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The discourses on the right to housing in Gauteng Province, 1994-2008.

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CHAPTER TWO

METHODOLOGY

2.1 Introduction

My thesis combines theoretical and empirical research (Bak 2004: 24-7, 85-6) on conceptualisations of and perspectives on rights, and events and narratives on specific types of rights. This chapter clarifies the manner in which I use the notion of 'discourse' and its extensions as a qualitative research framework in sociology, and my motivation to use a fusion of mainly qualitative data collecting and analysis methods. The approach is within the scope of the "social construction of reality" theoretical framework, which is concerned with "[t]he ways in which we commonly understand the world, the categories and concepts we use, are historically bound and culturally specific" (Burr 1995:3; also Neuman 2000:16). This framework encourages the use of research methods entailing a range of methods to gather and analyse data about the meanings people attach to their social behaviour, the concepts they use to categorise social behaviour, and how they understand these concepts as a way of making sense of processes and events in their everyday world. Notions of rights and adequate housing have cultural and historical settings, and this also effects how the pronouncements on these notions legitimate particular social attitudes and practices (Cameron et al 1999:141-2). Peter Berger and Thomas Luckman (1966:17-18) see social constructionism as an extension of the Marxist proposition that human consciousness is determined by social being. This sociology of knowledge theoretical framework distinguishes between how ordinary members of society acquire knowledge about how the social world is kept together and how learned scholars acquire knowledge about the social world. Social constructionism contends the "man in the street" does not inquire into what is "real" and what he "knows", only if he encounters some problem

(Berger & Luckman 1966:14). So, my thesis rests on the argument that the "man in the street" feels rights are something real, he takes it for granted he possesses "rights", and behaves accordingly. Humans develop habitual behavior and institutions based on these beliefs (Berger & Luckman 1966:70-3). Although society is a social product, society itself can be an objective reality, and humans are also a product of society; 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 (Berger & Luckman 1966:79-82). These core propositions of social constructionism approach guide my examination of the "discourses" or language and statements about rights, particularly rights to housing, in South Africa.

2.2 Specifying the scope of my qualitative data collection

Qualitiative research entails the examination of texts, a focus on interactive processes and events, semi-structured interviews, and a historical approach to the topic (Neuman 2000:36-7). My explanation for the use of such a research framework is facilitated by means of a literature review, emphasising the findings of the major existing material falling within the scope of the thesis, and by noting important concepts and variables in that material.

The focus of my study is on data, obtained from a range of sources, relating to developments in the first fourteen years after the 1994 elections, that is, the period covered by the ANC's popular legitimation as evidenced by an electoral hattrick of victories; a period that also includes the time of the writing and formalisation of social and economic rights in the Final Constitution of 1996; it is also the period witness to the passage of the first set of laws and policies to realise specific rights; and it is a period in which there have been many challenges to realise the right to housing through protests and court battles.

Understandably, it is a short period in which to expect dramatic redistributive transformation (see Daniel, Habib & Southall 2003:2), however, intentions of political intervention into the policy making choices require that the incremental developments thus far merit closer scrutiny especially since ambitious targets had been set yet the public is regularly informed several targets are far from being achieved. The annual opening of Parliament addresses of the President as well as the Budget speeches of the Provincial premiers and Ministers of specific cabinet portfolios, in part, bear a tone of dramatic transformations. However, inherited structural constraints, particularly of an economic nature, affect the strident claims politicians make about achieving socio-economic transformation (Marais 2001:2). I give considerable attention to integrating data of a historical nature to help illuminate the positive or negative judgements concerning achievements in the first fourteen years of transition.

Sufficient quantitative data exists of the needs, expectations, and priorities across several marginalised, informal settlement communities, as well as of the achievements of government towards realising the rights associated with this sector of society, but this quantitative information is still open to interrogation and interpretation through qualitative research methods. Much attention has been given to the institutions and periodic electoral rituals that are symbolic and evident of democratic consolidation. However, the equalisation demands of citizenship status among such marginalised persons suggest that qualitative studies of the experiences of the formerly disenfranchised groups in a changed political order, and how they link these experiences to the realisation of their rights, is a worthwhile complementary type of study to help us understand the dynamics of such communities. A qualitative study appears most suited in circumstances where it is apparent that people remain dissatisfied with their standard of living and occasionally are called on to boycott the election rituals of inclusivist democracy. Also, the argument that there is “contestation” about the meaning of rights (Pigou et al 1998) inspires the motivation and the specific contribution that I aim for in the thesis. The detailed list of questions at section 2.3.8 of this chapter points out what type of questions I asked in interviews with persons involved in housing and housing rights processes and as well as in my

examination of published sources to collect data on meanings about rights and obligations towards realising rights.

2.3 The notion of "discourses" on the realisation of rights

The idea of 'discourse' has been popularised to illuminate the persistence of domination through knowledge. My preference for a research method that involves the gathering of data pointing to different discourses on rights is similar to sociologist Tim Dant's (1991:129-31) view that in the analysis of discourses the focal concerns are the interrelationships between language, ideas, knowledge, power, domination, and resistance. Dant (1991:8) talks of the social knowledge shared by people as existing as discourse; social practices which generate, disseminate, acquire, review and criticise knowledge all takes place as discourse.

With origins in linguistics the contested notion of discourse has gained immeasurable popularity; the notions of 'discourse', 'discourse analysis', and 'the analysis of discourse' have all cross-fertilised each other, and have influenced new research directions in the social sciences. Its diverse meanings and multitude of definitions has widespread use in different social science disciplines (Hastings 2000:131-132; Jaworski & Coupland 1999:6-7,35; Kendall & Wickham 1999:35). Housing and urban studies researchers (Hastings (2000:131; 2002:19) say one approach 'discourse analysis' is challenged to prove its value to others in the social science community, and, in fact, has produced a large body of research illuminating transformation processes and power relations, and could prove to be of value in studying housing processes.

2.3.1 Distinguishing between discourse, discourse analysis, discourse theory, and the analysis of discourses

Doing qualitative research and trying to make sense of what an analysis of

discourses approach entails encounters a variety of explanations of what have been the aims and goals of researchers using the notion ‘discourse’ as a principal tool in their research, their attempts to clarify or give a name to their specific approach, and the sources of data they use. Common threads are the exercise of power through the use of language, the subordination of some social group, and emancipating subordinate groups by championing their viewpoints.

Making sense of the world, giving meaning to the world, communicating our experience of the world is done through language. Linguists used the term discourse in the analysis of the organisation of words in conversation, speech, and written texts in the creation of meaning (Coulthard 1985:1-3). Closely related to this is the notion ‘discourse analysis’ which David Howarth (2000:6) says examines language use by analysing talk and text to uncover rules governing the connection of sentences in speech and writing. But, through the expanded interest in sociological issues, discourse analysis has a different meaning than that used by linguists; Howarth (2000:10) adds:

> “Discourse analysis refers to the process of analysing signifying practices as discursive forms. This means that discourse analysts treat a wide range of linguistic and non-linguistic material - speeches, reports, manifestos, historical events, interviews, policies, ideas, even organizations and institutions - as ‘texts’ or ‘writings’ that enable subjects to experience the world of objects, words and practices.”

