “available funds are prioritised to address priority groups”, and, in a context where there is shift from reliance on limited state resources to a market-driven policy of dependence on the private sector to make a significant contribution to increasing low-income housing stock, the under performance of these contractors is because of “[a] shortage of cash flow” (Department of Housing, Gauteng 2006). The underspending of R90 993 million it reported in the same year is not related to its actual subsidies scheme but to the payments it should have made to suppliers; it claims to have spent 95 percent of its appropriation, or R1, 673, 302 billion of R1, 754, 295 billion. The specific provincial allocations in the national housing budget allocation works in terms of a formula of demographic statistics using the 2001 population census, weights, and points. Currently, Gauteng receives around 25.3 percent of the national budget’s housing allocation. But in the opinion of a senior staffer in the provincial housing department (Interview: Willem Odendaal), due to the migration patterns in Gauteng, as he claims may be revealed by a more updated 2005 survey (the year of the interview), Gauteng actually should be receiving around 35 percent of the national allocation. He argues that the 2001 census does not satisfactorily address migration trends. Whatever the figures that government departments

provide on the number of subsidised houses built in Gauteng, the figure of a 38.3 percent increase in the number of households living in informal settlements from 497 906 in 2002 by another 198 846 to 688 752 in 2003 (SAIRR 2006:414; see also Pressley 2006) means for a long time the phenomenon of informal dwellings will be a part of the Gauteng landscape and fast returning to the province's 1998 housing backlog of 836 784 (Fast Facts no.2 2000:4). This increase of 198 846 new households in just one year far exceeds the provincial department's picture of the expected increase of 26 000 new households in the province per year and an annual in-migration of 24 000 new households, totaling 50 000 (Department of Housing, Gauteng 2001:4-5). This means it is necessary to review, first, the calculation of the number of houses to be built each year to overcome the backlog as well as the projections that the backlog may reach 750 000 in 2020 when, in fact, that number is more imminent, and second, to review the size of fiscal resources being competed for, among other state spending items, to be made available for housing.

Informal settlements are so overcrowded, to an extent that they stir up hostility towards new persons locating in settlements. The City of Johannesburg demolished the shacks of 37 families living in Zandspruit informal settlement near Honeydew, because it claimed the shacks were erected next to Beyers Naudé Drive (Khangale 2003). These evicted families were moved to a nearby informal settlement, but the residents there would not accept them and threatened them with violence. The residents of the alternative settlement camp feared the new arrivals would displace them from the top of a waiting list for houses to be developed for them. This issue and fear of queue-jumping is prominent in the hostility informal settlement communities have towards authorities when the latter tries to manage the location of homeless households.

Given the enormous backlogs and competition for budget resources, understandably, housing is an issue which gets considerable attention in the episodic promises and public communications of Gauteng's provincial and local government circles. For instance, in the case of Tshwane municipality:

“Housing will take centre stage in the Tshwane Metropolitan Municipality over the next four years in an effort to fight the backlog of more than 100 000 houses, executive mayor Father Smangaliso Mkhathshwa said yesterday.”

...

“The huge backlog of houses prompted us to prioritise housing for the next four years.” (Chuenyane 2002)

and,

“Gauteng Housing MEC Paul Mashitile has termed his 2003/4 budget “a budget towards a sustainable housing strategy.””

“In doing so yesterday, Mashatile allocated R1,2-billion for the construction of proper houses, which would reduce the proliferation of informal settlements.” (wa Sepotokele 2003)

Sometimes promises of movement on housing are attempts to pre-empt episodic protest action:

“Gauteng Premier Mbhazima Shilowa is about to make more than 30 000 Johannesburg squatters happy.”

“When he speaks on Monday to mark the official opening of Gauteng legislature Shilowa is expected to tell Zevenfontein squatters of a trend-setting new housing model that will accommodate them.”

“They have been waiting for eight years for the development.”

“After Shilowa took office in 1999, one of his promises was to get decent houses for the people of Zevenfontein.”

“Tomorrow, Zevenfontein residents plan to march to the offices of

Shilowa and Johannesburg mayor Amos Masondo to vent their anger over the slow process.” (Tabane 2003a)

In line with a national policy to eradicate squatter camps in ten years, Nomvula Mokonyane asserted that Gauteng can reach this goal:

“Government is to embark on an ambitious plan to eradicate informal settlements in SA.”

“It is estimated that about 1,1-million people live in informal settlements. This despite the fact that government has built 1,6-million low cost houses for the poor in the past 10 years.”

“Housing Minister Lindiwe Sisulu says eradicating informal settlements could take the form of either upgrading them or turning them into formal settlements.”

“Gauteng housing MEC Nomvula Mokonyane says 10 years is a “reachable” deadline.”

“Explaining how this is to be accomplished, Mokonyane says her department has already identified informal settlements that could be formalised into townships.” (Wilson & Marrs 2005)

In its register of 405 informal settlements in Gauteng, the provincial housing department identified 105 that could be developed as townships (Department of Housing, Gauteng 2005). This idea would be complemented by a rental housing scheme where rentals would be subsidised by government.

Whatever the promises, it has become apparent that poor communication between local government and communities, as well as the educating of communities on aspects of realising the right to housing through the subsidy schemes, exacerbates the problems that have emerged. There appears to be

certain civil society groups that are appreciative of some aspects of the government's housing policy, but they are also wary of and express certain public perceptions of the inefficiency of the bureaucracy:

“The government has good policies on housing but doesn't communicate with the intended beneficiaries on how they work.”

“This sentiment was expressed by non-governmental organisations who have asked Gauteng Housing MEC Nomvula Mokonyane to take the blame for the backlog of housing delivery in the province.”

“NGOs attending a housing summit in Boksburg yesterday complained that the department was not communicating messages on the projects, policies, subsidies and progress to communities.”

“Reverend Teboho Lesinyeho of the Tseba Community Resource Centre, representing Soweto, complained that many people were still on the waiting list and the department had failed to update them on the allocation of new houses.” (Malefane 2005a)

The Landless People's Movement (LPM), is very prominent in both land and housing struggles in Gauteng and is described as “a thorn in Shilowa's side because they are constantly camping outside his office in order to pressure him to sign an undertaking to end forced removals and evictions and with threats to call for a boycott of elections” (Tabane 2003), is also of the view that generally communication between government departments and communities is a source of problems. The LPM claims there is a widely held sentiment about poor communication:

“We are no longer consulted about the policies that are supposed to transform our lives; and”

“In spite of the slow delivery of land reform, our people have received little communication and report-backs from government.”
(Landless People’s Charter 2001)

This poor communication and the migration of such large numbers of people to urban areas, and the increased demand for an acceleration of housing delivery, exacerbates a sense of exclusion from the transformation processes by the homeless and informal settlement inhabitants. The persistence of the phenomenon of informal settlements and slow delivery of housing because of a shortage of land for low-income housing projects (in some instances the shortage is because a small number of private land owners in the peri-urban areas refuse to sell their land), contributes to a sense of exclusion among a considerably larger number of people from the ownership of a plot of land and a house. It appears from the LPM’s statement that government’s approach is to see communities as dependent while it delivers on what are promises of constitutional rights; but communities are not always using rights discourse to frame their sense of exclusion.

Whatever, the pressure of demographic trends upon housing demand in Gauteng and claims on fiscal resources, and nationwide problems of underspending, as well as a slow down in delivery, there are other impressions of comparatively complimentary achievements in the province:

“A Provincial Budgets and Expenditure Review released by the national Treasury last week revealed that housing delivery had dropped steadily in the past few years compared to the building boom that followed the euphoria of the first democratic elections in 1994.”

“Only two provinces seem to be making strides in housing provision - Gauteng and KwaZulu-Natal - with the latter having more than doubled its output from just over 14 000 in 2001 to 36 734 last year.” (Baloyi 2005)

The Review actually shows a fluctuating trend in houses completed or under construction in Gauteng between 2000 to 2005, as seen in Table 8.3. However, the trend is still far below Premier Sexwale's plans for a 150 000 houses per annum and of the critics' (Dlamini 2003) calculation of 423 000 being required.

TABLE 8.3: Houses completed in Gauteng

2000/01	2001/02	2002/03	2003/04	2005/06
38 547	46 723	24 344	49 034	28 002

(Department of National Treasury 2005:163)

8.3 Issues in the management of the provincial housing budget

Urbanisation trends to the country's economic hub and research about land demand for farming purposes, I argue, makes it more convincing to see peri-urban land occupations as a form of housing demand protest. The proximity of housing protest to Gauteng's urban centers, such as that at Bredell which I discuss in section 8.8, vindicates aspects of van der Berg's (1998) predictions on such protests, and of the authorities' preference towards urban spending as a way of containing protest. However, the fact that a wave of urban housing protest in 2005 took authorities by surprise suggests this spending preference is either not working or not reaching its targets. There seems to have been equal concern, on the part of the authorities, for a fair distribution of housing funds to rural areas. That there should be concern for the delivery of adequate accommodation for rural areas at the onset of the RDP in 1994, was apparent in the claim at that time that there may be as many as 2.9 million informal dwellings in rural areas (Fast Facts no.12 1994:1). Organisations working among farm workers also expressed concern that the government's national housing policy would focus on the Pretoria/Witwatersrand/Vereeniging area and other urban areas, and effectively would ignore the housing needs of farm workers (Fast Facts no.11, 1994:1). This reasonably does cause one to conjecture that a bias toward rural spending and providing housing in rural areas, similar to NP

policy in the late 1960s and early 1970s, is government's way of restraining the migration to cities, where housing demand erupts in violent protest. The first post-apartheid housing minister, Joe Slovo, was in fact more in favour of increased spending on rural housing as a means of contributing to rural development. Gauteng's provincial government together with the Department of Agriculture and Land Affairs, until 1999, in addition to building low-income houses, dealt with urban housing demand through a pioneering rapid land-release programme (Forrest 2001). The programme gave these surveyed sites with secure tenure and basic services to urban homeless people who could not afford formal housing but wanted the land to build shacks instead. However, what needs to be made sense of is the announcement, made by the government in January 2000, that there was to be a cut in provincial budgets for urban areas, thus allowing government to focus on rural areas and poorer provinces (SAIRR 2000:165).

The management of the provincial housing budget fund and specific projects contributes to the backlog. The Gauteng housing department has recently reported underspending on its housing budget is not a problem. However, it shares a general problem other provinces claim as a valid reason for underspending and slow housing delivery --- a lack of capacity and skills (Mail & Guardian 2006); I would argue, it effectively appears to be a lack of proactive senior officials. Indicative of the problem being with the bureaucracy is a survey by the department of local government of Gauteng residents' rating of local government which gave local government an overall rating of 5.5 out of 10 for service delivery and local governance (Mail & Guardian 2005a). Underspending is sometimes linked to the incapacity of individual managers. The behaviour of one public servant vindicates such claims; in the case of the Johannesburg local government housing department, where the housing backlog was around 180 000 houses, the department head, Shimmy Maimela, procrastinated for a two year period, and had not spent his capital budget of R100 million (wa Sepotokele & Sefara 2003). Mr Maimela was deemed as not assertive, and consequently demoted because he delayed the awarding of a tender. On the other hand, he

appeared to be undermined by his staff: his juniors had to act over him and awarded the tender for a housing project. Besides underspending being linked to capacity, there is also a long starting out process. Gauteng housing MEC Paul Mashatile said the drawn out process behind underspending was because it took eighteen months to get a project started, and the feasibility study, the environmental assessment, and objections and problems with local authorities also delayed the process; all of these, he hoped, would be overcome by a shift to centralised planning and the expected increase in a capacity to spend (Tabane 2003a).

Where underspending has been linked to the unavailability of land for housing projects, as in the case of the Ekurhuleni municipality, where private ownership of land constrained housing expenditure, there is also the perception of poor coordination between government departments. In this instance, it is about the poor coordination between the national Department of Housing and the Department of Land Affairs. A national organiser in the LPM (Interview: M Kupheka), says he expects the Department of Land Affairs, which deals with land reform, should be more proactive in buying land.

The leadership of the housing bureaucracy also has fingers pointed at it for slow delivery due to several serious instances of a variety of fraudulent activities involving the province's housing funds. Housing MEC Paul Mashatile acknowledged the low-cost housing initiative lost R42.9million to fraud, corruption and shoddy work; corruption included bribes paid to bump people up on the provincial housing list and developers receiving subsidies for houses that are not built (Tabane & Moya 2002). The occasional uncovering of fraudulent activities accentuates public perceptions of a rife culture of corruptions and fraud, particularly in the handling of housing funds at local government level. An LPM member (Interview: M Zulu) speaks of his perception thus:

“... and now when the funds are allocated to that particular place [an anecdotal account of funds to be used for the upgrading of an informal settlement near Thembelihle]... there is an annual budget

... last year it was R63million that was allocated to Thembelihle, but nothing is being done! So the money is being misused. ... Generally the corruption of the local government is very high.”

However, the problem of fraud is not a one-sided activity of local government officials. It is also a problem of private developers who take money from government but do not build houses, and owe the Gauteng government more than R200m (Benjamin 2005).

Newspaper columnists and opinion-makers, in attempting to make sense of the source of these problems, assert that the impediments of capacity and corruption in the civil service, to a large extent, is due to the ANC’s strategy to extend its hegemony from a parliamentary majority and to control the organs of the state (du Preez 2006). Public commentator, Max du Preez (2006) claims this is evident in the fact that membership of the ANC is a prerequisite for senior appointments in the civil service and other public offices, a phenomenon elsewhere referred to as “cadre deployment” or giving posts to “party loyalists” (The Star 8 September 2008), whereas, the ANC government should give attention to building a professionally trained civil service corps to be employed at all three levels of government. The underperformance of lower level officials in the housing bureaucracy has the consequence of the housing MEC appearing ineffective, and with non-governmental organisations and opposition parties calling for their resignation (Benjamin 2007). Making a generalised statement about appropriate actions in such instances, Jack Bloom, a DA member of the Gauteng legislature said MECS must be subjected to accountability measures and fired for non-performance (Benjamin 2007). The DA puts forward a notion of accountability that refers to the consequences that persons in charge must face when they fail to perform. If such drastic measures for accountability are urged in the public arena, it may pressure senior officials to be tyrannical in the management of their bureaucracies and in their demands of their subordinates; such an approach and work environment possibly may unintentionally prompt the exit of competent employees.

