

PRESS STATEMENT  
(Johannesburg, 2 December 2010)

**Minister of Human Settlements misunderstands the Constitution and social justice struggles**

Over the past year, the Minister of Human Settlements, Tokyo Sexwale, has been praised for his energy in tackling the housing crisis. He recently signed service delivery agreements with his nine MECS for Outcome 8 of the presidential outcomes - sustainable human settlements and improved quality of household life – and he has been very vocal on what actions will accompany these agreements, as well as the challenges faced by his department. However, some of the Minister's recent statements (see below) point to a lack of understanding of the reasons for the emergence and existence of informal settlements and illegally occupied inner city buildings. Further, his statements about the legal framework and recent court cases show a disregard for the role of the courts in enforcing the obligations imposed by the Constitution on the state, and in advancing struggles for fundamental rights in a constitutional democracy.

The Minister has repeatedly referred to the “worrying trend” of the “legalisation of illegality” entrenched by recent court rulings. He claims these rulings have severe budgetary implications for government's housing plans. He asserts that the rise in the number of informal settlements in the country is largely as a result of “powerful court rulings in favour of illegal settlers.” On a number of occasions, he has referred to the *Blue Moonlight* case in which the South Gauteng High Court ordered that the City of Johannesburg pay the rent of occupiers facing eviction from a privately-owned building in the inner city. While this order may not be without problems, and appropriately therefore all of the parties are currently appealing various aspects of the order in the SCA, the Minister's approach, by contrast, implies an attack on the judiciary itself.

What the Minister apparently fails to recognise is that for millions of poor citizens (and non-citizens), informal settlements and inner city buildings are the only forms of accommodation available in the city or close to it. These forms of housing have two very important factors that state housing developments have often failed to provide – closer location to employment opportunities and affordability. The proliferation of these forms of informal housing has little to do with court judgments, and everything to do with the failures of the state at all levels to provide affordable public rental housing for poor people in cities, and to upgrade informal settlements *in situ*, close to jobs and socio-economic infrastructure.

Demolishing shacks in informal settlements and confiscating building materials is not the answer. While there is a need to deal with the illegal and abusive practices of those who hijack buildings and other slumlords, evicting poor tenants, who have no alternative from living in allegedly hijacked inner city buildings, does not address the problem either. Poor people will continue to move to urban centres in search of jobs, whether or not courts defend their rights. It would be better if the government acknowledged this reality and saw this as an opportunity for economic development and growth, which would be part of its development of an appropriate urban housing framework.

The migration of people to cities is a world-wide phenomenon that cannot be rolled back by denying them access to housing. Further, the South African government's poor handling of migrants/refugees/asylum seekers in South Africa, particularly Zimbabweans, is directly linked to the insatiable demand for accommodation in inner cities, particularly in Johannesburg. Failure to make these linkages, evident in the heavy-handed approach to foreigners that the state has adopted, has devastating consequences.

The National Treasury has highlighted that “deliberate efforts to open access to lower income groups in inner cities and in economically active areas are required to avoid locating poor people in peripheries.” Furthermore, according to the government-mandated Social Housing Foundation (SHF):

*the location and density of affordable housing makes a significant difference to the overall costs and benefits of housing to South African society over time and that housing that is well-located in urban centres, even though it financially costs much more to build, (due to higher land prices) actually has more benefits for society and costs less over time than does much cheaper housing on the periphery.*

The reality is that most social housing projects (that the Minister has been promoting) cater predominantly for households earning between R3 500 and R7 500 a month, with a small percentage catering for the bottom end of the market. Yet the vast majority of households in South Africa – approximately 85.6 percent - earn R3 200 or less per month. Therefore, this leaves a huge shortfall in formally accessible housing stock.

The state bears the ultimate burden and is constitutionally obliged to act to fulfil the right to housing. Of course, it cannot do so overnight. For this very reason, the law recognises that many people will have to remain in informal — and often unlawful, though legally protected — accommodation until the state is able to assist them. In this sense, the Minister is correct. What would normally be unlawful is made lawful for so long as the alternative would be homelessness, which in any democracy – particularly a middle income country like South Africa – is a far worse harm.

The Minister's assertions that courts and legislation are preventing 'development', and encouraging people to remain in sub-standard accommodation, are incorrect. The real problem lies in the failure to provide decent, affordable accommodation for the poor in cities.

Further, Minister Sexwale's focus on court judgments includes an implicit attack on the rule of law, the independence of the judiciary and its mandate to enforce all constitutional rights and the obligations they impose on the state. Instead of seeking ways in which to discharge his constitutional obligations, the Minister seeks to assign blame to that part of our constitutional state - the judiciary - that is attempting seriously to fulfil its constitutional mandate. He is not alone in this. Recent statements by Minister of Justice and Constitutional Development, Jeff Radebe, and deputy Minister of Transport, Jeremy Cronin, are in much the same vein.