This means that in sociological investigations of subjects’ experiences of phenomena such as power, ideology and domination, rights, and how subjects give meaning to these, it is possible to use a broader range of data sources. Although long associated with linguistics, it’s usage has developed to have more to do with just language. The expansion of discourse analysis to many disciplines still had some limited application --- much attention was given to the analysis of text and talk and not enough to “the conditioning or conditioned structures and processes of the social contexts of their actual use” and the “[m]acro-constraints of social and political structure, thus, remained in the

background" (van Dijk 1990:7). The challenge to new social science research is to unveil, through a combined focus on social and political structures and on language, how modern power abuse, its legitimation, the reproduction of inequality, and the manufacture of consent is achieved through the control of semantic content (van Dijk 1990:11). In broader terms, it is about how discourse shapes social and political institutions, and how these, in turn, shape discourse.

Interest in the notion discourse in modern social theory has been dubbed the "linguistic turn" (Purvis & Hunt 1993:474), and researchers adapting the notion find it fruitful when theorising how language among other forms of semiotics expresses social experience as well as contributes to the constitution of social subjects and their relations. Discourse analysis often emerges in interpretive sociological research concerned with power relations; ways of thinking about certain social issues; how some views become authoritative and others marginalised; the conditions under which knowledge is produced and communicated; and the practices of institutions, among others (Hunt & Wickham 1994:5-20). In some research 'discourse' is associated with the concept 'ideology'. Although the two are also differentiated from each other, discourse is sometimes also used to enhance research on ideology, the internalisation of ideology, and the concern about how forms of consciousness reproduce and conceal, as well as possibly undermine relations of class domination and subordination (Purvis & Hunt 1993:473-5, 478, 483). Sociologist Tim May (1997:128) adds that discourse analysis demonstrates how discourses are able to possess a life of their own and contribute to the silencing of other voices.

In his study of the concept 'ideology', sociologist John Thompson (1984:99, 133-8) argues the recent work in the linguistic turn, and the associated concepts of discourse and discourse analysis has given life to new strategies to address connections between power, interests, ideas, language, and possibilities for social change, effectively giving discourse a "sociological turn". This sociological turn is hugely indebted to the work of French social philosopher and linguistics scholar, Michel Foucault. Extensions since Foucault, such as 'critical discourse analysis', have attempted to integrate Foucault's approach with other

sociological traditions like the Frankfurt School of critical theory.

The notion of 'discourse theory' is based on the view that "all objects and actions are meaningful, and their meaning is a product of historically specific systems of rules" (Howarth 2000:8). This approach is concerned with how social practices construct and contest the discourses that make up our social reality. Basically, the world we live in is always about signifying or giving meaning to practices and objects.

Particularly through the work of Foucault, discourse analysis discovered ways of dealing with its limited applications and gained significance for sociological research. Foucault acknowledged that language analysis influenced his interest in developing an analysis of broader social issues, which include the analysis of power and disciplinary forces in human sexuality, the growth of the health care system and the penal system in the modern era of industrial capitalism; he says:

> "The question posed by language analysis of some discursive fact or other is always: according to what rules has a particular statement been made, and consequently according to what rules could similar statements be made? The description of the events of discourse poses a different question: how is it that one particular statement appeared rather than another?" (Foucault 1972:27)

Foucault was interested in how humans were constituted as subjects but avoided the notion 'ideology' because of its homogenised representation of domination, and because he wanted to approach the capacity of humans' resistance to power differently (Foucault 1988:118; Purvis & Hunt 1993:487-9). He saw discourse as a means of political practice, a form of intervention that was part of a struggle where knowledge was a means of practicising power and that had to be challenged by subjugated knowledge (Dant 1991:129-131; Foucault 1988:109). In contrast to Marxist or socialist currents, Foucault also saw knowledge as the linchpin of power and not labour (Aronowitz 2003:162); he argued that what counted as knowledge or science had to be challenged by the "insurrection of subjugated knowledges" (Foucault 1994:41). His notion of

discourse is a sociology of power relations as far as who may acceptably speak the truth of a situation or the "object of discourse" (such as 'rights' or 'adequate housing', in the case of my thesis); he says:

> "... truth isn't outside power, or lacking in power ... Each society has its régime of truth, its 'general politics' of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true." (Foucault 1988:131).

For Foucault a discourse is a collection of statements (which is not the equivalent of 'sentence'), the regularity of statements makes up a "discursive formation" (Foucault 1972:80, 107, 116). These statements deal with the same topic, they combine with other statements in a predictable manner, they generate other compatible statements, and they have the same effects (Mills 2003:54, 64). Foucault clarified his usage thus:

> "the term discourse can be defined as the group of statements that belong to a single system of formation" (Foucault 1972:107),

and,

> "We shall call discourse a group of statements in so far as they belong to the same discursive formation; it does not form a rhetorical or formal unity, endlessly repeatable, whose appearance or use in history might be indicated (and, if necessary, explained); it is made up of a limited number of statements for which a group of conditions of existence can be defined." (Foucault 1972:117)

There were developments and shifts in Foucault's thinking and methods: his development of his notion of discourse and power shifts from an archaeology of knowledge phase to a genealogy of discourses phase (Habermas 1987:248-9, 279-80; McHoul & Grace 1993:14-17). In his archaeology phase he showed how the constitution of truth and the exclusion of other discourses worked in different

forms of scientific disciplines and produced technologies to control different subjects. His shift to a genealogy of knowledge phase gives more attention to resistance and shows how marginalised or subjugated knowledges engage in criticism of dominant discourses and resist established practices of power --- he termed it the "insurrection of subjugated knowledges" (Foucault 1994:41). These genealogies are not about challenging the broad framework of bourgeois domination, but with tackling local and specific issues (McHoul & Grace 1993:85). My thesis takes meanings about socio-economic rights and adequate housing as such local issues.

Foucault's conceptualisation of discourse remains foundational in the 'sociological turn'; it entails understanding the conditions that make certain forms of knowledge and practices possible, to understand the dominant "truth claims" in society, and to avoid causal explanations of outcomes. Elaborating on Foucault's meaning, Alan Hunt and Gary Wickham (1994:8-9) say the effects of discourses on social life are that they:

> "...authorise(s) some to speak, some views to be taken seriously, while others are marginalised, derided, excluded and even prohibited. Discourses impose themselves upon social life, indeed they produce what it is possible to think, speak and do."

