

**OWNERSHIP AND OCCUPATION CONTESTATIONS IN SOUTH AFRICA: THE
CASE OF STATE HOUSING IN BUFFALO CITY MUNICIPALITY, EASTERN
CAPE**

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Abstract

This thesis examines contestations around access to state-provided housing or simply state housing in South Africa, using a case study of two sites in Buffalo City Municipality, and with a particular focus on occupation without ownership through informal and illegal means. While the South African state, based on an official human rights discourse and regime, seeks to provide state housing to the urban poor, massive housing backlogs continue to exist within urban spaces. As a result, the urban poor turn to self-provisioning through the construction of informal settlements or backyard shacks, waiting at times indefinitely to be allocated a state house via the official housing waiting lists. To overcome this problem, some amongst the urban poor opt to circumvent the process by invading and illegally occupying state houses, leading to occupation without ownership. In doing so, they draw upon their own moral rights-claims to justify their actions.

The thesis examines the multiple causes for occupation and ownership contestations in the two research sites as well as the different forms that these contestations take. The study is framed theoretically in terms of a sociology of human rights, identifying and analysing how moral claims to rights amongst ordinary people often come into conflict with a legal-institutional conception of rights adopted by the state. The study also draws on a diverse array of theorists whose work speaks to the manner in which ordinary citizens develop their own ways of acting contrary to state officialdom. Using interpretive sociology, the study considers the views and practices of those illegally occupying houses without ownership and those who feel victimised by these informal actions. It considers these intra-community dynamics in light of the machinations of local state powerholders at municipal level. As with interpretive sociology, then, the thesis privileges social realms of meanings, interpretations, experiences and practices of human agents.

Informal state housing occupations in the Buffalo City Municipality are caused by a number of factors related to state incapacity, weak policies and poor planning, corruption, resource constraints and so on. The study vividly demonstrates the tensions arising and existing between the South African state's legal human rights regime and locally-constructed moral-rights regimes amongst the urban poor. This tension is seen in the interrelated phenomena of 'occupation without ownership' and 'ownership without occupation', as the poor draw upon

and use ordinary logics of rights for recourse. The thesis shows how diverse rights regimes lead to intra-community conflict, in particular along generational and racial lines.

Dedication

In Memory Of

Hellen Zinyeku Makotore

Ellah Matangira Msindo

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TO JESUS BE THE GLORY

Acronyms

African National Congress	ANC
Breaking New Ground	BNG
Buffalo City Municipality	BCM
Covenant on Economic Social and Cultural Rights	ECSCR
Democratic Alliance	DA
Eastern Cape Department of Human Settlements	ECDoHS
Economic Freedom Fighters	EFF
Economic Structural Adjustment Programme	ESAP
General Household Survey	GHS
Head of Department	HOD
Housing Subsidy System	HSS
Human Science Research Council	HSRS
Integrated Residential Development Programme	IRDP
International Covenant on Civil and Political Rights	ICCPR
International Monetary Fund	IMF
Member of the Executive Council	MEC
National Development Plan	NDP
National Housing Code	NHC
National Housing Needs Register	NHNR
Parliamentary Liaison Officer	PLO
Parliamentary Monitoring Group	PMG

Prevention of Illegal Evictions	PIE
Public Service Accountability Monitor	PSAM
Reconstruction Development Programme	RDP
Residents Associations	RA
Service Delivery Improvement Plan	IDP
Socio-Economic Rights Institute	SERI
South African Legal Information Institute	SALII
South African National Civic Organisation	SANCO
Statistics South Africa	STATS SA
Temporary Residential Areas (TRA)	TRA

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CHAPTER 1: INTRODUCTION

1.1 Introduction

Informal occupation or self-provisioning of state houses, referred to as illegal occupation by the South African state, is a huge problem in post-Apartheid South Africa. It is an outcome of several housing provisioning challenges including but not limited to state capacity (Tomlinson, 2011; Bond, 1997; Bond and Tait, 1997), weak initiatives and contradictions in government policy (Lalloo, 1999; Huchzermeyer, 2001), poor planning and implementation (Ruhiiga, 2014; Goodlad, 1996) mis-management, corruption (Manomano et al., 2016; Rubin, 2011), poor administration (Myeni and Mvuyana, 2015), resource constraints (Ndinda et al., 2011; Thomas, 2010), limited housing supply and slow delivery (Turok and Scheba, 2019; Gilbert 2004), politics in the housing allocation system (Levenson, 2017), and overall failure by government to meet its promise of ‘housing for all’ in the new democratic era. In the scholarly literature, a number of these important explanations are now conventional.

This thesis examines local manifestations of housing contestations in two communities, Fynbos and Phakamisa, in the Buffalo City Municipality (BCM), Eastern Cape Province, in a context of scarcity and state precariousness. More specifically, it focuses on the phenomena in state housing access of ‘occupation without ownership’ and ‘ownership without occupation’, in the BCM specifically. Locating these struggles over housing at the community level reveals the way the poor experience and respond to vulnerabilities around access to shelter in post-Apartheid South Africa. The thesis shifts from the traditional analysis of urban-based social exclusion and the politics of resistance through social movements by analysing urban contestations using a human rights-based approach as the starting point – this entails examining popular rights-based claims made by individuals and community groups as they go about seeking to access scarce resources, notably housing. In a liberal democracy, a major recourse for the urban poor in pursuing their interests and needs is a logic of rights, at least as defined and understood by themselves. As will be demonstrated, it does not matter to them whether their understanding of rights is legally pertinent or whether they are merely making moral claims.

Located in the discipline of Development Sociology, and with reference to the complicated question of human rights, the thesis examines political and social processes and practices underpinning and marking the lives of poor urban communities within a human-rights era.

Human rights give rise to both legal and moral claims which may come into conflict with each other. The discourse and practice of human rights involves the creation of spaces for contestation. On the one hand, human rights are concretely enumerated as if they were laws; on the other hand, rights are understood as moral claims without any legal binding framework. The ambiguities surrounding the issue of whether human rights are moral claims or legal claims, and under what circumstances, produces sites of struggle in local urban communities in post-Apartheid South Africa. These contestations are seen, for example, in the deployment of claims for equal opportunity of access to housing along racial lines, between social classes, across different generations, and also in relation to competing historical claims made about urban land ownership. A human rights dimension to the analysis is significant in that it acknowledges the fact that human rights discourses and practices shape the socio-political and economic space and influence actions at all levels of society, including the ‘populations’ – or the urban poor who are typically excluded from civil society (Chatterjee, 2004) and seek ‘uncivil’ means of accessing urban resources. This study discovered that informal occupiers of state housing, both individuals and groups, could not access state housing formally. Rather, they tactically employ diverse and localised rights-based claims to justify actions of informality and illegality.

It is not the intention of this thesis to take a state-centric approach to analysis and adopt an exclusive focus on how the state manages its excess populations through housing policy and programmes. Neither is there an intention to make a case that all occupations are purely an outcome of the history of racial segregation and the current political processes focusing on the state. These are vividly significant in my analysis of BCM housing contestations and are highlighted as causes for the contestations around ownership and occupation of state housing. However, in other urban centres in post-Apartheid South Africa, other factors may be just as significant. In understanding the causes and character of the housing contestations around ownership and occupation in urban post-Apartheid South Africa (and specifically in the two research sites), the thesis has a two-fold focus. Firstly, the thesis aims to understand at a community level how rights-based claims are used to justify and perform informalities and illegalities in poor urban communities. Secondly, it seeks to examine state-citizen interfaces around the issue of housing rights (which themselves are a product of a history of injustice and ongoing administrative and political processes) and their impact on intra-community relations (of contestation) in the BCM. A rights-based analysis helps us to understand how such

contestations (that are outcomes of state failure, poverty and inequality) may lead to struggles amongst the poor over access to housing and other resources.

Urban housing is a universal problem because of the expansion of cities and urban populations in different contexts and historical episodes across the globe, which is taking place often without any corresponding development of urban economies. In southern African cities, urbanisation can be generally attributed to the huge development imbalances between urban and rural economies (Khumalo, 2004). Urbanisation in South Africa dates back to late 19th century (Mabin, 1992), with increasing industrialisation and the need for workers in urban areas. The rate of urbanisation increased rapidly during Apartheid (Khumalo, 2004). South Africa has seen a steady increase in urban populations in the post-Apartheid era due to the relaxation of urban-influx laws in the late 1980s. This expansion has led to marked challenges for the urban poor, in particular in accessing decent and affordable housing, resulting in self-provisioning by way of informal settlements and widespread squatting (Smets et al., 2014).

Informal settlements continue to increase due to continued household expansion in urban areas. Of course, the construction of state housing in urban spaces by central states across the globe seeks to counter the backlog in urban housing stock. For example, the government of Malaysia since independence in 1957 has provided low-cost state housing and, from the 1980s, this has involved collaboration with the corporate sector (Idrus and Siong, 2008). Chile, Colombia, China and many other countries likewise have delivered housing programmes for the urban poor (Richards, 1995; Gilbert, 2004). Such state housing programmes have experienced serious difficulties, including deficiencies in the quality of the housing stock and failure to meet the growing housing need among the poor. This is certainly the case with regard to post-Apartheid South Africa. The lack of adequate housing increases the possibility of housing contestations. The BCM case is one case in point where there have been contestations around ownership and occupation of state houses.

The BCM was selected as a research site because of its proximity and accessibility to the researcher, but also because the BCM accounts for most of the informal settlements in the Eastern Cape Province. It is also where most of the conflicts over occupation of state houses was taking place at the time the research was conducted. Phakamisa and Fynbos were selected for their different contexts, the former being a black community and the later a combination of black and coloured people. Fynbos offered a racial dimension to these contestations.

In Fynbos (in East London), the Eastern Cape Department of Human Settlements (ECDoHS) in 2014 undertook two state housing projects (Fynbos 1 and Fynbos 2) and built, respectively, 210 and 150 state houses for low-income earners. While the Fynbos 1 project was undertaken within the boundaries of Fynbos, the Fynbos 2 project was actually implemented near Fynbos in an area called East Bank. The houses in East Bank were built after the Department failed to obtain adequate land to build all 360 houses in Fynbos, and some are yet to be completed. The Fynbos and East Bank houses were illegally occupied including those that are not complete (without windows, ceilings, water and electricity). The Fynbos 1 project houses were all illegally occupied by members of the coloured community but, in East Bank, some occupants claimed they were the rightful owners. In the thesis, I often refer to Fynbos/East Bank when describing the East London case.

In the case of Phakamisa (in King William's Town), the Phakamisa Low-Cost Housing Project involved three sub-projects: two in Phakamisa East with 147 houses and another one with 100 houses, as well as 850 houses in Phakamisa South (BCM, 2001). The initial plan to build the houses in Phakamisa dates back to 2000; however, the construction was completed in 2018 (Eastern Cape Department of Human Settlements, 2018). In Phakamisa, not all houses were illegally occupied. There is a mix of legal and illegal occupants and the status of the occupations, legal/illegal, is highly contested in Phakamisa. Subsequent to the illegal occupations, both housing projects have experienced state evictions in a bid to restore rightful occupants, at least according to the state's notion of ownership.

Illegal occupation involves moving into and living in state housing owned by others without the permission of the latter. This entails contestations about ownership and occupation of state houses, leading to a situation of ownership without occupation, and occupation without ownership. In terms of these contestations around access to shelter in Fynbos and Phakamisa, the study focuses on the character of these contestations and, in particular, the diverse rights-based discourses around access to housing, which involve competing legal, historical, moral and needs-based claims of those involved in the contestations.

Reference to 'rightful' beneficiaries throughout the thesis is not based on the researcher's moral judgement of who is right or wrong. It is used to describe those, who according to formal procedures of the state, have their houses illegally occupied. The research acknowledges the dynamics of housing delivery processes in South Africa, which is characterized by corruption, maladministration, cronyism, and so on. These delegitimise state processes, thereby sometimes

rendering them ‘informal’; hence, ‘rightful’ occupiers may not be the ‘right’ ones in the first place. Rightful in this context is used legalistically in terms of who the state would call the rightful beneficiary without any moral value judgement on the part of the researcher.

The sections that follow in this chapter outline the history of housing in South Africa pre-1994 and, briefly, housing provisioning post-1994 – post-1994 housing is covered more fully later in the thesis (chapters 4 and 5). A review of housing literature and urban informality is provided, followed by a section on the theoretical framework of the thesis (which is detailed more fully in chapter 3). The chapter ends with an outline of the chapters.

1.2 History of Housing in Pre-1994 South Africa

The housing crisis in South Africa is an effect of decades of land dispossession and racial segregation. Long before Apartheid from 1948, systematic racial segregation to housing access was instituted through various ways in South Africa. These included racial clauses in property deeds as well as forced removals of blacks from some urban areas when plagues occurred (the bubonic plague in 1891 and influenza in 1918), which the white government attributed to overcrowding in black communities – thereby justifying the need to relocate blacks to racially-designated areas to decongest the city (Goodlad, 1996; Kraak, 1981). Further, none of the state institutions developed up until the 1923 Natives Urban Areas Act provided services for blacks, but for whites only (Chikwanha, 2005).

Since the 1920s, South Africa’s housing policy sought to establish a certain social order based on racial discrimination, with state housing policy giving priority to poor white working class (Wilkinson, 1998; Parnell, 1998; Goodlad, 1996). In fact, the problem of financing housing in South Africa, even up until the late 1960s, was reduced to the problem of “South Africa’s white population” (Verburg et al., 1969). Well before Apartheid, the Natives Land Act of 1913 and the Native Trust and Land Act of 1936 were legislated to create urban boundaries between blacks and whites so as to ensure that blacks do not have permanent residence in urban areas (Lind, 2003). As Mabin notes, “by the 1930s informal settlements off the fringes of the cities and many towns began to become common” (Mabin, 1992:16). Large-scale construction of black townships was carried out where the urban working class was compelled to live (Parnell, 1998), but these low-income labourers were considered as temporary urban residents. The Group Areas Act of 1950 and the Prevention of Illegal Squatting Act of 1951, amongst other legislation, reinforced this. Thus, Smith (1992) describes blacks in the cities as “temporary

sojourners who stayed in the cities as long as they were required by the white economy”, with no rights to the city (Smith, 1992:2).

However, with increasing industrialisation in the 1950s and the need for a permanent stable black labour force, selective rights were later given to certain blacks based on employment status. This arose despite the heightened rural-to-urban influx control system introduced by the Apartheid government from the late 1940s, which white agricultural capital was demanding (Abrahams et al., 2018). In other words, at first sight, it appeared to be a contradictory policy, as if “urban policy [was] directed at the unattainable: securing of labour power without labourers” (Maylam, 1990: 57). But, in satisfying the needs of urban manufacturing capital, it led to what Huchzermeyer (2001b:2) describes as a distinction between “(relative) elite permanent black urbanities, and temporary and illegal black urbanities, whose tribal identities would be maintained”. In this regard, “[l]egal urban residence depended on employment, duration of employment and availability of approved accommodation” (Chikwanha, 2005:134).

Nevertheless, the growing black urban population created problems for housing in what came to be termed the ‘Native question’ or the ‘Bantu problem’ at the time (Wilkinson, 1998:217). This saw the growing establishment of black townships in the urban outskirts and continued systematic racially-based spatial segregation: “Apartheid housing delivery was state sponsored and anti-participatory and it reinforced the spatial and racial character of residential settlement” (Pottie, 2003:123). Black townships continued to grow, marked by informal settlements and sporadic relocation of urban blacks. Meanwhile, Native Reserves were transformed into Bantustans (homelands) where black people were expected to live permanently when their services were no longer required in the urban areas of white South Africa. Based on its racial urban geography and spatial arrangements, the Apartheid city was a segregated city based on racial exclusions (Marais, 2005, Simon, 1989).

The estimated housing need in 1950 was 250,000 units with an estimated squatter population of 200,000 (Soni, 1992:42). To counter this, amongst other acts, the Apartheid state created an ‘emergency Native housing scheme’ and established a national housing fund (Wilkinson, 1998:218). The Bantu Housing Board was created in 1957 under the Housing Act to address the housing problems of blacks. The housing financing arrangements were aimed at reducing the fiscal burden on central and local states and therefore sought to, for instance, recoup loans through rental or purchase schemes by blacks. Employers were also expected to provide

funding schemes for black housing. As Chikwanha (2005) explains, these initiatives did not have significant success, in part because of absence of support from local government authorities and a lack of willingness to make available state funds to blacks who were still, in many cases, considered temporary residents. Further, building societies could not fund blacks to build on land that did not belong to them, hence the latter resorted often to squatting (Chikwanha, 2005).

Resistance to pass laws in the 1950s and the ensuing Sharpeville Massacre of 1960 led the Apartheid government responding through stringent measures of controlling and repressing black political organisations as well as by way of tighter controls on urban influx of blacks (Goodlad, 1996) and their forced removal from cities. This involved “defending the segregated spatial patterning of South African cities” (Huchzermeyer, 2003:591). But urban inflows continued alongside a burgeoning housing shortage in black townships. In the 1970s, a period of heightened political protest, the Apartheid government began attempts to allow for home ownership for blacks through a self-help approach (Wilkinson, 1998). Home ownership for blacks was a direct outcome of the Soweto riots in 1976 and the lobbying of the private think tank, the Urban Foundation (Huchzermeyer, 2001a, Soni, 1999). This was followed by a mass sale of rental stock to blacks in 1983 and the adoption of a new policy of ‘orderly urbanisation’ and total abandonment of influx control in 1986 (Marais and Cloete, 2017). The 1983 government sale of state housing was followed by an increase in rent for those who did not purchase the houses, which caused resistance from tenants through rent boycotts (Goodlad, 1996).

Orderly urbanisation relinquished territorial segregation but maintained residential segregation with an acknowledgement of the fact that the relaxation of pass laws and urbanisation would be desirable for economic growth (Hindson, 1985). In fact, it was impossible to restrict blacks from living permanently in urban areas due to the increased need for a skilled and stable labour force (including in the growing tertiary sector), and this became linked to the government’s efforts to develop a black middle class (Soni, 1999). Racially-neutral laws were introduced to create measures that addressed the problem of squatters and implement residential strategies that resulted in orderly urbanisation (Hindson, 1985). The ending of influx controls in 1986 increased rural-urban migration and resulted in the growth of informal settlements in urban areas as well as backyard shacks (Wilson et al., 2015). Urban population increase was also due to the systematic underdevelopment of Bantustans, to where the majority of blacks were relegated; hence, many moved to cities in search of work and to access the city (Levenson,

2014). After the relaxation of influx control laws, the Apartheid government introduced state funded site and service schemes (Pottie, 2003).

Freer mobility from the Bantustans to the urban areas in the 1980s was not followed by freedom of access to a house in a residential area of choice, because of ongoing racial-spatial separation. Although blacks were no longer prevented from owning land in the urban areas, they were restricted to the outskirts of urban centres. As well, they did not have easy access to houses due to limited income and racially-biased systems of access to housing. Blacks remained second-class citizens (Tait, 1997). The late 1980s were marked by a reduction of state housing provision due to a shift towards a market-oriented housing delivery programme (Chikwanha, 2005; Parnel, 1992). By 1990, the Independent Development Trust was established, prioritising housing provision and capital subsidy programmes for low-income earners (Goodlad, 1996). By the end of Apartheid, though, massive housing challenges, even in purely quantitative terms, existed, and informal settlements were pervasive throughout the urban landscape of South Africa.