8.4 The operation of the subsidy scheme and the allocation of housing to applicants

Bridget Harding of Wietpro Housing, a low-income housing development company that has completed projects in the Ekurhuleni municipality, is of the view that the private developers were the agents who built a million houses in five years in line with the RDP's ambitions (Interview: B Harding). However, she speaks in a very disappointed manner about the government having changed the operation of the subsidy scheme. She says "government took the subsidies out of their hands"; consequently, private enterprise, a key player in the market-approach to low-income housing, feels that, in some sense, they have been removed from expedient involvement in low-income housing development.

Government made efforts to change the subsidy scheme in recognition of the extent of poverty among homeless households and their inability to repay bonds; different levels of poverty required different levels of assistance. The changes announced by housing MEC Nomvula Mokonyane in November 2004 include a full housing subsidy for the "hard-core poor", and then a housing deposit assistance only for the "middle-income group" (Mboyane 2004):

"She said subsidy beneficiaries would get increased access to credit and a choice of ownership from April."

"Under the new subsidy scheme, people in the R0-R1 500 and R1 500-R3 500 income groups would receive the full R28 000 subsidy."

"For those earning between R3 500 and R7 000, the government would pay a 10% deposit on their homes."

"The MEC also vowed that the government would work with financial institutions to ensure that poor households receive funding." (Malefane 2004)

An LPM activist's view (Interview: M Zulu) is that beneficiaries of subsidised low-income housing generally appreciate the inflation related increases. But he also expresses a view that there seems to be confusion about the workings of the subsidy system; it locates people in places far from their work environment, and this imposes increased public transportation costs on them:

“...In informal settlements there are those facing evictions. The government officials who come there say you are applying for a subsidy. But now the big question is: How can I apply for a subsidy when I'm facing evictions ... somebody is telling me this place is being upgraded ... which is senseless. If you do apply for subsidy for that particular [sic] whereas I know I will be moved to somewhere else. ...I want my house in Thembelihle [near Lenasia], and the next thing I'm told my house will come out in DTL. ... and its very far from my usual stamping grounds. I work in Lenasia, I want to be near my working area. But in DTL I have to pay something like R25 just to come to work, and I earn R150 a week. Its a bloody fortune, something I cannot afford. We do like the subsidy issue, but *in situ*, locally, where we are. ...”

Although the notion of co-option may be used to investigate the state's (or the branches and structures of the ruling party) role in the allocation of houses to the poor, it may be that the state can also attempt to co-opt people by involvement in the establishment and running of informal settlements too. This can be demonstrated in how the ANC attempted to assert its control, influence and co-option of informal settlement residents in the Kanana (a Sotho name for the biblical “Canaan, land of milk and honey”) informal settlement camp in Hammanskraal, north of Pretoria (wa ka Ngobeni 2001a). During the year 2000, hundreds of homeless people formed the Kanana informal settlement. Without the approval of the legitimate local government authorities to custodianship, the ANC and the South African National Civics Organisation (SANCO) clashed over legitimate custodianship of the Kanana informal settlement. It was a dispute over which organisation had the right to charge people money for stands and

administer funds, there were also mutual allegations of corruption and embezzlement of funds, as well as SANCO claims that the ANC was creating chaos by charging money for stands on land earmarked for schools and other facilities. Both the ANC and SANCO charged the homeless for land at Kanana at prices of between R90 to R500. SANCO, allegedly, demolished the ANC offices and the shack of a United Christian Democratic Party (UCDP) leader. The ANC was able to pull in state resources in its favour: the SANCO branchperson was arrested on charges of malicious damage to property, government officials made promises to supply electricity and water, and the incumbent Minister of Safety and Security, Steve Tshwete, visited Kanana but, reportedly, pretended to be ignorant about the illegality of the settlement.

The opportunism of political parties and civic organisations on occasions such as that above may also be problematic, especially when one thinks of notions like partnerships between communities and the former types of organisations; their rivalry can be disruptive of what communities actually can achieve:

“Residents are concerned, however, that the political battles over power and control between Sanco and the ANC could frustrate the prospects for development of their area. Without political interference, they say, Kanana can become one of the biggest stories in the country.”

“So far cooperation has helped them build proper roads and install several water tanks. The area has been divided into eight sections, known simply by the alphabet - sections A to H.” (wa ka Ngobeni 2001a)

The ANC’s possible co-optive interventions in the housing process have been challenged; it has been accused of allocating houses of better standards and quality to its supporters and poorer structures to non-supporters. In a parliamentary debate, some years before the white NP leader, Martinus van Schalwyk, expediently decided to join the ANC in 2002 (see Blutchter 2002), the

leader of the coloured members of the NP, Member of Parliament Jac Rabie, challenged Housing Minister Mthembu-Mahanyele on the grounds that the ANC's allocation of houses gave preference to its supporters:

“It is said, and now that hon lady must listen, that the mud houses at Vaalpan in Vaalharts are intended for people who do not belong to the ANC. According to these rumours, the brick houses are intended for people who belong to the ANC. ... It is no wonder that today the citizens say openly that they prefer the four-roomed dwellings built by the old NP to the “luxury toilets” that the ANC builds, in which one cannot even fit a decent bed. ...” (RSA Debates, 20 June 1996)

8.5 Issues in housing quality and size

The issue of what constituted “adequate housing” has vexed policy makers since the transition to a new housing policy framework. Housing Minister Joe Slovo stated at a meeting of the National Housing Forum in 1994 that the government's programme could not deliver to the poorest households structures of 50m², but the incremental housing approach of his department was not a return to site-and-service schemes; building contractors were also saying to local authorities that they must reduce their standards in line with what the poor could afford (SAIRR 1995:554-5). Speaking at the opening of the Community Bank in Benoni, a bank that would accept small deposits for low-income clients and make home loans to them, Slovo distanced himself from the ‘toilets in the veld’ approach to starter houses:

“We have got to start developing our ideas for starter houses - basic structures with basic facilities which will give people a roof over their head and the opportunity to expand as and when their financial circumstances allow them to buy some building materials. This is not about toilets in the veld, and its not about the simple provision of serviced sites. We are investigating ways in which the

state - especially local government - can play a role in ensuring that the housing process, once begun, will indeed be completed. What it is about is understanding that a good 60% of South Africans cannot afford even to buy a house which already can be called a home.”(Slovo 1994)

Contrarily, Gauteng’s first housing MEC, Dan Mofokeng, was not in favour of the national housing policy’s incremental approach to housing. He was optimistic that the province’s housing projects could deliver more substantive products of high standards. He spoke of one project, which was targeted for households earning less than R1 500 per month, costing about R30 000 per unit and their buyers making R200 a month mortgage payments, delivering four-roomed houses of which two were bedrooms, that would be 50m², on plots of at least 500m² (SAIRR 1995:526). Surprisingly, it has been a Gauteng housing MEC, Mofokeng’s successor, Nomvula Mokonyane, who has acknowledged that the housing products delivered by the new government are the same type of matchbox structures as those delivered by the apartheid government, as well as their being structures made of low-quality material and a safety hazard, and that also bring humiliation to the occupants (The Star 5 June 2003). Disappointment about the standards and quality of housing products also point to the poverty and the massive joblessness in Gauteng, which continues to affect people’s ability to realise their housing rights. Consequently, there is great dependence on government to provide housing, and for people to acquire a sense of dignity:

“How can one afford a home without the means to buy one?”

“It’s the same old story of the haves and have-nots. But it remains the responsibility of the Government to provide houses for all - rich and poor.”

...

“I would like to see the Government building more and more houses. A house is the first step on the road to dignity and self-

esteem. Having somewhere decent to live makes you proud.”
(Sowetan 2002)

This lament is useful in pointing out that the shift from notions such as “people driven development” to a delivery from above approach (see Huchzermeyer 2001) in housing policy processes can alienate recipients from the products they receive, and does not cultivate a sense of community involvement in using society’s available resources as well as each individual household’s own resources to produce products that may satisfy a household’s sense of dignity and self-esteem.

This approach of communities being recipients of technocratic decision-making processes has a surprising outcome: among many black people today there is a recurring comparison to the standards and quality of houses built by the apartheid regime. This nostalgia is also perhaps unfortunate. Despite the fact of the insensitivity involved in designing apartheid era matchbox houses, as white architect Theo Crosby (1975) spoke of, this nostalgia abounds. An LPM member (Interview: M Zulu) expresses this nostalgia thus:

“... During the apartheid government at least they used to give us a ‘half-brick’ house, now its just a ‘half box of matches’ [a comparative image of the size of houses moving from small to even smaller, clarified later in interview]. They are so small, tiny!... All you have to put in there is just a little cupboard and a very narrow bed. A good example of those houses is here in Freedom Park and they are building one on your way to Vlakfontein. ... The apartheid government built better houses. The apartheid government houses we can see in Soweto, in Jabulani. ... They are big enough for the people to live in. But nowadays we don’t even live in comfort. There is no privacy. They are so close to each other. So we definitely feel we do not want such houses. We would rather people be given material, like the government has been suggesting of late.”

...

“I can hear my neighbour three houses away, I can hear them fighting, I can hear them talking just a general chat. ... That’s how close they are and that’s how tiny they are.”

The residents of Kanana informal settlement in Hammanskraal also bring into question the quality of RDP houses by expressing a preference for their informal shelters:

“Residents say their area is not like a typical South African squatter camp. Most of the 20 000 residents have built homes that make the government’s Reconstruction and Development Programme houses look like matchboxes.” (wa ka Ngobeni 2001a)

It appears the process has been driven by the extent of housing need or demand and delivery in large quantity while the quality of products was de-emphasised. Housing MEC, Nomvula Mokonyane, acknowledged the preceding approach emphasised quantity and has given symbolic recognition of the problem of quality, and also made claims of a shift in the province’s new housing strategy to a focus on quality as a means of enhancing the quality of lives of people in Gauteng (Mboyane 2004).

There certainly may be legitimate concerns about standards and quality issues, but the picture of persistent delivery of problematic structures may also be misleading. Developments in some more recent projects suggest the problems of standards are being addressed, and, in the words of Housing Minister Sisulu (2007), that “quality is attainable”. Sisulu acknowledged this problem on a visit to the mixed-income housing project in Cosmo City, north of Randburg: “We are also pleased that the houses are of high standard and not the usual matchboxes.” (Cox 2005) The Olievenhoutbosch Housing Project, a mixed housing project which Minister Sisulu (2007) acknowledged the banks played a crucial role in financing, delivered starter houses with a minimum of two

bedrooms, a living area and inside bathroom. These may be the types of structures that housing researchers (see Agnew 1981 and Saunders & Williams 1988) argue embody exchange value, that represent wealth which is transferable across generations, and that can be used as collateral. She praised the structures of a project she expected to expand to a future showpiece of 5 840 units which had a potential for the owners to use as collateral and raise financing for further improvements thus:

“If wealth creation is to be stimulated amongst the current beneficiaries of the programme, then the housing asset needs to have functional value, a usable physical asset to create social and human capital and an exchange value, an ability to create financial capital. And hence significant public investment and substantial private sector collaboration are called for.” (Sisulu 2007)

However, this outcome must be measured against the affordability fact of which income groups qualify for such products, namely, households with monthly incomes between R2 500 to R8 200 (Wilson 2007), and who could possibly pay 25 percent of their monthly income towards a mortgage (SAIRR 1995:531-2). The capacity of this income group is in sharp contrast to that of many informal settlement residents: a Gauteng Housing Department (2005) survey found that 89 percent of respondents in 488 594 shacks across a total of 405 informal settlements earned between R0 to R1000 per month.

In the Olievenhoutbosch Housing Project, the financing role of the ABSA banking group in the construction of houses of such standards was acknowledged as crucial. It is an outcome of the financial services charter agreement to get the banks involved in lending R42bn in the low-income housing market. It also is symptomatic of a shift in discourse, a shift from a situation where the fiscal limits of the state set the parameters of what social redistribution targets could be achieved, to a discourse of “a necessary relationship ... between government and the financial institutions” and “public-private-partnership” (Sisulu 2007), in order to achieve the redistributive outcomes of a housing policy. In projects

across the country, this role of the banks is identified as crucial, for instance, the involvement of Standard Bank in projects in Ekurhuleni, and First National Bank (FNB) in the N2 Gateway project in Cape Town (Leshabane 2007). While it is commendable that banks have eventually begun to lend money for such projects, based on the abovementioned figures of what a large proportion of Gauteng's informal settlement inhabitants are excluded, we should also recall Saunders and Williams' (1988) argument that housing programmes can exacerbate a stratification process where the occupants of one type of housing stigmatise the occupants of another type of housing of lesser value.

8.6 Banks and low-income housing

The advocacy of a housing development policy through government subsidies complemented by private developers to South Africa's housing backlog for the low-income classes is essentially a free market approach similar to that advocated by the World Bank. In this approach, it also means the banks, the main private sector mortgage lenders, are to become a significant facilitating agent in the production of low-income housing. Banks' priorities and motivations are about making money, nevertheless, among some sectors of the black communities people see the banks as unsympathetic with problems they experience, and this fuels protest action. Residents of Protea Glen in Soweto, embarked on protest action because they felt banks were behind the evictions of some residents in the area. The community supported the evictees because they were aware that some unemployed occupants were unable to make bond payments:

“Key to all the issues raised was the reality that some of them are no longer able to pay their bonds because of circumstances beyond their control and they need urgent assistance.”