Sara Mills's (2003) exploration of Foucault's use of discourse concurs that of one of the intended meanings of his use of was that it entailed processes that exclude other statements:

> "The notion of exclusion is very important in Foucault's thinking about discourse, ... Rather than seeing discourse as simply a set of statements which have coherence, we should, rather, think of a discourse as existing because of a complex set of practices which keep them in circulation and other practices which try to fence them off from others and keep those other statements out of circulation." (Mills 2003:54)

In a related matter, Jim Kemeny (1988), a housing researcher sympathetic to the

use of analysis of discourse research methods, also warns that power is exercised in housing research, something common to all social research. In the production of knowledge on housing processes, certain perspectives about what the central issues are, have become hegemonic through how research funding organisations, journal editors and editorial boards act as "gatekeepers" (Crane 1967:195) excluding some viewpoints and constraining discourse:

> "Crucial to the question of which issues and problems become defined away and which become accepted as the 'central issues' must be the exercise of power. For the production of knowledge through conceptual and ideological filters must be understood in the context of the social control of the production process. Dominant perspectives become dominant as the result of the imposition of one definition of reality upon the consciousness of researchers at the expense of other, different, definitions. To understand why, therefore, certain perspectives attain a position of hegemony within a science it is necessary to understand the way in which the power structure of the science distorts the conceptualisation in the first place and forces them into particular lines of thought." (Kemeny 1988:206)

These linkages between power, knowledge, and 'truth' are central concerns to Foucault's studies. Hence my proposition to use a methodology drawing on Foucault's notion of discourse, as well as extensions thereof, by accepting that the Constitution "governs" (see Seleoane 2001) statements about socio-economic rights, by examining the links between power and knowledge, of the type of "discursive regime" it permits (Foucault 1988:107, 112-3, 118-9), consequently, I commenced with the expectation this may give my research greater insights into the prospects of the post-apartheid transition and the struggles about housing. But discourses are forms of knowledge that also nurture opposition to domination, hence discourse does not simply conceal, it is also something that there is a struggle about and is a power contending social forces attempt to influence (Foucault 1977a; Purvis & Hunt 1993:488).

A discourse delimits what can be said and supplies the concepts, metaphors,

models, analogies for new statements made within that discourse. Any discourse is part of a complex of other discourses. Foucault refers to as “discursive practices” those forces which restrict and constrain the production of knowledge (Foucault 1972:49, 117), they are practices by which people identify themselves as authorities to speak on a subject and make refinements to ways of thinking about the subject (Mills 2003:57). He characterises discursive practices as the:

> “delimitation of a field of objects, the definition of a legitimate perspective for the agent of knowledge and the fixing of norms for the elaboration of concepts and theories. Thus, each discursive practice implies a play of prescriptions that designate its exclusions and choices.” (Foucault 1977:199)

There are a number of both external and internal practices with exclusionary effects on the production or acceptance of other knowledge or discourses (Mills 2003:56-61). An external exclusionary practice would be distinguishing ‘experts’ who are regarded as being able to speak the truth, while the statements of those persons who are not in positions of power are not regarded as the truth. The practices of institutions like universities, publishing houses, government departments, and scientific bodies reinforce these exclusionary practices on other discourses. Internal practices occur when a subject area, like in my thesis’s research focus, social and economic rights, is studied within the confines of a particular discipline such as law (see Evans 2005:1046, 1049-54), or even sociology, and thereby restricting the possible knowledge we may develop. Another internal exclusionary practice Foucault calls “the rarefaction of the speaking subject” (Foucault 1972:50-1; Mills 2003:61). In this instance, the dominant trend in society is to limit who we accept as an authoritative speaker on a subject. So, for instance, we could limit ourselves to Constitutional Court judges as the only authoritative interpreters of the concept “social and economic rights” or “state obligations”, or what it means to “respect, protect, promote, and fulfill” constitutionally guaranteed rights, and consequently exclude the statements of civil society organisations on these. Or we could limit ourselves to government officials’ notion of “adequate housing”, the government’s annual reports, or the Finance Minister’s reports on the nature of the economy, the

state's revenues and its spending capacity, and those other forms of making statements or "enunciative modalities" as Foucault (1972:50-5) collectively termed the disparity of forms through which a group of statements can be made --- and ignore the perspectives of housing activists organising communities for the realisation of housing rights.

Foucault sees his notion of discourse as more fruitful than that of ideology because the latter is always treated as something in opposition to the "truth"; for Foucault truth is produced within discourses that are neither true nor false (Foucault 1988:118). Mills (2003) argues Foucault is useful where Marxist analyses of links between ideas, ideology and power are not successful:

> "The reason that many people find the term discourse to be of use is that Foucault stresses that discourse is associated with relations of power. Many Marxist theorists have used the term ideology to indicate that certain statements and ideas are authorised by institutions and may have some influence in relation to individuals' ideas, but the notion of discourse is more complex than this notion ideology in that ... a discourse is not simply the imposition of a set of ideas on individuals." (Mills 2003:54)

Although it is most apparent that Foucault is using this notion to show how people govern themselves and others by the production of "truth", he also regards the production of knowledge by political activists as a form of resistance to the knowledge disseminated by the State and its institutions (Dant 1991:131; Mills 2003:74, 76). Foucault (1988:126) observed intellectuals have taken to organising around specific issues, and connecting themselves to struggle practices on that specific issue, something I find inspiring about how intellectuals could take up housing rights issues. For Foucault, the production of alternative knowledge or discursive intervention is a form of political practice and resistance to power relations involved in knowledge production; this position inspires a considerable part of my discussion on the meaning of housing as a right. His argument about discursive interventions also helps in spelling out what specific contribution my thesis could make as an intervention into SA's transformation:

> “And if pointing out these sources - denouncing and speaking out is to be part of the struggle, it is not because they were previously unknown. Rather, it is because to speak on this subject, to force the institutionalized networks of information to listen, to produce names, to point the finger of accusation, to find targets, is the first step in the reversal of power and the initiation of new struggles against existing forms of power.” (Foucault 1977a:214)

Discourses delimit what statements can be made and make the rules for what new statements can be made. All discourses are part of a larger complex of discourses and have rules for combining with other discourses. Although Foucault did not spell it out as such, Kendall and Wickham (1999:41-6) argue that his use of the notion of discourse entails five discernible steps. The first step is the recognition of a body of organised, regular and systematic statements on an object. For instance, statements on the notion of economic and social rights; how statements are organised around this notion without trying to peer beneath the surface of these statements. The second step entails identifying the rules for the production of statements to enable us to see shifts that occur in a discourse. This may concern issues such as the meaning of rights and shifts in thinking about rights, or how judges in the different courts, in different rulings, have interpreted the Constitution’s rights promises and the state’s obligations. Together with the foregoing step, the third step is the identification of rules that delimit what can be said. It is similar to the fourth step, the identification of rules that create new spaces permitting new statements to be made. The idea is to avoid seeking the origins of a particular thought so as to set limits to our focus on the production of statements, but it is also so that we may grasp what are new statements within a discourse. For instance, what inventive thinking and practices have arisen on the realisation of rights. Step five is identifying rules that ensure a practice is simultaneously material and discursive. This means we should not see a simple one-way causal connection between ideas and material conditions. For instance, we should not give primacy to material conditions over thinking about rights, nor should we, conversely, give primacy to statements about rights over material conditions.