Racial dynamics in housing are important to underscore, as part of the history of housing access in South Africa and racial segregation, in contributing to the current housing crisis. As stated earlier, racial segregation ordered urban society and access to the city, privileging whites above any other race regarding access to housing and land. The Group Areas Act was engineered on the basis of racial segregation in allocation of urban land for housing. There were also coloured and Indian designated areas and this urban segregation planning is very evident today in most South African cities and towns. The history of urban migration is pertinent to the creation of racially constructed settlements in South Africa, apart from being the outcome of Apartheid laws. As Mabin (1992) observes, evictions that occurred from private farms in the 1940s through to the 1970s, for example, led to migration of different races into the city in different proportions. By the 1940s, two thirds of Indians and whites lived in urban areas, half of coloureds and only a fifth of blacks (Cilliers and Groenewald, 1982).

As we will see in the empirical chapters, these racial dynamics were played out in housing contestations (as coloureds claim to belong to the Fynbos area because they settled in the place earlier than blacks). In Phakamisa, too, the generations that settled in Phakamisa earlier have a sense of belonging and ownership of the area. Inherent in contestations over land and housing is the question of claims over who owns or possesses particular urban spaces (including land and housing) between different races; and these questions are regularly asked and answered in

relation to historical migration patterns. Additionally, in South Africa, the politicisation, racialisation, contestation and control of citizenship and space is evident, in part following and reproducing Apartheid structures (O'Halloran, 2016:2). Goebel (2007) describes the persisting legacy of segregated cities, with new African (black) arrivals typically settling on the periphery of urban areas, historically reserved for Africans. The South African housing policy has not been successful in addressing the political and economic relations around land and housing that were created historically on the basis of racial segregation. As a result, racial tensions around land and housing remain; of course, in varied degrees between different cities. In the BCM, particularly Fynbos, there was strong resistance from both the coloured and black communities to be moved to the outskirts. Hence, they indicated they would continue to fight to live in Fynbos even if it meant fighting between themselves.

It is against this backdrop of years of restrictions of house ownership and urban occupation for the black majority that state housing policy and delivery in post-Apartheid South Africa emerged. It emerged with a burden to redistribute and restore dignity to blacks through provision of adequate shelter. For black South Africans, democracy would mean access to land and housing as a way of reversing decades of dispossession and unequal access.

1.3 Housing in Post-1994 South Africa

Apartheid ended at a time of neo-liberal orthodoxy, with the World Bank and other multi-lateral financial institutions propagating this orthodox with regard to housing policy in developing states (Taruvunga and Mooya, 2018), including South Africa. At the same time, the post-Apartheid state recognised the political imperative of undoing the legacies of racial injustices and engaging in programmes of socio-economic redistribution, with housing of great importance in this respect. Failure to deliver sufficient housing can potentially weaken governments and their capacity to stay in power (Bond and Tait, 1997).

Faced with the burden to redress and enable the right of access to housing for the majority of the blacks, the post-Apartheid South African state was caught between a welfarist approach to housing delivery while respecting private property rights and market-driven reforms (Royston, 1998). Greenberg (2004:4) describes post-1994 state policy and practice as “that which is not opposed to the dominant global project with the capitalist market at its core ... [with] the state improving the functioning of markets or creating them.... through market-compatible subsidies and grants to provide resources to enable participation in markets for housing”. This market approach and commodification of housing, as Rolnik (2013:1058) points out, has profoundly

affected the enjoyment of the constitutional right to housing due to failure by low-income blacks to afford housing on the housing market. In this context, Lall et al. (2007:4) state that “escalating housing prices, limited access to finance and low supply of subsidised housing has made it difficult for poor households to enter the housing market”. Adopting a market-oriented policy in housing contradicted the goal of redress. Bond and Trait (1997) describe it as policy failure on the part of the state and Lalloo (1999:35) describes the state as one with an unequivocal democratic mandate to eradicate the legacy of Apartheid, but failing in housing policy to address the mandate effectively.

Although the constitution exists to enable the realisation of housing rights, the state as an agent of implementation of policy is not a neutral organ, as contestations are inevitable within the state itself. The question of the role of each level of government (national, provincial and local) in the delivery channel is critical in determining the success and failure of the state as a whole. This is particularly the case with regard to resource allocation, programme implementation and monitoring of housing programmes. The local government has been criticised for failure, unjustifiably so it might seem, as some authors argue that the decision to grant local government the responsibility of executing housing programmes did not consider important factors of capacity and the interference of provinces, in addition to managing complex relationships with the private sector (Pottie, 2004; Tomlinson, 2011; Atkinson, 2007). State housing provision involves administrative and technocratic processes as well as political processes, including staff and officials composed of incumbent government political representatives, administrators and technocrats.

In the end, the three levels of government play distinct but related roles in the housing delivery channel. Formulation of housing policies and funding are the main responsibilities of the national department; the provincial department administers housing grants, and monitors delivery against set targets; and the local government applies for funds from the province to implement housing programmes (Ngwenya and Cirolia, 2000). Housing delivery involves making crucial – administrative and/or political – decisions about who gets a house and when, which are very important questions in a context of scarcity.

State housing entails state assisted provisioning either through extending individual housing subsidies to enable self-help construction, the provision of state-built houses for free to the poor, and social housing where the state provides capital for private companies that construct houses for low income rental housing as well as individual subsidies that are given to assist

with mortgages. The notion of ‘RDP housing’ is a colloquial name for the post-Apartheid state’s original housing programme that provided houses for ownership to the poor, namely, the Reconstruction and Development Programme (RDP). In 2004, a new state housing programme emerged called Breaking New Ground (BNG) leading to the construction of BNG housing. However, the term ‘RDP’ is regularly used in daily discourse to designate all state housing. Different financing mechanisms were initiated after 1994 in South Africa to support home ownership and affordable rental for low-income blacks. Initially, informal dwellings were regarded as illegal (Marais and Krige, 1999:117), but there has been a shift to upgrading of informal settlements.

However, in South Africa and indeed elsewhere, state housing in-itself does not address the fundamental problem facing poor urban black households, namely their low-income base and overall levels of poverty. This leads to urban spaces characterised by people suffering from multiple deprivations, “ranging from failure to access basic services such as water, electricity, improved sanitation, durable house structures, sufficient living area and access to secure tenure” (Marques and Saraiva, 2017:18). At the same time, though urban housing problems are common across the developing world, the specific forms, dynamics and complexities of these problems are subject to considerable temporal and spatial variation, including intra-national differences between urban centres. The ways in which the urban poor enact agency pertaining to accessing shelter are also very diverse (Buire, 2017). Thus, localised studies take on empirical and analytical significance, including this study of Buffalo City Municipality, South Africa.

The build up to democracy was not a simple process for the state because of the need to balance the demands of business interests and the needs of the public (Laloo, 1999, Huchzermeyer, 2000). The 1994 Housing White Paper preceded the new constitution and was useful for housing policy in the dawn of democracy. The 1996 constitution affirms the right to housing. Section 26 of the post-Apartheid constitution stipulates that “(1) everyone has a right to have access to adequate housing; (2) [and] the state must take legislative and other measures within its available resources to achieve the progressive realisation of this right” (Government of South Africa, 1996). Such constitutional or legal frameworks for the provision of socio-economic rights (including housing) exist in many countries, yet there remain huge challenges regarding the realisation of these rights. Between 1994 and 2017, under the Reconstruction and Development Programme (RDP) and Breaking New Ground Programme (BNG), the

government constructed 2,975,197 houses for low-income earners (Department of Human Settlements, 2017).

Initially, the new South African government pursued an ambitious housing programme meant to provide low-cost houses free of charge to households earning less than R3,500 a month. A target of building one million houses within 5 years was set with the ultimate aim of providing housing for all, albeit with evident drawbacks regarding the sheer size of the housing backlog as well as massive fiscal constraints (Bond and Tait, 1997, Bond and Khosa, 1999, Oldfield, 2000). Other programmes, with revised targets, followed. Overall, state housing provision in South Africa is “both a political imperative and reconstruction priority for the post-Apartheid government and remains key to economic, political and social transformation of the country” (Oldfield, 2000:858). Demand for housing remains high with an estimated backlog of 2.1 million in 2016 (*African News Agency*, 22 April 2016); and informal settlements are pervasive (Huchzermeyer, 2006), with more than 1.2 million households living in informal settlements (Cirolia et al., 2016:3).

1.4 Housing Crisis in South Africa: A Literature Review

It is indubitable that the housing crisis in South Africa currently is, among other factors, an outcome of a history of discrimination, land dispossession and inequality of access, and that the provision of state housing is meant to enhance inclusivity for those who were excluded due to Apartheid (Levenson, 2018; Mpehle, 2015; Mabin, 1992; Beyers, 2016; Gunter, 2013). Literature has considerably acknowledged this view. This section offers a review of the literature, showing the various themes existing in the literature on state housing in South Africa. This includes examining the state’s housing programmes in terms of its intended goals: namely, improving the lives of housing beneficiaries, reducing poverty, redressing past spatial injustices in urban areas, enhancing socio-economic development, transforming human communities and fulfilling human rights obligations (Adebayo, 2016; Lalloo, 1999; Oldfield, 2000; Turok and Scheba, 2019). The section also shows the existing gaps in the housing literature regarding struggles and contestations around access and ownership of houses, which the thesis seeks to fill.

In reflecting upon the successes and failures of the South African state’s housing programmes, both quantitative and qualitative indicators are used (Govender, 2011). The quantitative dimension is in particular brought to the fore, emphasising the challenges faced by the government in financing low-cost housing and the consequent sheer inadequate supply of

housing units resulting in massive housing backlogs (Jarbandhan et al., 2016). In addition, some literature focuses on the impact of low-cost housing delivery on the health of housing beneficiaries and on the sustainability of the built environment because of overcrowding and lack of infrastructural and social services (Goebel, 2007). The increase and prevalence in informal settlements in urban areas (such as Cape Town) has seen researchers also examining informal settlement patterns and problems, including the South African government's initial emphasis on curbing informality and later its (at least in part) embracing of informality and targeting informal settlements for upgrade (Huchzermeyer and Karam, 2006; Patel, 2013).

In the literature, there is considerable attention on the many conditions and factors contributing to state housing provision failure in South Africa. These factors include: lack of coordinated integration between different branches and tiers of the state; absence of financial and technical capacity; slow delivery of housing units due to construction delays; inadequate workmanship by incompetent and unqualified contractors; maladministration and a general failure to ensure proactive monitoring and evaluation systems to curb corruption; and lack of adequate suitable land for housing programmes (Motlhabane, 2015; Modimowabarwa, 2014). In addition, nepotism and cadre deployment by the ruling ANC party impedes the protection and enforcement of the right to housing in South Africa (Nevondwe and Odeku, 2012). For these and other reasons, the democratic dispensation for poor urban black South Africans has not translated into the fulfilment of socio-economic rights in the “*de facto* daily lived experiences of ordinary people” (Williams, 2005:219).

In this respect, literature exists which considers the lives, experiences and practices of state housing beneficiaries, including in Durban and Johannesburg (Charlton and Paula, 2017; Mosselson, 2017). As well, Charlton (2013) analyses the strategies of beneficiaries in selling their houses, renting them out or even opting to live in informal settlements. Clearly, the failings of the South African government's housing policies and programmes have a range of negative consequences for the day-to-day lives of housing beneficiaries as well as for those so far unable to access state housing. These include the unintended consequences of housing delivery, such as mistrust of the government, disillusionment, and conflict (Mafukidze and Hoosen, 2009). Combined, these lead to variegated responses by the urban poor.

Following from this, the South African housing literature often considers overt (and sometimes dramatic) conflicts in the form of service delivery protests directed at local municipalities and the central state (Alexander, 2010; Pithouse, 2007; Atkinson, 2007; Booysen, 2007). Certainly,

these disruptive protests, mostly around housing delivery and related infrastructure/services, are a common feature in urban South Africa (Thomas, 2010), and they are a clear manifestation of the frustrations and discontentment in urban housing delivery nationally (Turok and Scheba, 2019). However, it is important to move beyond an exclusive focus on state-community tensions with reference to urban housing challenges in South Africa.

This entails considering less overt, intra-community contestations in the context of the lived experiences of the black urban poor. Significant local contestations are taking place over ownership and occupation of state housing, but this has not been a key focus in the prevailing housing literature. Though urban households typically occupy the houses duly handed over to them by government, some intended beneficiaries (i.e. owners) are unable to occupy their officially-allocated houses because other people have already illegally occupied them. This type of illegal occupation is different from the construction of illegal dwellings on occupied land and the formation more broadly of informal settlements.

In a famous case, Cross (2006) discusses Crossroads, a township in Cape Town, where housing protests involved struggles over who has the right to occupy particular RDP houses. Completed houses remained vacant for over a year because of violence between residents from two wards who both claimed the right to occupy the 300 houses. Overall, delays in handing over houses to official beneficiaries result in other people occupying the houses, or occupations cause such delays. At times, local state corruption has led to the jumping of the queue in housing waiting lists, with those claiming to be disadvantaged then undertaking illegal occupations (Corruption Watch, 2013; Huchzermeyer, 2014b, Levenson, 2019). Concerning such occupation and ownership controversies, Malatji (2011) investigated the causes of occupations of RDP houses at Namakgale in Mopani District of Limpopo Province. In this case, households refused to occupy houses granted to them because of the distance away from their current place of residence, and thus they occupied housing stock closer to their residential area.

Eviction of illegal occupants is a complex process, in many cases because alternative accommodation must be made available for the evicted people in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act of 1998. In 2014, and for this reason, the North West Province High Court was barred by the Supreme Court from issuing an eviction order to illegal occupants of RDP (state built) houses at Seraleng Township in Rustenburg (Supreme Court of Appeal of South Africa Judgement, Case Number 937/13).

In the Eastern Cape, an article published, entitled “Shock report on illegal occupation of RDP houses” (*News 24*, 10 April, 2015), shines light on the extent of illegal occupation of RDP houses in the province. In Kwazakele in Nelson Mandela Bay Metropolitan, of the 480 RDP houses audited, people who are not registered beneficiaries occupied 255 of these houses. A number of newspaper articles in the *Daily Dispatch* (an East Cape Province based newspaper) have been published with such headlines as: “Mass takeover of RDP houses” (*Dispatch Live*, 29 December 2015), “Residents struggle for RDP homes” (*Dispatch Live*, 28 November, 2017), and “Owners in the cold as illegal occupants hijack RDP homes” (*Dispatch Live*, 27 November, 2018). These and other related articles vividly show the struggles for occupation and ownership of RDP houses in the context of housing backlogs, as well as the absence of the realisation of the right to housing enshrined in the South African constitution.

Literature has also focused on the use of courts by the marginalised communities to realise housing rights (Huchzermeyer, 2003; Langford, 2014; Marais and Wessels, 2005). South Africa is one of the countries where the poor have resorted to the courts for successful litigations on housing issues. Both successes and failures of the courts in helping the poor to realise housing rights have been noted (Wilson, 2011; Dugard, 2000; Wertman, 2015). It is evident that, although the poor sometimes obtain legal aid and support from civil society or other organisations, it is not always easy to get recourse using courts, and the difficulties in enforcing court judgements does not help either. These realities at times lead the poor to resort to non-legal means of accessing housing. Though the civil society space including community-based organisations, Non-Governmental Organisations (NGOs) and other formations has been useful in litigating on housing issues, it has fallen far short in terms of everyday housing needs and demands.

This thesis contributes, in the first instance, to the housing literature on South Africa by seeking to add to the emerging literature on local intra-community contestations around housing in terms of ownership without occupation and occupation without ownership. Focusing on intra-community contestations helps in understanding the way in which the urban poor take charge in the reorganising and determining of resource access, a process that is ordinarily supposed to be driven and ensured by the state. It is important to understand how the urban poor respond to the lack of realisation of housing rights, especially in a context where it has become difficult for the poor to legally realise housing rights due to state incapacity, resource constraint and corruption.

Illegal occupations undercut the state's formal housing waiting list procedures, which the occupiers claim though to be informalised insofar as they are subject to corrupt and underhanded dealings. The occupiers' own informal practices derive, at least in part, from claims of moral legitimacy and rightness and their own ethical compass. The thesis, in the second instance, seeks to contribute to the prevailing literature by way of an innovative moral-right claim based analytical understanding of local housing contestations (as detailed in chapter three).

The following section extends the literature review on housing with a focus on urban informality as a concept central to informal occupations. Urban informality is not a new phenomenon in South Africa and it has been understood by some as a form of resistance to the state. Whereas states often equate informality with illegality, ordinary perceptions of informality amongst citizens are more complicated, as informality is not seen as necessarily reducible to illegality. In this thesis, I refer to informal and/or illegal occupations. Informality pertains to an alternative way of acting (and existing) in relation to what is deemed formal, and it has found legitimacy even in its illegal form. What is formal is not necessarily legal and vice versa and, for that reason, I use both terms contextually. Informal occupation of houses in the BCM is one form of urban informality extending beyond the informal occupation of land; hence, it is of significance to expand our review of literature to urban informality.

1.5 Urban Informality

Informality emerged initially as a concept describing informal economic activity in the urban areas (Hart, 1973), but it has developed to describe all forms of informality in urban spaces including informal access to land and shelter. The concept has evolved from being understood as a 'sector' of the economy to being redefined as a 'new way' of acting (Herrle and Fokdai, 2011:3). Groenewald et al. (2013:94) describe urban informality as a way of accessing shelter and a basis for inclusion by the urban poor, as it undercuts the view that residents must by necessity wait endlessly for formal housing delivery. In relation to the language of what is legal, regulated and legitimate from the perspective of the state, acts of urban informality tend to go beyond what is acceptable to the state. The outcome has been a body of literature that considers informality as a form of resistance to the state (Bayat, 2000; Kudva, 2009; Moyo and Gumbo, 2021). However, state responses to urban informality have been diverse and at times contradictory, including condemning, tolerating and condoning informality (Kamete, 2013; Waldorff, 2016; Kaarsholm and Frederiksen, 2019). There is also a focus on the processes,

causes and outcomes of urban informality, including considering the agency of those involved in informal activity as a politics of self-help (Fairbanks, 2011; Banks et al., 2020).

An extensive literature exists on urban planning and the complexities involved in attempting to formalise informal spaces that are randomly created in an unordered way, including challenges of dealing with the ‘unplannable’ exceptions to urban order (Roy, 2005). Similarly, Scott (1998) describes the imperatives of the modern state, including the orderly urban planning of cities meant not only to enhance urban aesthetics or create healthy living environments, but also to facilitate state control and management of urban space and society. Harvey (1978:213) describes a more capital-centric notion of urban planning, with its primary purpose of supporting production, circulation, exchange and consumption. These top-down urban-planning templates and grids, while logical to the state (and capital), fail to recognise the diverse and variegated manner in which ordinary urban residents seek to structure their daily lives. Informal, albeit structured, ways of acting by residents may be undermined in the process, but they often continue to exist as practical means of survival if not resistance.

