

Submission on the draft Human Settlements White Paper

by the Centre for Affordable Housing Finance in Africa (CAHF)

We thank the Minister for the opportunity to provide input on the draft White Paper for Human Settlements. The Department is to be commended for how it has intensified its efforts to solicit stakeholder input on the draft—by extending the deadline and holding numerous consultation sessions across the country and with different sets of stakeholders in February. The Department's hard work to bring the White Paper to this point is greatly appreciated.

The Centre for Affordable Housing Finance in Africa (CAHF) has been operating as a non-profit independent think tank in South Africa since May 2014, with a vision for an enabled affordable housing finance system in countries throughout Africa, where governments, business, and advocates work together to provide a wide range of housing options accessible to all. CAHF pursues this mission through the dissemination of research and market intelligence, supporting cross-sector collaborations and a market-based approach. Our work is freely available on our website (<https://housingfinanceafrica.org/>) in both English and in French.

Our South Africa programme focuses on making the residential property market function more effectively at the lower end, through local-level projects as well as national policy-level interventions. A key area of our work in South Africa is the Citymark programme focused on understanding housing markets at city level, and engaging local government to affordable housing markets for economic growth.¹ In addition, CAHF and 71point4 have piloted a Tenure Support Centre in Khayelitsha, Cape Town, to facilitate formal residential property market transactions in the affordable housing market.² The TSC coordinates and offers a range of critical services that enable households to transact formally in the residential resale market.

Our input on the White Paper is therefore made on the basis of CAHF's extensive track record in research, data analysis and advocacy in South Africa. Fifteen years after the Breaking New Ground policy, this WP needs to set out fundamental reforms for the sector and strategic directional changes. The WP must look broadly and systematically, starting with a review of the findings and recommendations from the past decade of research, evaluations, and studies that are available.

¹ The Citymark research takes deeds registry data framed as indicators at the neighbourhood level and considers market size, value, activity and performance on a segmented basis that highlights affordable housing in particular. We publish regular metro reports analysing the residential property market in each metro—including the stock and transactions of government-subsidised properties, and lending activity by market segment. In addition, we make the information easily available through a variety of online dashboards which empower government officials and other housing sector practitioners to explore the spatial location and performance of residential property markets, with an explicit focus on the lower market segments including new and old RDP stock. See <https://housingfinanceafrica.org/projects/citymark-analysis-of-residential-property-markets-in-south-africas-eight-metros/>

² See <https://titledeed.org.za/>

The WP needs to pull that intelligence together, review the evidence, and distill key strategic directions moving forward. Further, it must not act in isolation, but draw upon international examples and incorporate a benchmarking analysis with other countries, in Africa and beyond.

Currently the draft document does not do those things. As a result, the opportunity is lost for this policy document to acknowledge and critically review our progress and challenges, and record the sector's consensus on what must change going forward. We look to the WP to make bold statements on strategic reforms, demonstrated strong leadership for the sector.

To this end, our submission focuses on the key issues we feel need to be better addressed in the draft document, in order to effectively serve the sector.

1. Role of state

Since the Housing Act of 1997 and the 2004 Breaking New Ground policy, the housing reality has changed and evolved. We are no longer in a situation where its advisable or feasible to rely chiefly on government's fully-subsidised housing programme as our primary means of addressing the housing crisis. Together we need to agree that we must change tack: continue to provide fully-subsidised homes to the most vulnerable, but intentionally change our approach for the many others who need access to adequate housing. The WP must make a clear statement to that effect, acknowledging government's constitutional obligations on the right to access to adequate housing, while also segmenting the market to develop more effective and cost-efficient means to supporting households with different incomes.

We do this by first stating clearly that it is no longer appropriate in the life of our nation for government to endeavor to provide RDP housing to all on the waiting list. Thirty years in, now is the time in our country's development path to shift away from the role of government as a builder and provider, to government as a regulator, enabler and active supporter of a functioning, inclusive residential property market that provides access to adequate housing for all.