Extensions to Foucault's sociological turn in the use of the notion of discourse include "critical discourse analysis" (Jaworski & Coupland 1999: 6-7, 35; Marston 2002) and "critical linguistics" (Wodak 1989). Although Foucault's approach to discourse was critical because it offered possibilities for the critique and renewal of social and historical conditions (McHoul & Grace 1993:27), extensions since Foucault's innovative usage such as the "critical discourse analysis" approach is seen by its advocates as political engagement working alongside the disenfranchised. Based on an examination of literary texts, linguistics scholar, Roger Fowler, offers the following definition (see also Jaworski & Coupland 1999:33):

> "I mean a careful analytic interrogation of the ideological categories, and the roles and institutions and so on, through which a society constitutes and maintains itself and the consciousness of its members... All knowledge, all objects, are constructs: criticism analyses the processes of construction and, acknowledging the artificial quality of the categories concerned, offers the possibility that we might profitably conceive the world in some alternative way." (Fowler 1981:25)

Greg Marston (2002:85), who has an interest in the utility of the notion of discourse in researching housing policy, also acknowledges that for some time discourse analysis had been associated with linguistic studies, but that field did not examine the origins of social formations, and it paid little attention to socio-economic class and official institutions. Critical discourse goes beyond the socio-linguistic notion of discourse in that it probes discourse as a form of power and also as an instrument in the social construction of reality. He sees critical discourse analysis as an advancement on the linguistic oriented studies:

> "Critical discourse analysis investigates the category of discourse as a form of power and discourse as an instrument of the social construction of 'reality'." (Marston 2002:85)

Linguistic oriented discourse analyses did not adequately theorise or analyse the social and political context and the relations of power that shape discourse. Linguistics scholar, Ruth Wodak (1989:xiv) argues the "critical linguistics"

approach is concerned with “uncovering injustice, inequality, taking sides with the powerless and suppressed”, and “to uncover and de-mystify certain social processes in this and other societies, to make mechanisms of manipulation, discrimination, demagogy, and propaganda explicit and transparent.” Critical discourse analysis integrates the Frankfurt School of critical theory’s interest in ideology and their reconstruction of Marxist theory to analyse antagonistic relations between political groups and social classes in advanced capitalist society, and develop a theory of communication to analyse ideological forces inhibiting socialist revolution (Agger 1991:107-111; Bottomore 1984:11-14):

> “the Frankfurt theorists believed that Marx underestimated the extent to which workers’ (and others) false consciousness could be exploited to keep the social and economic system running smoothly.” (Agger 1991:107)

Socialist revolution in the twentieth century was an elusive quest mostly because of the working class’s susceptibility to false consciousness like dominant ideas that the economy was run along rational lines, hence, capitalist social relations and a capitalist economy could endure. The Frankfurt School was critical of Marxist approaches with a positivist tendency in the way they expected the demise of capitalism. Class struggles had to be advanced through the critique of dominant idea systems or ideologies (Agger 1991:107, 109,110). Jürgen Habermas expanded the school’s interest in ideology and false consciousness through his study of language, intersubjective communication, discourse, and the notion of truth (Outhwaite 1994:39-57; Sewart 1980:342-50). Sewart (1980:342-3) says Habermas’ linguistic turn was about arguing “sociopolitical relations of domination are rooted in distortions of communication” and he wanted “to locate in the basic human activity of communication a possibility of making rational decisions about the truth of norms and values”. This bears a resemblance to Foucault’s idea of resistance to hegemonic discourse.

There are significant differences in the ideas of Foucault and Habermas. Foucault and other postmodern theorists are critical of the ideas and institutions of the European age of Enlightenment such as reason, rationality, and the

modern state (Calhoun et al 2002:351; Habermas 1987:239-40, 246, 269, 282). Foucault pessimistically sees the institutions and modern forms of knowledge, the sciences or epistemes, which develop in this Enlightenment age not as liberating humans but as forms of exercising power and having social control effects on humans. Habermas sees similarities in Foucault's genealogical historiography and his own concerns with communicative action in the "lifeworld" (Habermas 1987:286). He observes that Foucault sees the transition from the absolutist state to modern state as conferring the latter type of state with a monopoly on violence as though there was a simple continuity with its predecessor; but Foucault does not see it simultaneously established, in a revolutionary way, the constitutional state, a political order where the absolutist ruler lost power to the sovereignty of the people, and liberal and civil rights gains were made under constitutional states (Habermas 1987:289-90). Habermas opposes postmodernists' pessimism about the Enlightenment, he sees the ideals of the Enlightenment as being an unfinished project and the best hope for human emancipation, when corrected as needed. Calhoun (2002:351-2) says:

> "He developed a theoretical system devoted to the *possibility* of reason, emancipation and rational-critical communication embedded in modern liberal institutions and in the human capacities to communicate, deliberate, and pursue rational interests."

Habermas sees humans as communicating information and points of view in an abstract network he calls the public sphere; he accepts that a differentiation sets in among actors in the public sphere, and some actors may have greater influence in the public sphere (Habermas 2002:358-9, 360-1). Once again, there is some resemblance to Foucault's notions, namely, that of the "rarefaction of speaking subjects" who shape discourse (Foucault 1972:50-1; Mills 2003:61).

However, Habermas feels constitutional guarantees of rights and a robust civil society can rescue the public sphere from any distortions in communication and, through civil disobedience, can force reconsiderations of the constitutional state as a dynamic and unfinished project (Habermas 2002:373-4). Thus, it appears

that, through the apparatus of the modern bourgeois constitutional state, it is still possible to further the emancipation ideals of the Enlightenment.

Some reservations have been made about whether discourse analysis is an inherently political project that advocates on behalf of the oppressed and disenfranchised or if it is merely a research approach oriented simply towards critique that leaves unclear issues like agency and the motor for social transformation. In defence of critical discourse analysis, it has been argued there are connections between language use, social practices, and political processes. The argument claims discourse analysis explores the relationship between language and power and, consequently, wider social processes (Hastings 2000:138). Arguably, critical discourse analysis has in common with the broader realm of critical social science approaches an ontological view of humans as having "unrealized potential" (Neuman 2000:76-9) but unfortunately humans live by oppressive institutions and idea systems that conceal this, and an epistemological viewpoint that research or knowledge production should uncover these distortions thereby contributing to changing them.

From seeing the popularity of the notion of discourse, that it is sometimes linked to ideology, and that there is a range of research approaches that incorporate the term to distinguish among themselves, social psychology scholar, Vivien Burr (1995), also points out there is difference between 'discourse analysis' as opposed to the 'analysis of discourses'. My thesis is more in the nature of the latter, the analysis of discourses. The analysis of discourses is one form of "deconstruction", which entails "tak[ing] texts apart and see how they are constructed in such a way as to present particular images of people and their actions" (Burr 1995:164). This description and explanation is likely more oriented to students of social psychology and their interest in issues of power and identity formation, but arguably has the elements of its utility to sociological research. As a specific form of deconstruction, once again in reference to the concerns of social psychology, Burr (1995:166) says the analysis of discourses involves taking prevailing discourses and examining their identity and power implications. In a sociological analysis of rights discourses and of adequate housing

discourses, the interest would also be in power relations between categories such as classes, the state, the bureaucracy, the judicial system, land and buildings owners, the homeless, the landless, the voters, and the disenfranchised. What a researcher is doing in the analysis of discourses is "searching for recurrent themes, for coherent sets of statements or phrases which appear to talk about or represent events in similar ways, for metaphors that bring with them particular images of the events described, for words which seem loaded with meaning" (Burr 1995;168). It is an intuitive and interpretive process without a systematic coding procedure, and within a social constructionist framework it is one of many possible readings of a text (Burr 1995:171). As to the benefits of this approach, Burr (1995:172) says "[t]he ultimate aim of the approach ... is to take a critical, progressive and political stance to the truth claims made by discourses which help maintain oppressive power relations, and to increase the 'voice' of marginalised discourses".