There entails a recognition of urban space as constituted by a set of social and political relationships, involving state-citizen interactions, intra-community networks and the everyday lived experiences and practices of resident-citizens, including informal access to housing (Saunders, 1989; Oldfield, 2014). Moving away from analyses on urban spaces without a human face, urban studies have analysed political and social action in informal settings. This involves focusing on contestations in informal spaces linked to what Kudva (2009: 1614) calls “a politics of informality that includes not just everyday resistance and creeping encroachments to achieve gains, but also episodic moments of open protest, collective mobilisation and violence”. Urban resistance to the state can manifest through ‘quiet encroachment’. Bayat (1997, 2000) use the phrase ‘quiet encroachment’ to describe non-confrontational urban resistance through informality, in which urban residents seek recognition and social inclusion. Informality is therefore seen by Bayat as a form of silent resistance to the state and by others like Chatterjee, as ‘political society’ (or ‘populations’) seeking to affirm their citizenship through informal access to basic needs (Chatterjee, 2004). Varley (2013) analyses informality as a vector of informal power and resistance (Ismail, 2014), or it is labelled as subaltern urbanism such as by Roy (2011). Additionally, Sparks (2017) describes informality as a site of political urgency. Basing his analysis on subaltern urbanism, he examines

How everyday practices of [settlement] camp management produce localised forms of governmentality, through which homeless residents resist stereotypes of pathology and dependence, reclaim their rational autonomy and recast deviance as negotiable difference in the production of governmental knowledge (Sparks, 2017:87).

Through various strategies of informality, the urban poor access resources, seek recognition and inclusion from the state.

Al Sayyad (2004:8) describes three perspectives from which urban spaces can be approached, that is:

The physical structure, comprising a population base; a social organisation, involving a characteristic social structure and related patterns of social relationships; and a set of attitudes, ideas of individuals or groups engaged in and operating under forms of collective behaviour and social control.

All the three perspectives apply to urban informality and access to housing through informal means. In accessing housing informally, the urban poor organise and engage with the state (if only indirectly and by subversion) and they express their variegated beliefs, attitudes and claims in the urban space in doing so. Therefore, the politics of informality should not be conceived in isolation from the built physical structures which provides shelter as well as the local social and political (state) structures through which acts of informality navigate, including by way of shared claims, rights and values. Informality is an arena of negotiation for physical, political and socio-economic space, revealing power relations between local actors and the politics of rights, claims and entitlements.

Informality according to Chatterjee occurs within the space of the uncivil/political society, outside citizenship ideals, “in a site of negotiation and contestation opened up by the activities of governmental agencies aimed at population groups”, who are “only tenuously rights bearing citizens and therefore a population for the state to govern” (Chatterjee, 2004:74,38). Chatterjee (2004) ascertains that ‘being informal’ in the city determines or strongly influences the way in which urban dwellers articulate their (individual and collective) claims to the city. Being informal describes engaging in activities that are not state-regulated and are often undertaken outside the domain of the law. These claims to the city are driven by a basic appreciation of rights to housing and associated benefits. Primarily, housing informality is an outcome of lack of access to housing through formal means, whether this entails the construction of informal settlements or gaining access to state housing through illegal occupations. Understanding this

informality requires some grounding from the perspective of rights to shelter. For instance, in locating housing struggles in rights-based discourses, Thomas (2010:27) investigates causes for housing protests.

Human rights provide a contested arena for negotiation through popular mobilisations, with the poor creating what Benit-Gbaffou and Oldfield (2014:283) describe as extra-ordinary claims for rights: where individual and collective claims are formulated as ‘rights’ and enacted as a political strategy for action and mobilisation (Slater et al., 2003). If the state provides housing based on legal rights to housing, but on an insufficient basis, the urban poor devise strategies and tactics that they use to translate perceived entitlements into real benefits. They do so by making moral claims against legal rights, including those stipulated in a national constitution. In doing so, “they challenge the rights rhetoric, set an agenda for justice and make a critique of the spatialities of injustice” (Benit-Gbaffou and Oldfield, 2014:283). Overall, they do not engage with the state based on legal claims to rights, but they may use the legal realm (including the courts) tactically and conveniently when they require legal support.

1.6 Theoretical Framework

It is not unusual to analyse state housing delivery from a human rights perspective in seeking to assess policy goals and achievements in terms of the extent to which housing rights are realised. This is in addition to studies on how the urban poor use the law tactically to access state housing with regard to constitutional rights and violation of these rights (Huchzermeyer, 2003; Bhan, 2016; Strauss and Lieberberg, 2014). However, in drawing upon a human rights perspective, this thesis goes beyond these forms of analysis by considering the manner in which rights are highlighted and asserted by the urban poor in accessing shelter through informal and illegal means.

The theoretical framing for this thesis, discussed more fully in chapter 3, thus draws upon human rights theory. The origin and character of human rights, including the right of access to housing, is open to significant debate (Sjoberg et al., 2001; Shestack, 1998; Hayden, 2001). Questions arise as to: the hierarchy of rights (for example, political versus economic rights); the anchoring of rights in moral values or politics; the natural, universal or situational content of rights; and the inalienable quality of rights or their contingent application and enforcement.

The notion of natural rights as endowed in humans from birth implies a common recognition and ability to distinguish between what is right and wrong (Hayden, 2001). Contrarily, human

rights as statutory claims exist only within historically and spatially inscribed legal boundaries. In this sense, real rights are born of law and struggle, whereas natural rights are mere imaginary rights (Das, 2013:2). Human rights are inherently contradictory in character (Kurki, 2011), and they embody “ongoing politics, a contestation over the terms of legitimate political authority and the meaning of ‘humanity’ as a political identity” (Hoover, 2013:217).

In unpacking the complexity of human rights, the thesis draws extensively on the sociological perspective of Bryan Turner (Turner, 1993; Turner, 2006). He proposes a theory of rights based on ‘moral sympathy’, or rights as social claims for the protection of lives and livelihoods, which are supported typically by collective sympathy for the plight of the marginalised. According to Turner, rights become historically-contingent social claims used for accessing basic needs. In a similar fashion, in an analysis of competing claims for land, Razzaz (1993) concludes that popular claims around land (and by extension, housing) do not emerge from property rights and, further, that a clear distinction needs to be made between property rights and property claims – or Turner’s social claims.

Property claims are often about history, customary rights, religion, *de facto* use and social citizenship (Razzaz, 1993:342). Because of this, they are not evaluated on the basis of legality. In this regard, Lund and Boone (2013) see land claims embedded in questions of contested authority, citizenship and the politics of jurisdiction. In relation to peri-urban areas in Mexico, Lombard (2016) notes the various claims over land whereby the right to land is multi-faceted and not limited to property rights. Conflicts emerging from contested rights of ownership and use of land are not easily resolved by existing law and are an ongoing problem in the relationship between urban authorities and local communities (Lombard, 2016). In this context, the thesis seeks to explore and examine the ways in which different claims exist around housing rights, and the manner in which contestations over ownership and occupation arise from contestations over these rights.

Those who occupy houses illegally engage in processes of self-provision outside the ambit and procedures of government allocation. Self-provisioning through illegal occupations abrogates the pathway for housing provisioning as determined by governments. The occupier uses the general right or claim to housing, though this does not translate directly to a right to occupation before an official allocation. Though governments, including in South Africa, are at fault for failing to provide sufficient housing, they are officially constituted as the sovereign power.

Hence, it becomes necessary to identify and examine the basis on which occupiers justify their illegal occupation of housing.

For Chatterjee (2004), the actions of occupiers who self-provide exist outside the legal and formal realms (Chatterjee, 2004), and beyond the sensibilities of civil society – what is often called the ‘uncivil sphere’. As such, occupiers do not count as social citizens and are liable to be excluded from state provision of basic social services (such as housing). If it is possible to speak about the existence of rights within the uncivil, in what forms are they enacted and expressed, and what is their content? Can the acts of informality and resistance of the urban poor assist in ascertaining whether human rights are, ultimately, legal or moral rights? Certainly, in South Africa, the practices and struggles emerging from the urban poor, as they seek to realise housing rights, reveal that they are active agents who appeal to the logic of rights, and invoke moral claims, in a manner similar to rural land claims (Cousins and Hall, 2011).

Housing is central to what Millstein (2017:255) describes as

[T]he post-Apartheid state’s project of citizenship, an expansion of rights and welfare to all South Africans...the realisation of housing rights as a symbol of becoming a citizen, of being recognized and seen by one’s government, and it provides a sense of dignity and belonging.

Patel (2016) also contends that housing strengthens a citizen’s sense of belonging, while Davy and Pellissery (2013:68) describe the right to housing as a promise of social citizenship. By occupying state-provided houses illegally, the urban poor are asserting and claiming their social citizenship through their own self-activity. Though appearing as protagonists, they are simply making themselves visible and legible to the state in a clarion call for recognition by the state of their property claims and right to citizenship.

1.7 Contribution of Thesis

The thesis contributes to the body of knowledge on housing problems in contemporary South Africa. The case of the BCM brings out an important dimension regarding housing challenges, and contestations around housing, by highlighting struggles of ownership and occupation, and from the perspective of contradictions between moral and legal rights in human rights discourses. It is important in sociology to acknowledge the role which (formal and informal) housing-rights discourses (and the meanings underpinning them) play in shaping and influencing everyday contestations over access to urban shelter in South Africa. There is an

important body of knowledge falling broadly within the discipline of a sociology of rights (Somers and Roberts, 2008; Sjoberg et al., 2001, Nash, 2014; Morris, 2010), but it has not been adopted sufficiently in empirically investigating linkages between rights, housing and everyday struggles. In pursuing this in this thesis, I hope to contribute to an increased understanding of the causes, conditions and character of housing struggles in present-day South Africa and, in doing so, to construct and use an innovative analytical framework for understanding the specific housing struggles taking place in the BCM.

I end this chapter with a short overview of the thesis structure.

1.8 Thesis Outline

The following chapter (chapter 2) identifies the research problem and thesis objectives as well as discussing the research methodology and methods. Chapter 3 sets out the theoretical framing for this thesis, with a particular focus on rights and contestations around them. Chapters 4 and 5 are contextual chapters which speak about urban housing in South Africa, both historically and currently. The South African state's state housing policies and programmes are detailed, along with the many challenges faced in this regard. As well, there is a discussion about the pervasive informal settlements existing in urban South Africa and reference to existing literature on illegal occupations of housing in South Africa. Chapters 6 to 8 are the three empirical chapters of the thesis. Chapter 6 presents the conditions leading to the informal occupation of state houses in the case study sites, including weak administrative systems, lack of proper allocation guidelines, political interference and corruption. Chapter 7 unravels the rights-based claims which the urban poor use in making demands on the state and to justify their actions of illegality. Chapter 8 shows how the urban poor employ a number of strategies to defend and protect their informal occupations. These range from physical resistance and use of violence, use of courts and negotiations with community leaders. Chapter 9 summarises the thesis and shows how the thesis has addressed the thesis objectives, including in light of the theoretical framing of the thesis.

CHAPTER 2: RESEARCHING HOUSING CONTESTATIONS IN BCM– OBJECTIVES, METHODOLOGY AND FIELDWORK

2.1 Introduction

This chapter discusses the research methodology and methods used to arrive at the findings presented in the thesis. But it does so in the context of first outlining the problem statement, and research questions and objectives, as well as the research sites. As Berg (2001:5) states, the choice of research methodology and methods is important for ensuring that relevant and suitable evidence is gathered for answering the research questions. In this chapter, I discuss in particular the case study design, qualitative methods, interviews, sampling techniques and other research-related matters. I also provide a comprehensive narrative of my experiences of fieldwork with a focus on issues of access, gatekeeping and researcher positionality.

2.2 Problem Statement

As stated earlier, the housing problem in post-Apartheid South Africa is attributed partly to weak policy implementation which has resulted in the failure to respond to the needs of the urban poor while also perpetuating inequality of access to housing (Huchzermeyer, 2001; Bond and Tait, 1997; Gilbert, 2004; Lalloo, 1999). As well, central to the problem of housing is spatial segregation of racial groups created during Apartheid and the continuation of this segregation in post-Apartheid times (Mayo, 1993). Housing needs for the poor have continued to grow in South Africa despite attempts by the democratic government to use policy to redress past segregation and growing inequality in urban communities.

Informal settlements in the form of shack dwellings form a great part of urban informality in the country and significant research has been undertaken about these informal settlements (Huchzermeyer, 2006; Richards et al., 2007; Del Mistro, 2009; Cirolia et al., 2017; Ziblim et al., 2013). Informal settlements have been used to show the extent of housing need, yet the current discourse condemns their eradication in favour of creating livable environments for urban residents. The problem of housing in contemporary South Africa has extended to other forms of informal access to shelter, including informal occupation of state-built houses. There is no comprehensive research undertaken on informal and illegal occupation of state-provided houses. This is despite the trend of illegal occupations growing, as the state continues to deliver houses to low-income earners in highly-contested urban environments.

Contestations around RDP housing occupation is not a straightforward phenomenon because they are embedded in complex administrative, political and state processes that are marred by irregular and informal practices in housing allocation. In fact, this research was born from a personal encounter, during my tenure as a housing researcher at the Public Service Accountability Monitor (PSAM), with an RDP housing beneficiary whose house had been occupied by another person because of administrative errors within the Eastern Cape Department of Human Settlements. Inadequate state resources, affordability, and demand exceeding supply resulting in competition for housing, are salient causes of the contestations around ownership and occupation of state provided houses. These factors are detailed in the thesis, as are the nature and forms these contestations take.

2.3 Research Questions and Goals

The main research question is: *What are the causes and character of the contestations over ownership and occupation of state-provided housing in contemporary South Africa with specific reference to Buffalo City Municipality (BCM), Eastern Cape Province?*

It is acknowledged that the state's housing policy currently has not resulted in urban transformation and has been unable to create spatial balances between racial groups. Structural poverty and inequality continue to characterise the urban areas in post-Apartheid South Africa. At a national level, historical legacies of Apartheid, structural poverty and the current administrative (housing) processes of the democratic government in South Africa are likely the broad conditions of existence for informal and illegal occupation of state houses, but these occupations take place under specific socio-spatial circumstances – hence, the significance of case studies such as this one of BCM. A subset of research questions emerges from the main research question:

1. What are the current administrative and political processes that guide housing delivery and to what extent do these contribute towards informal occupation of state-built houses in the BCM? Who does the allocation of houses and how is it done?
2. Can diverse rights-based claims be useful in making sense of individual or community decisions to occupy state-built houses? What do the narratives of those involved in informal occupations reveal about their claims for ownership and occupation?
3. What do contestations around housing reveal about the way the urban poor construct their realities in the face of housing scarcity?

The overall objective of the thesis, built on the main research question, is *to investigate and analyse the causes and character of contestations over ownership and occupation of state-provided housing in contemporary South Africa with specific reference to Buffalo City Municipality (BCM), Eastern Cape Province*. The subsidiary goals, which align with the set of research questions above, are:

- To investigate both official and unofficial processes of housing allocation and, in particular, the manner in which people access state housing not officially allocated to them as beneficiaries in BCM;
- To examine diverse housing claims and determine whether those claims are animated or legitimised by popular constructions and understanding of rights.
- To understand the way in which the urban poor respond to vulnerabilities emerging from inadequate housing and the state's failure to realise their housing rights.

2.4 Research Sites

The research sites for the study are Phakamisa in King William's Town, and Fynbos/East Bank in East London, which all fall under Buffalo City Metro District Municipality. In 2011, a census showed that the Buffalo City Municipality (BCM) had the highest number of informal dwellings in the Eastern Cape Province (Statistics SA, 2011), such that access to state housing is of critical significance to the urban poor, including in King William's Town and East London.

The Buffalo City Municipality (BCM) was created from merging two former Transitional Councils, that of King William's Town and East London, in 2000. The BCM is composed of two magisterial districts, namely, East London, including the previous Ciskei magisterial district of Mdantsane, and King William's Town and the previous Ciskei magisterial district of Zwelitsha (BCM IDP Plan Review, 2016-2021:35). In 2016, the BCM had a population of 834,997 composed of 31.6% under the age of 15, 64.4% between ages 15-64 and 4.0% over 64 years (South African Government, 2020).

The Eastern Cape Province, where the BCM is located, is predominantly a rural province with a population estimated at 6,5 million according to the mid-year population survey for 2018 (Stats SA, 2018). The Eastern Cape Province is the largest province nationally in terms of land coverage and the BCM covers 2,515 square kilometres (BCM IDP Plan Review, 2016-2021:35). It is also the poorest province in the country with about 880,000 people living in

poverty (Stats SA, 2016). The mid-year population estimates for 2018 also show that Black Africans constituted 80.9% of the province's population, 8.8% Coloured, 2.5% Indians/Asians and 7.8% Whites (Stats SA, 2018). Demand for housing in the province, based on a national needs register for 2018, stood at 532,518 potential beneficiaries. Of these, the Buffalo City Municipality had 80,272 potential beneficiaries, constituting 15% of the total demand in the province (Service Delivery Improvement Plan (SDIP) Implementation Report 2018/19).

Figure 2.1 below shows the Buffalo City Municipality and the location of King William's Town and East London within the municipality.

Figure 2.1: Buffalo City Municipality Map



Source: Map extracted online <https://municipalities.co.za/map/7/buffalo-city-metropolitan-municipality>

Urban development in BCM through the industrial and service sectors happens along the East London - Mdantsane - King William's Town - Dimbaza urban development axis and it attracts people from the greater Amathole region in search of work and better urban services (BCM IDP Plan Review, 2016-2021:36). This has generally led to a significant growth in demand for housing in BCM over a number of years. Overall, 25% of the population in the BCM lives in 156 informal settlements, making up 40% of the total households living in informal settlements

in the province (Isandla Institute, City Profiles, 2018). The growth in the number of households living in informal settlements in the BCM has been higher than the growth rate of the other metropolitan areas across the country: at 17% compared to the average of 12% for all metros (Stats SA, 2013). By 30 June 2014, the BCM housing list backlog stood at +-40,000 (BCM IDP Plan Review, 2016-2021:64). Table 2.1 below indicates the housing needs for BCM in 2014.

Table 2.1: BCM Housing Statistics (as at 30 June 2014)

Number of beneficiaries registered for home ownership	1,481
Number of beneficiaries educated about possible home ownership	2,022
Number of top structures delivered	208
Number of serviced sites completed	374
Number of temporary shelters requested	54
Housing list backlog	+40,000
Number of informal settlements upgraded	0
Number of shacks demolished	87

Source: BCM website. <https://www.buffalocity.gov.za/documents.php>

In this context, the thesis seeks to understand the local complexities, particularities and dynamics of illegal occupations (without ownership) in the two cases under study. At the same time, the research also hopes to contribute to a more general understanding of ownership without occupation and occupation without ownership in contemporary urban South Africa.

In this sense, the research involves an instrumental case study (Berg, 2007). Phakamisa and Fynbos were chosen as case studies in part because of convenience of access. East London, where Fynbos is located, is about 132 kilometres from Rhodes University in Makhanda where the researcher resided at the time of research, and King William's Town (the other research site) is closer. Additionally, ongoing contestations over housing with extensive media coverage in the two areas during the time of research facilitated the possibility of real-time data collection and analysis. Further, much has been written on housing in the provinces of Gauteng, the Western Cape and KwaZulu-Natal and relatively less in the Eastern Cape Province. This is partly due to the existence of prominent urban research institutes and institutes of higher learning in these provinces. This thesis thus provides an in-depth analysis using Eastern Cape case studies.