“It was also evident that the community had a problem with the way the banks were conducting evictions.” (Chiloane 2004)

Besides this expectation that banks should be sympathetic, government is also criticised for not being understanding of the plight of unemployed black people, as well as for not coming to their assistance. An LPM member (Interview: M Kupheka) contrasts the behaviour of the ANC government with that of the previous regime, which he alleges did assist its white electorate. From that reference point, he sees it as odd that the present government assists and compensates white farmers who lose their livestock through various infections or drought, but is not helpful towards the unemployed who simply cannot make their bond payments:

“These things which are happening in Protea Glen are going to happen!”

...

“...What we are looking at, the person who is being kicked out of this house, he’s not working. Where must he go to? Now the bank, where must they recover their money? ... The government must come in and resolve the problem.”

Consistent with this adversarial stance, another LPM member (Interview: M Zulu) feels it has to take up the task of exposing what he calls the “corrupt” practices of the banks, and consequently, my informant said, the organisation became involved with case of the Gumbi family in Senoane in Soweto who were being threatened with eviction by the banks. When expressing anger about government being apparently unhelpful, an LPM member (Interview: M Zulu) also links this anger to a cynical expectation of government that they would simply go through the election period rituals and continue to vote for them:

“while “nothing” is done for destitute blacks, at the end of the day, they are appealed to vote for the incumbent government.”

Although the language of rights is absent from the expressions of these expectations, the expectations appear to be underlined by a view that since a

black majority, which has a large poor segment, has voted into power a government with black leadership it would almost always be responsive to the plight of that section of the electorate. While political and community organisers sometimes use the generalised justification of a need to assist blacks it can be a problem to base arguments for such assistance in the language of rights if it does not bear in mind how class stratified the black community has become and the classic arguments in support of socio-economic rights are that such rights are for the amelioration of the conditions of the working class and poor as well as reducing the wealth disparities between the rich and poor.

8.7 Housing developments, infrastructure, and service provision

The World Bank (1991) report pointed out how wasteful and costly apartheid's system of segregated residences had been, and advised that post-apartheid housing policy integrate low-income housing closer to economic opportunities and affluent housing. Housing MEC Nomvula Mokonyane asserted that new housing developments deal with the legacy of segregated suburbs (also Lupton & Murphy 1995:164). This appears to be following President Thabo Mbeki's call to build non-racial communities, as well as consistent with Minister Lindiwe Sisulu's initiatives for a new housing strategy, called sustainable communities, which would include building low-cost housing close to affluent suburbs. In fact, Cape Town took the lead and proposed that future residential housing developments include a 20 percent low-cost housing component (Hartley 2004). Minister Sisulu is reported as saying the new sustainable housing policies would end the old development patterns which segregated on race and class lines, provide secure tenure, and deal with the challenge of optimising the use of available space for the development of the urban poor (Malefane 2004). Sisulu argued the new approach was borrowed from Australia and Ireland and claimed the Malaysian precedent to achieve integration set even higher targets: wherever the private sector builds, 30 percent must be low-income housing (Merten 2005).

Housing officials in Gauteng claim the Cosmo City development costing R224 million is based on such lines; it includes plans to move around 3 000 Zevenfontein informal settlement residents into houses near the affluent Dainfern suburb (Business Day 2004). However, the plan has run into the “not in my backyard” (NIMBY) syndrome of wealthier communities who oppose their juxtaposition with considerably less affluent communities. They organised into an association called the Jukskei Crocodile Catchment Area; these residents claimed the Cosmo City project would have a negative affect on property prices in the area. Mokonyane dismissed their opposition as racist because they sought to preserve apartheid’s race and class geographic separations:

“That (the opposition to the project) is strange because the very people they do not want on their doorstep are the ones who clean their houses and work on their gardens,” Mokonyane told hundreds of Zevenfontein residents at the launch of the project.”

“She said the objections were racially motivated.”

“We want to do away with separate development. The people who are objecting to this development want to see black people living in their backyards forever. This government will not allow that. We want to bring back the dignity of the African child,” she said.”

“The project was also in line with the government’s strategy to eliminate informal settlements.” (Business Day 2004)

The Cosmo City project also faced difficulties because of the need to get banks involved to provide loans. For some time banks were reluctant to grant loans because the potential occupants fell into a high risk category. Eventually, by May 2006, banks were won over to a programme of partnership with the housing department to provide loans to people earning in the R3 500 to R7 000 a month income range (Benjamin 2006), an income group considered too well-off for government sponsored RDP houses (Benjamin 2006a). By the end of November 2006 a new public-private partnership was announced to provide funding for low

and middle income earners wanting to settle in Cosmo City (Benjamin 2006a). The partnership deal was specially designed for this group to realise their dream of owning a house. First National Bank, set aside R200million for this and developed a new loan, called Smart Bond, for people earning a single or joint monthly income between R2 500-R10 000. Government undertook to provide a once off lump sum to pay half of the home owner's deposit.

The situation in the Thembelihle informal settlement demonstrates how environmental factors such as the province's extensive dolomitic undersurface restricts housing developments. The provincial government claimed the Thembelihle area was dolomitic thus uninhabitable and necessitating removal of the inhabitants. Yet this information cannot suppress the anxieties of communities. Three times in 2003, Thembelihle residents, wearing LPM T-shirts, marched to the premier's office to submit pleas to end all removals in Gauteng, and they also called for a land summit, which would deal with the land rights for urban landless people. PAC activist, Thami ka Plaatjie was involved in organising Thembelihle residents' opposition to the threatened removals, he said: "[i]t is a ploy to make people move" (Mail & Guardian 28 June 2002). Marches to Premier Shilowa and Mayor Masondo's offices appeared futile to Thembelihle residents; they were threatened with imminent removal by the "red ants" (the workers of Wozani Security company who wear red overalls). Consequently, they resorted to barricading roads in Lenasia and were fired on by police using rubber bullets.

For members of the LPM, the housing minister's declaration of war on shacks or informal settlements, that they should be removed by 2010, is received as a threat to the housing rights of the poor. The announcement is understood to have said that no informal settlement would be upgraded, but they would be "reallocated" [sic, probably meaning relocated], because these settlements in Gauteng are an eyesore to tourists and to investors (Interview: M Zulu).

Private land ownership is another factor which affects spending and low-income

housing developments. Bridget Harding (Interview) of Wietpro Housing expresses the views of housing developers involved in Gauteng's eastern metropole, Ekurhuleni, that land is acknowledged as "very scarce". These developers do own a residue of undeveloped land acquired some years before the subsidy system was changed and taken out of the hands of the private developers. Consequently, they had to halt plans to build low-income houses on the land. They also are aware of there being farmers willing to sell land for housing in the area. The developers' view is that the metropolitan government cannot deliver because the sale offer was made around five years back, but the metropolitan government has not acted on the offer. Harding suggests the reason may point to a capacity problem on the part of metropolitan government:

"Even if we give them land, they are incapable of delivering. Land is offered to them at like a thousand Rand [R1000] a stand, all they have to do is provide the subsidy ... but its their inability. ...The problem is that they are not totally motivated, skilled people." (Interview: B Harding).

The notion of access to adequate housing is inextricably linked to access to services. The circumstances suggest many of the province's residents are still in dire need, while, on the other hand, politicians make the usual promises and claims of achievements. Gauteng's Development Planning and Local Government MEC, Trevor Fowler, is reported (Tabane 2003a) to claim that while 86 percent of Gauteng residents had access to water and most municipalities already provided their residents with six kilolitres of free water each month, and only 70 percent had access to proper sanitation facilities but the authorities promised to get rid of the bucket system in the province by 2004.

8.8 Housing unrest in Gauteng Province

The foregoing discussion is about state controlled initiatives and developments

in the formative phase of a new housing policy. However, homeless people converging upon Johannesburg revealed signs of impatience and militancy about acquiring shelter or housing. Despite episodic promises of senior officials in different levels of the province's government, Gauteng is rocked by episodic protest actions of its homeless, whether it is organised, peaceful yet clamorous marches, or spontaneous violent barricades in roads and the burning of debris, or confrontations between residents and armed police or security companies, which sometimes climax in beatings or shootings. Such events are all indicative of simmering anger about slow delivery, poor products and ongoing removals. Clashes with the authorities also spur comparisons and equating of the new government with the brutal repressive measures of the apartheid government (Habedi 2004). Official promises and calculations of housing need appear to be not in tune with people's perceptions of these:

“LPM [Landless People's Movement] members yesterday slammed Shilowa's plans to build 40 000 houses this year. “What is 40 000 houses in relation to the backlog in the province? Shilowa must show more seriousness over the issue of housing,” said LPM Gauteng chairperson Maureen Mnisi.” (Tabane 2003)

More needs to be understood about the inclinations of shack dwellers, their perceptions of their prospects in the new political dispensation, and their attitudes towards the rituals of this political order. The language of rights to certain state services does not appear to always initially accompany the actions of marchers or violent mobs. Accounts of protest actions (as in the Thembelihle march mentioned below) merely report of communities demanding housing; there is no invocation of Constitutional promises of the right to housing, but those protest actions sometimes are a precursor to court contestation, a formalised context where the language of the right to housing emerges. It appears that simple impoverishment and need for basic shelter drive most protest. In reference to the clashes between authorities and residents at Diepsloot township, which is interspersed with informal settlements, north of Johannesburg, a newspaper editorial (Mail and Guardian 2004) expressed the

opinion that it is simply poverty, insecurity, high crime and unemployment levels, and general alienation from the socio-economic mainstream that “shack settlements are tinder to any spark”. It may be these residents are “tinder to any spark” because of constant insecurity in their lives, and lack of empathy on the part of authorities. Low-income housing researcher and consultant, Ted Bauman of the Urban Resource Centre, adds that the situation of South Africa’s shack dwellers is comparably the same as in other developing countries: informal settlements sometimes are on land considered too valuable for low-income housing, are not suitable for upgrading, must be relocated temporarily or permanently, and, more poignantly:

“... Shack dwellers are seen as people without rights, people whose problem is their own, not that of city managers or other urban residents.” (Bauman 2004)

For shack dwellers subjected to repetitive relocations and beatings or shootings, this experience is an ironic contrast to their citizenship aspirations and the revolutionary promises of the *Freedom Charter*. Journalist Rapule Tabane writes of a demonstration by residents of Thembelihle informal settlement organised by the LPM revealing diminishing reverence for the document:

“The Freedom Charter was signed 47 years ago, but its ideals are still a mirage for people from Thembelihle squatter camp, south of Johannesburg.”

“As a result, proceedings to mark the 47th anniversary of the adoption of the charter were nearly disrupted in Kliptown yesterday when protesters from Thembelihle invaded the function. They were promptly turned away by police.”

...

“The irony was that while freedoms enshrined in the charter were being celebrated, the squatters from Thembelihle were demanding housing.” (Tabane 2002)

The patience of the province's shack dwellers is at times pushed to actions which express their disenchantment with officials. Violence erupted at Diepsloot informal settlement when a rumour spread that the residents would be relocated to yet another informal settlement much further away in Brits, north of Pretoria. One Diepsloot resident said:

“The people are angry. This is God's way of showing their anger. We cannot stay in shacks when officials live nicely,” he said.”
“(Gauteng premier Mbhazima) Shilowa is the only person who can sort this out. He works very hard, but the people who work for him are corrupt.” (Business Day 2004a)

Another resident, Thabo Shabalala, who had been moved from an informal settlement in Alexandra township to Diepsloot, linked his complaint to his erstwhile optimism about what voting would do for him:

“We are tired of empty promises. We were promised RDP houses but we still live here.”

“Brits is far away from our workplaces. How do they expect us to go to work?”

“We will spend R50 a day just for transport. How are we going to survive if we have to spend so much?”

“This is annoying - these people are not delivering. Is this what we voted for?” Shabala asked.” (Maphumulo 2004)

These incidents of housing related unrest are also occasions for opposition political organisations and parties to be on the scene, where they present themselves as champions of the province's alienated homeless people, as the PAC had done through its involvement in organising protest marches at the Thembelihle informal settlement and a land occupation at Bredell (Khumalo

2002; Mothibeli & Cook 2001a). If the housing departments do not work on improving communication with the public, as may have been a catalytic factor apparent in the case of the unrest in Diepsloot, they must take responsibility for the episodic protests. Poor communication between the housing departments and the public fuels protests, which have troubled the housing departments. The Housing Minister acknowledged after weeks of countrywide housing protests in mid-2005 that poor communication, which officials are blamed for, fueled protests about slow delivery, and government accepts that grievances about living in abominable conditions for many years are genuine (The Citizen, 4 June 2005:3). Despite the promises of the provincial premier, the housing MEC, and city mayors to prioritise housing delivery, it did not occur at a pace that would pre-empt a fresh wave of violent housing unrest in 2007 in places such as Mamelodi and Vlakfontein in Gauteng, besides those incidents in other provinces too (Mail & Guardian 2007a).

The province's housing public servants undoubtedly have done their bit in terms of fulfilling the obligation to realise access to adequate housing with their available resources; a report of this states:

“Since 1994, the Gauteng government has spent about R5-billion to provide housing for more than 2,5-million people in the province, housing MEC Paul Mashatile said on Tuesday.”

“Presenting his department's annual report to the legislature, Mashatile said this included 275 383 stands, 175 034 houses built, 180 764 houses transferred to their tenants, and 83 690 hostel beds upgraded.”

“Despite this progress, Mashatile said the housing backlog had increased to about 35 000 households during the past year, bringing the cumulative figure to 423 000 households. A backlog would remain as long as the movement of people from rural areas

was not curbed through the development of these areas.” (Mail & Guardian 2002)

Three years later, Mashatile’s successor as housing MEC, Nomvula Mokonyane reported a backlog of 440 000, a decrease in the preceding year’s backlog of 620 000 units because of the fluctuating influx of workseekers from other provinces (Radebe 2005). However, conservative estimates of the province’s backlog place it around 600 000, and, in a legislature oversight report, Mokonyane’s department has been accused of poor financial management, lack of co-operation with other departments which affects delivery, despite her response that her department spent 99 percent of its budget and exceeded some of its targets (Benjamin 2006). In the language of the Constitution, and considering that there is practically no underspending of the province’s housing budget, the department may be argued to be doing its best to use available resources to progressively fulfill the right of access to adequate housing.