2.3.2 Analysis of discourses and sources of data

Foucault's study of prison psychiatry, *Madness and civilisation*, used data drawn from medical and legal reports (Foucault 1977:204). In critical discourse analysis, interviews are a preeminent source of data, but only to further explore issues discerned in the analysis of documents (Marston 2002:85). For researchers of housing issues, discourse analysis and its extension, critical discourse analysis, has emerged almost in the fashion of a paradigm shift or epistemological break that challenged the long-time dominance of positivist perspectives into research on the production, consumption and distribution of housing, and the nature and meaning of housing (Clapham 2002:59; Hastings 2000:132 Marston 2002:82-4). It is a further area of study in the discourse studies that are being used in many areas in the social sciences. In addition, insights are drawn from the critical theory tradition and its focus on antagonisms between political groups and social classes (Marston 2002:85). Hastings (2000:134) specifies the research agenda of the new paradigm in housing studies as an attempt to understand how housing is experienced and how

meaning is produced about housing issues. Furthermore, its qualitative orientation may be discerned in the nature of empirical data it analyses - “texts and talk” (Hastings 2000:133), although there is preference for written texts. Further contributions to the development of the paradigm contend there is a need to understand both texts and practices or the relationship between texts and the actual activities and social relations on the ground. To illustrate this point, it means investigating how policy texts are interpreted by the audiences they are intended for (Hastings 2000:133). The qualitative orientation of my study is more in the vein of what Neuman (2000:147) calls ‘bricolage’: I draw data from the variety of published sources and available verbal statements relating to the topic; most of those I used are described in the next section.

2.4 Sources of quantitative and qualitative data on the realisation of social and economic rights

Foucault’s theory of the exercise of power through discourse is a key influence in my analysis of statements about socio-economic rights in general and housing rights in particular in South Africa. Seleoane (2001:66) cautions that discourse on socio-economic rights is constrained by the Constitution’s conceptualisation thereof but the discourses on socio-economic rights and adequate housing have several different agents making statements about these. Sarkin (1998:629) talks of a post-apartheid configuration of prominent forces that make core contributions to knowledge of and development of a rights culture. These forces include: the Constitution, Parliament and ministries dedicated to specific portfolios, the Constitutional Court, the international human rights treaties which government ratifies, the South African Human Rights Commission, and non-government organisations and civil society organisations. Undoing the apartheid legacy is crucially linked to the discourses --- the thinking and related practices --- which affect the unfolding of people’s realisation of socio-economic rights. Through interviews and the analysis of texts in terms of the research questions listed at section 2.3.8, my study examines this configuration’s statements and contributions to socio-economic rights discourse, with specific focus on the

consequential housing policies and practices.

Studies conducted since 1994 on socio-economic rights are mixtures of quantitative and qualitative reports either generally on issues of social and economic rights or specifically on housing. Probably, the principal sources of the "official discourse" (Burton & Carlen 1979) or, in Foucault's (1972:50-5) terms, "enunciative modalities", on developments here are the annual publications of government departments at national and provincial level; the publications of the South African Human Rights Commission on socio-economic rights are considerably of a quantitative content that relies on figures obtained from state departments and its evaluations of these achievements are framed by its constitutional mandate and the Constitution's qualifications of these rights.

2.4.1 The National Department of Housing annual reports

Since the appointment in 1994 of the first post-apartheid Minister of Housing, Joe Slovo, the National Department of Housing has maintained its record of annual publications and reporting on the progress of housing developments. These sources are within the orbit of Burton and Carlen's (1979) idea of "official discourse", which extends the empirical list in Louis Althusser's conception of the "state's ideological apparatuses" and includes state communications and publications. Althusser elaborated of Marxist-Leninist theories of the state and argued the state is more than repressive apparatuses which intervene in the class struggle in the interests of the ruling class using or functioning by violence. There are also the distinct and specialised "ideological state apparatuses" which function by ideology to realise the interests of the ruling class. But state departments function through a mix of both repression and ideology, with one mode usually being predominant (Althusser 1971:137, 141- 6). Burton and Carlen (1979:24) argue for the ideological role of the publications of state departments: "We have called these publications 'official' because they are produced at the command of the government, and we have characterised their institutional site as comprising part of the State's ideological apparatuses ...".

Thus, I have taken the position that official publications from the Housing Department(s) may be seen to be part of the “state’s ideological apparatuses” that legitimate its discourse on the notions of “rights” and “adequate housing” as well as its actions in these matters (see Burton & Carlen 1979:22, 24-5, 31, 45). These publications have the effect of overshadowing the statements on the right to adequate housing by parties outside of government such as the “new social movements”, noted for their resistance to the government’s neo-liberal economic policies (Forrest 2003) and for arguing official policy is the origin of the housing rights crisis. These publications suppress the alternatives that these movements offer, they make claims and provide evidence of the state’s commitment on housing rights. Hence the state is justified in its measures to maintain public order and dispense justice in the face of revolt about housing issues.

The publications argue there is a rational approach to the housing programme and thus redeem the state’s legitimacy by undermining rival discourses. Burton and Carlen (1979:45-6) see the power “effects” of the official discourse thus:

> “... Official Discourse reproduces representations that claim the state apparatuses are founded upon the general will of citizen-subjects. Official Discourse is a selection of existent modes of reasoning that celebrate dominant normative principles. ...”
>
> ...
>
> “State discourse uses the language of administrative rationality, normative redeemability and consensual values to indicate itself as functioning within a democratic mode of argument.”

2.4.2 The Gauteng Department of Housing annual reports

These annual government publications are similar to those of the national housing department. However, they are focused at provincial level developments; they cover strategies to address the housing backlog in the Gauteng provincial region, as well as the actual achievements, they also identify

the challenges facing the provincial department, and report on the provincial government's management of its housing finances. These strategies entail types of housing, allocation of funds, and consideration of new legislation.

2.4.3 Studies by the South African Human Rights Commission

The Constitution in *s* 184(3) allows for the creation of the Human Rights Commission (a constitutional amendment in 1998 changed the name to South African Human Rights Commission, SAHRC hereafter) as a state institution expected to strengthen constitutional democracy. The SAHRC monitoring role is a unique factor in global jurisprudence (see ESR Review 1998 1(1):1). Its tasks include monitoring how state departments deliver in terms of how rights are defined in the Bill of Rights:

> "*s* 184 (3) Each year, the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment." (RSA 1996)

The SAHRC is tasked with gathering data from various government departments dealing with their respective performances on the realisation of socio-economic rights, or the Constitution's definition of the state's core obligations to "respect, protect, promote and fulfill" the rights. It liaises with the national and provincial departments about developments on housing rights. The first year in which this was to be done was 1998, leading to the SAHRC's first report published in March 1999. In its annual report of January 2000 the SAHRC claimed that it had "come of age" by 1999 and it had "undertaken the most comprehensive programmes and interventions to date" (SA Institute of Race Relations 2001:521). The SAHRC acquires its information through questionnaires or monitoring instruments called "protocols". The SAHRC asserts that its protocols give special attention to studying developments effecting marginalised or socially

and economically vulnerable groups."(HRC 2000:2) groups, which include: persons living in rural areas, in informal settlements, homeless persons, female-headed households, previously disadvantaged racial groups (Africans, Coloureds, Indians). The SAHRC exposes departments that are non-compliant with the request to submit data, and it has subpoena powers. It also makes recommendations on what actions state departments should take to realise progressively the right to housing (HRC 2001:9, 12).