Second, the current draft can be strengthened by beginning with an analysis of powers and functions in the human settlements sector, recognizing the designation of housing as a concurrent function, and reviewing the challenges experienced over the last decade in sharing responsibility for the function across spheres of government. The WP then needs to consider if that allocation of powers and functions (and the linked fiscal framework) are still the most suitable structure for housing delivery, given South Africa's urban development strategy, the current and future state of local government, and the imperative for spatial transformation and city-building. Instead the current draft takes a rather skeptical and frustrated tone with regard to municipal corruption and inefficiency and, in many instances, blames municipalities. It would then make sense that this document would address powers and functions up-front and propose a comprehensive approach to improving inter-governmental relations on HS, building local government capacity and rationalising the split of powers and functions.

2. District Development Model

Established in 2019, the purpose of the DDM model is to establish a framework for intergovernmental planning, delivery and accountability within district and metro areas to ensure more efficient and effective service delivery. The DDM centres on the One Plan developed for each district and metro which pulls in all spheres of government to set up a long-term view for

service delivery in the area. In the present draft, the WP fails to address how the District Development Model (DDM) and its component One Plans will be leveraged to improve the planning, funding and implementation of human settlements.

There is brief reference to the DDM in a few places, but the document does not sufficiently address how the DDM can be used to tackle key HS issues around intergovernmental coordination and funding. The DDM is mainly referenced in the context of area or precinct-based infrastructure funding (Section 5.2 in the paragraph on public finance funding reforms). The funding section (4.2) speaks of an ‘area-based’ infrastructure grant to support the implementation of coordinated area-based plans that include a range of departments,” and a capacity grant to fund professional services for scoping land, EAs and other tasks. Given that the infrastructure grant would pay for “the building of infrastructure, public spaces and services, including land costs, investment in public spaces, and the like,” it is unclear if the intention is to reform the existing MIG and USDG, or to set up a new grant entirely.

The DDM has massive potential for addressing some of the critical barriers in the delivery of human settlements, including the need for infrastructure to support new developments, and the coordination of budgeting and planning between spheres of government, each of which has a role in human settlements delivery. It is therefore imperative that the WP unpacks exactly how the DDM model can be harnessed to improve targeting, increase efficiencies and make housing programmes more effective. The WP can respond to the following questions:

- Where do human settlements plans fit into the One Plans?
- Can the One Plan be used to lock in intergovernmental commitments to HS developments in the same way the Priority Housing Development Areas (PHDA) were intended to do at a smaller scale?
- How can the DDM be used to improve the coordination and delivery of housing in rural areas?
- What is the relationship between accreditation and assignment and the DDM? In districts that have been accredited, the scope and purpose of the One Plan will differ than in districts where member municipalities are accredited but the district is not?³

3. Accreditation and Assignment

There is substantial coverage of the accreditation issue in the draft WP. However, while the document reaffirms what is in the 2023 Municipal Accreditation Framework, it does not include any bold new statements to reshape how accreditation works, despite its limited success to date. The intention with accreditation is to shift the locus of prioritisation/planning and implementation of human settlements to city level, because local government is where the key functions come together (transport, planning, local economic development, housing). The accreditation and assignment framework guides how we devolve the function to capacitated municipalities incrementally on a case-by-case basis. While almost 50 municipalities are now accredited, for many municipalities the status change is just on paper. No municipality has yet been assigned the HS function, as assignment permanently devolves the function and means the municipality would receive the HSDG directly, as opposed to via the province.

³ In districts where both the district itself and one or more of the component local municipalities are accredited, what role will the DDM and the One Plan play in coordinating HS delivery and funding?

Here lies a key barrier: the Housing Act says that the MEC must accredit if a municipality has capacity and complies with the criteria, but an MEC is unlikely to do so as long as that means losing control of a substantial part of their budget and portfolio. The White Paper does not suggest the removal of this requirement in the Housing Act, but it does reinforce the 2023 Framework, which introduced important measures to start to address this problem. The framework sets out timelines for MECs to respond to municipal applications and allows for the intervention of the National Department and Minister in cases where the MEC does not act.