However, doing its best with available resources does not nourish the patience of the homeless; they episodically renew their protests, street barricades, clashes with police, and shout slogans that are void of the notion of rights, as well as threaten to sustain violent protest and boycott elections, as was apparent in the shouts of Vlakfontein residents in July 2007:

“We want houses”, “No houses, no votes”, “... We are tired of living in shacks. We demand RDP houses and we’re not going to stop toying-toying until we get what we want”, “People are dying in shacks and the council is not doing anything about it. They only think of us during elections. When elections are over they forget about us.” (Maphumulo 2007)

Although episodic violent protests are the most prominent register of Gauteng’s homeless peoples’ impatience about housing delivery, there have been noteworthy incidents where communities first resorted to the courts to prompt speedier housing delivery by local authorities, as was the case with the residents

of Mandelaville informal settlement. A report thereof also indicates how officials resort to the defence of limited available resources to account for slow delivery:

“Unlike residents of other townships who took to the streets to demonstrate their frustration at the lack of housing, former residents of Mandelaville near Diepkloof, Soweto, took the council to court.”

...

“Last week Johannesburg High Court Judge Nigel Willis warned that he would hold Johannesburg mayor Amos Masondo, city manager Pascal Moloi, housing director Uhuru Nene, acting director of legal services Solomon Sekgota and regional director for Roodepoort Callie Coetzee guilty of contempt of court if they do not provide basic services to the community within two months.”

“Willis rejects the city’s argument that it is being hampered by a lack of resources and the realisation that it has “bitten off more than it could chew” by agreeing in September last year to provide basic services within two years.” (Benjamin 2005)

The probably spontaneous option of violent housing protest has caused much material loss, injuries and even death. While it may be a meritable strategy to first try legal processes as an attempt to get authorities to act more speedily on housing delivery, it appears that the “limited available resources” will almost always be the official response. In the wake of a wave of nationwide protests, housing minister Lindiwe Sisulu poignantly communicated to the public about how limited resources are, regardless of how widespread the anger and violence about housing delivery has been:

“There is only so much money that the government has. This cake has to be shared equally among competing interests.” (Mail & Guardian 2005b)

8.9 Challenging hegemonic housing rights discourse: land occupation and squatter evictions

Other than the episodic violent protests in streets, the occupation of land in urban areas, such as the incident at the Bredell area near Kempton Park, east of Johannesburg, was one of the most outstanding signals of the extent of dissatisfaction with slow delivery, as well as the anger and frustration of the homeless in Gauteng province. Further land occupation incidents in the peri-urban areas offered the most fertile opportunities for contestation of the meaning of the right of access to adequate housing as held in s 26 of the Constitution, but which may come into conflict with other Constitutional rights and other pieces of legislation used by local authorities.

8.9.1 Land occupation in the peri-urban areas

The Bredell incident demonstrated how private land ownership affects spending and restricts low-income housing developments in the province. In July 2001, maverick persons linked to the ANC's rival liberation organisation, the Pan Africanist Congress (PAC), organised people to occupy privately- and state-owned land and charged about 150 squatters R25 a portion of land, reportedly collecting a total of about R150 000 (Mothibeli & Cook 2001). Some of the people were already applicants for the housing subsidy scheme (Centre for Development and Enterprise 2001:2-3, 4; wa ka Ngobeni & Deane 2001:6), and, sufficient documentary evidence shows some households were on the land considerably longer than six months (Huchzermeyer 2003:100). The organisers first claimed to be part of an organisation called the African Renaissance Civic Movement, but it was apparently a front for the PAC organisers (Cook & Mothibeli 2001a). Some months after the incident, the Centre for Development and Enterprise organised a debate about the incident, and completed a report which says accounts of the number of people settled on the land at Bredell vary between 5 000 to 10 000 people (CDE 2001:4). Leading members of the PAC,

such as Patricia de Lille and Stanley Mokgoba, chose to distance themselves from the organisers of the land sale who placed the stamp of the Benoni branch of the PAC on the receipts. Apparently, many of the people involved in the invasion were squatters who were disappointed with the ANC's response when they approached that party, but resorted to the PAC for assistance after noticing it had successfully organised land occupations in the same municipality near Daveyton and Etwatwa (CDE 2001:40). At the CDE debate, the PAC's chief whip in the Gauteng legislature, Mosebajane Malatsi, spoke of a longer historical sense of land dispossession and defended this strategy:

“He said that in terms of PAC policy, South Africa's land could not be bought and sold, as the liberation struggle had been about the return of land removed from indigenous people under colonialism and apartheid. While 1913 was the cut-off date for land claims in terms of the government's restitution programme, the land had already been taken away long before that from the indigenous people. He appealed to the ANC to change the constitution to bring about proper apportionment of the land, saying that representatives of the PAC and the Azanian People's Organisation in parliament would help it to obtain the necessary parliamentary majority. There was no moral justification for paying compensation for land that was simply being restored to its rightful owners.”
(CDE 2001:3)

Despite the involvement of prominent organisers of the Bredell land occupation, such as Thami ka Plaatje, being linked to the PAC, shortly after the Bredell land occupation the Landless People's Movement was formed in August 2001. It claimed to represent the homeless across South Africa (Modjadji 2001:13); it favoured land occupations and warned of further land grabs because of slow delivery by government. The LPM has gained the support of other organisations working on land matters such as the National Land Committee, and has asserted that it is independent of political parties, especially the PAC (The Star 25 July 2002:6).

Groengras Eiendomme, who claimed to be the lawful owners of the land occupied by the squatters, challenged the Bredell land occupation. Other forces sided with the landowners. The Minister of Land Affairs unsympathetically declared: "They should go back to where they came from." (Huchzermeyer 2003:98) The land invasion raised concerns about foreign investor confidence if the state did not act decisively to protect property rights and pre-empt land invasions such as those rampant in Zimbabwe, and the exchange rate of the Rand also seemed shaky for a few days while the events were daily news headlines (Huchzermeyer 2003). The matter was heard in the Pretoria High Court on 10 July. The legal advisors for the squatters were confident about using the law and court system to rule in favour of the squatters; they made references to the Cape High Court's ruling in *Grootboom v Oostenberg Municipality*, which ruled on the children's right to shelter, and, consequently, brought relief for all:

"Advocate Jeff Kraut for the squatters and the PAC told the judge yesterday that it would be inhumane for the court to evict the squatters."

"Referring to children's rights in the constitution, Kraut said: "The court is the upper guardian of the children.""

"If an eviction order was granted, parents could disappear. "What happens to the children? That is a far greater danger (than the open railway line, fuel pipe and electrical pylons on the property).""(Cook & Mothibeli 2001a)

However, resorting to apartheid era legislation, the *Trespass Act of 1959*, which contradicted the prohibition on arbitrary evictions in s 26 (3) of the Final Constitution (Huchzermeyer 2003:85, 99), the court ruled the Bredell squatters must be evicted within 48 hours. Other than evictions which followed the Pretoria High Court hearings, from national to local government level the response to these mobilisations has been to deliberate new legislation to prosecute persons

found guilty of land invasions as well as the organisers of such campaigns (The Star, 11 September 2001:1), as I discuss in section 8.9.3.

The Bredell incident is a story of defiant opposition, and a small dose of realism among some participants that government would not tolerate such measures. Some of the squatters felt it would be poor public relations to evict the squatters in front of the print and television journalists; others were realistic that government would not relent, because it would inspire land invasions across the country (Steinberg 2001). The Minister of Safety and Security, Steve Tshwete's, visit to Kanana and his pretentious ignorance about the illegality of that settlement is a marked contrast to his reactions to the Bredell land occupation incident where members of a rival political party were prominent organisers. When Tshwete visited Bredell he warned the squatters the full weight of the law would be used to evict them. It is reported the Bredell invaders burst into singing anti-ANC songs upon hearing of Tshwete's threats (Mothibeli & Cook 2001a). The squatters expressed their desperation and responded defiantly:

“There is going to be blood here. They will not move anyone alive here. They will only remove our corpses,” said one woman in the crowd.” (Mothibeli and Cook 2001a)

The eventual eviction of the Bredell invaders showed an ominous militancy was growing among those impatient with slow delivery and brutal police responses:

“The toyi-toying crowd led by a group of sobbing, semi-naked women, charged at the police, saying they were prepared to lay down their lives to fight for the land they had settled on.” (Mothibeli and Cook 2001)

When Housing Minister, Sankie Mthembu-Mahanyele, and Ekurhuleni mayor, Bavumile Vilakazi, visited the Bredell site, they were chased away by the angry squatters (Cook & Mothibeli 2001). On a day when the court was in session to decide the fate of the squatters, protesters gathered outside and chanted militant slogans; the metaphor of land (“one plot”) underlies the sense of acquiring a house among the participants in peri-urban protests:

“Outside the court about 100 PAC supporters chanted and waved posters reading “Enough is enough” and “One plot, one family”.”
(Business Day 2001a)

The demolition of the squatters’ shacks caused much anger, frustration, and disenchantment with the government:

“Wendy Mashaba sobbed as the squad tore down her shack. “Why are they doing this? My husband was arrested last week, and I do not have any money to hire a truck to remove our property. This government is cruel.””(Mothibeli & Cook 2001)

However, regardless of the illegality or opportunism of the organisers of the land occupation, or the rhetoric of their slogans, or which political groups mobilised them, the squatters gained significant sympathy from civil society groups, such as, the Methodist Church of SA, the Islamic Institute of SA and the Anglican Church (Mothibeli & Cook 2001b). These groups appealed to the authorities not to evict the squatters, and also showed up on the day of their eviction to attempt to separate the police and squatters in the violent clash that ensued.

The Bredell incident highlighted another difficulty encountering housing delivery --- private ownership of land. Bredell is located in the Ekurhuleni metropolitan district of Gauteng. Around the time of the incident, the council had a housing backlog of 250 000 houses and was sitting with a housing budget of R341 million, but there was no land for development in the area. The money could not be spent, the right of access to adequate housing could not be fulfilled because of private ownership of land. Most land is owned by private developers and still caught up in the legacy of racially unequal access to land, meaning it is white-owned (Xundu 2001a). The Gauteng housing Department (2005) claims there are 103 informal settlements in Ekurhuleni, but journalists Cox (2002) and Jeffreys (et al 2003) claim there are 112; apparently it has the highest number of squatters in all Gauteng municipalities because people are drawn to possible work opportunities on gold mines and industries in this municipality.

Private ownership of land is a divisive issue. In another incident of land occupied in the Benoni district in Ekurhuleni, a squatter settlement grew to about 4 000 households on the land of a white farmer. The government, specifically, the Department of Land Affairs, was reluctant to buy the land as a means of restitution to the farmer. In support of the farmer, a commentator (Kruger 2001) says this is setting a precedent because the government effectively sanctioned this resettlement of homeless black people on privately-owned land, without paying a cent to have them resettled; while the legal wrangling ensued, more people settled themselves on the contended land.

It is no surprise that, in most instances, squatter settlements or land occupations will be on white-owned private property; the LPM's statements agitate around the claim that about 85 percent of the land remains owned by about 60 000 white farmers (Land Research Action Network 2003). Sadly, not enough attention is given to the long history of the privileged disposal of land to white settlers and white corporations over decades of legislation which sanctioned such a privilege. Also, attention must be drawn to the fact that property or wealth has been transferred between white generations. The significance of this, I argue, is that the conflict over rural and peri-urban land will for a considerable time appear as mainly an inter-racial conflict between landless black people and historically privileged land-owning white people, although occasionally the occupations have taken place on state-owned land. On the one hand, the problem harks back to the nature of the negotiated transition which Mamdani (2000:183) says left intact the gains of the beneficiaries of apartheid where the land acts and forced removals allowed whites privileged access to land. On the other hand, the negotiated transition has facilitated a contrasting class situation and type of conflict among blacks; after the decline of the Johannesburg inner city (see Ryan 1997 and Bähr & Jürgens 2006) there is an increasing black ownership of inner city buildings facilitated by the City's authorities inner city regeneration plans (see Trafalgar Inner City Report 2006), these black landlords are unlikely to tolerate the occupation of their buildings, which have potential rent profits, by homeless blacks.

The point I raise about inter-racial conflict over peri-urban land is demonstrated in another case in the Ekurhuleni municipality, where about 6 000 families or 40 000 squatters had settled on Abraham Duvenage's farm, Modderklip, east of Benoni (Seria 2002, 2002a, and 2002c). The situation also revealed the conflict between two constitutionally protected rights --- the private property rights of a farmer and the rights of the homeless to housing and land. Squatters occupying the Chris Hani settlement since the mid-1990s had their shacks torn down by the municipality in mid-2000. Believing that the adjacent land belonged to the municipality, they moved there and called the settlement "Gabon". Duvenage bought the land in 1966 from Modder B gold mine. The 50ha of land was earmarked for commercial agriculture. Duvenage cultivated soya, maize and vegetables, but, apparently, a surge in crime in the district after a land invasion forced him to retire (Hofstatter 2005a). The Benoni City Council informed Duvenage of the illegal occupation of the land and gave notice that the squatters be evicted in terms of the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998* (or 'PIE' Act). Duvenage insisted the City Council must do this and indicated a willingness to co-operate with this eviction, but there was no response from the City Council. Eventually, Duvenage laid trespass charges against the squatters, but the police and other state departments were opposed to this move. The Johannesburg High Court ruled that, with the assistance of the sheriff and police, Duvenage may evict the squatters. Those parties refused to assist, unless Duvenage first paid R1.8million for a security company to carry out the eviction. The homeless squatters ignored the eviction order, thereby challenging Duvenage's individual private property rights, and demanded the government install toilets and electricity in the Gabon settlement. Then, Duvenage took the case to the Pretoria High Court, which subsequently ruled in his favour, as well as that of other private landowners and commercial farmers.