The two sites, however, exhibit distinct characteristics in terms of their geographical location within the BCM and their populations and racial compositions. Phakamisa is located in the urban periphery of King William's Town (about nine kilometres southeast of the central business district) with a predominantly Black African population. It is divided into three sections: a section built for government employees called New Town, a section with state houses called 'four rooms', and a former informal settlement area called Kuwait (Gedye, 2015). Kuwait is the area where, when new houses were built between 2016 and 2018, contestations over allocations and occupations arose. Fynbos is in a high-density inner urban area in East London with a mixed population of Black Africans and Coloureds.

Initial research, based in part on media reports, indicated that widespread illegal occupation of housing stock was taking place in both East London and King William's Town. The contestations over ownership and occupation of state houses intensified to include physical conflict, but they arose over a long period which included local suspicions of corruption, favouritism and mal-administration. Those who occupy illegally do so often before the houses are fully complete. The BCM attributes handover delays and failure to complete projects as the reasons for illegal occupation of incomplete units (BCM IDP Review, 2015/16-2016/17:95). On 26 May 2015, the national Department of Human Settlements and the Eastern Cape Department of Human Settlements in a meeting highlighted the challenge of illegal occupation of houses in BCM (Parliamentary Monitoring Group, 2015).

Thus, the Eastern Cape provincial department of housing openly acknowledges the challenges in state housing allocations that have resulted in illegal occupations and ownership-occupation contestations in the BCM area. As well, since 2018, there have been protests in King William's Town and East London over illegal occupation of state houses, as reported on national television and in local newspapers. The BCM has developed beneficiary allocation correction policies in which illegal occupants are evicted (Interview with Department officials, August 2019). In 2019, the Eastern Cape Department of Human Settlements undertook evictions of illegal occupants in the BCM and these evictions were reported with the headline "BCM evicts hundreds of families" (*Herald Live*, 09 July 2019). Some illegal occupants in Phakamisa and Fynbos experienced evictions in 2019, leading to houses being burnt down in November 2019.

In Fynbos, the illegal occupations began on 9 July 2018. This entailed the occupation by coloureds of houses which were supposedly meant for blacks. The BCM went to court to seek permission to evict them. The illegal occupants sought to legally challenge this but lost the case

to BCM on 18 April 2019. On 26 June 2019, BCM evicted the illegal occupants (the first time); however, the evictees moved back into the houses. When the second round of evictions came, there was an attempt to ensure that they evicted the illegal occupants while, at the same time, moving the rightful beneficiaries into the houses. This resulted in violence and destruction in November 2019. More specifically, the illegal occupants resisted evictions leading to violent clashes between the rightful housing beneficiaries which resulted in over twenty houses being burnt down and several houses damaged (*The Eastern Cape Rising Sun*, 15 November, 2019).

Illegal occupations in Phakamisa, King William's Town started upon completion of houses between 2016 and 2018. At the time of the fieldwork in 2019, the houses in Phakamisa were fully occupied albeit some illegally. The BCM implemented evictions of illegal occupiers almost immediately in July 2019 after winning a court case to evict. Although Phakamisa did not erupt in violence during the evictions, the evictees moved back into the houses after the sheriffs and police left, according to media reports and the interviews conducted. The contestations over state housing in Phakamisa involved black youths occupying houses which were meant for the older black people, as indicated by the ward councillor at the time (Phakamisa Interview, August 2019). As well, *SABC News* (25 June 2019) indicated that there were cases of elderly blacks occupying other houses illegally after their houses had been occupied, thus creating a web of illegal occupation. The *Daily Dispatch* (on 09 July 2019 and 15 June 2019) reported on Phakamisa housing contestations and evictions with respective headlines: "illegal occupants of RDP homes removed", and "Gogo [the elderly] put out of home amid housing list chaos". In all this, not only in Phakamisa but also Fynbos, housing waiting lists have been central to the contestations, as they are manipulated and used for corrupt activities in housing allocations.

2.5 Research Methodology and Methods

The research methodology underpinning the thesis is an interpretive sociology which privileges, ontologically, the social realm of meanings, experiences and practices of human agents. Epistemology, the focus is on understanding subjective meanings and practices, including their conditions of existence. Interpretivism is concerned with intensive, in-depth examinations and analyses of specific bounded (spatially and temporally) social phenomena and contexts (Alharahsheh and Pius, 2000:41), such as contestations around housing ownership and ownership in East London and King William's Town over the past few years. Subjectivity informs interpretivism in that reality is not treated as a given but as mediated by everyday

meanings and interpretations. In its extreme versions, this might lead to relativism or idealism, but this is not the case for this thesis. In understanding the interpretation-based claims put forward by the housing contestants in the research sites, I bring to the fore material conditions of existence (around Apartheid legacies, systemic poverty and failed state housing policies) pertinent to configuring these contestations. Hence, a structuralist dimension is also implicit in my analysis.

Nevertheless, social meanings and interpretations are central to the thesis methodology. This entails a recognition that “society is created [or constructed] and maintained through repeated interactions among individuals” (Carter and Fuller, 2016:932), and that “meaning is created as a result of interaction between people and [this] allows people to produce some of the facts forming the sensory world” (Aksan et al., 2009:903). Everyday understandings of the world, as formulated through meanings, arise during social interaction over time and condition the actions and practices of human subjects. In this way, meanings become embedded in social actions and not merely in the minds of individuals (Dey, 1993:27). By drawing upon the insights of interpretive sociology, it is possible to focus on (and foreground) the meaning-rich historical and social claims about human rights articulated by urban residents involved in housing contestations in the two research sites. Thus, interpretive sociology enables the interrogation of meanings of housing rights as understood and used by the urban poor.

Interpretive sociology is linked to a qualitative research methodology, including the use of case studies. Qualitative research considers the “meanings, concepts, definitions, characteristics, metaphors, symbols and descriptions of things” (Berg, 2001:3). It seeks to understand human actions within their own real-time contexts and enables the researcher to “view the case from the inside out: to see it from the perspective of those involved” (Gillham, 2000:10). As implied, this does not entail a complete emphasis on ‘agency’ at the expense of ‘structure’, as structural tracings condition and are enacted in the meanings, perspectives and practices of agents.

2.5.1 Case Study Design

The thesis involves a case study design, which allows researchers to study complex phenomena within their broader contexts (Baxter and Jack, 2008) – in this case, illegal occupations, locally within the wider context of housing politics. Qualitative case studies are often exploratory in character in that they seek to make sense of a social phenomenon through identifying themes as opposed to testing hypothesis (Hancock and Algozzine, 2006; Noor, 2008). Nevertheless,

theoretical awareness as well as a familiarity with the housing literature on South Africa offered guidance in addressing the thesis topic (see chapters 3, 4 and 5).

A case study has intrinsic value in understanding the complex phenomenon under study within a particular locale, but it also offers likely insights into the same phenomenon existing elsewhere under comparable conditions. There is no claim, though, that the results from this study are representative of a broader universe, and thus the study does not seek to generalise with reference to the phenomenon of illegal occupation across urban South Africa. In selecting the case of BCM for reasons given earlier, the intention was to optimise understanding of illegal occupations and to identify the specific characteristics of the BCM cases; At the same time, the selection of two sites where illegal occupations were taking place was of some importance. As Noor (2008:1604) states, replication in terms of more than one case (or site) offers more confidence in the overall results. The selection of two sites was therefore significant in facilitating firmer conclusions about the character of illegal occupations. This does not entail a comparative analysis of the two sites, though the specificities of each site (including the racial dimension in East London) become clear.

2.5.2 Research Methods

Focused field work in Phakamisa and Fynbos/East Bank was undertaken in August 2019. Beyond this, I also made a significant number of intermittent visits to both sites (for research purposes) throughout much of 2019 and 2020. The fieldwork research method used was semi-structured interviews (with residents and key informants) along with primary documentation. The selection of interviewees involved purposeful sampling, based on the researcher's judgement on who would provide the most relevant information given the focus and objectives of the research (Etikan and Bala, 2017; MacNealy, 1999). These were adults, above 18 years, either male or females who occupied state-built houses and those living in temporary shelter or shacks claiming their houses were forcefully occupied. Interviews with residents were all done with selected individual household representatives. From the key informants, the researcher established the determinants of illegal occupations from the perspectives of department officials, local councillors and community leaders, some of whom are implicated in the occupying of houses. The interview schedules for the key informant interviewees appears in Appendix 3 and 4; and interviews for official RDP beneficiaries and illegal occupants appear in Appendix 1 and 2 respectively.

The interviews with residents provided first-hand accounts of the contestations around occupations without ownership. All the interviews were conducted in a flexible manner so as to allow for probing and follow-up questions. Questions were asked in a systematic way but the interviewer had the freedom to probe far beyond the answers to the prepared interview guide as described by Berg (2007:95). Critical self-reflection and cross-checking were used during the interviews to ensure that the full complexities of the illegal occupations, and the different and competing perspectives around them, were brought to the fore.

Interviews were complemented by the use of primary documents. In this regard, as an employee of the Public Service Accountability Monitor (at Rhodes University), I was able to interact during meetings with Provincial Department of Human Settlements officials and the Portfolio Committee on Human Settlements. These meetings helped me to source important primary documents in the form of policy documents, research reports and annual reports. Primary documents provided data on housing delivery performance, historical data about the relevant housing projects and the extent of housing demand, including within the BCM. Policy documents also provided information on housing policy nationally and provincially.

The most important subjects of the interviews were residents of Phakamisa and Fynbos/East Bank, who had occupied houses illegally. I had two local research assistants who assisted me in identifying these people for interviews. I used a purposive, snowball sampling approach (Onwuegbuzie et al., 2007) in selecting residents for interviews. Initially, I sought out residents who were known to have occupied houses illegally, and was sometimes referred to other occupiers in the process. At times, though, I (along with the two assistants) resorted to a door-to-door approach and only learnt about the occupation status of the resident in this way.

I interviewed other residents as well, again based on non-random sampling, in particular those who occupied houses legally and shack-dwellers who longed for formal housing. I sought their thoughts on, and insights into, the local contestations around ownership and occupation. In certain cases (in Phakamisa), the occupation by rightful owners was contested. Their ownership was contested because someone living in a shack on the same plot was claiming ownership of the house. In the case of the interviews of all residents, because non-random sampling was used, I do not claim that the residents interviewed are in any way statistically representative of clearly-defined universes in the two sites.

The fieldwork interviews with residents in Phakamisa were conducted in isiXhosa. The two local research assistants acted as translators for me during the interviews, as I am a non-

isiXhosa speaker. IsiXhosa interviews were translated and transcribed in English. Interviews with key informants were carried out in English.

Field notes were also written where important observations were made while in the field, and this was supplemented at times by videos and photographs taken by the researcher.

2.5.3 Profile of Interviewees

I provide, in this section, a profile of the residents interviewed in both research sites. Because of the complex character of the occupations in Phakamisa, it is necessary to clarify the status of informal occupations. The formal occupation process is set out by the Department of Human Settlements, where allocation is done according to an official housing list. If not allocated a house on this basis, then an informal (illegal) occupation exists.

I raise this because the ward councillor for Phakamisa offered an alternative understanding of informality (Councillor, Phakamisa, August 2019). The definition of informality as espoused by the ward councillor factors in historical access to land in Phakamisa, in which informality is associated with the younger generation. The ward councillor argues that the older generation in Phakamisa was given land to live on in Phakamisa as far back as the 1970s, before the dawn of democracy and the introduction of the RDP housing programme. The older generation lived on formally allocated plots and was permitted to build shacks. Post-1994, the post-Apartheid government did not acknowledge this arrangement. Instead, according to the councillor, a post-1994 official waiting list was constructed which (whether intentionally or not) prioritised the younger generation in Phakamisa, and side-lined the older generation living in shacks now for decades. For the councillor, the older generation are the legal owners of the RDP houses built in Phakamisa, because of the past promise and by the fact that their older age implies that they would by necessity be entitled to an RDP house prior to the youth. This is in contrast to the state's view of formality, which is based on what appears on the formal housing data base and waiting list.

In this context, during the interviews in Phakamisa, I came across a complex array of occupation statuses, including:

1. An old individual staying in an informal structure (shack) on a plot where an RDP house was occupied by a younger person who had been allocated the house according to the waiting list. The older person claimed that his/her house had been taken by the youth illegally.

2. An old or young individual who occupies a house with the full knowledge that, according to the waiting list formal allocation, the house is not in his/her name. They occupied through breaking into the house, with permission from the councillor or ward committee members or through informal access to the keys from constructors.
3. An old or young individual occupying a house and claiming that the house he/she occupies is his/hers according to the waiting list and allocations (with nobody else seemingly making a claim on that house). Many such people were not keen on being interviewed, which raised suspicion on whether their claim to ownership was truthful.

The first two groups were the main focus of the study, as these entailed contested occupations, including those who claimed their houses were taken and those who forcefully occupied the houses. Those people (the third group) who claimed that their occupation was approved by the Department of Human Settlements and that their status was uncontested, did provide information but only on their observations of the ongoing housing contestations in the area.

For the purpose of defining formal and legal occupation, I make use of the state's notion of formality but taking cognisance of the fact that its meaning is contested, not only on the basis of the councillor's view but also because the waiting list itself is contested (there are claims that the list is easily manipulated which allows certain residents to jump the queue). As mentioned earlier, 'rightful beneficiaries' is used to describe those, who according to the Department's formal processes, are supposed to occupy houses. This term is used for purposes of distinguishing between those who forcefully occupy houses and those the Department intended to hand over formally, the latter being the rightful beneficiaries.

A total of twenty interviews were conducted in Phakamisa. These were done with individual participants selected from households (see Table 2.2).

Table 2.2: Phakamisa Interviews (with Residents)

Phakamisa	Female	Male	Total
Formal occupants	4	2	6
Informal occupants	5	4	9
Elderly living in shacks	4	1	5

Key informant interviews in Phakamisa were undertaken with the ward councillor, South African National Civic Organisation (SANCO) chairperson, one church leader, the

Parliamentary Liaison Officer for the Department of Human Settlements, and a journalist for the *Daily Dispatch* newspaper.

In East London, a total of 26 participants were interviewed (see Table 2.3). In Fynbos, illegal occupants were predominantly coloureds who had moved into houses meant to be occupied by blacks according to the waiting list. Interviews were done in English with coloureds and isiXhosa with the rightful beneficiaries.

Table 2.3: Fynbos/East Bank Interviews (with Residents)

Fynbos/East Bank	Female	Male	Total
Informal occupants (Coloured)	10	9	19
Rightful Beneficiaries (Black)	5	2	7

Key informant interviews were undertaken with two officials from the Beneficiary Directorate of the Provincial Department of Human Settlements, Nomonde (the leader of the black community whose houses had been illegally occupied) and Rabia (the leader of the coloured community which had illegally occupied houses in Fynbos).

2.5.4 Data Analysis

Qualitative data analysis is about “defining concepts, categorising, theorising, explaining, exploring and mapping the range, nature and dynamics of phenomena” (Ritchie and Spencer, 2002). Data collected for this research was mainly in the form of audio recorded interviews, translated and transcribed. Where participants did not consent to voice recording, interviews were hand-written.

Because of the amount of data collected during fieldwork, the researcher may be overwhelmed at first by the sheer volume and complexity of the evidence. For this reason, I initially went through a process of familiarising myself with the data. I allowed the evidence ‘to breathe’ by letting it ‘speak to me’ – i.e. to allow broad themes to emerge from the evidence itself, though I had my thesis topic, focus and overall objective in mind as well as my research questions and objectives. The aim was to find recurring topics and how these relate broadly to the research questions. In doing so, I sought to categorise and code the evidence according to the emerging

themes (Stuckey, 2015). Coding is “a procedure for organising the text of the transcript and discovering patterns within that organisational structure” (Auebach and Silverstein, 2003:32). It is important at the coding stage to revisit one’s research aims and preconceptions, and to consider how the data responds to your research concerns or challenge your preconceived views. Data coding thus helps to filter information, identifying recurring topics on which to build themes. It was not easy in the first instance to see and recognise connections between the transcribed texts and the research questions, but studying the transcripts repeatedly was useful in eventually developing themes. The intention though was not simply to impose prior theoretical knowledge on transcribed material, as Schmidt, (2004:253) cautions against.

Data analysis involved making sense of how the research participants used a logic of rights when describing their actions. For instance, when a resident who illegally occupies a house says, ‘I want a house’, one can begin to decipher the context of rights from which the individual is making a claim, because ‘want’ cannot be expressed outside entitlements. But the question is how one’s ‘want’ of a house translates into breaking in and illegally possessing a house that does not belong to him/her. This is clearly not a legal claim for a house. The process of data analysis, hence, involved understanding the character of rights-based claims expressed by those at the centre of housing contestations.

Once I established these broad themes, I then unpacked and identified more specific themes pertaining to collected evidence, and coded pieces of evidence according to these particular themes. In the end, these specific themes formed the basis for interpreting and analysing the data. The refining of the specific objectives set out earlier in this chapter and the organisation of the empirical chapters in the thesis were also both conditioned by this data-analysis process.

2.6 Research Challenges, Ethics and Positionality

In this section, I outline my encounters in the field, gatekeeping, and access issues. I also provide details of my position and positionality as a researcher. The state housing delivery process in South Africa is political in that the government is at the centre of the process of delivery and does so as a political mandate to provide shelter to urban poor communities. Redistributing resources in democratic South Africa requires the government to make political decisions through resource allocation. Because political decisions have to be made against the backdrop of dispossession and racial segregation, issues of race and equality are bound to arise in housing. Racial, class and generational politics characterised my field research in the BCM.

Researching in such contested areas does not happen with ease, due to suspicions around the identity of the researcher and the purpose of the research, particularly from government officials and politicians. I therefore reflect upon my position as a researcher, as well as the research assistants' positions in the field. This is important because power dynamics between researchers, research assistants and participants influence and shape the research process and outcomes (Stevano and Deane, 2019:3).

In undertaking the fieldwork amongst residents in both sites, the intention was not to confirm the legality of the occupants by verification of any pertinent documentation. This would have been intrusive and raise suspicions about the intention of the researcher in gathering information, perhaps even being labelled as a prying state official. The researcher was therefore deliberate in not asking for any proof of ownership, but asked questions in a manner that the respondent would volunteer information that would help the researcher to determine the occupation status of the participant.

At the same time, the research was of a highly-sensitive character. Suspicions were high and the researcher had to navigate a space in which there was considerable reluctance to volunteer information among the community members. In fact, fieldwork took place soon after the first evictions of illegal occupants in the two sites, at a time when emotions were quite high and the environment volatile. This posed a potential risk to the researcher, but the familiarity of the research assistants with the local residents tended to put the latter at ease.