However, these reforms in the new 2023 Accreditation Framework do not go far enough. One option would be to change Section 10 of the Housing Act to add that if the MEC does *not* act within the timeframes and the principles of the framework, the National Minister is able to step in.

A second option is to shift the evaluation of municipalities and approval of accreditation to COGTA. This makes sense for three reasons. First, accreditation is essentially a developmental, capacity-building process, and half of the criteria for accreditation relate to governance of the municipality as a whole, not simply an assessment of the HS component. At its core, this is the mandate of DCOG, to support, regulate and strengthen municipal government. The assessment of municipalities and the development of support programmes for dysfunctional municipalities is clearly DCOG's mandate and expertise.

Second, shifting this responsibility to DCOG will enable an independent evaluation of a municipality's readiness (potentially through the establishment of an accreditation readiness assessment panel under DCOG).

Third, given the importance of infrastructure funding—and intergovernmental coordination around infrastructure funding—in the delivery of integrated human settlements, a shift to DCOG would enable closer links to the Municipal Infrastructure Grant (MIG) and the Integrated Urban Development Grant (IUDG).

4. All-of-market perspective

In the draft document, the finance section (Section 4.2) focuses almost exclusively on government subsidies and fails to include plans on how the state will leverage, promote and regulate private investment from households, developers and lenders. At a time when the government needs to be shifting its mindset with respect to the role of the state in human settlements, the funding section of the WP appears to still take a government-centric approach. Instead, the starting point for leveraging resources for the HS sector and identifying the most effective funding instruments needs to be an all-of-market approach that scopes the entire funding environment and identifies all the financing moments along the housing value chain.

The WP rightly emphasizes the importance of infrastructure funding and speaks of an infrastructure grant that is area-based. However it is unclear if this is a proposal for a new conditional grant, in addition to the MIG, HSDG, USDG, IUSG, and ISUPG. Clearly there is a need to interrogate the grant framework holistically and rationalize it to ensure different categories of local government receive fit-for-purpose grants. We must also ensure that an area-based approach—integrated across spheres of government—also finds an obvious home in the grant framework. How government can most appropriately fund infrastructure is a critical question

because it unlocks areas for housing development, leaving the private sector to undertake the development itself. The implementation of integrated, area-based infrastructure plans will enable private developers to deliver more affordable units.

The WP also needs to make a clear call for a full review of the subsidy scheme, investigating how the scheme has performed overall. This would include consideration of its massive contribution to property market, the performance of government-subsidised housing, and its impact on the operations of the market. The WP must also engage with the real issue of the rapidly increasing subsidy amount, and how this impacts the residential property market, and the gap market in particular. This would include consideration of the unsustainability of the quantum increases and the reality that more money for each house means fewer fully-subsidised houses built.

5. Managed land settlement and self-build

Although the WP speaks to serviced sites and rapid land release, it does not sufficiently delve into this issue. Given that government is now increasing its emphasis on the provision of serviced sites and only providing housing top structures to the aged and destitute, the WP needs to also contain a clear statement of government's obligation to support self-build and the ability of many households to develop their own housing solutions. Government cannot just stop at the provision of a serviced site and claim they have assisted people to achieve their right to adequate housing. It is recommended that government introduce a new policy focus area specifically for managed land settlement (MLS)⁴ and self-build housing support (financial and non-financial).

As per the housing subsidy scheme, financial assistance for self-build is already catered for through a number of subsidy programmes, primarily FLISP/FHF (for households with monthly incomes over R3500 and under R22 00) and the Individual Subsidy Programme (for households with a monthly income under R3 500). No changes to the policy framework—in terms of eligibility requirements and subsidy usage—would be necessary to ensure all the targeted vulnerable households can be supported for self-build. However self-build support is mentioned almost as an afterthought in the National Housing Code. As part of a broad review and rationalization of the Housing Subsidy Scheme, subsidies for self-build need to be pushed to the forefront in the Code and developed as a larger, integrated programme across income levels.⁵

In order to increase the take-up and realise its potential demand, the self-build subsidy programme would require adequate funds and sufficient implementation capacity: advertising and building awareness of this option widely, promoting this avenue for securing a housing solution within the target market, and setting up the processes to make the approval and acquisition of the subsidy smooth for beneficiaries.