The outcome appears to have two interesting dimensions to it. On the one hand, it arguably vindicates an instrumentalist argument about the ultimate nature of the state machinery (Jessop 1990:27), and specifically of the law (Gordon

1998:645), being the protection of claims to private property and corporate interests's views of how and when the property may be used; critical legal studies proponents argue a legal discourse which defends property rights as symbols of individual freedom and economic efficiency "conceals the violent, arbitrary, and ugly faces of existing institutions" (Gordon 1998:652). But, on the other hand, it also shows the state machinery will sometimes only act in such an instrumentalist manner if the costs for their action are also carried by owners of private property, thus, securing the latter's interests does not compete for the use of the state's fiscal resources. However, the ruling was not one-sided: it simultaneously protected the right of the squatters to remain on the property until the state provided alternative housing, as well as reminded the state of its obligations to have measures that would provide access to adequate housing. Journalist Nasreen Seria (2002a) followed the case and reported the gist of the High Court ruling thus: the Judge (William de Villiers) agreed with Duvenage it was not his sole responsibility to remove the squatters; the state had failed to carry out its constitutional duties on a number of issues; and the state was ordered to produce a plan which could include either evicting and rehousing the squatters, or buying the land. The ruling was a victory for private-land owners since it spelled out the state's role in a civil matter and commercial farmers felt vindicated that the state could no longer be idle while private land owners were burdened by a situation that involved the state's land reform and housing policies (Seria 2002a). Effectively, the ruling supported property rights and eased SA's commercial farmers fears of a Zimbabwe land reform programme that disregarded the rule of law. Judge de Villiers made an important critique of the state's claims to have policies to deal with land reform --- he felt they must be implemented effectively (Seria 2002b)

The LPM was also enthused by the Pretoria High Court's refusing the State the right to appeal against the earlier ruling; it saw the ruling as prompting the State to be more proactive about its obligations to housing and land reform:

"The LPM condemns the State's refusal to accept its responsibility to ensure that everyone in South Africa has access to land and

housing. Where does the State expect people to wait until their name comes up on those “queues”? The majority of South Africans are poor and landless, and the land reform programme is still not working - only two percent of the land has changed hands since 1994. This leaves the poor and landless with little option but to occupy a piece of land to live and grow food.”

“The LPM congratulates the court for its wisdom in holding the State to account for the country’s land crisis. The court ruling clearly indicates what the LPM has been saying all along - either the State must expropriate land for land reform, or the people must occupy land and the State must follow up the paperwork to make the land theirs, or else give them some other land.” (Landless People’s Movement 2003)

One possible conclusion, then, is that mobilising homeless people in ways that channels their actions towards a court ruling, with a possible ruling that chastises the state about its slowness to meet its constitutional obligations, is one strategy where the law could be used in the interests of the homeless.

The unsuccessful Respondents in the *Modderklip* case (President of RSA, Minister of Safety and Security, Minister of Agriculture and Land Affairs, and the National Commissioner of Police) took the matter to the Supreme Court of Appeal. The Supreme Court ruling, *Modder East Squatters and Another v Modderklip Boerdery (Pty) Ltd; President of the RSA and Others v Modderklip Boerdery (Pty) Ltd*, upheld the Pretoria High Court enforcement that the State compensate the owner of Modderklip farm for the violation of his property rights (BCLR 2004(8):822). The Supreme Court also declared the State had infringed on the squatter’s s 26 (1) right of access to adequate housing, because it expected the landowner to expel the squatters, but failed to provide alternative land for the squatters to occupy:

“[30] ... [I]n a material respect the State failed in its constitutional duty to protect the rights of Modderklip; it did not provide the occupiers with land which would have enabled Modderklip (had it been able) to enforce the eviction order. Instead it allowed the burden of the occupiers’ need for land to fall on an individual ...”

The Supreme Court further declared,

“[52] ... [T]he State, by failing to provide land for occupation by the residents of the Gabon Informal Settlement, infringed the rights of Modderklip Boerdery (Pty) Ltd which are entrenched in sections 7(2), 9(1) and 25(1) and also the rights of the residents which are entrenched in section 26(1) of the Constitution.” (BCLR (SCA) 2004(8).

The unsuccessful parties then appealed to the Constitutional Court. The Constitutional Court’s ruling in May 2005, *President of RSA and Another v Modderklip Boerdery (Pty) Ltd and Others*, was critical of the State’s failure to act in accordance with a number of its obligations: on housing, on land invasions --- a socially inflammatory matter with ramifications for political stability, on evictions, on protecting private properties from invasions, as well as the State’s arguments that if it proceeded with the eviction and provided accommodation to the squatters this would encourage queue jumping. The Constitutional Court chose to rule the case as a s 34 of the Constitution (RSA 1996) matter which states that all persons have a right to a fair hearing in court to resolve a dispute. The justices ruled the state had failed to do anything about the owner of Modderklip’s rights to such a resolution of a dispute:

“[51] The obligation resting on the State in terms of section 34 of the Constitution was, in the circumstances, to take reasonable steps to ensure that Modderklip was, in the final analysis, provided with effective relief. The State could have expropriated the property in question or provided other land, a course that would have relieved Modderklip from continuing to bear the burden of

providing the occupiers with accommodation. The State failed to do anything and accordingly breached Modderklip's constitutional right to an effective remedy as required by the rule of law and entrenched in section 34 of the Constitution."

The squatters, who had formed a "settled community", were allowed to stay, and the State had to pay compensation to Modderklip. The ruling vindicated positions to the left of the ANC that the Constitution entrenches the legacy of unequal land ownership. Prior to the ruling, Duvenage's despondent disposition was: "People can tell you to bugger off from your own land", but was elated with the ruling and, reportedly, said: "The rule of law has survived - the interests of justice were served in court today." (Hofstatter 2005a). Laurie Bosman, president of the farmer's union Agri-SA, was also elated; he said: "This ruling emphasises the property rights enshrined in our constitution and spell out the state's legal obligations during a land invasion.... Any other ruling would have been a disastrous blow for all property owners, not just farmers." (Hofstatter 2005a). Acting Chief Justice Judge Pius Langa warned that land invasions of the scale at Modderklip threaten not only private property rights of a single owner but also have implications for stability and public peace. The squatters were simply content with a judgement that they could remain where they were until alternative accommodation was found for them (Hofstatter 2005a). Undoubtedly, this outcome once again reverts to the state having to consider what portion of its available resources it could use to provide alternative accommodation for a specific extensive community of 6 000 homeless families.

The language of the LPM, the PAC, as well as that of pan-Africanist sympathiser, academic Julian Kunnie (2000), commonly encourages the invasion of white privately-owned land. How much land remains white-owned private property is still disputed, but is unlikely to prevent future land occupations. The land reform programme steadily delivered a total of 8 936. 69 hectares of land in Gauteng between 1996 to 2003, although much smaller amounts were delivered in 2001 and 2003, perhaps something attributable to the Department of Land Affairs

claiming that land is expensive in the province (Department of Land Affairs 2003:31-2). Laurie Bosman argues along the lines that considerable progress has been made with land reform and that figures for white land ownership are overstated; he claims that 67 percent of SA land is white-owned and not the often publicised figure of 87 percent (Seria 2002c). Contrarily, researchers (Ntsebeza 2007) at the Programme for Land and Agrarian Studies (PLAAS), claims that whites still own in excess of 80 percent of the country's land surface. Researchers at the Centre for Development and Enterprise (CDE 2001, 2005; Bernstein 2005) claim that land reform has emphasised rural land reform whereas there is an urgent need for land reform in urban areas in order to make land available for low-income housing. Despite a rural emphasis, Ntsebeza (2007) claims that "[i]n the past 13 years, only about 4% of white-claimed agricultural land has been transferred." The events in the Modderklip ruling demonstrate the courts will uphold the private property rights as held in the Bill of Rights. Ntsebeza (2007), referring to a warning of Judge Didcott, points out the Bill of Rights can entrench privilege. This slow progress with land reform, and the variety of needs for the land, in the future, may yet produce a major political crisis that exceeds the imagination of Judge Langa when he commented on the Modderklip events.

An interesting response in the Bredell drama, was that of the historically 'white' opposition party in the post 1994 parliament (as well with an erstwhile history of parliamentary opposition to the NP and its apartheid policies), the Democratic Alliance (DA). The DA laid fraud charges against the leadership of the Bredell land invasion. In the whole drama, the DA gave no attention to the legacy of privileged white land ownership, but put forward that the land invasion would jeopardise international investment in a nearby theme park. Understandably, this reason angered the invaders --- their living rights had to be secondary to the concerns of highly mobile international capital (Cook & Mothibeli 2001). The actions of the (now multiracial) DA, in this instance, is consistent with the view that, in the ongoing consolidation of a democracy, 'white' opposition parties remain protectors of the interests of the white minority (Maloka 2001:230).

Having become the majority opposition, it may be expected that the party has aspirations to win an election, and effect a turnover of government through the democratic institutions, hence it would offer opposing views to government's agenda (Jung & Shapiro 1995:272, 275). Yet its stance towards the homeless may only alienate the party from potential support within this constituency. The party has a record of championing liberal rights both during the apartheid era as well as after 1994, but its opposition to ANC policies and to land occupations on the basis of a defence of liberal rights may enhance perceptions of its character as a right wing conservative party (Calland 2006:163-6). To the detriment of the DA's claims of an image as a party with a multiracial membership and support base, some members in the DA leadership may be caught in a narrow discourse on the right to property; while the racially skewed private property rights in the peri-urban areas persists and constrains new low-income housing developments. It is a discourse that needs to be criticised by utilitarian type of thinking about accelerating the broadening of the enjoyment of property rights to the majority, and possibly pre-empting incidents which undermine political stability and government's control over the land reform and redistribution process. The DA would have to demonstrably broaden its manifesto's defence of property rights, or "the right of all people to private ownership" (see Democratic Alliance 2007), while simultaneously earnestly pressuring both the ANC government to accelerate land reform and also white land-owners to be acquiescent on this potentially explosive issue. In contrast to its stance on the actions of the homeless in the Bredell land invasions, the DA has surprisingly worked up a considerable following in another informal settlement, Orange Farm, south of Johannesburg. On the eve of the 1994 elections the DA was chased out of Orange Farm, but ten years later, the erstwhile DA party leader, Tony Leon, could claim the party was making significant inroads into an informal settlement community where it had signed up scores of new members who gleefully publicly discarded their ANC membership cards (Brown 2006). One year after the outbreak of housing protest in Diepsloot informal settlement, DA members spoke a language is more cognisant of the lack of patience among homeless with the delivery of housing; DA intelligence spokesperson Paul Swart rejected Ronnie

Kasril's claim that the protest is stoked by a "third force":

"... the only immediately identifiable 'third force' appears to be the poor, destitute people of this country who, after being marginalised for most of their lives, have yet to experience any meaningful service delivery..." (Hartley & Radebe 2005)

There certainly are complexities about the party's position in SA politics. Like any opposition party would, it claims to be winning votes in black areas "mainly from black South Africans frustrated by the ANC's failure to provide jobs and basic amenities" (Blutcher 2002), it is unlikely about whether the party's liberalism rhetoric is appealing or not to Africans, as some analyses (Makgoba 1998:272) focus on. The gains are simply due to frustration with service delivery.

Another politically conservative white response was that of the Transvaal Agricultural Union (TAU) which added its voice to claims that land invaders are linked to attacks on white farms (News24 7 September 2001); however, subsequent analysis of these attacks claim they are purely criminally motivated, there is no political motivation (Criminal Justice Monitor 2003). On the other hand, the ANC view was that incidents such as the Bredell drama was staged by elements who had not worked for the country's young democracy, and these actions were attacking this new order (Cook & Mabuza 2001).

Regardless of the overarching Bill of Rights' guarantees to housing and shelter rights, it also appears that the wording of the laws around evictions are such that the state may still legally evict, that is, if the authorities claim the eviction occurred within 24 hours of the erection of shacks. Apparently, several illegal evictions have occurred in the Ekurhuleni municipality:

"The Ekurhuleni Metro Council, formerly the Benoni City Council, appears to have been illegally demolishing shacks and evicting squatters on the East Rand in Johannesburg."

“And one of the companies the council hired to evict squatters has decided to no longer do such work because it is “inhumane”.”

“Officials of the Ekurhuleni Metro Council have been using private companies to evict squatters in Bredell near Kempton Park and in other places on the East Rand without having applied for a court order.”

...