Problems did emerge though. The research assistant in Fynbos was met by chance, as the person who initially offered to assist was not forthcoming at the very last minute, most probably due to the politics around access to houses. The individual was a Democratic Alliance (DA) Member of the Provincial Legislature (MPL) and member of the portfolio committee on human settlements. The Democratic Alliance party is one of the main opposition parties in South Africa. The DA MPL is a public critic of the incumbent government led by the ANC and its housing delivery progress. My hunch was that the DA MPL did not feel comfortable working with me in the field, as that would directly impact on my research because I could be associated with opposition party politics. I appreciated his decision to step down as this would otherwise compromise my findings, because he could potentially refer me to individuals with biased views.

In Phakamisa, the researcher was confronted by a group of – seemingly – politicians and community leaders who claimed to have monitored the researcher's movements in the

community for a number of days and wanted to understand her agenda with “their people”. Amongst them was a lawyer. I was somewhat worried not knowing how this confrontation would affect my research, including whether it would close doors for me in trying to proceed with my interviews. It was clear to me that such an encounter meant that the process of housing occupation is not just an administrative process involving housing officials but a political process too. Having explained carefully the purpose of the fieldwork, the group left.

In Fynbos, the researcher also experienced personal surveillance, in two instances being informed about the risk of what she was doing. One man indicated “people have guns here, you can be shot”. The sensitive nature of the research also caused discomfort with some of the informants, with one informant requesting to stop the interview before it was finished. The ANC councillor in Fynbos did not make herself available for the interview, despite finalising several appointments to meet with her.

Before undertaking the fieldwork, the research proposal went through the ethics protocol of Rhodes University and was approved. In the course of all the interviews, the purpose of the research was clearly and openly presented before proceeding, and informed written consent for most of the interviews was provided (see Appendix 5 for consent form). Where the research subject requested that the interview not be recorded, I would adhere to the request and take hand-written notes. If a subject requested that an interview be discontinued, this was done immediately. Pseudo names are used in the thesis to conceal identities; where real names are mentioned, these would have been reported in the media for public access.

2.6.1 Gatekeeping and Access

Issues of consent and access form part of the ethics in qualitative research, hence it is critical for the researcher to be granted permission to do interviews whether at institutional level by the relevant officials and/or at an individual level with relevant subjects. Miller and Bell (2012:61) argue that “consent should be ongoing and renegotiated between researcher and researched throughout the research process”. It therefore does not end with the granting of ethics clearance with one’s institution of affiliation, but requires that the researcher continue to be conscious of ethical issues in the course of performing the research. For example, access to the Eastern Cape Department of Human Settlement was relatively easy, as I had contact with officials before I started field work. However, my challenge was to obtain written consent to do the interviews. The head of the Beneficiary Unit provided me with names of officials with

whom I could conduct interviews, but several attempts to have her put her consent in writing did not yield positive results. I went ahead and did interviews with those officials without official written consent. I also requested material from the Department archives that relate to the subject of my investigation from the head of the Beneficiary Unit, and the documents prepared for me were only those accessible to the public via the Department website.

2.6.2 Reflexivity and Researcher Positionality

Reflexivity is an ongoing process of evaluating one's identity or position as a researcher during research. Corlett and Mavin (2017) define it as, "a self-monitoring of, and a self-responding to, our thoughts, feelings and actions as we engage in research projects" (2017:377). Reflexivity is important in that it relates to how one's assumptions, opinions, values, beliefs, interests, and perceptions influence the research process and outcomes. It involves continually asking yourself about the process of field work and how one's thoughts, feelings, history and background play a role in the making of conclusions in a research project. These factors influence how the researchers relate to participants and research assistants and consequently affects the nature of knowledge created. It involves translating the reality of the research subjects into that of the researcher, such that the researcher fully understands the world of the research subjects. The researcher does not become a neutral figure in the process. It is therefore critical that the researcher acknowledges her/his subjectivities in undertaking field work and, by doing so, increase research objectivity and address any possible biases. This is not to say the researcher compromises the validity of the research through his/her identity. It is to acknowledge though that the researcher is directly connected to and influences knowledge production through research methods.

My interest in the research topic on housing contestations in South Africa comes from my unique history of deprivation as a black African. I resonate with post-colonial challenges of access to socio-economic rights and government failures to deliver. I therefore identify socially, personally, and politically with the challenges faced by black Africans in a post-colonial era. While doing fieldwork, I was conscious of the bias that could influence my work as a black female researcher, particularly when dealing with a different race, in this case coloureds. Having lived in South Africa, in the Eastern Cape Province for a decade and half, I have observed the housing crisis in the country and its effects on low-income earners, and understand the plight they face due to lack of shelter. However, I cannot say I share the exact experiences of housing deprivation as a student coming from a different country (Zimbabwe).

I do not have direct personal experiences of lack of shelter except through observation. I am not politically affiliated in any way. In that regard, I consider myself an outsider to the communities in which I conducted field work. More so, I hold a general position of privilege held by all researchers coming from institutions of higher learning, who undertake research in vulnerable communities. The researcher-participant relationship is inherently characterised by power dynamics that impact on research outcomes. For example, researchers come to the field with preconceived assumptions. Reflexivity requires that researchers acknowledge these power dynamics in the search for truthful knowledge.

The basic assumption regarding the housing problem in South Africa takes a top-down institutional approach, that begins with the role of the state. My experience as a researcher in an NGO that offers critical analysis of human settlements delivery influenced my decision to explore further the housing problems in the Eastern Cape. Work experience created preconceived views of a government that has failed to adequately provide housing to the urban poor community. Acknowledging my position as a researcher with an NGO background is useful in that I would not then deliberately ask questions that simply entailed affirming my preconceived views. Instead, there was every attempt on my part to understand openly the responses as presented to me in the field. This was significant for my research because, whereas in my position as a housing department ‘watchdog’, I would make analysis from a biased lens, for my PhD research, I needed to make a more balanced enquiry on the basis of findings from the participants. As Corlett and Mavin highlight, research is not ultimately the story of the researcher but that of the participants (2017:386).

Observing and managing emotions with respect to participants and the researcher is also important for reflexivity (Haynes, 2012; Munkejord, 2009; Shaw et al., 2020). During my field work, I had encounters with the elderly who were desperate for houses and who claimed to have lost the opportunity to occupy houses as they were forcefully occupied by the younger generation. The elderly people were hopeless and fearful as they could not physically challenge the occupiers. Managing such emotional encounters requires the researcher to empathise with the people but, simultaneously, manage one’s own emotions in response. This requires ongoing reflection and a redefinition of one’s role as a researcher. Although I identified with the plight of the communities, I was also cognisant of my position as a researcher who is limited in bringing about immediate solution to the problems they face; hence, I was careful not to make promises of resolving their problems. However, narrating their problems was important to them because, in the process, it gave them an opportunity to share their personal experiences, thereby

offering some sense of relief that someone has listened to them. In this regard, it is important for the researcher not to rush them through their stories, even if it is thought that some of the information will not add value to the findings.

Language is also important for reflexivity and positionality. The language(s) spoken by researchers and participants greatly impact on the research (Cormier, 2018:328). Cormier (2018) points out how power is expressed in the language used during field work. This is pertinent to researchers who speak the language of participants (linguistic insiders) as well as researchers who do not speak the dominant languages of the participants (linguistic outsiders) (Cormier, 2018:329). The former researchers might differ on other markers of identity vis-à-vis the research subjects, such as race, ethnicity, religion, dialect or accent, and all these factors impact on the degree of insider positionality (Cormier, 2018:329).

I consider myself a linguistic outsider because I am a foreign student who neither speaks isiXhosa, the dominant language for the isiXhosa participants, nor Afrikaans the dominant language for the coloured participants. Being an outsider sometimes has the advantage of stimulating participants, who desire to share information, to do so – with the outsider (Stevano and Deane, 2019). In Fynbos, the coloured lady who introduced me to the community called people to come and do interviews with a lady from outside South Africa. This made me a bit uncomfortable though, in a country where foreign nationals have faced xenophobic attacks, and I wondered why my nationality was of significance in this context. The question of where I come from was uncomfortable for me throughout the interviews. However, I realised that my identity was most probably useful, partly because it cleared concerns of political motivations on my part from the perspective of participants.

I worked with a research assistant in Phakamisa where I interviewed isiXhosa participants, and the assistant was useful for translation from isiXhosa to English during the interviews. The assistant was from a rural community near the place where interviews were conducted. He was not involved in the ongoing housing contestations although he had some knowledge of what was going on in Phakamisa. He works for a local agricultural NGO in Phakamisa, and I met him at a workshop and since then I have kept contact with him. The isiXhosa interviews were transcribed into isiXhosa and then translated into English by two other isiXhosa speaking people (as noted in the Acknowledgements). The two transcribers helped to clarify interviews as they could easily understand isiXhosa and English.

In Fynbos, I had a research assistant, Nomonde, for the isiXhosa interviews who was part of the community which claimed that their houses were occupied by the coloured community. She is a health community worker in Fynbos and a secretary of SANCO, who was directly involved in leading the community and creating an interface between the local government, local political leaders and the community over housing struggles and other service delivery issues. She assisted me with translation from isiXhosa to English. Nomonde was also useful to the researcher in accessing the Fynbos coloured community. Although there were conflicts over ownership and occupation of houses in Fynbos, Nomonde had a working relationship with both coloureds and blacks in Fynbos as a health worker. She used her contacts from the coloured community for me to get access to Fynbos 1, where the coloureds had informally occupied houses. While she took me to a coloured woman who would then take me to Rabia, the coloured community leader, Nomonde indicated, 'I do not want you to go with our own version of what is going on here. I also want you to hear their side of the story'. Nomonde's attitude was of significance to me in that she saw it necessary for the researcher to have a balanced view from the coloured community, whom blacks accused of taking their houses. She left it open to me to make conclusions based on the information I got from both sides.

Interviews with coloureds in Fynbos were all done in English and there was no research assistant. It is important though to state that doing interviews in English with community members whose mother tongue is not English has its own challenges. English language proficiency differed between the researcher and participants. To make proper sense of the data, any researcher must ensure that language use and expressions during the interviews are properly captured. When the transcriptions with the coloured research subjects were completed, all interviews were edited to provide clarity of data. I appointed an Afrikaans-speaking person to transcribe interviews that were done with coloured participants. Although this was done in English, working with an Afrikaans transcriber was important as she was familiar with coloured culture and associated forms of verbal expression, which helped the researcher to use the interviews more effectively in comprehending the housing actions of the coloured community in Fynbos. She was also useful in transcribing Afrikaans video clips that were taken in Fynbos when the evictions were carried out as well as some background talk that took place in Afrikaans amongst participants in households while the interviews were taking place.

2.7 Conclusion

Chapter 2 has outlined the problem statement, the research questions, and thesis goals, as well as the research methodology and methods. Also discussed are the research challenges, issues of ethics and researcher positionality. Together, this has revealed the complex nature of research in contested urban spaces in post-Apartheid South Africa, which required the researcher to navigate through visible and invisible community and socio-political structures that undergird and affect housing delivery. The methodology and methods selected are consistent with the main research question and objective, as they facilitate the collection of evidence pertinent to answering the main question and addressing the main objective. The following chapter (chapter 3) sets out the analytical framing for the thesis.

CHAPTER 3: ANALYTICAL PERSPECTIVES ON HUMAN RIGHTS CONTESTATIONS

3.1 Introduction

This chapter offers the theoretical framing for the thesis by examining the notion of human rights, in order to understand the inherent contradictions existing with regard to rights-based claims to housing in urban South Africa. The actions of ordinary urban citizens (against the state and other citizens) in accessing housing illegally and informally (i.e. occupation without ownership), which are central to the thesis, seem to be conditioned by grounded notions of rights to which are attached moral claims for justice, and these typically transcend official human-rights discourses and regimes. Furthermore, in making sense of these acts of informality, and the conflicts in which they are immersed, the chapter focuses more specifically on a diverse range of theories and theorists (including Partha Chatterjee and James Scott) sensitive to the everyday practices of ordinary citizens and the moral bases possibly underpinning these practices.

It will be clear by the end of the chapter how these theoretical perspectives connect and assist in making sense of informal and illegal occupations in the BCM. Certainly, in forcefully occupying houses, the occupiers have reasons for doing so. The reasons are clearly not found within the law but in the reality of the contemporary vulnerabilities that residents face due to lack of realisation of housing rights. It is therefore essential to frame this thesis broadly with reference to the vulnerability of the human condition under specific historical and spatial circumstances and contingencies.

3.2 Human Rights Discourses, Regimes and Contestations

Broadly speaking, human rights are “norms that aspire to protect all people from severe political, legal and social abuses” (Stanford Encyclopaedia of Philosophy, 2003). As officially articulated, human rights include individual freedoms which should be exercised without interference from governments, that essentially include first-generation rights (political and civil rights). These contrast to socio-economic rights where governments must not only refrain from interfering with the liberty of citizens but must enforce action often requiring allocation of financial resources to ensure the realisation of these rights (Roodt, 2003). On the basis of the official recognition of a range of rights, or specific rights, rights-based claims (or simply

rights-claims) emerge or exist amongst ordinary citizens, though such rights may not be realised or even realisable. However, as Bandman (1973:205) states, “claims enable us to exercise our rights, to stand up if necessary to demand justifiably what is our due”.

Even at an official level, though, there may be different human rights regimes (Ferguson et al., 2006) existing simultaneously, including both civil and customary ones. In addition, a particular official human rights regime is never politically neutral (Adjei, 1995; Hoover, 2015), as in the case of the respect for private property rights in a vastly unequal society.

At the same time, the foundation for human right regimes is not reducible to the official articulation of rights-discourse, as if human rights are exclusively constitutional and legal rights. There may be alternative moral renderings of rights-discourses circulating in a particular society which are not founded strictly on prevailing legal principles, leading at times to contestations around the very character of existing rights and the significance of realising particular rights-claims (Razzaz, 1993; Beitz and Goodin, 2009; Wilson and Mitchell, 2003). As this thesis seeks to show, this becomes visible when it comes to contestations around access to housing in urban South Africa, as justifications for occupation without ownership are animated by a set of rights-claims often contrary to legal rights, including claims around history, citizenship and justice (Isin, 2009; Connolly and Ward, 2008).

Undoubtedly, officially-existing human rights regimes shape the relationship between governments and citizens in diverse ways. As duty-bearers supposedly adhering to legal rights as backed by legislative instruments, states (and governments) often adopt and use rights to inform policy and programmes, thereby creating interfaces of interaction between duty-bearers and rights-holders. On the basis of official rights regimes, rights-holders develop expectations and even a sense of entitlement (as rights-holders) (Orend, 2002; Palmer and Burgess, 2012; Reus-Smit, 2009), which the duty-bearers are meant to satisfy. However, the willingness and capacity of governments to realise the rights of citizens often falls far short of requirements and expectations, as is the case in contemporary South Africa. In other words, rights are not realised and rights-claims remain unfulfilled.

As a general tendency, rights have a moral and ethical basis to them, and states express them as “legally defined entities”, while citizens view them as possible “entitlements that people are able to claim in their everyday lives” (Ferguson et al., 2006:1). As citizens ‘translate’ official rights in relation to their everyday lives, a form of slippage between states and citizens may arise regarding interpretations of the very character of human rights, as officially set forth

legally. More specifically, states set forth rights as laws and citizens regularly interpret rights as moral claims without necessarily any legal backing.

It is therefore possible that competing rights-claims exist regarding calls for justice, equality, fairness, goodness, integrity, dignity, rightness and so on, depending on who makes the call and the context within which the call is made? Are human rights formal or informal, or both? Are they legal or moral, or both? Is there a moral underpinning to human rights as legally and formally defined? Overall, it appears that the fluid, dynamic and contested character of rights is contextually-situated. At the centre of seemingly contradictory claims about rights is that human subjects with agency and interpretive abilities make use of human rights discourses to their benefit. Whether they choose a concept of rights as moral or legal, and whether they fluctuate in their adoption of particular rights-discourses and under what circumstances, often depends on what a particular concept achieves for them situationally. The fluid character of rights creates spaces for contestations. This is not to suggest that all human subjects have an equal capacity to interpret, articulate and enforce rights. What matters more generally is the human capacity to engage in human rights talk, to understand the basic entitlements emerging from rights as understood in particular ways, and to then put forth specific claims, from which human practices emerge.

In the light of conflicting conceptualisation of rights, citizens may express rights-claims by drawing upon informal notions of rights embedded in the historical past, experiential present and anticipated future. These rights-claims (comprising local informal human rights regimes) have profoundly moral connotations, and they offer – both implicitly and explicitly – a criticism of the official human rights regime as devoid of moral and historical justice. As Campbell (2006:24) explains, the concept of right swallows up distinct but related terms such as justice and equality. What is ‘a right’ may not be ‘the right thing to do’, and the opposite is also true (Campbell, 2006), and this is where the possibly conflicting nature of rights as moral or legal come into play in conditioning social practices. For example, it may appear legally wrong (and many would say, therefore morally wrong) to forcefully occupy state or private land, but when one considers the history of land dispossession in South Africa and elsewhere, some may consider it as politically (and morally) justified to seize land. So, is the right to land in Africa more broadly, for example, a legal and/or moral right? It is precisely this ambiguity that produces sites of struggles over land in Africa and this extends to struggles for shelter in South Africa as well. There is an inherent contestation over rights-claims and human rights regimes, as manifested in everyday interactions between the state and citizens and, as this thesis shows,

often between citizens themselves. Because of this, the notion of rights is a contested notion and rights-based claims regularly clash (Kurki, 2011).

The state upholds legal rights officially as intrinsic to its human rights regime, but often falls short in pursuing and practicing them, due to systematic challenges of corruption, incapacity, political failure and maladministration (Keith, 1999). For Sen (2004), if human rights remain unfulfilled, particularly in terms of broad-based socio-economic development, what appears as well-meaning rights talk simply becomes loose talk. In this light, Nash (2015) claims that a legalistic perspective on rights can be a hindrance to achieving human rights, not only because unjust laws can be passed which are detrimental to the well-being of humans, but due to the failure of states to implement just laws properly if at all.

Nevertheless, drawing upon this official regime, citizens make legal (and moral) demands on the state depending on their social and economic status, which conditions their ability to access basic needs formally. Given the entitlement character of these rights-claims, state failures around the realisation of rights is bound to create levels of dissatisfaction amongst those denied rights-realisation, despite (if not because of) the state's claims about the conditional character of legal rights. As a result, alternative bases for claiming rights arise amongst citizens, backed by a moral justice discourse which is consistent with, or goes far beyond, any moral basis underpinning the legal set of human rights. In certain instances, because of state maladministration and corruption, the very legal status of state practices also becomes the subject of interrogation by citizens. Insofar as these 'distorted' state practices occur (in seeking to realise legal rights), the moral justice claims of citizens intensifies, as does mobilisation of citizens based on these claims.

Post-1994 urban South Africa has seen an increased demand for basic infrastructure and services as poor urban citizens make claims for the realisation of fundamental socio-economic needs. Access to housing in particular has been characterised by conflicts and indeed protests, at times violent, as the poor demand houses from the state. Thomas (2010:28) rightfully argues that "such protests are rooted in a rights discourse of the anti-Apartheid struggle and in the new constitution's recognition of the right of access to adequate housing, which is nonetheless, subjected to fiscal constraints". Although demand surpasses the supply of state houses, the contestations for housing is not simply about the economics of supply and demand. There are also justified expectations amongst the poor as a result of the historical promises made during Apartheid and those promises made by the state post-1994.