But, apart from subsidies, it is incredibly important that government also provides funding to set up programmes that directly help households to build their own houses/ top structures using their own funds or subsidies. Part of this is the Transaction Support Centre mentioned in the WP, but this effort must be more ambitious and include support for self-build as well as support to households for purchasing a new or existing house.

⁴ MLS allows households to settle on (semi) serviced land with basic tenure security, and then use their own money to start to build their own shelter and houses.

⁵ See <https://housingfinanceafrica.org/documents/investigating-the-value-and-feasibility-of-using-public-finance-for-self-build-housing-processes-in-south-africa/>

Examples of the components of such a (non-financial) self-help housing support include:

- the establishment of material bulk buying and/or voucher schemes,
- the provision of template house building plans,
- training and advice on how to contract and employ local builders and service providers,
- training and support in how to build better quality temporary housing structures,
- support in setting up local savings (and credit) clubs and schemes,
- the creation of data bases and platforms where people can get reliable information on affordable and quality building materials and building service providers (like plumbers, brick layers, etc), and more.

This is part of a much broader argument for the re-orientation of the role of the state, away from government as project builder/developer, towards the state as enabler of the realisation of individual vulnerable households' own housing solutions.

6. Land release and the Housing Development Agency (HDA)

Although there is a sector-wide shift towards Public-Private Partnerships (PPP) to release and develop land for low income housing and increased attention on the topic, in practice, PPPs are often unduly cumbersome, delayed by various conflicts, or undermined in their objectives by poor structuring of the deals, from government's perspective. There is a great deal of literature on PPPs, and pressure at LG level to push PPPs, but the reality is that many municipalities lack appropriate capacity to effectively undertake these projects. Where there is a lack of experience and hands-on knowledge, municipal officials often hesitate to take a PPP approach, or do not manage to optimise the PPPs they do pursue.

It is proposed that NDHS consider establishing a Technical Hub at the Department to support land release projects and PPPs for human settlements and affordable housing. The facility could offer guidelines and training on the new legislative framework document case studies, convene a community of practice with site visits, and provide legal expertise and technical assistance on project packaging.

One option would be to house that Technical Hub in the Housing Development Agency (HDA). The WP already proposes a change in the mandate of the HDA. According to the draft WP, Section 6 of the HDA Act must be amended to provide authority to the Minister "to acquire land that can then be released to the HDA for development projects". Furthermore, "the decision-making authority in respect of the approval of projects to be undertaken by the HDA must vest in the Minister". It appears that the aim is to reduce the powers of the HDA and put more of its current activities and decision-making directly under the direct control of the Minister. Its imperative that this issue be debated broadly with proper consultation, and that a clear rationale for this change is put forward.

7. Inner city rental housing and dangerous and dysfunctional buildings

The fire at the Albert Street building in August 2023 that killed over 70 people should have been a trigger for bold decisions and real action on the problem of degraded, unsafe, and hijacked buildings in the inner city. While NGOs fight to protect occupants of these buildings from eviction and homelessness, these places remain ticking time bombs in terms of public safety.

But court cases in the last ten years have set a high bar for ‘alternative accommodation’ with respect to proximity, permanence, and the nature of the accommodation. While the high bar ensures the fulfilment of occupants’ rights under Section 26 of the Constitution, it also makes it basically impossible to remove occupants from terribly unsafe buildings, given the low supply of affordable rental in the inner city and the reality that the municipality has not been able to provide that standard of accommodation at that scale.

The draft White Paper fails to talk about what we are going to do about dangerous buildings and the crisis of supply of affordable rental in our cities. The document needs to take a bold stand on this issue, in order to open up space for critical reforms in the Housing Act.

In short, the WP needs to clearly recognize the urgency and danger of this problem and that a new approach is required that likely includes legislative change. Through open and candid dialogue with key stakeholders, we can be realistic about what alternative accommodation can be offered and recognise that progressive realisation may mean we need to accept something short of permanent ownership units in the same geographic area in order to protect occupants of these buildings from a future tragedy.