“ACME Training Academy spokesperson Dawie Spangenberg said an eviction done by a state organ does not need a court order if it is done within 24 hours of the time shacks were erected.” (wa ka Ngobeni 2001:8)

These interpretations and violations of the eviction laws have not gone unchallenged:

“It’s false and it is not even in the Act [Prevention of Illegal Eviction From and Unlawful Occupation of Land Act]”, said a Benoni-based lawyer.” (wa ka Ngobeni 2001:8)

If the evictions of shack dwellers are illegal, it appears they still can successfully use the courts to oppose their eviction. In March 2006 police tore down shacks of squatters who had lived for eighteen months approximate to an affluent suburb in Moreleta Park, Tshwane. The squatters appealed this in the Bloemfontein Appeal Court, which determined there was no court order to sanction the joint eviction action in March 2006 by officials of the Tshwane metropolitan municipality, the Department of Home Affairs, and the SA Police Services (SAPS); the act was in violation of s 26(3) of the Constitution and the specific law in s 8(1) of the PIE Act which holds: “No person may evict an unlawful occupier except on the authority of an order of a competent court.” (*Tswelopele* 2006:para. [2]). Tswelopele, the shack dwellers’ legal representatives, successfully sought an order that the three government

departments restore the possessions of the shack dwellers and rebuild the shacks in the same location. All three departments acknowledged their violation of the law and the court had to determine what type of relief could be provided. The shack dwellers, meanwhile, returned to reconstruct their shacks but the SAPS and Tshwane municipality demolished them, prompting Tswelopele to return to court for a new settlement which required the shack dwellers be given shelter at the Garsfontein Police Station and at a shelter in central Pretoria. Here they would be registered for the housing subsidy scheme, but it turned out only a few qualified for the subsidy. Thus it was ruled the occupants be given their shacks back. However, because they were unlawful occupiers, the shacks were to be constructed in such a manner that they could be dismantled at a later date. Nevertheless, the shacks were torn down again in August 2007. The action was in violation of the Bloemfontein Appeal Court's ruling that the rights of the squatters had been violated and government agencies had to rebuild their shacks (*Independent online*, 20 August 2007). This continued harassment of the shack dwellers by the police placed the head of the SAPS, Minister of Safety and Security, Charles Ngqakula, in contempt of a court order of 20 August that the shacks be rebuilt within 12 hours and he faces arrest for this violation (*News24*, 30 August 2007). This police action transpired despite the Supreme Court of Appeal ruling of how unjustly and indignifying the treatment of the homeless had been:

“And it is not for nothing that the constitutional entrenchment of the right to dignity emphasises that ‘everyone’ has inherent dignity, which must be respected and protected. Historically, police actions against the most vulnerable in this country had a distinctive racial trajectory: white police abusing blacks. The racial element may have disappeared, but what has not changed is the exposure of the most vulnerable in society to police power and their vulnerability to its abuse.” (*Tswelopele* 2006:para. [16])

The responses to the Bredell drama, on the one hand, have been claims to the effect that, because of slow delivery or failure of delivery, government is the

cause of the problem, thus there will always be a willingness by people to occupy land (Friedman 2001). On the other hand, there are calls for realism, and to acknowledge the housing backlog inherited at the time of the 1994 political transition cannot be resolved even by midway of the second post-apartheid presidential term. Friedman (2001) also correctly observes that land invasions may be rabble-rousing opportunism on the part of opposition politicians.

Incidents like the Bredell occupation also may be due to government officials behaving in an exclusionary manner. They consequently deliver large quantities of poor quality products, as well as with little regard to location. Civics organisers such as Mzwanele Mayekiso (1996:241-8, 277) argued shortly after the political transition that the idea of partnership in dealing with housing development was already abandoned because of the resilient influence of the Urban Foundation's preferred approach of self-help housing. Consequently, poor standards and quality products were foisted on black people. Nevertheless, Friedman (2001) notes that this exclusion and future 'Bredells' may be overcome by resuscitating the ideas and practices of government partnership with communities, regardless of this potentially slowing housing delivery.

Following the Bredell events, government officials at various levels made ominous statements about a need to amend legislation preventing land invasions (The Star, 11 September 2001:1; Business Day 10 June 2004; Ensor (2006). The state followed up promises of harsher laws with another controversial statement concerning rapid land release. The rapid land release policy which the Departments of Agriculture and Land Affairs had used up to 1999 provided serviced plots for people to build shacks on. While it may provide some secure tenure over land, the expected consequences of the return to such a land release policy may be a mushrooming of legalised wood and iron settlements, no different from informal settlements. It also raises concerns about favouring urban areas in funding allocation, in the sense that the funding formula when dividing the overall national housing allocation, would give greater weight to provinces such as Gauteng and Western Cape with their higher urban

concentrations and number of shacks (Forrest 2001). The idea of a rapid land release as a solution is met with cynicism by an LPM member (Interview: M Zulu) as it would really amount to settling people far from urban centres:

“... rapid land release is supposed to be done far away... on the outskirts of the big cities. They release the land far away from anything.” (Interview: M Zulu)

But the Gauteng housing department continued to raise concerns and public anger even further when it stated it planned to halt the delivery of low-cost housing and made its own statements about resorting to a rapid land-release program. This prompted the national housing department to rectify the situation and assert that government remains committed to the RDP housing policy. Housing Minister Sankie Mthembu-Mahanyele reiterated government’s commitment to delivering free low-cost RDP housing and clarified that the rapid land release approach was because it was no longer viable to build houses, so it resorted to the rapid land-release programme which involves government allocating land to people and providing necessary services and infrastructure to enable them to build their own houses, and the programme was piloted in Gauteng where more than 15 000 sites were released with about 30 000 more in the pipeline (Radebe 2001).

Formed after the Bredell incident, the LPM grew in national prominence: it mobilised people, marches and petitions around the issue of forced removals. It has clearly adopted the “adversarial” type of approach (Habib 2003; Ballard, Habib, Valodia 2007:406; Oldfield 2005:16) in confronting the state about social and economic rights. The LPM has a different, and very generalised, sense of restoring land to the descendants of earlier dispossessed generations from official restitution policy and legislation such as the *Restitution of Land Rights Act of 1994* (and its amendments), which involves restitution of land rights to individuals or communities who can verify to the Land Claims Court their losses due to discriminatory laws passed after June 1913. Lucas Mufumadi of the LPM says land occupations are “inevitable” in South Africa because of government’s

arrogance, the slow pace of land reform, and people's inability to engage government to speed up land reform (Modjadji 2001). Patrick Mojapelo of the LPM admits people voted for the ANC because of its promises to return land to the people (Modjadji 2001).

Despite being labelled "demagogues" who use redundant tactics such as calling for election boycotts in an inclusivist democracy (Sachs 2003), that campaign of some of the adversarial social movements nevertheless highlights how the problem of slow delivery may actually disenfranchise people: voters can only register if they have a residential address, which is impossible to obtain if they are threatened with eviction (Ballard, Habib & Valodia 2007:406). Slogans in LPM marches express their views on several connected issues --- poverty, housing rights, evictions and land ownership: "*How can poor people buy their own land back?*"; on their questioning of evictions while there is slow delivery of housing: "*Why are we moved from shack to shack?*"; on their likening of evictions to apartheid policies: "*Down with forced removals*". Invoking Hardt and Negri's (2000) term, LPM organiser, Andile Mngxitama (2002), says these slogans of the "multitudes" aptly capture the inability of today's generation of impoverished, although enfranchised, citizens to own land and houses, and partly explains their distrust of the new political establishment: "*Down with political parties*". Mngxitama's views capture the distrust his movement's adherents have of the new elite in a deracialised polity, and how they remain protective of certain white interests as did the apartheid rulers:

"I sometimes even wonder why they did not give black people parliament long ago, because they really did not have to fight so hard if they knew that their privileged positions would be protected by a black government." (quoted in interview with Jacobs. nd.)

On 24 July 2002, together with the National Land Committee and the Anti-Privatisation Forum (APF), the LPM organised a march of hundreds of protestors starting from the Protea South informal settlement in Soweto and proceeding right up to the offices of premier Shilowa, where they delivered a letter

demanding an end to forced removals (Angel 2002). Although there may be claims of opportunistic opposition politicians influencing the LPM, the LPM has asserted its independence when it rejected calls by the PAC, which LPM regards as having insignificant grassroots support, to disrupt the World Summit on Sustainable Development (The Star 25 July 2002:6).

Well into the tenth anniversary of an inclusivist democracy, people in Gauteng still reiterate their openness to unlawful and confrontational options given their lack of patience with non-delivery and the ineptitude of authority structures:

“Disgruntled residents of Tembisa on the East Rand who have been on the waiting list for reconstruction and development programme (RDP) houses since 1996, have warned that the problem could become a “time bomb” if not addressed.”

...

“A local resident, Norman Phasha (41), who has been on the waiting list for a RDP house since 1996 said: “Our situation has become so desperate that we are once again contemplating breaking the law by illegally occupying all low-cost houses in Esselen Park and Kaalfontein to highlight our plight.”

...

“Melitha Malesane ... said she felt hopeless ... “Every single one of us with C Forms was made a fool of by those in authority.”

“Florence Mahosi (42) said: “After paying R3 000 to Wietpro, (a low-cost housing project initiated by the council) I felt betrayed and left in the lurch when the same council abruptly halted the project after only 200 of the 429 RDP houses were built.””(Fuphe 2004)

And, a year later, Tembisa residents who have been on waiting lists for low cost houses marched again, demanding a purge of corrupt officials and a proper handling of the allocation of houses:

“Said [Tembisa Residents Association] TRA’s Abednego Makwakwa: The time has come for government and Ekurhuleni council officials to realise that the tolerance of this community is limited.”

“If they continue to conduct themselves arrogantly and as if the Tembisa community does not exist, they are manufacturing an uncontrollable time-bomb. Soon it will explode without warning and plunge the whole area, themselves included, into chaos.” (Fuphe 2005)

Although evictions are not central to ANC government policy as they were to the NP government, nevertheless, they have occurred on a considerable scale and evictions of squatters are bloody affairs reminiscent of apartheid era removals. The post-1994 era removals result in lots of similar losses of personal belongings and other assets accumulated over many years. When residents are reluctant to move, police or private security companies are often called in, they resort to truncheon beatings and the firing of rubber bullets, as in the case of the removal of protesting squatters at the Thembelihle informal settlement camp (The Star 2002a). Residents of the Mandelaville squatter camp near Diepkloof, Soweto, some who had been there since 1976, complained of the losses they suffered when moved by the “red ants” (Ndaba 2002).

8.9.2 Contestation of inner city evictions

Despite constitutional protection from arbitrary eviction, evictions are a daily experience not only for rural tenants on farms, informal settlement inhabitants and land invaders, but also for homeless people in the inner city regions of

Gauteng. The Urban Sector Network (USN), an organisation concerned with community-based approaches to housing and funded by the US Agency for International Development (USAID), sought to interpret the state's obligations to "respect" and "protect" the right to adequate housing. Its interpretation was submitted in one of a series of reports to the Housing Department and may be used as a basis to examine certain housing rights events. The USN report holds that the state's obligations to respect and protect the right to adequate housing includes the ratification of international treaties, and preventing violations of the right means preventing discrimination, arbitrary evictions, and ensuring an independent judiciary and access to courts (USN 2003:3). Miloon Kothari, a United Nations special reporter on housing rights, cognisant that the right to housing is enshrined in the Constitution, said that much when visiting South Africa, as well as expressed disappointment that government spent considerable amounts on hosting sporting events despite the pervasive poverty, and called for a moratorium on evictions noting how they occurred in rural areas and inner cities despite legislative protection (Mail & Guardian Online 2007).

The housing backlog in the province has forced many people to occupy buildings in the Johannesburg city centre, only, at some point, to face eviction, often by the "red ants". The City of Johannesburg's Inner City Regeneration Strategy (ICRS) plans to remove people from about 235 dilapidated or "bad" buildings in the inner-city; this is part of a project expected to attract private-sector investment and transform Johannesburg's image into a "world-class African city" (Phasiwe 2005), ahead the 2010 Soccer World Cup (Ismail 2007). Opposition to the evictions have a tone reminiscent of Fanon's (1963:133) criticisms of post-independence elite's attraction to costly, prestigious ventures while the circumstances of the masses worsen. Besides appearing to be a violation of the guidelines of the USN's interpretation of housing rights, the planned evictions have been condemned by the Geneva-based human rights organisation, the Centre on Housing Rights and Evictions (COHRE), as a violation of housing rights. A COHRE (2005:23-5) report notes that signatories of the International Covenant on Economic, Social and Cultural Rights must find alternative

accommodation for evictees. The matter has seen the Centre for Applied Legal Studies (CALS) of Witwatersrand University, a public interest legal research organisation, drawn in to assist the targeted evictees.

Generally, city authorities contend the evictions are necessary because the occupied buildings were not made for human residential occupation but were originally offices, they do not have proper sewerage systems, toilets and baths, ventilation, have become infested with rats and cockroaches, are unsafe because of illegal electrical connections and have declined into inhabitable deathtraps in the event of fires; they are also deemed as havens for criminals. The different sides speak differently of the buildings. For the illegal occupants who have endured previous evictions, the buildings are a “home” (Green 2005). Almost always, evictees complain of insufficient eviction notice, loss of possessions, and no alternative accommodation is arranged for these evictees.

These inner city evictees are part of the lowest earning segment of the labour market. They have a different appreciation and sense of their housing rights. In 2001, about 15 000 households or 60 000 people comprised the housing backlog in the inner city, and were most likely to be occupying “bad” buildings (Wilson & du Plessis 2005). CALS sees these evictions as systematic violations of the buildings’ inhabitants’ right of access to adequate housing, as well as their right to protection from arbitrary eviction. CALS noted the municipality does not convene a hearing before taking the decision to evict. In a letter to Johannesburg mayor, Amos Masondo, CALS noted how 600 residents were evicted, and pleaded for the evictees to be seen as near destitute, very low-income people earning around R1000 per month in menial type labour in the inner-city, with no choice but to live in “bad buildings”, but who are “rights-bearers” whose rights were being violated. CALS also accused the city authorities of using apartheid era legislation to evict such people, as opposed to using post-apartheid legislation which requires that alternative shelter be provided, an action that would obviously require the City authorities to use a portion of their available fiscal resources. Specifically, the authorities were using the *National Building*

Regulations and Building Standards Act 103 of 1977. Interestingly, the building occupiers' strategy attempted to use the law which may be deemed to protect private property interests; they argued they unlawfully occupied the buildings in terms of the PIE Act and were protected by that piece of law. Hence, the City would have to use its resources to find alternative accommodation for them. The CALS letter states: the situation deprives the residents of a chance to be heard; the City was using apartheid era legislation to enforce an eviction whereas the PIE Act must be used; the PIE Act requires alternatives be provided but when no alternatives are provided the people simply occupy another "bad" building; the people are dependent on low-income work in the inner city and RDP houses, where long waits can be expected, are on the urban periphery stifle and their access to jobs; consequently, the inhumane policy of evictions from "bad" buildings violates South African constitutional law and international human rights law (CALS 2005).