2.4.4 Studies of rights and delivery in post-apartheid South Africa

There are some notable sources outside the ambit of state departments and constitutionally created bodies that have contributed to the discourse on rights and adequate housing.

2.4.4.1 The study by the Community Agency for Social Enquiry (CASE)

The SAHRC facilitates wider civil society involvement and contributions to research into developments on realising social and economic rights since 1994. To this effect, it employed a non-governmental research organisation, the Community Agency for Social Enquiry (CASE), to complete a study of public and non-government views and perceptions on these developments (see Pigou et al 1998). Subsequent to this research, CASE has completed a number of other studies on rights perceptions.

Most of the CASE report data on views and perceptions was captured through means of a national survey or questionnaire. The report noted the need to bridge the abstract conceptualisation of rights in the Constitution and public awareness of the claims that can be made against those rights. The report produced interesting data on the diverging responses across race and income groups on levels of satisfaction with living conditions, on appropriate redistribution measures, and on issues the government must address urgently. This data was produced in quantified responses. Although it was published only two years after

the Final Constitution was passed in 1996, it signalled some disturbing facts one would expect government to address as a matter of urgency. It reported that low percentages of the population had seen a copy of the Constitution (32%), and there was low awareness of the Bill of Rights (30%) and socio-economic rights (Pigou et al 1998: 24-6). While education may be a solution to these specific issues, it is still clear that there is a perturbing situation about public perceptions of the realisation of rights that fall under the broader umbrella of social and economic rights. As many as 29% of respondents felt housing was a major concern (Pigou et al 1998:10). Furthermore, there are significant levels indicating low perceptions of delivery on housing and such trends are certainly at odds with President Thabo Mbeki's reported perception of enormous patience about housing delivery among the homeless:

> "Only 24% of the respondents believe the government has kept its promise to provide houses to people, and 60% believe it has not done so. The belief that government has kept its promises is held more by Africans (25%) and coloureds (13%), than by whites (11%), and Indians (6%): more by people in urban areas (30%), than by people in rural (24%) or metropolitan areas (21%). Interestingly, this does not reflect the common perception among NGOs that housing development receives preferential treatment. In informal and metropolitan settlements only 17% believe that government has kept its promises." (Pigou et at 1998:13)

The report acknowledged problems about the absence of clear definitions of rights and state obligations in the Constitution, about public expectations and actual delivery, and about the flexible approach in terms of budget commitments and timeframes for delivery. Consequently, it suggested that much space is left for research into the contestation between state, civil society, and the courts into the realisation of these rights (Pigou et al 1998:8). The report steers clear of being an evaluation of performance, but its contribution as a quantitative approach prompts research contributions that can invigorate the rights discourse and the life of those central forces in the configuration expected to further the realisation of rights in SA.

2.4.4.2 Studies of the monitoring process

Mandla Seleoane (2001) of the Human Sciences Research Council (HSRC) has given attention to the SAHRC's monitoring and reporting process. While the SAHRC has been given a central place in the monitoring and reporting process, Seleoane supplements that task by examining the connection between theory and practice. He re-examines the spirit of social and economic rights since these have evolved through various individual philosophical contributions to the discourse as well as in various declarations and covenants; he notes the difficulties that have emerged due to the ranking of civil and political rights above social and economic rights in the works of various writers since the 1970s; he observes the different pace at which institutions have been developed to realise the latter rights; and he contributes his own assessment of the SAHRC's monitoring and reporting methodology of government departments' performance on the Constitutional promises. Seleoane attempts to tease out the strengths and weaknesses of that monitoring process noting that the SAHRC's conceptualisation of these rights is restricted to the Constitution's conceptualisation thereof, and, consequently, so too is the monitoring process.

2.4.4.3 Journal monitoring and debates

Various research centres and institutes contribute to invigorating debate and education on social and economic rights through involvement with communities, engagement with the state and courts, and broadening the archive of materials. One such organisation is the Community Law Centre at the University of Western Cape and its involvement in publishing a specialised journal, *Economic and Social Rights Review* (abbreviated as ESR Review in my references). The journal editors hope this platform for civil society debate will lead to practices that make the Constitution's formal promises of equality a reality:

> "... [I]t is widely recognised that constitutional provisions mean little if they do not change the lives of people they are meant to govern. The ultimate custodians of constitutional promises are the people

> themselves. It is therefore essential that civil society play an active role in monitoring and, wherever necessary, pressurising responsible institutions to fulfill their obligations. As citizens we need to keep questions about the present state of the delivery and accessibility of housing, health services, social security, food and water and education on our personal and on the public agenda. We have to ensure that the different institutions responsible for the implementation and monitoring of economic and social rights reach their full potential." (ESR Review 1998 1(1):2)

The articles in the pages of the *Economic and Social Rights Review* are of a wide scope: they cover interpretations of the Constitutional provisions on these rights; they analyse international covenants dealing with these rights; they report on specific conflicts between communities and government, and the role of the courts in those conflicts. Such journals are a valuable resource in giving life to the realisation of these rights and perhaps challenging the Constitution's restrictive conception of social and economic rights.

Another notable scholarly journal appearing even before 1994 is that managed by the Centre for Applied Legal Studies at the University of Witwatersrand, the *South African Journal on Human Rights*. Although its contributions are on the broad scope of human rights, it has published several articles dealing with the vexed issued of whether social and economic rights should be included in the Constitution or even in the Bill of Rights. Since the actual finalisation of the Constitution, its contributors have debated developments relating to the socio-economic rights contained in the Constitution. For instance, articles such as those of Bilchitz (2003) and Pieterse (2004) closely examine the Constitutional Court's interpretations of rights and argue how these may be supplemented as well as how judicial enforcement may be enhanced. Newman (2003) examines the monitoring process played by a statutorily created body, the SA Human Rights Commission, and evaluates how that body's activities may be enhanced by civil society monitoring. Liebenberg (2005) gives attention to the concept "human dignity" and its relationship to human rights, and evaluates the

Constitutional Court's approach to linking material deprivation and the realisation of social and economic rights. Wesson (2004) examines and evaluates a specific Constitutional Court ruling dealing with the right to housing.

2.4.4.4 Miscellaneous publications on housing developments

Several other archives containing data on housing developments have been created by a range of institutions. For instance, the Centre for Policy Studies in Johannesburg conducted its own longitudinal research, a five year research project (Tomlinson 1998:137). The fruits of that monitoring are the obvious publications by researchers linked to the research centre.

Sometimes the archives have relied on extracting statistical data from reports of the national and provincial housing departments themselves. For instance, the monthly reports of the South African Institute of Race Relations (SAIRR), the *South African Review*, and Statistics SA (STATSSA). Non-government organisations add much analyses and comment, thus enlivening debate and challenging both the official and far-left discourses. The archives created by STATSSA created data that can test for correlations with housing developments, such as, unemployment levels and consumer expenditure patterns.