Many of the cases of occupied buildings that are dangerous and dysfunctional have been hijacked by criminals or occupants are simply occupying the building without permission. However another subset of cases is sectional title units in blocks of flats. In these cases, eviction is made all the more difficult as the units are all owned separately. Due to non-payment of levies and poor governance, the body corporate has collapsed, leading to a lack of security, management and maintenance that creates a dangerous environment. The Community Schemes Ombud Service (CSOS) must take on the responsibility of addressing these cases with a programme that targets buildings where the body corporate has collapsed, as well as cases where the body corporate is about to collapse. While the CSOS Act speaks of pro-active interventions, mediation and support for non-compliant schemes, it does not assert a mandate that CSOS must prioritise inner city buildings in danger of scheme collapse, degradation and danger to occupants. CSOS has a role to play in addressing the public safety crisis of dysfunctional, occupied buildings and this needs to be stated clearly in the WP.

8. Title deeds and the 8-year restriction on the sale of RDP housing

Thankfully, the WP states that Sections 10A and 10B related to the 8-year restriction on the sale of RDP houses will be revisited, with the intention of “lifting or significantly relaxing the restriction on voluntary and involuntary sales of state-subsidised housing”. This is welcome news as it would enable beneficiaries to capitalise on their home as an economic asset—by trading it formally, making improvements, and borrowing money against it. Reaching consensus on this question of whether the 8-year restriction must be scrapped or amended must take into account not simply the rights perspective which priorities the shelter value of a house, but also the importance of housing as an economic asset in the broader effort to ensure functioning, inclusive residential property markets in low-income areas.

The issue of title deed reform and maintenance also needs greater attention in the WP. The approach must recognize that the formalization of title deeds is a serious barrier to a functioning property market and thus stunts economic growth. While the title deed backlog with government-subsidised housing falls under NDHS, that is only one component of the issue. The need for title deed formalisation in cases of informal transactions or deceased estates is a broader problem that

affects the entire market. A systemic approach undertaken by a committed partnership that pulls in the DALRRD, DoJ, NT, and DHS, (as Operation Vulindlela is pushing) must be a top priority identified in the WP. In this respect, a broadened commitment to partner with other government stakeholders to address the entire title deed framework which is stunting functional property markets is a great example of NDHS asserting a shift in the role of the state to enabler and facilitator of the market.

Furthermore, as part of the imperative to address the title deed backlog, the WP must call for the finalisation and approval of the draft Regularisation Policy which provides detailed policy guidance on the resolution of the diversity of complex beneficiary administration cases.

9. Backyard dwellers and small-scale developers

Particularly over the last 5 years, there is a building consensus that (a) backyard rental is a key sub-market and needs to be supported, and (b) small-scale developers in township areas are doing good for the sector and themselves by developing units to rent at affordable rates. For example, TUHF 21 has been extraordinarily successful in providing loans and technical assistance to small-scale developers and offers a super model for replication and expansion.

Although the draft WP has a section on rental and notes the growing size and importance of the sector, it does not include a loud statement of support for backyard rental and small-scale developers as a key lever to focus on moving forward. Backyard rental is a sub-market that has thrived for years without government support, and persists and grows despite the lack of a national policy framework and efforts to eradicate these dwellings. Backyard rental and small-scale developers do not require state subsidies; what they do need is non-financial support and attention from local government, framed by an overall national policy or programme which steps up to acknowledge and prioritise this active part of the rental market.

It is recommended that the White Paper explicitly commit National to developing a national programme to support backyard rental and small-scale developers, with an enabling framework and non-financial levers—this would finally provide local government with a clear statement of support and a guiding framework with which to shape interventions to build this sector. The WP is an opportunity for National to assert leadership on this issue, by acknowledging the value, potential and challenges of this sector and provide a clear policy framework and direction on this issue.