Other international opinion, namely that of the Centre on Housing Rights and Evictions (COHRE), is the evictions of squatters and tenants without providing any alternative housing was illegal, it is effectively a blatant violation of human rights, and, for the organisers of the World Cup soccer event, it is surprising given the history of apartheid era evictions (www.2010cup.co.za). In COHRE's view it is a mockery for governments to sign international agreements which forbid such actions, but to then go ahead and violate such international laws. This is an alarming international phenomenon without recourse to justice, rehousing or compensation (Community Law Centre 2003). Besides using apartheid era legislation, the City craftily interpreted other building standards legislation, to sanction the evictions. It was not always providing emergency shelter to house the evictees, as was ruled in the *Grootboom* case, and as is required in the *Housing Act of 1997* (du Plessis & Albertyn 2005). CALS and the Wits Law Clinic opted for the contestation strategy in the Johannesburg High Court, to oppose the Municipality's request to the High Court to order the eviction. CALS asked the Court to have the city's practice of evicting around 70

000 occupants of “bad” buildings ruled as unconstitutional, and to have such evictees placed in alternative accommodation.

On 3 March 2006, Judge Mahomed Jajhbay, of the High Court, stopped the evictions and ruled (*City of Johannesburg v Rand Properties 2006*) the city authorities must first devise and implement a comprehensive plan to accommodate people it sought to evict (Benjamin 2006). Jajhbay criticised the city’s inadequate housing plan as required by the *Housing Act of 1997*, and was of the view the city could not use safety regulations to justify the regulations. He linked the values of the Constitution to the right to adequate housing: he opined the Constitution promised a life of dignity and adequate housing was indispensable to this (see CALS, Inner city, nd). His ruling, besides referring to the Constitution and the Constitutional Court’s decision in *Grootboom*, referred to international human rights instruments such as the *Universal Declaration of Human Rights*, the *International Covenant on Economic Social and Cultural Rights*, and the *African Charter on Human Rights and People’s Rights*. He was of the view that, regardless of their level of economic development, states that are signatories of these instruments must immediately address the housing needs of their populations, otherwise they were in violation of the right to adequate housing. He noted that: the occupants opposed all the building safety, health, and fire by-laws which were being used to evict them; the occupants felt the requirements of the ‘PIE’ Act were that alternative accommodation be provided but this would not bring them just and equitable relief; the occupants felt their right to adequate housing as promised in s 26 of the Constitution would be violated by the eviction; and that the city authorities had not fulfilled their constitutional obligations to achieve the progressive realisation of the right to adequate housing. In view of such violations of constitutional obligations, the occupants wanted suitable alternative shelter to be provided for them. Judge Jajhbay’s inspection of the buildings concurred with some of the health and safety concerns of the building owners and also differed on some of these concerns; he found the occupants to be very poor and dependent on livelihoods in the inner city and neighbouring suburbs, but there was no alternative

accommodation in the inner city. Jajhbay was of the view the *Grootboom* ruling moved away from the notion of the “mere rationality of state actions” to a position that requires the State and other relevant stakeholders to act in ways that reasonably fulfill their constitutional obligations on socio-economic rights. He also noted that, four years after the *Grootboom* ruling that municipalities must have an emergency fund which would cater for the shelter needs of persons being evicted, the Johannesburg municipality still did not have such a fund. He ordered the City to use its available resources for such a programme.

Jajhbay saw the Constitution as transformative and serving the needs of society’s marginalised [para. 51]. He added, apartheid era policies and eviction legislation sought to restrict black people’s urbanisation and, effectively, who could secure a wage income. However, that era has been superseded, so, the urbanisation of destitute, income-seeking black people must not be legislated against, and the building occupants cannot be evicted on the basis of apartheid era building safety and health by-laws. Jajhbay has a commendable historicised sense of the desperate circumstances of people occupying inner-city buildings. He noted that apartheid era laws insulted the dignity of African people, that the spirit of the new constitution incorporated the *ubuntu* value systems of African people, and sought to restore that sense of dignity, but constant evictions in post-apartheid SA undermined this. Effectively, Judge Jajhbay noted the State was not living up to the transformative duties the Constitution imposed on it. The average income of the building occupiers was R500, whereas the City offered houses for rent at R600. The State thus could not proceed with the evictions as this would violate the housing rights of the building occupiers and was instructed to devise an emergency programme using its available resources for people in desperate or crisis situations. He noted the Constitution obliges the State to provide equally for those who could afford housing as well as those who could not, and the city’s Emergency Housing Programme had failed in that regard.

An interesting creative dimension of Jajhbay’s ruling in favour of the building occupants was his invocation of an indigenous value system, *ubuntu* [paras. 62-64], explicitly mentioned in the Interim Constitution of 1993 but not in the Final

Constitution, which Jajhbay feels it does articulate. He argued the City's preference to relocate the building occupiers was contrary to the principles of compassion and dignity enveloped in *ubuntu*, and its principles must resonate in the institutions of South Africa's constitutional democracy.

For the occupants' legal representatives, this was a notable victory, as Cathi Albertyn of CALS said in a statement, which touches on the issues raised in the Urban Sector Network's interpretation of the state's obligations to "respect" and "protect" the right to housing. CALS hoped the ruling would set a precedent and deter future evictions and expose the City's inhumane policy as a violation of SA's Constitution and international human rights law (Benjamin 2006).

A consequence of the ruling was to highlight that government's slow movement on housing the poor was having an effect on the private sector. Private property owners of inner-city buildings were concerned their illegally occupied buildings would never be cleared of non-rent paying occupants, and that investors needed for the gentrification of the inner-city may become reluctant to invest there (Williams 2006). Increasingly, some privately-owned buildings in the inner city have become black-owned. This situation is an interesting contrast to my representation of the conflict over land and land invasions in the peri-urban areas reflecting the legacy of colonial conquest and having a predominantly inter-racial face to it. Black owners of occupied buildings, just as most white-owners would do, are equally likely to also seek evictions in order to upgrade buildings and derive profitable incomes from the building inhabitants. Thus, this conflict of interests is likely to develop into one with a mixed race profile of property owners reflecting the class mobility that the elite transition has unblocked, it is a multiracial class of those seeking the protection of private property rights against thousands of unemployed and low-income blacks struggling for the right to housing and occupying the buildings owned by the former group.

Regardless of Jajhbay's ruling of March 2006, building owners found loopholes and inner city evictions resumed by May of 2006. Private owners could order the evictions in order to clean the buildings, and subsequently place occupants in at profitable rents. In conjunction thereto, the city council could declare that, because it did not order the evictions, it had no obligation to provide temporary housing. One victim of the renewed evictions by the "red ants" at 06:00am on 9 May of 2006, who had lived for two years in Massyn Court in Kerk Street, responded thus:

"I had no idea what was happening" ... "I'm sad. Now where do I go? [said Linda Duze]" (van der Reijden 2006)

The Anti-Privatisation Forum argued the council must provide temporary housing, but the city's operations manager, Peter van Vuuren, said this applied only to evictions ordered by the council. The building owner, Nasser Davids, was gleeful that cleaning and renovating of the building could commence; it would be converted to one-room apartments and bachelor flats rented at R2, 500 a month (van der Reijden 2006).

The City appealed the High Court ruling that it could not evict people without providing alternative accommodation. The Supreme Court of Appeal ruling of March 2007 (*City of Johannesburg v Rand Properties (Pty) Ltd 2007 SCA 25 (RSA)*) overturned Jajhbay's ruling. This court stated it was not unconstitutional or unlawful for the City of Johannesburg to evict the tenants; it reasoned that Judge Jajhbay's interpretation had conflated many issues involving the right of access to adequate housing, the nature of the state's obligations, and laws about evictions. The Supreme Court ruled that: while the City may evict the building's occupants, this was not dependent on the city providing alternative housing, but it imposed on the City another Constitutional obligation --- to use its resources to find alternative minimum shelter which does not have to be within the inner city [para. 5]. Jajhbay's ruling had erred by assuming the existence of a minimum core and should have restricted the right to that contained in the Constitution, namely, a right of access to adequate housing [para. 43]. The Appeal Court

continued that the Constitution does not give a person a right to housing in a locality that they choose, such as, in the inner city [para. 44]. Furthermore, Jajhbay's ruling had overstepped the division of power principle because it was the domain of an elected City government to determine its vision of the inner city, and not that of a court [para. 45]. Jajhbay's ruling had also overlooked the constitutional qualification of the right of access to housing; it did not consider that the City did not have the means to provide the building occupants with inner city accommodation, and it was clear that the city had not failed in its duty to progressively realise the right to housing within its available means [para. 45]. The Appeal Court also raised semantic issues of the law, specifically the 'PIE' Act, about when evictions may be permissible, and how the Constitutional Court itself had not satisfactorily clarified the meaning of considering all "relevant circumstances" in its deliberations on when evictions and the destruction of houses may be permissible [paras. 39, 40].

Public comment and opinion-making in the print media on the Appeal Court ruling by economist, Karen Heese, and Kevin Allan, a local government analyst, combines the principle of the fiscal limits of social spending with a discourse of rights as not being absolute, something to be realised on demand. Their view notes the constitution's lofty aspirations about rights, but there are fiscal constraints on the City authorities' inner-city regeneration and housing obligations, so the right to housing is not to be seen as some absolute right that overrides other duties of the City:

"The Supreme Court of Appeal's recent finding that it was neither unconstitutional nor unlawful for the City of Johannesburg to evict tenants of unsafe building in the inner city provides welcome recognition of the conflict between an aspirational constitution and the financial limitations experienced by local government. Given this conflict between rights and a normative take on budgeting priorities by the city, it is more than likely that the case will eventually come before the Constitutional Court and will make for a fascinating exploration of the realistic boundaries within which

ideals should be upheld. Those opposed to the ruling argue that it failed to take into account the individual economic circumstances of those residents who will struggle to subsist outside of the inner city. The Supreme Court, however, ruled that the city had the right to decide where residents should be housed. While there are strong arguments for protecting the rights of impoverished inner-city residents, these rights, specifically to housing within the inner city, should not be absolute. In the case of residents of unsafe buildings, their presence undermines attempts at inner-city regeneration and poses significant health and safety risks to the residents themselves, as well as their neighbours and the public at large.” (Heese & Allan 2007)

The City’s provision of alternative accommodation did not suit the tenant’s economic circumstances: rents in alternative accommodation in privately owned buildings in the city were beyond their means, and the ruling did not bind the City to provide alternative accommodation in the inner city (Benjamin 2007). Legal representatives of the tenants then took the case to the Constitutional Court. Legal teams representing the tenants and the City presented their arguments to the Constitutional Court on 28 August 2007. The Constitutional Court, however, reserved judgement, giving the parties time to reach a settlement in this matter, but the Deputy Chief Justice promised the Court would reach a finding if the two parties could not reach a settlement (News24 28 August 2007). Based on the strengths of the eloquent arguments made by the Supreme Court of Appeal judges in their challenging of Judge Jajhbay’s ruling, as well as some public opinion such as that of Heese & Allan (2007), the prospects of the building inhabitants remaining in the inner-city looked very bleak.

Seeking a settlement, the parties engaged with each other reaching a temporary relief agreement in November 2007 where the occupants would not be evicted and buildings made more sanitary and habitable, but a Constitutional Court finding was still required in February 2008 (*Occupiers of 51 Olivia Road* (2008)).

Justice Yacoob noted that the previous court hearings raised the broader question about the City's housing obligations - whether the City had made reasonable provision for housing people in desperate living conditions in the inner city [para.3]. Furthermore, in terms of its constitutional obligations, if the City evicted the occupants, it would violate their right to dignity [para.16]. The City was bound to be "reasonable", but only within the means of its "available resources" [para.18]. Furthermore, the previous court hearings had not instructed the parties to meaningfully engage each other, as was found to be a path to reaching a resolution in *Port Elizabeth Municipality*. His ruling states:

"[18] And, what is more, section 26(2) mandates the response of any municipality to potentially homeless people with whom it engages must also be reasonable. It may in some circumstances be reasonable to make permanent housing available and, in others, to provide no housing at all. The possibilities between these extremes are almost endless. It must not be forgotten that the City cannot be expected to make provision for housing beyond the extent to which available resources allow. As long as the response of the municipality in the engagement process is reasonable, that response complies with section 26(2). The Constitution therefore obliges every municipality to engage meaningfully with people who would be homeless before it evicts them. It also follows that, where a municipality is the applicant in eviction proceedings that could result in homelessness, a circumstance that a court must take into account to comply with section 26(3) of the Constitution is whether there has been meaningful engagement."

However, the agreement still required judgement on whether the City's housing plans had permanent solutions for the desperately homeless class of people, but Justice Yacoob's ruling avoided this, stating rather that the City was "reasonable" and had "shown a willingness to engage" [para. 34]. The City's use of the apartheid era building regulations legislation which would make evictees

homeless and the Supreme Court's supportive ruling was also brought in line with the new Constitution by declaring sections of that legislation unlawful. The ruling did not mean the immediate provision of adequate housing, nevertheless, it was a form of temporary relief which the occupants, wearing "stop evictions" T-shirts, were jubilant about. For public interest litigation activists at CALS who assisted the building occupants, it boosted faith in rights discourse and related practices to make gains in the struggles of the homeless: "We are absolutely delighted. This is a victory for human rights and a vindication for the rights of the poor people to housing." (Cox & Seale 2008).

8.9.3 Homelessness, evictions, protest, and the law under a transformative constitution

Despite optimism about the Constitution's overarching transformative nature, contrarily, there appear to be other legislative developments that may protect private property rights in ways that constrain the realisation of the socio-economic right to housing, the options of the homeless for shelter while they patiently wait for authorities to provide housing through available resources, and the organisation for housing protest. These developments may be cultivating tensions between constitutional promises to a right to human dignity, the collectivist values of *ubuntu* as broadly outlined in *State v Makwanyane* (1995) and the hope about how this may influence adjudication culture such as that in Judge Jajbhay's creative invocation, as well as possibly show up some problems in Habermas' (1996) view about law being the main integrative force in modern democracies that seek to get the obedience of citizens in a context of constitutional recognition of both individualistic liberal and collectivistic rights. These developments suggest that the integrative consequences of the law may really be about obtaining the homeless' compliance to respect private property through a series of negative sanctions, and almost no assurances about their struggle to realise socio-economic rights.