In this way, the significance of a particular human right and its realisation (such as access to housing) has a strong experiential and subjective dimension, that is, the “existence of beings with subjective conscious experiences of the world for whom goods [for example, housing] can have value or who can specify the standards according to which value is to be judged” (Bilchitz, 2007:9). For the urban poor in South Africa, housing has significant value including for purposes of living a life of dignity.

A historical perspective of official human rights ascribes human rights to the Holocaust, which led to the establishment of the International Military Tribunal that resulted in the Nuremberg trials where a number of Nazi leaders were tried and convicted (Sjoberg et al., 2001). However, for many, the Universal Declaration of Human Rights (UDHR) in 1948 is the key watershed moment for the establishment and institutionalisation of human rights internationally. It is in fact the founding document for the modern human rights doctrine (Das, 2013; Hopgood et al., 2017; Kurki, 2011; Verschraegen, 2002), paving the way for the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The UDHR provided the foundation for what later became a widely accepted official discourse on human rights (Verschraegen 2002; Wellman, 2011; Wilson and Mitchell, 2003). These rights, which arose as historical-social constructs (Woodiwiss, 1998) are “‘practical’, ‘institutionalist’, or ‘functional’ set standards for political legitimacy, serve as norms of international concern and/or impose limits on the exercise of national sovereignty” (Etinson, 2018:1).

Although human rights received pre-eminence with the Universal Declaration of Human Rights, the need for safe and secure communities existed long before the UDHR. Human rights, though not formulated in the manner they were post World War 2, date back to ancient times, including theoretical and historical discourses on human rights emerging from philosophers such as Aristotle, Plato and Aquinas (Hopgood et al, 2017; Hayden, 2001), with their ideas of justice, equality and freedom being pertinent. These moral values remain central to contemporary official rights regimes, with some states incorporating them into their legal documents. The ancient world though understood human rights as rights by virtue of one being human (Donnelly, 2013).

Thus, a notion of natural rights precedes, and acts as a bulwark at times, for contemporary official human rights regime (Hayden, 2001), based on notions of human dignity, autonomy and equality (Palmer, 2007; Locke, 1998). As Cruft et al. (2015:4) argue, “natural rights are

rights for all human beings, simply by virtue of their humanity”, and they have a pre-legal and even pre-social existence. Natural rights are conferred on all humankind by virtue of being human, and hence they are universal, inalienable and applicable to all, at all times and in all places (Shestack, 1998). In this sense, natural rights are present in the ‘state of nature’ independent of any social or cultural order (Sjoberg et al., 2001). In the ‘state of nature’, each individual respects the life and dignity of all and does no harm to others. This is based on the claim that “humanity has a common and perhaps singular, moral nature shared by each of us, which provides a universal standard that all political authorities must meet” (Hoover, 2013:218). Admittedly, the realisation of natural rights remains utopian, given the calamities and disorder throughout human history, such that a shared ‘moral nature’ has been corrupted over time. However, the quest for human dignity ingrained in natural rights resonates with the (informal) moral justice claims around housing detailed in this thesis.

Overall, then, attention to human rights reveals their fluid and contested character (Hayden, 2001), including through the presence of official legal regimes and more informal moral regimes. Their contested character makes provision for informality in accessing basic services in urban spaces. In the end, for this thesis, the key question may not be whether rights are legal, political, moral (or natural) claims, but how the urban poor demonstrate their own will, capacity and capability to realise rights (Bilchitz, 2007) in selectively and tactically drawing upon different rights-claims in seeking access to housing in contemporary urban South Africa. In this way, the urban poor are asserting their social citizenship (Madsen and Verschraegen, 2013), though existing as marginalised citizens.

Section 3.3 acknowledges that rights-based perspectives need to be supplemented by other theories to explain fully the informal occupations studied in this thesis. Firstly, I explain Bryan Turner’s sociology of rights theory and its importance to my argument. I then weave in other theoretical perspectives including about moral economy, political society, legibility and state recognition, and the everyday.

3.3 Rights-Claims of the Urban Poor

The specific character, quality and effectiveness of official and other human rights regimes of course exist within specific historical and spatial contexts, and hence they are subject to significant variation (Brunsma et al., 2016; Madsen and Verschraegen, 2013; Hynes et al., 2010)). For this reason, chapters 4 and 5 set out the broad structural (political-economy) context within which the post-Apartheid government’s human rights regime prevails with specific

relation to housing, as well as giving insights into an alternative rights regime arising amongst poor urban citizens in South Africa.

In this section, I do not delve into the now-rich field of explicit sociological inquiry into human rights, nor do I refer to important sociological traditions which implicitly had a notion of human rights often from a critical perspective (Frezzo, 2012; Blau and Moncada, 2013; Brunnsma et al., 2016; Turner, 1993; Verschraegen, 2002; Beitz and Goodin, 2009; Shue, 1996).

However, Bryan Turner's sociology of human rights is of some importance (Turner, 1993, 1997). He highlights that official citizenship simply gives citizens a legal identity with a set of legal rights and obligations. Without discarding citizenship as a sociological concept useful for human rights analysis, Turner develops a sociology of rights based on precarious institutions and human vulnerability. This sociology of rights, as espoused by Turner (1993:489), "grounds human rights analysis in human frailty especially the vulnerability of the [human] body, in the idea of precariousness of social institutions and in a theory of moral sympathy".

Insofar as human rights entail "social claims for institutionalised protection supported by the collective sympathy for the plight of others" (Turner, 1993:489), it is quite often the case that the official human rights regimes, and the precarious (resource deficient, incapacitated and corrupted) state institutions meant to enact these regimes, are simply unable or unwilling to address the pronounced human frailties and vulnerabilities amongst notably poor citizens, leading to a "community of suffering" from which there seems no escape (Turner, 1993:503). It is not surprising, then, for deprived citizens to enact their own moral rights regimes in trying to overcome their vulnerabilities, thereby capitalising on the fluid nature of rights. However, this study of occupation without ownership raises doubts about the prevalence of an undivided 'community of suffering' characterised by sympathy for others. The precariousness and deprivation of others, in such cases, 'play second fiddle' to one's own precarious conditions of existence.

In furthering the line of argument developed so far, I refer to the work of a number of scholars whose work is not necessarily framed in terms of human rights, but which resonates with the points made so far. Human rights are ordinarily understood and exercised within the legal framing of states. However, the actions and practices of ordinary citizens regularly entail informality and illegality, and these may emerge from rights-claims detached from official human rights regimes. The urban poor thus feel justified in crafting their own means to access basic needs (such as housing) and they do so outside the state's official institutionalised and

legal systems. Although they engage in illegal or informal activity, they justify their actions on the basis of different rights-based moral claims. When the urban poor enact their own moral claims, they build a moral economy of rights, explained in the section below, to respond to human vulnerability due to lack of adequate shelter.

3.3.1 Moral Economy of Rights

The concept of a moral economy speaks to these dynamics, as it highlights the views of right and wrong as understood by ordinary people (Milton, 2007). As propounded by many historians, such as E P Thompson (1961), this notion tends to refer to pre-capitalist legacies of common culture (including ‘traditional’ social norms and obligations) still embedded in the lives of working people under capitalism, and which may serve as the basis for handling the precariousness of working class lives.

Describing bread riots in England, Thompson concludes that the riots indicated “an extraordinary deep-rooted pattern of behaviour and belief” based on justice, equality and fairness, as well as “traditional rights and customs supported in principle by the wider consensus of the community, a moral order that gave legitimacy to actions” (Thompson, 1961:66, 1971:78). The moral economy of the poor revolved around a popular consensus of the obligations of those in power and a social contract that governs the expectations of the poor and the duties of political authorities (Linebaugh, 2008). The notion thus also brings to the fore enduring ties (hang-overs from the past) between political authorities and ordinary people (such as relationships of patronage), or “that balance, that tacit understanding, between governor and governed” (Bartlett 1983:42).

Moral economies are not mere phenomenon of the past, but also exist in contemporary capitalism (Gotz, 2015). The contemporary state operates within the confines of institutionalised legal rights, but the moral question of right and wrong continues to be pervasive in the political life of ordinary citizens, as they seek to address their fundamental vulnerabilities. When the basic rights are compromised or threatened (or not addressed at all), the relationship of trust between state and citizens is broken (The issue of trust is further discussed in Section 8.7.3). In the light of the promises of the anti-Apartheid struggle (as embodied in the Freedom Charter), and the post-Apartheid state’s promises of for instance basic service delivery as a human right, a tacit agreement (or informal rights-based social contract) arose between the South African state and poor urban citizens.

Though seemingly shattered by the state, the urban poor draw upon this moral economy to remind the state of its broken promises; and if need be, they engage in illegal practices to access housing, sanctioning (negatively) the state in the process and justifying their actions by way of a moral economy around housing. In the case study of occupation without ownership, this will become clear. As well, specific state officials at local level seem at first animated by this moral economy in facilitating illegal access to housing for the urban poor, though this is for political gain, as will be shown.

But, understanding more fully the poor and the existence of their moral economies, requires understanding their socio-political space and how they relate with the state and its institutions. Below, I present Chatterjee's analysis of the urban poor which, as 'political society', seeks to affirm rights through informal means because the state does not count them as rights-bearing citizens.

3.3.2 Rights and Political Society

Chatterjee is well known for developing the concept of 'political society', distinguishing it from 'civil society' with reference to India and what he calls 'most of the world'. Civil society, according to Chatterjee, is "the realm where the normative standards of western modernity hold sway with 'the rule of law' and the discourse of rights constituting its fulcrum" (Nigam, 2014 :1060). For Chatterjee, civil society (where rights-bearing citizens exist) is a middle-class space, whereas political society is the space of the urban poor:

The populations [in political society], who informally/illegally occupy land, squatter, use electricity, water and transport without paying are ... not criminalised by government because of the political recognition and the function of the populations in the urban economy. They are not treated as right bearers or legitimate civil society members but as urban populations with specific characteristics and needs and must be appropriately governed (Chatterjee, 2011:14).

Those in political society, labelled by Chatterjee as populations, are not recognised and treated by the state as rights-bearing citizens. Likewise, these populations (i.e. the urban poor) do not respect the rule of law and procedural forms of democracy intrinsic to the human rights regime of civil society, and they go about accessing basic services via illegal and informal means. The urban poor do not have access to the official human rights regime while, at the same time, the government is not able or willing to stringently restrict them from undertaking their own self-provisioning methodologies.

Through their informal actions, the urban poor strategically strive for recognition and inclusion, affirming their own rights-claims even through illegal means. They thus make every attempt to transform themselves into social citizens by articulating and forging rights (Isin, 2009), sometimes by organising themselves and demanding recognition and support from government. They find legitimacy in their actions through a moral appeal to the generally recognised obligation of government to provide for the poor and the underprivileged (Chatterjee, 2011). Because of this, their presence within the realm of political society (and outside civil society) does not imply that they have no relationship with government; rather, their relationship with government is different from that of middle-class rights-bearing citizens. At times, this entails entrenched forms of patronage based on state largesse, not as an entitlement but as the way of generating state legitimacy and control, thereby pacifying the volatile urban ‘populations’ (Chatterjee, 2004).

In South Africa, popular addresses by government leaders refer to the poor as ‘our people’¹. In presenting the Department Budget Vote for 2020/21, the Minister for Human Settlements, Lindiwe Sisulu, mentioned ‘our people’ twelve times. She described, for example, how urban overcrowding placed ‘our people’ in danger and how alternative accommodation was to be provided to ‘our people’ in order to address the plight of ‘our people’, thus ensuring that ‘our people’ are living in safe places (South African Government, 2020). This rhetorical reference to ‘our people’ (or Chatterjee’s population) highlights the significance for the South African state of managing the expectations of the urban poor with reference to housing access. However, in the face of broken housing promises and massive housing backlogs in urban South Africa, the urban poor resort to alternative methods of housing access. In doing so, at times this involves local government or party officials taking it upon themselves to engage in patronage politics with the urban poor to facilitate the occupation of houses, including without ownership.

Political society is subject to state control and management, as the actions of the poor are often contrary to norms of governance in a civil society. Informal occupations counter formal delivery state procedures and challenge the state’s position as the official institution responsible for the provision of resources to the poor. In the following section, I discuss the thoughts of James Scott regarding how informality counters state control and visibility of its populations.

¹ National Parliament of South Africa for the idea of ‘our people’ <https://www.parliament.gov.za/our-people#>

3.3.3 Legibility and State Recognition

James Scott, in his book, *Seeing Like A State* (1998) examines how the modern state seeks to “‘map’ its terrain and its people” (Stimson, 2000:822). This entails making people, space and society visible and legible, thereby facilitating ease of control and subjugation. This also involves universalising, standardising and simplifying people and places in grid-like fashion for purposes of maximising the efficiency and effectiveness of state administrative functions (Scott, 1998). State officials try to simplify the complexity and variability of local practices and dynamics in terms of standard and uniform grids for recording and monitoring. This is because local complexities and contingencies, and the massive diversity this entails, is simply illegible to the state and, because of this, impossible to monitor and control. This is witnessed for example in the state’s construction of cities and forest lands.

For Scott, then, the project of the modern state has been primarily to appropriate, control and manipulate (Scott, 1998). These attempts at bringing simplification and uniformity to space and society tend to stifle dynamic and vibrant local socio-cultural systems and practices which emerged over extended periods of time. However, these state processes do not obliterate these systems and practices in their entirety, such that they may linger on in some form in the face of top-down driven initiatives. For ordinary citizens in specific locales, these local systems and practices are ordered, understandable and indeed legible whereas, for ‘outsiders’, they may be chaotic and illegible.

This is evident in the case of the institutionalisation of private property regimes as a basis for standardising land tenure, access and use. As Scott notes, “land invasions, squatting and poaching if successful represent the exercise of *de facto* property rights which are not represented on [legal] paper” (1998:49). Private property rights do not represent all the claims attached to land possession and use. Although property rights are used to more easily administer landed and fixed property, local moral codes (and practices ensuing from them) demonstrate that those who are not able to access property through legal means, do so outside the law. As Linebaugh (2008:45), rightly observes, “commoners think first not of title deeds but of human deeds”, or the quest for human dignity. The benefits of decent shelter derived from informally occupying a piece of land or a house overrides the need for title deeds before occupation.

Scott (1998) makes a significant effort to examine city planning as a deliberate act on the part of the state and its administrators to make urban spaces legible, thereby managing and

controlling these spaces more effectively. Urban visibility is at the core of urban planning. The grid-like construction of the built environment in urban centres is undertaken in a manner that allows it to be visible to the outsider (i.e. the state). For the state, legibility of the urban space facilitates policing and control, but it also allows the state to be more efficient and effective in the provision of services, including housing (Scott, 1998). However, Scott acknowledges that the urban order has no necessary relationship to the localised 'order' of life as experienced by its residents.

This can be seen in the construction of post-Apartheid housing of a standardised type laid out in grid like patterns. Associated with this is the official housing waiting lists which, for the state, simplifies and monitors housing provision and makes visible those who need housing. From the state's perspective, self-provisioning of housing by the urban poor through the formation of informal settlements falls outside the realm of standardisation and represents a threat to state legibility and control. Additionally, those who engage in illegal occupations (and specifically occupation without ownership) go contrary to the formalist procedures ingrained in the waiting lists, creating scenes of chaos and mayhem and clouding the visibility of the state.

The urban poor do this as they find ways to survive and access resources that the state ordinarily would or should provide. The morality behind their actions is based not only on need but on the (il)legitimacy of state procedures. Can the poor not justify their actions to jump the housing queue when the waiting list is easily manipulated by corrupt officials and the state has not put systems in place to manage the housing database effectively? As they go about occupying houses informally, the poor cloud the visibility of the state in terms of the latter's capacity to manage and control. The moral basis for their claims and practices around illegal occupations is reinforced by their capacity and willingness to engage in tactical navigations despite the seemingly hegemonic presence of the state. The next section uses the concept of the everyday to show that, in enacting their own moral rights regime, 'political society' is tactically seeking to fight against their own vulnerabilities on a daily base.

3.3.4 Human Rights and the Everyday

Finally, it is worth considering briefly the notion of the everyday (de Certeau, 1984; Lefebvre, 1990). Though this notion typically refers to the taken-for-granted, mundane and familiar activities of daily existence, de Certeau (1984) uses the term in relation to his theory of tactics. The state adopts strategies of domination in ordering and controlling people and society, but

not in a totalising manner. Spaces exist within the parameters of the strategies of domination for ordinary people – in their everyday lives – to engage in practices which may not entail forms of resistance or opposition, but which involve ways and means of ‘getting by’ or ‘getting on’ with their lives. In this regard, de Certeau (1984) argues that the state produces ‘things’, whether these are laws, regulations, institutions or infrastructure. Ordinary people ‘consume’ these ‘things’, but not necessarily in the manner intended by the state.

With specific reference to this thesis, the key state-produced ‘things’ include the official human rights regime, the official housing waiting lists and the state-built housing stock. These ‘things’ are consumed by the urban poor in South Africa but, in appropriating them, they do so in ways which go against the logic and imperatives of officialdom. This certainly takes place in the case of illegal occupations of housing stock, but it also appears when the urban poor ‘consume’ the official human rights regime or official housing waiting lists to their own advantage, not to access state housing legally but informally. These tactics, though, do not necessarily imply acts of resistance against the state, at least from the perspective of those engaging in such practices. Their rationale, for better or worse, is much less dramatic, involving for instance the simple desire for a roof over their head and a place they can call home.

To put the various analytical points raised in section 3.3 into general focus, it can be argued that, in their everyday struggles for access to housing, the poor urban population (political society) does not typically realise housing rights through legal claims, although sometimes they do. They rely on a moral economy of rights whereby they enact rights to gain access to housing informally, thereby countering state procedures that seek to make them visible (for example, waiting lists) and therefore more easily controllable. The state finds it difficult to manage and control them as they abrogate formal state procedures. Their actions, as described by Bayat (2000:536), “tend to contest many fundamental aspects of state prerogatives, including the meaning of order, control of public space, of public private goods and relevance of modernity”. Their actions, however, do not necessarily constitute forms of urban resistance in the manner seen through protests and organised urban formations. Rather, through everyday survivalist tactics, they seek to incorporate themselves into the prevailing logic of urban existence, a logic marked by the failure of the South Africa state to address what they see as their moral-legitimate right to human shelter and dignity.

3.4 Conclusion

To conclude, chapter three has provided the analytical framing for the thesis by setting out the theoretical underpinnings of human rights (including rights to housing) and the controversial and disputed character of particular rights-based claims. This has involved going beyond officially-articulated human rights discourses and regimes, as these state-centric human rights regimes do not capture the full breadth and depth of rights-claims existing within a particular society. A diverse array of moral claims (arising historically) circulate within society, and these are drawn upon either in principle or strategically-tactically as a basis for affirming (or denying) the rights of particular categories of people, including in relation to accessing state housing. At the same time, as we shall see, agencies of the state (and its version of human rights) remain crucial to animating and shaping the character of ‘occupation without ownership’ struggles in contemporary urban South Africa.