Poor people, lawyers, courts and judges are not the enemy. Where government acts lawfully in advancing the rights of the poor, the courts have no role. But there are flaws in state housing policy and implementation. Rather than the denialism of the past, we need to engage in order to strengthen democracy, security and stability.

As NGOs that represent poor clients and use the law - and sometimes litigation - to protect and promote human rights, we urge the Minister to engage with those involved in fighting for human rights, particularly in relation to access to housing and basic services. The Minister's statements highlight the fact that he does not understand the Constitution or value the constitutionally mandated role of civil society and the courts in advancing rights and equality.

**Endorsed by (in alphabetical order):**

Centre for Applied Legal Studies (CALS)  
Community Law Centre (CLC)  
Lawyers for Human Rights (LHR)  
Legal Resources Centre (LRC)  
SECTION27 (incorporating the AIDS Law Project)  
Socio-Economic Rights Institute of South Africa (SERI)

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ENDS

The Minister of Human Settlements' recent statements have included the following:

- On 26 May 2010, during his Budget Vote speech, the Minister referred to the **“worrying trend” of the “legalization of illegality” and the “negative impact of unintended consequences emanating from certain landmark judicial rulings on the human settlements mandate”**. He drew attention to the recent ruling in the *Blue Moonlight* case, stating that “in some cases, the rulings have forced the amendment of human settlements policy, with severe and unplanned budgetary consequences. The most recent far-reaching ruling is the one against the Johannesburg Metropolitan Municipality where the city has been ordered to pay rent to a private property owner on behalf of illegal occupiers until alternative accommodation has been found. While being dutifully circumspect about the constitutional independence of the Judiciary, the Ministry of Human Settlements is concerned about rulings that could virtually collapse government budgets and plans where unlawful behaviour - in this case illegal land and buildings' occupation -- is legitimised by a series of court rulings.”
- In August 2010, at the launch of Tau Village housing project in Tshwane, the Minister registered his unhappiness with some of the judgments against the illegal occupation of land or buildings and cautioned that the judiciary should not sanction this. He argued that the government should work together with the judiciary to find ways and means of solving the problem stating that **“we do not agree with the legalisation of illegality”**.
- On 20 October 2010, at the launch of the Cavendish Chambers housing project in inner city Johannesburg, the Minister made strong statements against 'building hijackers', and challenged developers to identify other derelict buildings in the inner city and to package as modern apartments. He called on the Hawks and Police Commissioner Bheki Cele to **“enforce evictions in cases where buildings have been illegally occupied”**.
- On 24 November 2010 at a medium term report to the parliamentary portfolio committee, the Minister described how the erection of shacks in an unplanned manner gave rise to ghettos and squatter camps, while serious problems were posed by the raiding of prime land, including the need to provide bulk infrastructure. He stated that it was necessary to stem the tide of people coming to the cities and voiced his support for the recent eviction and arrest of illegal tenants in the inner city of Johannesburg, under instruction from the Minister of Police, as this sent out the right message to offenders, and would allow more buildings to be freed up to house people in an appropriate way. He stated that **if the appropriate measures were not taken, then people would continue to migrate to the cities, squatting on land illegally, and demanding that bulk infrastructure be provided, whether it was desirable or not.**
- He further stated that the courts should not be granting judgments in favour of illegal occupants of land, pointing out that there were now 2 700 informal settlements in South Africa, an increase of more than 1000 percent since 1994, largely because of **“powerful Court rulings in favour of illegal settlers.”** He stated that people were then claiming the right to alternative housing, and syndicates were taking advantage of these laws, which were meant to cater for poor people who qualified in terms in the *Grootboom* ruling, not those who were squatting, or who could pay. He urged the courts to interact with his department, noting that the court rulings had severe budgetary implications, and **described how it was “frightening” that the Johannesburg City Council was being held liable for the rental of occupied buildings** (referring to the *Blue Moonlight* case).
- On 29 November 2010 the Minister was quoted as saying **“we do not want to create a beggars culture where people just expect to be given free houses from the State. This is just a safety net for the poorest of the poor, but cannot go on forever.”** He stressed the government's focus on providing for the 'gap market' i.e. those earning between R3 500 and R12 800 a month, through the Department of Human Settlements-National Treasury joint venture to establish a R1 billion Housing Guarantee Fund aiming to provide 600 000 new loans in the affordable housing market by 2014. He further referred to the up scaling of affordable rental housing delivery through major investments in inner city renewal projects and densification, referring particularly to the “empty and abandoned buildings in our cities, close to existing infrastructure, that can be used for the development of human settlements.”