Individual researchers contribute to the debate on housing processes too, though not always explicitly stating which theoretical perspectives influence their research, and their research is either on developments in specific provincial regions or an examination of the national policy (Bond 2000a & 2000b; Bond & Tait 1997; Marais & Krige 2000). Sometimes their research in broader areas like "quality of life" (Møller 2000) incorporate the housing question.

As early as 1976 the periodical *Housing South Africa*, associated with the South African Institute for Housing and the National Association of Home Builders, emerged. The periodical's managers also had some links to the Urban Foundation, a private sector organisation that became involved in Black housing after 1976. It covered topics like, all in relation to Blacks, housing programmes

and strategies, issues on funds for housing, the behaviour of institutions involved in bond financing, building costs and designs, efforts to attract investors, analysis of housing needs. In these pages, the Institute declared that its mission was about affordable housing and working towards formulating housing policy, and all this was compliant with the United Nation's definition of housing. Well into the first decade of a post-apartheid housing policy, the name of the periodical changed to *Housing Southern Africa* and the periodical has covered the spectrum of visions for a new housing policy as well as the broader range of housing-related issues that have been surfacing in this era.

Anthologies of conferences, seminars and symposia such as the "*Low-cost housing and ubanisation conference*" (AIC Conferences 1994) also have appeared (see also Harrison, Huchzermeyer & Mayekiso 2003; Khan & Thring 2003; Rust & Rubenstein 1996; Laeburn-Peart 1994). These have made available articles and papers covering a range of issues dealing with housing the poor, such as: historical essays on the origins of the housing backlog, the development of post-apartheid housing policy, studies of the role of specific institutions in housing processes --- i.e. financial organisations, civic organisations, building contractors, and local government, studies of specific housing strategies, problems of urban bias and land shortage, issues emanating from the legal framework concerning housing rights, the macroeconomic environment's effect on housing rights and processes, and notions of entitlement and empowerment in housing strategies.

2.4.5 Archives

Seleoane (2001:66) provocatively argues the discourse on social and economic rights may be constrained by the Constitution's conceptualisation thereof. During my general queries at the Constitutional Court Library about the drafting of the post-apartheid constitution, I learned that tape recordings were made of the constitution negotiations sessions. Undoubtedly, these would prove to be a useful source of information on the positions held by different participants or

party representatives on how statements about rights should be formulated, but I could not get any further assistance on locating such tape recordings.

The Housing Act of 1997 stipulated that a National Housing Data Bank and Information System be created, however, in my thesis I make use of the national and provincial department's publications instead. The Council for Scientific and Industrial Research (CSIR) has also been involved in research on low-income housing project developments and assembled some data on these. Besides the National Housing Department's statistics on nationwide housing developments, there is the work of the SA Human Rights Commission to interrogate these statistics. Application was submitted to the SAHRC, which has assembled data on housing developments targeted at low income communities or households, to examine the data they have assembled. The response of the SAHRC, however, was that it releases this information in its annual reports.

The National Housing Act is a product of several stages and I examined the preceding documents in the form of Green Papers and White Papers. Prior to the 1994 elections which brought about a change in government, several civil society groupings, such as, PLANACT, also debated policymaking on housing delivery and adequate housing.

2.4.6 Interviews and interview informants

There is a wide spectrum of perspectives on the realisation of the right to housing. On the housing backlogs in particular, Bond (2000a:18-20) discerns two broad perspectives: one perspective includes a diversity of organisations that, by and large, approve of the government's performance; another perspective is that of a diverse grouping of organisations who share similar criticisms of developments on housing rights. My selection of interview respondents tried to reflect this diversity in order to provide sufficient valid and reliable data for the analysis of a complex discourse. Although the interviews at certain moments dealt with perspectives on the government's performance on

delivering on housing rights, the interviews also sought out the respondents' ideas about the meanings of rights and what implications this had for policy.

After selecting the range of organisations for the interviews, telephonic inquiries were made of which individuals would be available to best represent the organisations' positions on issues and responses to events. In some cases, closer to the scheduled interview date, I was redirected to interview another member. All respondents or an intermediary were sent an introductory letter by fax or e-mail, which provided brief institutional affiliation details of myself, my overarching focus on socio-economic rights and interest in housing rights in particular, a request to record the interview, and a list of theme questions.

I conducted a series of semi-structured interviews of one hour to one-and-a-half hours each with persons attached to the organisations listed below. The idea of "theme questions" (May 1997:107, 111) is a strategy to raise questions in the course of a semi-structured interview and to use other questions to probe deeper into the responses to the theme questions. In this way it is possible to get respondents to relate important experiences, opinions, aspirations, attitudes and feelings about the discourses on social and economic rights and housing rights in particular. Because only a few respondents were available, I also had to scan a wide range of published sources to collect data pertinent to the research questions I used in the study.

2.4.6.1 The Landless Peoples' Movement (LPM)

After many brief telephonic introductions with executive members of the South African National Civics Organisation, as well as forwarding my interview theme questions, turned out fruitless in terms of securing an interview, I felt the only accessible civil society organisation was the Landless People's Movement. My first contact with the LPM was telephonically, and later through e-mails, with Mr Andile Mngxitama, who referred me to two other members. Maureen Mnisi, an activist who deals with housing, directed me to a fellow spokesperson.

a) Person interviewed: Mr Mangaliso Kupheka, National Organiser for LPM
Date of interview: Sunday, 12 June 2005
b) Person interviewed: Mr Mkhululi Zulu, LPM Gauteng Provincial Secretary
Date of interview: Thursday, 07 July 2005
c)Person interviewed: Mr Philip Phosa, LPM Secretary General of Thembelihle/Lenasia Branch
Date of interview: Sunday, 18 June 2006 and Sunday, 16 July 2006

2.4.6.2 Builders Associations / Project Developers: Wietpro Housing

Person interviewed: Ms Bridget Harding, Managing Director
Date of interview: Monday, 18 July 2005

2.4.6.3 The South African Human Rights Commission

Person interviewed: Mr Charles Mphephu, Housing Rights researcher
Date of interview: Thursday, 28 July 2005

2.4.6.4 Gauteng Department of Housing

The information services staff directed my requests for an interview with Housing MEC Nomvula Mokonyane to another senior colleague.

Person interviewed: Mr Willem Odendaal, Chief Directorate, Housing Development
Date of interview: Monday, 08 August 2005

2.4.6.5 Financing Institutions: First National Bank

Persons interviewed: Mr Abel Mngadi, Head: New Business, Housing Finance, and Mr Sibusiso Ndlovu, Head: Marketing & Special Projects, Housing Finance.
Date of interview: Thursday, 06 July 2006

2.4.6.6 Courts and the Constitutional Court

My attempts to contact legal representatives from the Legal Aid Board who had been involved in cases about removing people from occupied land proved fruitless despite being advised to forward my list of theme questions and promises of being put in contact with an appropriate legal representative. I also requested an interview with Justice Albie Sachs, a prolific contributor to debates on the development of a human rights culture in post-apartheid, who, after examining the list of interview theme questions I forwarded to him, declined an interview and sent me a copy of one of his publications (Sachs 2003), explaining that the article deals with many of the theme questions.