There are, however, contrary views of whom the law favours. In the case of the invasion at Modderklip, the view of Laurie Bosman of the association of white commercial farmers, AgriSA, is that land invaders are protected by the 'PIE' Act:

“The (new) Prevention of Illegal Evictions Act affords more protection to illegal occupiers than to land owners,” AgriSA land affairs committee chairman Laurie Bosman said. “Duvenage is effectively being deprived of his land without any compensation.”

(Cook 2001)

In the courts there may have been clever skirting around the rights of different groups. For Steinberg (2005), the decision on the Modderklip incident was exceedingly crafty. When the Supreme Court of Appeals ruled on the occupation, it ruled that the state had violated the invaders' right of access to adequate housing, as well as Mr Duvenage's property rights. The Constitutional Court was crafty in the sense that it avoided judging on this as either a housing or property rights matter; instead, it ruled that it was Mr Duvenage's right to a speedy resolution of a dispute in the courts that had been violated. The Constitutional Court ruling in the *Grootboom* incident had set its approach that individuals could not demand housing from the state and the state could demonstrate that it indeed was rationally using its available resources to progressively realise the right of access to adequate housing, in the long run.

It is also odd that the state seems ever vigilant to prevent land invasions even when there are no private land owners to complain of such imminent threats to be found:

“The Tshwane Metro Council has been trying frantically to locate the owner, possibly the state, of a fully developed, large piece of land zoned for industrial use outside Pretoria, which angry farm workers threatened to invade on Monday.”

“The land, fully equipped with water, sewerage and electricity, has been lying idle the past five years.”

“A group of [200] farm workers threatened to invade the land to build shacks after the council did not react to their pleas for proper housing.”

“Councillor for the Crocodile municipality Gabriel Tswala said the identity of the land owner was still not known.”

“If (the land) belongs to the state, it can be donated to the council for housing purposes and if it is private land, it can be bought.”
(Cook 2002)

There are, however, other perspectives which claim that impulses towards land invasions are on the retreat in the Johannesburg area. It may also be because the state or, more specifically, local government, is sharpening its machinery to rapidly repress and deal with invasions: the Johannesburg Metropolitan Police Department (JMPD) established a Rapid Response Unit (RRU) “to prevent land invasions during the early stages”, and city authorities acknowledge that while informal settlements emerge spontaneously, they also claim land invasion has ceased because people are aware government does not tolerate it (Cox 2002).

In the same year as the Bredell events, the state’s response to the phenomenon of land invasions was the threat by the Minister of Housing, Sankie Mthembu-Mahanyele, to present to parliament, before the end of 2001, new amendments to the legislation to prohibit land invasions, the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill* (the ‘PIE’ Act). The minister was intent on upholding the “rule of law”, the amendments promised to be harsh because existing legislation made it difficult to uphold the “rule of law”, a law protecting a history of inequitable property rights and which is the root of considerable discontent about transformation. The harsh proposals considered two years of prison for persons guilty of invading land or instigating such (The Star, 11 September 2001:1). Apparently, the ANC government also

contemplated tougher amendments upon observing the existing law could not penalise its PAC rivals who had mobilised the Bredell invaders (Huchzermeyer 2003:101). Furthermore, it is reported (Radebe & Hartley 2003) the legislative amendment was also to appease banks and their concerns about legal loopholes that made it difficult to evict tenants who default on home loans, which banks feel undermines confidence and property rights.

In subsequent years even provincial governments uphold a zero-tolerance approach and are keen to adopt swifter and harsher responses to the ongoing episodic land invasions. The Gauteng MEC for local government, Qedani Mahlangu sought to draft a land invasion policy granting increased powers to the metropolitan police and the SA Police Service power to evict squatters within 48 hours of an illegal occupation, and which municipalities would have to strictly enforce (Business Day 10 June 2004). Besides trying to control the growth of informal settlements, the proposed legislation was also aimed at the phenomenon of “shack farmers”, that is, owners of smallholding farms who allowed squatters to put up shacks on their land (Mboyane 2004a)

COSATU aptly responded to government’s announced plans to tighten up legislation, the thrust of which would be to outlaw the occupation of land and buildings, and make it illegal to collect funds for the legal costs to fight evictions. COSATU contrasted the tension between private property rights and the realisation of socio-economic rights in the proposed legislative amendments, stating it finds that choice of response disturbing (Radebe 2003):

“... the provisions in this legislation largely addresses the concerns of property owners, and therefore compromise the advances of progressive realisation of socio-economic rights.”

...

“Whilst there is reason to ensure that the rights of property owners are protected, COSATU remains convinced that the government’s bigger concern should be to pursue land reform and housing to

advance progressive realisation of socio-economic rights, as entrenched in the Constitution. This will most effectively combat the need for anyone to illegally occupy land. "(COSATU 2003:2-3)

COSATU's analysis identifies, in general terms, the class interests served by the proposed amendments, as well as the Democratic Alliance's housing spokesperson response to a Supreme Court ruling that prohibited summary evictions of squatters, as organised interest groups that mooted a law to protect private property interests:

"... this draft amendment Bill aims to tighten the law to protect landowners, and thereby protects the rights of the 'haves', to the exclusion of the 'have-nots'. If indeed it is the case that intensive lobbying by landlords and banks is what motivated government to amend legislation, it reflects the worrisome trend that business is increasingly holding government to ransom." (COSATU 2003:3-4)

In the face of official threats to tighten up land invasion legislation, there is defiance. That defiance is bolstered by the apparent blunder of the municipal government not to buy invaded land, even though farmers decide to resolve a matter by offering it for sale to the municipality, as was the case of Modderklip Boerdery. An LPM activist (Interview: M Kupheka) speaks of how government inaction spurs on land invasions thus:

"Well, they can do it. ... When the farmer said: "I want four million for this farm", the government didn't want to buy. At the end that farmer took the government to court and now the government has to pay the court. ... That's not good thinking of the government. ... we said the government must buy. ... They are doing opposite things from what the people want. They cannot stop the invasion of land. They are going to have problems about the invasion because everywhere where they are supposed to buy land for the people, they are not buying the land for the people. So people are going to invade land, now they move them from here, they are

going to invade somewhere else. Farmers are evicting people from the farms, they are dumping them on the road. ... People are investigating now, "*which land belongs to the government?*", so that we can go and invade there ... because they don't have no alternative. ... If they [the government] are not looking after the people of South Africa ... and think they are tightening up the laws of South Africa ... they are not going to solve the problem."

In the view of Gauteng Housing Department officials (Interview: A Odendaal), the problem of land invasions in Gauteng cannot be solved because there is not enough land for housing:

"If I were to say there is not enough land in Gauteng to provide housing, that would not be true. What is playing a much more guiding role is the issue of well-located land. Because we have moved away from land to well-located land, and that's why the province has established the Land Use Task Team and come up with this cost-benefit analysis. To actually ensure that the life-cycle cost of the development is actually reduced for government and as well as for the individual. I don't think there's an issue about whether the land is owned by white people or by whom. I think there are other issues. It's the approach of the local authority. You will find that Johannesburg [municipality] is very careful with the procurement of land and Tshwane [municipality] will say, "Okay, we just expropriate. We negotiate, we expropriate, and we just carry on." Johannesburg [municipality] don't want to follow that route. I'm not sure what is the reason for that. Then we have the urban edge. We are saying that we must only procure land within the urban edge, and that limit [sic] our land because its going into this well-located land issue. One of the major blockages in Ekurhuleni is the issue of high-potential agricultural land. When you do your environmental impact assessment they have a standard letter that they use. The MEC said that you cannot utilise

high-potential agricultural land for housing development. Then if you don't do that and its inside the urban edge they push you out. So its nothing to do with whether the owner is black or white. Its basically other issues: the approach of the local authority, the approach with regard to high-potential agricultural land. ... There are other political dynamics.”

Furthermore, the Gauteng Housing Department gets little financial support from the Department of Land Affairs to procure land. The Gauteng Housing Department does appreciate the “enthusiasm” of Land Affairs, but it is deemed as too little to make an impact:

“We spent ... in Gauteng between R120 and R150million a year on land. Their contribution is R8million. So we are saying your contribution is so little, its five percent. We are actually not very much worried, and there's a lot of conditions.” (Interview: W Odendaal)

Money promised by land Affairs must be used in twelve months. But other processes mean it can extend up to eighteen months to do a feasibility study, followed by a valuation of the land, an environmental assessment, and a technical assessment to check whether or not the land is on dolomite. All this adds on more months (Interview: W Odendaal).

Whether the forced evictions are in the inner-city or the peri-urban areas, critics and organised civil society monitors have observed how they appear to be shrewdly timed to occur after elections. Increasingly, there is a questioning as to whether the Constitution may be an effective instrument to contest the right of access to adequate housing while political manoeuvring often undermines this right. Samore Herbstein (2006) of AZAPO argues along these lines saying it is ironic that: twelve years into the democratic dispensation thousands of black people are still forcefully removed; in Gauteng the “red ants” evict more people than the Department of Housing provides housing for; discussions about

relocations are shrewdly moved to after elections; the “much-hyped constitution cannot prevent the betrayal of the voter and the increased priority given to the wishes of landowners over the needs of the landless”.

By December 2006 the amendments to the PIE Act that the Housing Department was considering proposing making it an offence to organise the unlawful occupation of land, thereby targeting individuals or organisations who mobilised people to occupy land (Enzor 2006), caused public interest litigation organisations to fear the amendments would increase the frequency of evictions (Wilson 2007:4). The amendment bill (RSA 2008) introduced to the National Assembly in March 2008 proposed changes at section 3 of the ‘PIE Act’ prohibiting the organising of people to occupy land without the permission of the owner, despite criticisms of such feared amendments. The kind of successful political activism or public interest litigation which used the rights of evictees in the PIE Act, may become constrained with the amendments.

If the amendments seek “to stop land invaders in their tracks” and “curb the politicisation of the land issue” as the Bredell incident did (Radebe 2003), it does not prevent the spontaneous violent housing protest where the actions of the homeless is fueled by visions and expectations of what the existing Constitution promises to oversee the delivery of. In September 2008, residents of Orange Farm said that much when accounting for their barricades of burning tyres and rocks and demanded housing, sanitation, and water:

“They will only speak to us when we protest. That’s how they want to work. We want basic services that are stated in the constitution. We want development.” (Maphumulo 2008)

Another interesting development about this is that, although their protest language does not explicitly refer to claims to specific rights, perhaps their references to the promises of the Constitution implies that this is animating some of the recent spontaneous housing protest.

8.10 Conclusion

Gauteng, the economic hub of SA, is the smallest province in land area size, but has the highest urbanisation and population density rates. The official calculation of the province's housing needs and estimation of the number of houses to be built per year in order to overcome that backlog has not successfully calculated the growth in population in the province. The provincial authorities certainly can claim to have a rational plan about using available resources to deal with housing demand, but figures also reveal a fluctuating delivery in the face of an increasing backlog. Events in the province, such as the Bredell land occupation, have suggested the gravity of the insight that we may expect the direction of more budget resources to the needs of provinces with large urban populations as disaffected people here are much easier to mobilise in opposition to the shortcomings of government policy.

The official responses to land occupations raises a few questions. First, the authorities' promises of rapid land release raises questions of the likely further proliferation of squatter settlements as a consequence of this policy. Second, the threat to tighten up anti-land invasion legislation prompts the question of whether we are likely to see the further polarisation of and clashes between homeless communities and the authorities. Questions are also opened up about what consequences it has upon people's consciousness when they develop one sense of housing and shelter rights as formally guaranteed in the Constitution, but the government is designing another layer of laws which proscribes that right, and it simultaneously protects banks and land owners. What we have seen in this regard is that organisations can sometimes successfully mobilise people to invade land and oppose the eviction of people defaulting on home loans, although the language of rights is not always at the forefront of their campaigns. The events at Kanana and Bredell raise questions of the management of possible sources of opposition, that is, is the situation such that if the ANC organises people to set up informal settlements in the absence of houses, it

would be accepted; but if there are instances where rival political organisations and civil society groups organise people to do so, it is unacceptable? Then there are questions raised about what to do with underperforming bureaucracies, where a lack of delivery which fuels public discontent is tied to the problem of underspending, and it, in turn, is tied to the problem of a lack of capacity and a weak leadership. And there are questions of the legitimation of the government and whether this is being undermined as opposition voices, frustrated with the lack of delivery, contend the political transition legitimated colonial land conquest, the white state's control of land, and privileged white entrepreneurs' access to and ownership of land. It certainly would be extravagant to claim the government does not enjoy legitimacy considering that it is in power through democratic elections and enjoys international recognition (Greenstein 2004:112). Notwithstanding, similar to housing researcher Peattie's (1979:1019) claim about how significant progress on housing is to a government's legitimacy, housing activists in SA are likely to contribute to this sort of harping about legitimacy as long as there is dissatisfaction about housing developments.

The problem of underspending raises some theoretical questions too. Some municipalities contend underspending is due to the legacy of private ownership of land. So, is the thesis that the state's social spending is limited because of the diminishing impact on capital accumulation inappropriate to explain certain dynamics of South Africa? Housing is, however, only one social spending item. Validating that thesis would require an examination of the size of the whole package of social spending, that is, on pensions, education, health, free water, and how the state acquires the financial resources for these.

Housing need in Gauteng has also generated some important legal contestation over the meaning of constitutional rights and the nature of state obligations in this regard. In the language of these court battles familiar themes have emerged, namely: the rationality of state plans; the limited resources of government departments and housing departments in particular; that citizens cannot demand the immediate realisation of a right; that citizens cannot demand the location of

a house; that the courts, in terms of the separation of powers doctrine, respect the capacity of state officials to devise rational plans about using resources to deliver goods and services specified as constitutional rights. In the next chapter I analyse the discursive implications of these themes in terms of maintaining relations of power and disciplining divergent positions in the context of the growing class inequality that has resulted under the elite transition.