10. Introduction of a Human Settlements Ombudsman

The WP calls for the establishment of a Human Settlements Ombudsman (Section 5.3.1) who is responsible for “the investigation and resolution of complaints and grievances about housing matters.” From the description of the Ombudsman’s portfolio, it is unclear how their role will relate to that of the Minister. With a “specific mandate of overseeing the entire machinery of human settlements development”, the Office of the Ombudsman is also intended “to ensure compliance with the constitutional principles of cooperative government and to foster intergovernmental relations that are conducive to meeting the aims and objectives of the legislation” (Section 2.3). Obviously greater clarity is imperative. It will be imperative that the new HS legislation must provide more detail on the mandate and scope of the HS Ombudsman, and the office’s relationship to the Ministry. How are cases referred? What is the relationship between the HS Ombudsman and MINMEC, the IGR body for the sector?

11. Innovation Fund

Many stakeholders, civil society organisations, private companies, and NGOs have bright, creative ideas for approaching the challenges of planning, funding and implementing human settlements. And although the policy dialogue at national level grapples with policy shifts, from a top level view, it is impossible to be aware of all the ideas and proposals out there that might, indeed, be critical levers we have not even thought of yet.

At present, many of these proposed programmes have a core idea that is innovative and appears to have great potential, but the piloting of such projects is impossible due to a number of reasons. Current funding instruments in the public sector lack space for entertaining such experiments and donors hesitate to invest in their implementation out of fear that the pilot will not be supported by the relevant government authority. With municipalities, for example, it is very difficult to find an official willing to champion a new idea or able to get the support from the requisite higher-ups. The default towards SOP in government means that initiatives that require a new way of doing things outside current procedure are sidelined in the pressure to deliver to annual targets (using familiar and/or tested methods).

In short, there are many good ideas out there in the sector that are blocked by red tape, insufficient funding or lack of support from local government. We have been struggling with these seemingly entrenched HS challenges since 1994; it may well be that the ‘answers’ are already out there and need to be given a hearing and support.

It is thus proposed that the White Paper include a commitment to establish an HS Innovation Challenge Fund, which provides funding for such initiatives. This status can also be leveraged to enable better collaboration with spheres of government whose involvement would be required for project success. The Fund would provide core funding that can then be leveraged to facilitate the packaging of finance from multiple other sources (e.g. MIG, HSDG, municipal own revenue). Such a fund would also provide an entry way to accessing government support for CSOs and community groups that are already struggling to find work-arounds that would be effective in their local setting.

The idea has been proposed previously by Afesis and is fully supported by CAHF. The Innovation Challenge Fund would have to include well-planned M&E and dissemination plans for sharing learnings. Initiatives supported could fall all along the value chain: innovative project packaging approaches, building materials, settlements planning, construction, financing (construction and end-user). It can also serve as a repository for learnings and experience. Pilots that failed in one area may well be successful when tried in a different area, under different circumstances.

12. Data

Underpinning the new policy framework needs to be a robust, updated, and accurate data infrastructure that can be used for planning, policy and administrative purposes. The WP acknowledges that the current data system—including the HSS—is unreliable, incomplete and inconsistent, and is not integrated and aligned across spheres of government. However the way the data issue is addressed in the WP is very high level and aspirational—without a diagnosis of what is wrong in the current system and how it falls short of effectively supporting the sector.

Improving this will take more than just making the system paperless. First there needs to be a full review of the data infrastructure for HS, to assess how well it meets its objectives of improving planning, implementation and monitoring in the sector. There needs to be a mapping of the data environment to determine what systems, processes and stakeholders are needed to ensure the infrastructure is fit-for-purpose in terms of the multiple ways that we use the data. Important questions to be addressed include: How will the structure of the data system be remodelled? Are there large gaps in the system in terms of what data is collected? How will data quality be managed?

In conclusion, we would like to note that CAHF is also a signatory to the letter submitted to Minister Kubayi, dated 16 February 2024, in which a wide range of organisations and experts express concern about the Draft White Paper and argue in favour of a comprehensive recast, as the incorporation of specific issues or concerns raised in individual submissions will not produce the strategic guidance needed in the human settlements sector. This is still the position we hold, but we hope that this individual submission will add texture, depth and detail to specific aspects of the new human settlements policy.

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