CHAPTER 4: STATE HOUSING DELIVERY AND THE RIGHT TO HOUSING IN SOUTH AFRICA

4.1 Introduction

This chapter provides insights into how human rights have conditioned state housing delivery in South Africa, and the constitutional, legal, policy and programmatic dimensions of this housing delivery. Policies are promises of what government intends to do for its citizens. Housing policy is followed by an outline of procedures for action on delivery, including waiting lists and income thresholds. These procedures allow the state to manage the housing process formally, but not necessarily successfully. In the case of South Africa, procedural and implementation failures have resulted in long waiting periods, leading to for instance queue jumpers. As well, the policy and procedures fail to incorporate urban residents who do not fall within the required income brackets and who, at the same time, cannot access houses through the market. The housing policy therefore fails to break through income as well as racial barriers of house ownership for many poor South Africans.

State housing policy in post-Apartheid South Africa emerged with a significant emphasis on redressing previous racial and economic injustices. The legal imperative for housing policy was thus informed by the moral (social justice) stance of the post-Apartheid government, which initially arose during the anti-Apartheid struggle, including by way of the Freedom Charter in the 1950s. Overall, the new government adopted a human-rights approach to housing delivery, including a legal framework for guiding delivery programmes in a manner that would bring about socio-economic justice and rights of access to housing for the urban poor. The quest for redistributive justice is evident throughout the policy documents.

Here, I outline the housing policies of the post-Apartheid State, including the initial Reconstruction and Development Programme (RDP) and the later Breaking New Ground (BNG), as well as related matters. The RDP and BNG housing policies are named in relation to the broad national socio-economic policies, the RDP and BNG, hence they are colloquially called RDP and BNG housing policies. There is no attempt to offer a comprehensive overview of these two policies, as there is abundant scholarly literature on them (for example: Marais and Krige, 1999; Huchzermeyer, 2001a; Lalloo, 1999; Charlton, 2013; Bond and Tait, 1997; Taruvinga and Mooya, 2018).

Significant housing shortages continue to exist despite significant housing delivery successes. This relates to the presence of large swathes of informal settlements in contemporary urban South Africa, which is covered in the following chapter. Section 4.2 below examines housing rights in relation to ownership and occupation as two key elements of meeting shelter needs in South Africa.

4.2 Right to Housing and Housing Rights: Ownership and Occupation

Land ownership and access in South Africa have been characterised historically by struggles between those who forcefully took the land and those who were dispossessed of their land. Section 27 of the South African Constitution obligates the state to take “reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis”. While the South African state pursues land redistribution and restitution as two key pillars of its land reform programme, these are in large part pertinent only to rural areas – at least in the case of the redistribution programme. In urban areas, the land question translates into the housing question. Hence, South Africa’s land reform programme leaves unaddressed the nagging housing question, as “the discourse on land reform addressed itself exclusively to rural situations” (Huchzermeyer, 2003:84). The South African state seeks to address this through its substantial housing programme, albeit within the confines of the legacy of racial geography in urban spaces.

Hohmann (2013:6) distinguishes between ‘the right to housing’ and ‘housing rights’: “[T]he former ... [is] ... implied in international and regional rights treaties and declarations, and in domestic constitutional orders; and the latter ... [are]... legal rights codified into or arising from the domestic law of particular national states”. I make use of this distinction as well, but not in the way put forward by Hoffman. From my perspective, the right to housing is a broad category within which exist a bundle of specific housing rights, which may or may not exist within a domestic constitutional order with its accompanying domestic laws and policies, and which may or may not be realised within a particular national order (such as post-Apartheid South Africa) irrespective of existing constitutional and legal provisions.

This is important because, like other socio-economic rights (such as the right to education and health), housing cannot be formulated as a single right, and there is often an unevenness in the realisation of specific housing rights. With reference to education, for example, Malherbe (2000:50) delineates the right to education in terms of: (i) basic education (ii) further education (iii) free choice of learning (iv) free choice of language of instruction, and (iv) free choice to

private education. Likewise, with health, access to treatment, to a health facility and to health education and so on become central to the realisation of the overall right to health. Similarly, the right to housing is only realised when different but related rights such as ownership, occupation, access and use are met – hence, it is possible to speak of housing rights.

In terms of the right to housing (as a broad category), recognised housing rights (as officially articulated and set out) in contemporary South Africa include access to a place of shelter, freedom of use of a house without interference, the right of ownership and occupation, secure tenure, and the right to dispose of housing stock in the housing market. Realising the right to housing, ultimately, entails the key rights of ownership and occupation, with these two rights of direct significance to this thesis as they are the basis for contestations. While, directly, the right to housing refers to a bundle of specific housing rights (such as ownership and occupation), it also encompasses wider issues about rights pertaining to a clean, dignified and habitable environment. These include access to water, electricity, sanitation and good infrastructure, and easy access to work and school (Weinstein and Ren, 2009). These wider sets of rights have been incorporated into the South African state's current human settlements framework.

Housing rights thus delineate all the important elements making up the right to housing. In South Africa, the legal framework guiding the right to housing (apart from the constitution) includes, amongst others: Housing Act 107 of 1997; Social Housing Act 16 of 2008; Rental Housing Act 50 of 1999; and Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (Aigbavboa and Thwala, 2018). Importantly, in a constitutional court case between Shoprite Checkers (Pvt Ltd) and the Member of Executive Council for Economic Development and others, a new and equally relevant right (not to be arbitrary deprived of a house) was added to the list of housing rights in South Africa (Southern African Legal Information Institute, 2015:24). The right not to be arbitrary deprived of shelter through illegal evictions strengthens the right of occupation and use of a house.

While the South African state is central to the realisation of the rights of ownership and occupation (McLean, 2003), the pursuance of its housing mandate is mediated by its own failures around institutional incapacity as well as by the practical actions of the urban poor, as they express their agency in activating what they understand as their constitutional, legal and other rights. Both these points are discussed later in this chapter and the following chapter.

Occupation without ownership, and ownership without occupation, are central to housing contestations in the Buffalo City Municipality. Although both sets of rights (occupation and ownership) are crucial to realising the right to housing, the urban poor in South Africa generally prefer ownership of houses over renting, especially given that the state's housing programmes provide an opportunity to own a house. Though it may be the case that state rental housing has certain advantages over home ownership (through title deeds) in ensuring broad-based housing provision, as Campbell (2014) suggests in the case of Tanzania, interviews with those renting in Tanzania show that they primarily want to own a house, with rental as a last resort.

Likewise, in the case of South Africa, the evidence from the thesis demonstrates that the urban poor prioritise occupation with ownership of state housing. House ownership provides security of tenure, a legacy to pass on to future generations, a symbol of social status, security in old age, and a fixed asset base. In this context, it is possible to understand the significance of contestations over ownership of housing (including by way of illegal occupations), particularly given the long official waiting period for housing access. Illegal occupations become the first step, it is hoped, towards occupation with ownership.

4.3 Policies, Legislation and Housing in Post-Apartheid South Africa

Since the dawn of democracy, the South African housing policy has evolved over the years as government faces diverse challenges in delivery models as well as the perpetual growth of housing backlogs. This section details the development of the constitutional and legal framework around housing in South Africa. This legislation has directly influenced housing policy and delivery as well as civil (and 'uncivil', i.e. illegal) engagement by the urban poor around housing provision. While housing rights emerge from the constitution and legislation, there is no guarantee that the urban poor will have their housing rights realised. However, they have some form and level of consciousness and recognition of entitlements, on the basis of which they make claims to housing and act out those claims at times via uncivil means.

4.3.1 Freedom Charter and New Constitution

To start off, it is worth contextualising housing in post-1994 South Africa with reference to the Freedom Charter. Although not a law at the time of its framing, the Freedom Charter influenced the post-1994 housing policy in significant ways (in terms of human rights), and it continues to resonate with both the government and the urban poor. The Freedom Charter was drafted in 1955 by an alliance of anti-Apartheid forces including the African National Congress, the

South African Coloured People's Congress, the South African Congress of Democrats and South African Congress of Trade Unions (Marcus, 1985). It outlined the vision of a united, non-racial and democratic South Africa, with key principles of universal suffrage, equal rights for all, right to own land, right to work, equality before the law, equal share of the wealth of the country and, most importantly and relevant to this study, the right to choose where to live (The Freedom Charter, 1955). The Freedom Charter (1955) stated that there shall be houses, security and comfort:

All people shall have the right to live where they choose; to decent house and to bring up their families in comfort and security. Rent and prices shall be lowered; slums shall be demolished and new suburbs built with transport, roads, lighting, playing fields and crèches. Fenced locations and ghettos shall be abolished and laws, which break up families, will be repealed.

In the clarion call of 'housing for all', the Freedom Charter promised to address the injustices around access and use of land for housing which discriminated against black South Africans. More broadly, it became the building block for the drafting of the new South African Constitution after Apartheid. Over two decades later, in a policy speech for the Eastern Cape Province in 2019, a Member of the Executive Council (MEC) stated that the Freedom Charter is the living soul of the country's constitution, the National Development Plan and the Provincial Development Plan (Eastern Cape Human Settlements Policy Speech, 2019). The MEC reinforced the principles of the Freedom Charter that "there shall be houses, security and comfort for all" (Eastern Cape Department of Human Settlements Policy Speech, 2019).

The principles embedded in the Freedom Charter, and in the post-Apartheid state's constitutional and legal provisions around housing, fall far short of expectations and aspirations in terms of their realisation, as we shall see later. However, the Freedom Charter continues to be a point of political reference for the ANC government's commitment to housing rights, and it serves as a reminder to the government of the aspirations of the people and the promises made by the government.

Whereas the Freedom Charter is a historical document pertinent to post-Apartheid democratic aspirations, democracy came with the enactment of the Bill of Rights in the 1996 Constitution. The right to housing is articulated in Section 26 of the Bill of Rights as the right of access to adequate housing within the available resources of the state. The role of the state in this regard is to create an enabling environment through establishing institutions and laws for the right to be realised.

Importantly, then, the Constitution does not offer a guarantee that the right to housing will be realised for all (in the sense of an entitlement), as the realisation of the various housing rights is conditional on state capacity. Nevertheless, there is an obligation on the state to pursue housing provision within its means. The right to housing, as articulated in the Constitution, places the primary onus on the state to enable and make possible the provision of housing through the mobilisation of resources and crafting of appropriate housing laws and codes. The principles embodied in both the Freedom Charter and Constitution became embodied in the state's original socio-economic development programme, the Reconstruction and Development Programme (RDP) (Charlton and Kihato, 2006), and they remain intrinsic to the state's housing provision. Additionally, property rights feature prominently in the Constitution by protecting private property owners from illegal occupants. As well, as indicated, the state must protect people from the violation of the right to housing through arbitrary evictions. It is important to highlight that all rights in the Constitution are based on human dignity, equality and freedom (Section 36). Therefore, in fulfilling housing results, the new policy would seek to fulfil those basic rights.

4.3.2 RDP: From 1994 to 2004

Consistent with the constitution, the South African state adopted and pursued a rights-based housing policy approach from the start. The RDP policy adopted by the original Government of National Unity attempted to integrate themes of development, reconstruction, redistribution and reconciliation (Robert, 1996). The key areas of development included education, health, transport, housing, land, water, electricity, employment, social welfare, clean and healthy environment, nutrition and telecommunications (Corder, 1997; Tissington, 2010).

In the years to follow, the ANC-led government deliberately sought to formulate and implement policies based on its election manifesto of providing houses for all. The opening statement of the ANC election manifesto on housing provision (from 1994) emphasised housing as a basic right to be realised by all:

A roof over one's head and reasonable living conditions are not a privilege. They are a basic right for every human being. For over two decades, the National Party stopped the building of houses for Africans in the urban areas. Influx control and a lack of urban planning have resulted in a crisis that is at the very root of many of our social problems. Women were denied the right to own houses. Decent family life has been denied to millions of people. We will focus on the 7-million squatters and the homeless, and the upgrading of townships. We will upgrade hostels to

meet the needs of the residents as part of a programme to eliminate the Apartheid migrant labour system. The ANC will work with building societies and other banks and financial institutions to ensure that people have the loans and means to build their own houses. Consumers will be protected from fly-by-night building contractors and unfair lenders. Housing plans will consider the need for people to stay close to where they work and the need to build efficient transport systems and to provide recreational and other basic facilities. The ANC will ensure democratic, efficient and open local government which works closely with community structures in providing affordable housing and services.

We have calculated that, within five years, the new government can:

- build one million homes;
- provide running water and flush toilets to over a million families;
- electrify 2.5-million rural and urban homes. (ANC, 1994)

The ANC government came into power with a clear focus on addressing the ills of Apartheid, including by way of a focus on housing provision for the urban poor. In 1994, a Housing Policy emerged and, as with the Constitution and the RDP, it highlighted access to housing as a right and a house as a fundamental need (Huchzemeyer, 2000; Pottie, 2004). Housing provision thus became paramount in defining the parameters of a democratic and just dispensation, thus placing a significant political burden on the ANC in fulfilling its promises.

Under the RDP from the early 1990s, the housing programme formed part of “the post-Apartheid project to redress the historical, socio-economic injustices of Apartheid with the eradication of the housing backlog” as both a “political target” and as a “broader developmental goal” (Tissington et al. 2013:6) – involving the provision of a physical asset (i.e. house), basic services, security of tenure and, hopefully, a sense of pride and dignity (Charlton and Kihato, 2006, Lall et al., 2007). The promise of ‘housing for all’ created significant expectations from the urban poor, and some critics claim that it produced a sense of entitlement and “made an exponential surge in the expectation of free benefits from government largesse” (Marutlulle, 2017:2).

Overall, the housing dimension of RDP emphasised the importance of community and private sector involvement, with the state though playing a central and direct role in housing provision (Goodlad, 1996). Housing delivery would combine (state-assisted) self-help schemes, public subsidies and (non-state assisted) market-based transactions (Goodlad, 1996; Marais and Cloete, 2017). In large part, in terms of its own direct involvement, the state adopted a two-pronged approach to housing provision, that is, subsidised house ownership and subsidised

housing for rental, the former initiated in 1994 and the latter in 1996 (Rust, 2006:6). Subsidised ownership required that a household fell below a R3500 income threshold. Rental housing was used to cater for those who could not afford houses in the open market, yet their income was more than R3500.²

In the case of RDP housing, the state focused primarily on providing the site (or plot), the housing stock and services for the urban poor. Servicing of plots only, for purposes of housing construction, was de-emphasised. However, even to this day, there continues to be discussions around the provision of site-and-service schemes, and the self-construction of houses (Department of Human Settlements, Water and Sanitation, 2019; Eglin, 2017). Over time, the RDP housing programme became synonymous with a low-cost state housing programme, as did the very term ‘RDP’ in popular discourse (Motlhabane, 2015). Currently, RDP houses are delivered as part of housing opportunities that include serviced sites and housing units. Delivery targets on housing opportunities under low-cost housing include targets for housing units and number of serviced sites (Department of Human Settlements, 2015).

The policy focus on mass delivery of state houses post-1994 was an attempt to fulfil the promise of housing for all. The production of houses on a large-scale would be useful for the state in meeting the expectations of poor urban black residents; in turn, this would facilitate the state management of the urban poor, who could pose a threat to urban and central governance if their expectations are not met. As we will see later, this goal was thwarted as housing delivery could not meet the housing backlog, which meant that the state would in the future change policy and use other means to manage its excess urban population.

Throughout the RDP period, housing as a right continued to be centre-stage. Thus, Section 4.4.2 of the White Paper on Housing (1994) describes housing as a basic need and affirms the state’s commitment towards addressing the right to housing. It states:

Government is under a duty to take steps and create conditions which will lead to an effective right to housing for all. It is also under a duty to refrain from taking steps which promote or cause homelessness. It is held that a person has a right to live in dignity, in habitable circumstances.

² The subsidy for rental housing falls under social housing. The term social housing is used in South Africa to refer to rental accommodation provided by the state. Where reference is made to state rental housing, subsidised rental housing or social rental housing, it means state provided rental accommodation. The income range for those who qualify for state rental housing is between R1500 and R3500.

Government therefore will vigorously promote an effective right to housing for all, within the resource and other limitations applicable to it.

At that time, South Africa faced massive housing challenges. In 1995, the South African population was estimated at 42.6 million, with two thirds of the population living in urban areas. In 1994, there were about 2.6 million formal housing units, about 7 million people living in shacks on un-serviced sites, and over 2 million in 620,000 shacks on serviced land (Goodlad, 1996:1633). Section 4 of the White Paper made it clear that a massive state housing programme was necessary. It claimed that:

Existing backlogs in housing requiring +- 200,000 households to be housed annually in order for the backlog to be eradicated over a period of 10 years.

New household formation requiring a further +- 350,000 households to be housed annually if backlogs are not to increase. ...

+45% - 55% of households in need of housing, unlikely to be able to afford or access [private] credit and therefore entirely dependent on own (limited) resources and state subsidization to satisfy their basic housing needs.

The housing delivery challenges are not reducible to the slow pace in delivery (compared to demand). Administrative and incapacity problems are embedded in the state's housing programme, thus affecting negatively on questions around effectiveness and efficiency. This led as well to the construction of sub-standard houses, the awkward location of certain housing settlements, corruption in issuing of tenders to construction companies, and corruption in the state's housing allocation process (Marutlulle, 2019:1). The South African government has consistently acknowledged the presence of corruption in supply chain management and in beneficiary management, which is evident through incomplete housing projects, defective houses, payments to construction companies where there was failure to build houses, inflated costs, fronting and fraudulent claims/invoices and misallocation of low-income houses (Maluleke et al., 2019:144).

As stated earlier, housing provision rely heavily on local, municipal-level, government as the implementer of housing delivery, as part of a decentralisation initiative. However, as Pottie (2004: 612) notes with regard to municipal administrative and institutional capacity, "building a municipal framework to fulfil the roles of provision of housing, adequate infrastructure, water and sanitation has been the major concern for the municipal reform process". Perceptions of pervasive corruption became focused on local government spaces as well. Yet, as Tomlinson observes, "often the provincial government assumes the role of housing deliverer", thereby

“blurring the roles and responsibilities between the provincial government and local government” (2011:419). Some of these issues, particularly corruption and blurred responsibilities, are directly pertinent to contestations around ownership and occupation in the Eastern Cape.

Additionally, the emerging housing policy did not succeed in tackling Apartheid-driven racial segregation in urban spaces and the racial-spatial inequality in home ownership (Lalloo, 1999; Crankshaw and Parnel, 1996; Pottie, 2003; Huchzermeyer, 2001b). Thus, though the post-Apartheid government sought to create spatially- and socio-economically integrated cities free from racial discrimination (Department of Housing, 1997), this has not taken place. This is significant in the case of one of two study sites for this thesis, as racial antagonism between Coloureds and Black Africans exist in relation to state housing.