Despite not having this first hand contact with any of legal representatives of land or building occupiers or the Court justices, the reports of the Constitutional Court (and sometimes of the High Court and Supreme Court of Appeal) are available electronically as well as in print in the *Butterworths Constitutional Law Reports*. Newspapers also carry articles with some detail of different parties' experiences and perceptions, as well as eyewitness accounts, of conflicts that have gone the legal route; the articles sometime incorporate the opinions of legal scholars. On 27 August 2007 I attended the morning session of an appeal hearing in the Constitutional Court (*Occupiers of 51 Olivia Road*) brought by parties being evicted from inner city buildings in Johannesburg. The gist of that oral presentation and the courtroom exchanges is satisfactorily summarised in the published court reports.

2.4.7 Research questions used in interviews and in the examination of published sources

The following list summarises the themes that were developed in the interview questions as well as which guided the collection of data from published sources. Certain themes were more appropriate for some respondents and not for others. A list of theme questions submitted to identified respondents prior to the actual

agreed on interview date were drawn from the list during the actual interview, bearing in mind the scope of the activities of the organisation in which the individual was involved, as these would be the most appropriate to elicit valid and reliable data from that respondent.

2.4.7.1 Views on budgets and the state of the economy

Discussion was elicited on the following themes to attain respondents' views on the national budget and the state of the economy:

- views on the state's budget allocations to housing in the years since 1994
- views on the nature of the housing budget allocations as a proportion of allocations each year
- views on the state of the economy and the reasons for the decline in housing allocations; what are best indicators of the state of the economy/of the economy's performance and the ability of the state to enhance social spending/ the (foreign) debt servicing obligations and constraints on social spending
- what criteria should be considered in the allocations to the different provinces; what criteria should be considered for allocations within Gauteng province in particular; views on whether an urban bias prevails; how is housing need/backlog calculated in respective provinces
- views on the economy, employment / unemployment and ability to pay bonds; consequences of defaulting.

2.4.7.2 Standards, quality of houses, understanding of "adequate housing"

Discussion was elicited from respondents to obtain their views on what they understand by adequate housing and issues on the standards and quality of houses delivered:

- quality of the houses remains a vexing issue and how should this be considered when deciding on housing allocations; adequacy of actions of government departments in ensuring quality of houses; whether the notions of standards and quality are not appropriate to South Africa

- views on the location of housing developments - proximity to schools, shops, transport, jobs
- views on a “rapid land release” policy; what type of structures may emerge; views on type / standards of housing causing stratification and conflict in townships.

2.4.7.3 The Constitution

In the interviews, these questions elicited respondents’ views on the Constitution, on whether it was adequate in specifying citizens’ rights, and state obligations:

- views on whether the Constitution should be changed to prioritise spending on social and economic rights
- views on the demand that “government must find a way to make the rich contribute more to housing the poor”
- views on the meaning of phrases like “full realisation of the right cannot be achieved as quickly as possible”; what does “respect”, “promote”, “protect” and “fulfill” in the Bill of Rights mean in terms of state duties and obligations; views on consequences of changes to the Constitution
- views on judgements in the Constitutional Court; the ‘*Grootboom*’ case
- views on whether the Constitutional clauses are adequate in instructing the state / or in spelling out its obligations in terms of delivery on social and economic rights
- views on the functioning of the courts / Constitutional Court since 1994
- the different views on the ‘*Grootboom*’ judgement and how it can advance the realisation of the right to housing
- social and economic rights apply to particular classes, what are the different views on how these may infringe on other rights
- the Constitution has come to have a life of its own, what has been positive thus far in terms of values like the improvement of the quality of life
- *s* 26(3) prohibits evictions without court orders, but there are still evictions and contestations, views on whether this clause needs to be changed to

advance the rights of victims

- views on the amendment procedure and is it too stringent if people want clause(2) of *s* 26 to be changed
- whether it is really a fiscal crisis, an objective constraint, or a human-made one, a problem that lies in the semantics of the Constitution
- how do respondents understand “realisation” of economic and social rights; what actions are required and what results should be seen.

2.4.7.4 Government capacity, management, and the banking institutions

These questions elicited respondents’ views about the institutional capacity and management of government on the realisation of social and economic rights, as well as views on the behaviour of banking institutions on those rights:

- views on underspending by provincial governments; is underspending a problem in Gauteng Province
- views on the capacity of government departments
- views on the likelihood that the state is violating the right to housing while it builds its capacity
- views on difficulties of acquisition of new land for new housing developments
- views on the banking sector; pace at which they work with loan applications; where and how they can improve
- views on an urban bias in social spending
- what is commendable about the choice of a housing strategy in terms of market versus state provision of housing
- is there bureaucratic inefficiency in accessing the right; should this be challenged in court
- what needs to be done for effective policing of the industry --- this is in the light of complaints about shoddy development and post-occupancy defects
- it has been argued that building materials cartels have pushed prices up so that they outstrip inflation; does this problem still prevail and what monitoring is there to prevent this.

2.4.7.5 Co-option and exclusion

These questions elicited responses to deal with the claims that home-ownership contributes to cooption, regime legitimation, and social stability, as well as claims of housing policies actually causing social exclusion:

- views on land occupations; provision of alternative shelter to communities that have been removed
- views on legislation to prohibit land occupation
- views on economy, employment/unemployment and ability to pay bonds; consequences of defaulting
- views on type/standards of housing causing stratification and conflict in townships
- views on appropriateness of the subsidies and of the subsidy increases; how increases relate to rate of inflation
- views on an urban bias in social spending
- views on citizenship rights and the effect on an improved “quality of life” --- how does it relate to standards / quality of housing; what indicators do we use to measure improved “quality of life”
- social and economic rights apply to particular classes, what are the different views on how these may infringe upon other rights
- is rapid land release the best solution for the poor and unemployed in Gauteng
- views on whether the steps taken by the state are “reasonable”.

2.4.7.6 International forces

These questions elicited respondents views on the contribution of international covenants towards realising social and economic rights:

- views on the effect of international covenants in advancing the right to housing
- other than the ’*Grootboom*‘ case, how else can international law be used in realising economic and social rights?; the right to housing in particular

- the government has signed the *International Convention on Economic, Social, and Cultural Rights* (ICESCR), but parliament has not ratified it --- is it important that it be ratified because the Constitution already protects those rights contained in the ICESCR?
- it is argued that Structural Adjustment Plans (SAPs) can infringe on obligations to the ICESCR, so signing the ICESCR is a form of protection against SAPs --- what are the different views on this?
- what contact is there between NGOs and the United Nations Committee on Economic, Cultural and Social Rights?

2.4.7.7 Civil society

These questions were about the impact of civil society groups on the shaping of socio-economic rights discourse:

- views on co-operation between government and civil society groupings towards realising housing rights; what should the nature and forms of co-operation be?; what are the consequences in terms of standards, co-option, and exclusion?
- what are the different perspectives on the state of civil society in post-apartheid South Africa?: is it a strong civil society or a weak one
- what forms of consultation have there been on housing development; and on community-based housing?
- what needs to be done for effective policing of the industry; this in the light of complaints of shoddy development and post-occupancy defects
- what can the SAHRC do to further the realisation of social and economic rights, and the right to housing in particular?; what has it done?; what more can it do?