

The logo for the Legal Resources Centre (LRC) features the letters 'LRC' in a large, serif font. The 'L' and 'R' are connected at the top, and the 'C' is positioned to the right of the 'R'. The letters are a dark grey or black color.

LEGAL RESOURCES CENTRE

Litigating the right to housing and security of tenure in South Africa

27 May 2013

Overview

- Section 25 and 26 of the Constitution in historical context
- Components of the right of access to adequate housing
- The key judgments: from *Grootboom* to *Changing Tides*
- The new law of eviction
- A case study: Backyard dwellers in Mitchell's Plain, Cape Town

The historical context:
Section 26 of the Bill of Rights

- Apartheid policy and legislated racial discrimination in land and housing was based on three main foundations: influx control; ‘homeland’ policies and criminalization of ‘illegal squatting’
- Substantive and procedural protections for black and poor people facing eviction were virtually non-existent during apartheid. Approximately 18 million people were jailed simply for having attempted to escape homeland and rural poverty. 3.5 million forcibly removed during 1960 to 1980. This is just the tip of the iceberg of the human damage done.
- The massive apartheid housing backlog, unemployment and related social problems were previously obscured for some as a result of decades of pass law application and ruthless hounding of the homeless and unemployed from urban areas

Section 26: components of the right

- From 1990, a systematic repeal of the key laws and bureaucracy used to maintain spatial, racial, economic and social segregation and constitutional amendments to make it more difficult for action to be taken against homeless and poor people
- Section 26(1) : *everyone has the right of access to adequate housing*
- Section 26(2) : *the state must take reasonable legislative and other measures, within available resources to achieve the progressive realisation of the right of access to adequate housing*
- Section 26 (3) : *No-one may be evicted from their home or have their home demolished without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions*

Section 25(6): right to security of tenure

- *“A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress”*
- Communal Land Rights Act and Extension of Security of Tenure Act: legislation purporting to give effect to section 25(6)

Significant judgments of the Constitutional Court dealing with evictions, housing and security of tenure

- *Grootboom v Government, RSA* (reasonable measures for people living in a housing crisis)
- *PE Municipality v Various Occupiers* (mediation in eviction disputes)
- *Occupiers of 51 Olivia Road v City of Johannesburg* (meaningful engagement)
- *Occupiers of Joe Slovo v Thubelisha Homes* (eviction for purpose of upgrading informal settlements)
- *Abahlali BaseMjondolo v. Premier of the Province of KZN*(constitutionality of KZN Slums Bill)
- *Blue Moonlight Properties v City of Johannesburg* (local government obligations in respect of emergency housing)
- *Occupiers of Skurweplass 353JR v PPC* (mass eviction, emergency housing)
- *City of Johannesburg v Changing Tides* (procedure in eviction cases)
- *In re DVB Behuising v NW Provincial Govt* (repeal of Proc 293 / 1962)
- *Tongoane v Minister of Agriculture* (constitutionality of CLARA)

The new eviction law : key elements

- Reasonableness as the review standard at every step of the formulation and implementation of national, provincial and local government housing programmes
- Eviction at the instance of private landowners or an organ of state – evictions as a general rule should not result in homelessness
- Mediation and meaningful engagement as a pre-condition for the granting of an eviction order sought by the state
- Local government has a constitutional and statutory obligation to plan for, fund and implement emergency housing programmes from its own resources

Case study: Backyarders in Mitchell's Plain, Cape Town

- Mitchell's Plain established in mid-1970's following evictions of estimated 150 000 Coloured people in terms of the Group Areas Act
- Local authorities in Cape Town historically responded differently to housing needs in Black African and Coloured townships. From 1990's, significant growth of new informal settlements near Black African townships eg Khayelitsha. Housing need in Coloured townships such as Mitchell's Plain was essentially bottled up resulting in massive growth of 'backyard' housing in these areas
- Tafelsig is situated in south eastern part of Mitchell's Plain: characterised by high levels of poverty, unemployment and severe levels of crime, gangsterism and substance abuse
- April 1998: Freedom Day land occupation in Tafelsig, Mitchell's Plain
- May 2011: Mitchell's Plain backyarders land occupation, Swartklip Sports Field
- October 2012: Isiqalo community land occupation, Vanguard Drive.