4.3.3 Case Law and the Right to Housing

Besides policy and legislation, it becomes important to underscore the role played by case law in reinforcing housing rights in South Africa. Particularly important is how the courts have come to the centre stage in negotiating housing rights between the poor and the state. For example, a landmark case from the year 2000, the Grootboom case, transformed housing rights in a drastic manner. Irene Grootboom and a group of about 900 people including children illegally occupied land close to a site earmarked for low-cost houses (Williams, 2005:219). The group was evicted and their property destroyed, and they found themselves without shelter and were settled in a sports field. With the support of the Legal Resource Centre, the case went to court to challenge the legality of such evictions given the right to housing in the constitution. The Constitutional Court ruled in favour of Grootboom and others and indicated that the local municipality was wrong in evicting vulnerable people without providing them alternative accommodation. Evictions must not render people homeless as this violates the constitutional right to housing. The Grootboom case is significant in making explicit a moral judgement based on consideration of the plight of the poor applicant, setting a precedent for future claims. What it means is that claims could be made in the future based on poverty, although it is not easy to convince courts on legal grounds to make judgements based on such claims (Bhan, 2016).

However, in the judgement, the judge clarified the following:

That the judgement must not be understood as approving any practice of land invasion for the purpose of coercing the state structure into providing housing on a preferential basis to those who participate in any exercise of this kind. Land invasion is inimical to the systematic provision of

adequate housing on a planned basis. It may well be that the decision of a state structure, faced with the difficulty of repeated land invasions, not to provide housing in response to those invasions, would be reasonable. Reasonableness must be determined on the facts of each case (Supreme Court of Appeal of South Africa Judgement Case Number 817, 2012).

This need to clarify at the very end of the judgement was necessary as a pre-emptive measure to undercut illegal occupation of land as a means to force government into providing shelter. With land invasions currently underway in urban South Africa, this judgement and its clarification (or qualification) is of great significance, and – at least indirectly – it relates to the contestations taking place in the study sites for this thesis. At the same time, the Grootboom case privileged the right not to be evicted and to be rendered homeless, more so than the right to provide shelter to the vulnerable urban poor in the first place.

The growth in the informal access to land and housing is generally informed by an overarching aspiration for the realisation of housing rights stipulated in the constitution; yet, by disregarding the law, those who participate in informality make use of their own version of rights in a manner contrary to state laws. In fact, those who engage in informal occupations conceive and use rights differently from those used inside courtrooms, also when courts are at the centre of the politics of access to urban resources, they alter the content of right-claims (Bhan, 2016:219). The South African courts play a strategic role in managing excess urban populations through evictions, which has proven to be complex because often government fails to provide alternative accommodation; the state is then left with no choice but to regularise illegal occupations. Policy shifts on informal settlements thus are a way of strategically managing urban populations.

4.3.4 Breaking New Ground: 2004 Onwards

This section briefly refers to the new Breaking New Ground (BNG) housing programme from 2004 under the national Department of Human Settlements. This programme builds on the RDP programme while also trying to respond to certain negative unintended consequences of it (Maluleke et al., 2019).

There was no radical shift from the RDP to the BNG programme. As with the RDP, the BNG conceives housing as a human right, as well as a poverty-reduction strategy and a source of employment creation. However, the BNG has attempted to move away from simply providing a house as its primary focus, towards a more holistic approach to human settlements that builds a house within a dynamic place of human habitation (Department of Human Settlements,

2009). Thus, it has sought, in a more focused and vigorous manner than RDP, to establish integrated human settlements that are economically sustainable and located close to social and economic facilities (such as schools and health facilities). As Charlton and Kihato (2006:256) put, “the BNG sought to engage with socio-economic issues around human settlements”.

Overall, the vision of the Department of Human Settlements (formerly, the Department of Housing), in 2004 remained “to promote the achievement of a non-racial, integrated society through the development of sustainable human settlements and quality housing” (Department of Human Settlements, 2004). Importantly, the BNG also focuses on the upgrading of informal settlements according to international housing requirements and the Millennium Development Goal of improving lives of slum dwellers (Department of Human Settlements, 2009), as discussed in the next chapter.

As well, by the time of the emergence of BNG, it became clear to the state that housing quantity alone was not a sufficient basis for measuring housing delivery success, and that a refocus from quantity to quality housing production was necessary (Tomlinson, 2006). This meant that, under the BNG, considerable attention has been given to a rectification programme, whereby improvements were made to sub-standard and defective RDP housing stock (arising from poor workmanship and corrupt practices). Pouring resources into this programme affected detrimentally the progress made by the Department of Human Settlements in producing new housing stock. This quality challenge, alongside rectification, has been pronounced in the Eastern Cape Province (Msindo, 2018). The Eastern Cape Department of Human Settlements has continued with its rectification programme despite the announcement by the Minister to stop rectification and focus on production of new stock (Msindo, 2018).

As the years progressed post-1994, it became increasingly evident that failure to meet the right to adequate shelter would result in discontentment among the poor urban populations. This could destabilise South African cities and, therefore, the state needed to revisit its housing policy to address the housing challenges arising from increasing urban populations and the consequence rise in informal settlements. The policy changes are important as responsive mechanisms for the changing needs in housing, but also as a basis for managing and containing discontented populations.

The following section discusses the increasing demand in housing in South Africa post-1994, revealing the growing need.

4.4 State Housing Demand and Supply in South Africa

As stated earlier, the end of Apartheid and the relaxation of urban influx control laws resulted in the growth of urban informality because, increasingly, black populations came to the cities searching for work. To date, informal settlements continue to grow unabated due to the increase in urban population and lack of access to formal housing. Since the end of Apartheid, and despite two significant housing programmes, the increasing population and household expansion in urban areas has increased the demand for housing. The demand is high both in absolute terms and in proportion to housing supply by the South African state, not unlike other countries in Africa (Tipple, 1994). Levenson puts it bluntly in saying, “no matter how many houses are delivered, the number of people in need of housing increases annually” (Levenson, 2017:475). Lall et al. (2007:5) state that the supply of RDP houses had minimal impact on housing demand, and similar claims are made about BNG housing.

To reiterate, three main streams of housing production run parallel in South Africa, namely, public sector built, private sector built and self-provided through state housing credit or personal resources (Aigbavboa and Thwala, 2018; Tissington et al., 2013). The following table (Table 4.1) provides an overview of housing provision from the year 1994 to 2019 nationally.

Table 4.1: Quantity of Housing Delivery from 1994 to 2017

Delivery Programme	Quantity Delivered between 1994 and 2017
Hostel/Community Residential Units	68,656
Social/Rental/Institutional units	124,183
Finance Linked Individual Subsidy Programme	11,618
RDP/BNG houses	2,977,197
Serviced sites and houses given to tenants who qualify for BNG houses	1,088,764

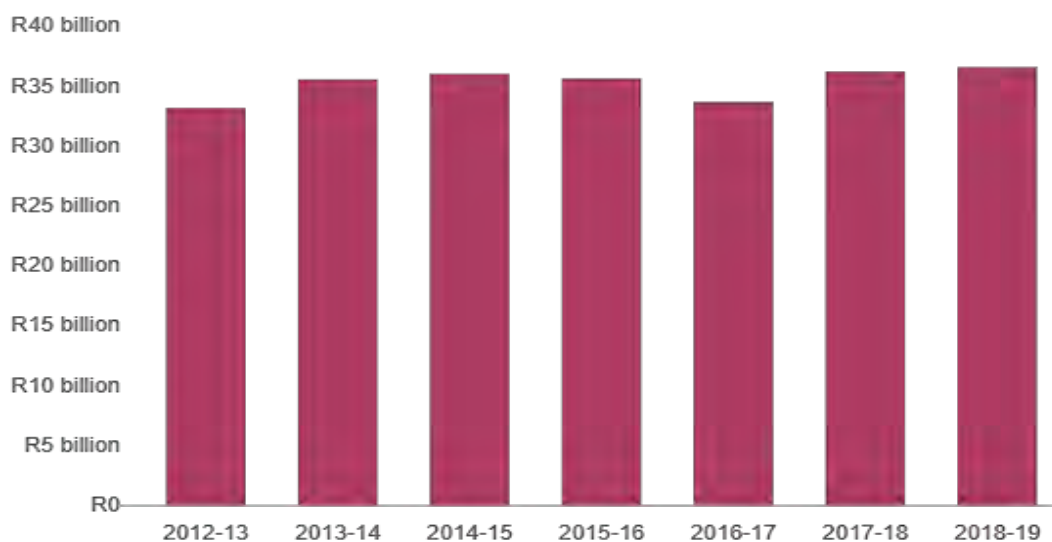
Source: Department of Human Settlements website: <http://www.dhs.gov.za/sites/default/files/u16/HSDG%20to%20Dec%202017.pdf>

In a budget vote speech in July 2019, the Minister of Human Settlements described the Department’s success in human settlements delivery, announcing that 1 167 138 serviced sites and 3 291 891 houses had been constructed in the post-Apartheid era (Minister Lindiwe Sisulu, Budget Vote, 2019/20). A few months earlier, in April 2019, the Minister called on South

Africans to celebrate this achievement, noting that over R500 billion had been spent on housing in benefitting 20 million people (Department of Human Settlements, 2019). Despite these achievements, the Minister indicated that the registered backlog stood at 2 356 025 housing units (Minister Lindiwe Sisulu, Budget Vote, 2019/20).

Although the national budget for housing delivery rose sharply at the dawn of democracy, it has since suffered massive cuts as the National Treasury focuses increasingly on other sectoral demands such as health, education and social security. In 1995/96 for example, expenditure on health and welfare had approximately equal share (about 10% of total expenditure respectively) with expenditure on housing, at R2.953 billion (National Treasury, 1996). In 2018/19, consolidated government expenditure for human settlements, water and electricity was only R56.4 billion, compared to R386.4 billion for learning and culture, R222.6 billion for health and R278 billion for social development. Figure 4.1 below shows budget expenditure for Human Settlements nationally (for the financial years 2012/13 to 2018/19) in real terms (the rand values in the Figure are the effective value in 2018 Rands). The Department has been spending over 90% of its budget since 2014; hence, expenditure offers a close indication of the budget allocated over the years.

Figure 4.1: Human Settlements Historical Expenditure Nationally

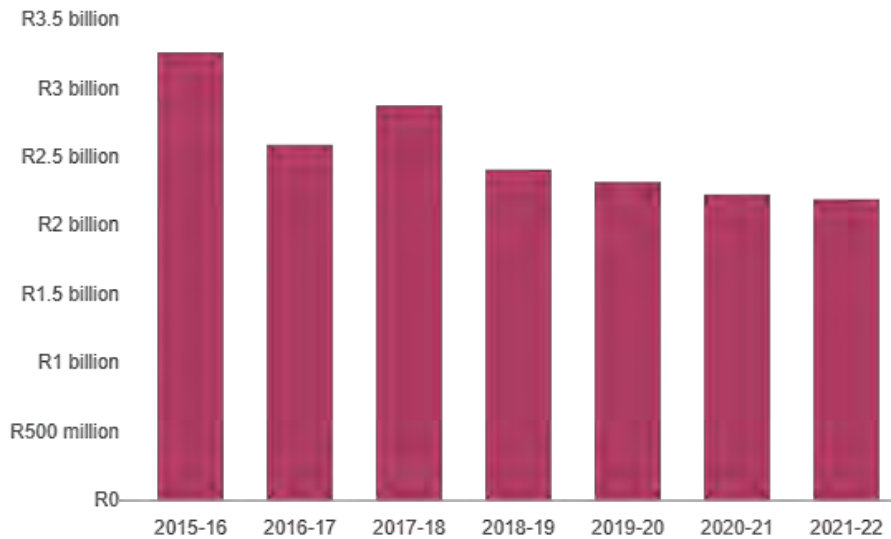


Source: <https://vulekamali.gov.za/2016-17/national/departments/human-settlements?>

The budget and expenditure for Human Settlements has generally been constant since 2012/13, leading in recent years to a comparative slow production of new housing stock under the BNG

programme. The problem is even more evident within the Eastern Cape Province, as demonstrated in Figure 4.2. Again, this is in real terms (with the rand values in the Figure being the effective value in 2018 Rands).

Figure 4.2: Expenditure for the Eastern Cape Department of Human Settlements



Source: <https://vulekamali.gov.za/2016-17/national/departments/human-settlements?>

The budget for Human Settlements in the province has been cut in recent years and is projected to fall further, limiting the extent to which the provincial department can continue to deliver houses for the urban poor. As well, the Eastern Cape Department of Human Settlements, in accordance with national policy, has slowly and incompletely shifted its policy from purely focusing on income threshold (as the key qualifying criterion) towards prioritising vulnerable groups (the disabled, child headed households, the elderly and military veterans), as important forms of categorisation in qualifying for state houses (Eastern Cape Department of Human Settlements, 2018).

Both nationally and specifically in the Eastern Cape, financial challenges inhibit the possibility of clearing the housing backlog and addressing, indirectly, illegal occupations of land and the proliferation of informal settlements. Housing shortfalls are not reducible to financial shortfalls, and other factors (such as priorities around modes of housing delivery) come into play (Levenson, 2017). However, the inability to access housing by the urban poor, often over an extended period, is bound to lead to frustration, anger and ultimately conflicts. For instance,

those who perceive themselves as excluded, neglected, unrecognised and forgotten engage in organised land occupations in waiting for formal housing from government. The existence of a backyard shack-dweller movement in contemporary South Africa is also an outcome of such perceptions, in part because housing delivery processes have prioritised those who live in informal settlements.

The diverse needs for shelter and the challenges of a growing urban population mean the state has to strategically shift its policy and delivery programmes to meet the increasing shelter needs of its populations. The section below explains the limitations of the income threshold and waiting list as instruments in the housing delivery process.

4.5 Income Threshold, the Missing Middle and Waiting Lists

To those who are left out of accessing state housing through income-qualifying criteria and cannot afford to access housing through the market system, illegal occupation speaks to a distorted and non-inclusive housing policy. The ‘missing middle’ (also known as gap housing in South Africa), alluded to earlier, is a category of people who are technically excluded from accessing a range of public benefits when income criteria are applied. They tend to occupy a space between the very poor and middle class. In this regard, the housing delivery income criteria ensure that state housing (for ownership) is not available to those earning above R3,500 (US\$206) per month. However, many earn above this income threshold and still cannot afford to buy houses on the market. Muhoro (2015), states that, in 2012, 20% of the population (about 2.3 million individuals) earned too much to qualify for government subsidised housing and too little to receive mortgage bonds from finance institutions. The figures have increased over the years as the income threshold has not been revised upwards against rising inflation.

In South Africa, if the missing middle (including many civil servants) occupy RDP houses, they are deemed as illegal occupants. Rental housing programmes have been implemented to make provision for the missing middle, yet the inadequate supply of housing continues to hinder access for many. Moreover, the threshold is not adjusted to inflation so that it caters for the erosion of income due to rising inflation. The result is that, in real terms, the income of those who are outside the income bracket of R3,500 is reduced – yet, they still cannot qualify for RDP houses. In an attempt to address the ‘missing middle’, the state provides social housing to those earning from R3,500 to R15,000 per month.

The Finance Linked Individual Subsidy Programme (FLISP) assists first time home buyers who earn between R3,500 and R22,000. Although the government has made every attempt to fill the housing gaps using different programmes within different income thresholds, this does not easily address the existing housing backlogs at every level. Beneficiaries for social housing continue to struggle to pay rentals, creating more challenges for the Department in managing debts and recovering rents. There is no easy solution to housing allocation challenges, and the income threshold has not helped significantly in resolving the housing crisis in South Africa. Such income-categorisations of course are useful in facilitating the delivery processes, but they have become increasingly challenged and contested. The use of income thresholds and addressing gaps in housing provision are part of the South African state's attempt at managing excess populations. Those left out (unwittingly) through income thresholds, whether as individuals or groups, may resort to informal and illegal forms of accessing housing.

4.6 Housing Allocation Process

Beyond the overall problem of housing delivery shortfalls, issues around local and provincial state departments and their administration of housing allocation processes are crucial when it comes to accessing state housing. The allocation of state housing takes place, at least officially, through official waiting lists arising from housing applications submitted by qualifying households or individuals, but multiple problems arise in this regard: including the existence of multiple lists, confusion over the state department or agency responsible for managing housing applications and waiting lists, and outright mismanagement and corruption. In fact, overall, housing allocation in South Africa is marred by irregularities, corruption and maladministration. Given the household backlog, the end result is that urban residents may wait indefinitely before being allocated a house officially (Gilbert, 2014; Huchzermeyer, 2014a). As Seekings et al. (2010:5) note, “the allocation of subsidies, and hence of subsidised housing, is a profoundly political process, largely insulated from the market. In practice, houses have been allocated in ways that privilege some poor people over others, and which serve to reproduce racial segregation”.

Regarding applications, registrations and the developing of the waiting list or housing databases, no single place involving uniform procedures appears to exist. At national level, a National Housing Needs Register (NHNR) was developed to capture all the housing needs across the country. The NHNR is not a database of those who qualify for state housing but an indication of the kind of assistance households require, compiled through the household data

of provinces and municipalities. The key purpose of the NHNR is to consolidate the various waiting lists/demand databases obtained from municipalities and provincial departments (Department of Human Settlements, 2020). Registration in the NHNR is unrelated to whether one qualifies for a house or not, as this only happens when applications are verified. Applications for state housing are done separately through the municipality or the province.

Those whose applications are assessed and qualify for state housing are captured in the Housing Subsidy System (HSS). The HSS is used to track housing subsidy applications and monitor allocation of housing subsidies, a system managed by the national department (of Human Settlements), relevant provincial departments and accredited municipalities. Registration and verification of applications is undertaken and recorded via the HSS. The National Housing Subsidy Database, linked to the HSS, keeps all records of subsidy applicants as approved across the country and it is supposed to prevent households from benefiting more than once through the housing subsidy (Tissington et al, 2013). There are concerns that these systems are not transparent and that manipulation and corruption might fraudulently impact on the allocation of houses.

Allocation and access to houses has deep political and local power dynamics due to different and seemingly contested roles played by municipal officials and councillors as well as provincial departments of housing. Broadly, provincial departments are directly and heavily involved in the allocation and handing over of allocated houses but, certainly in practice, the process is not uniform across the provinces. However, there are standard procedures which provide guidelines for the allocation of houses, as set out below³:

Step 1: Applicants for state houses complete the registration form and are given a receipt called a ‘C Form’ which takes note of the date the person registered.

Step 2: Applicants are registered on the municipality’s Housing Demand Database.

Step 3: The Municipality applies its selection criteria as set out in its approved housing allocation policy to preselect a short list of potential beneficiaries for the project.

Step 4: A preliminary input of selected households’ information is then captured from the subsidy application forms into the Housing Subsidy System (HSS), which runs several checks against the Population Register, Deeds Office, the Unemployment

³ These steps were developed by the Western Cape Province but they apply generally to allocation of houses nationally. The construction of houses is an ongoing process that involves planning housing projects and submitting the plans for approval to the provincial department. Online <https://www.westerncape.gov.za/general-publication/allocating-beneficiaries-housing-opportunities#01>

Insurance Fund and other government systems to ensure that applicants still qualify. Several rounds of beneficiary selection may take place, removing applicants who do not qualify, until all the housing opportunities have been allocated.

Step 5: The municipality then publicises the beneficiary list in its local offices for public scrutiny.

Step 6: Beneficiaries will be contacted to inform them that they may now take occupation of the residential unit once the houses have been completed. The occupants receive a 'happy letter' from the officials on the day they occupy their new houses.

The larger municipalities (especially metropolitan areas) may be accredited to generate their own waiting lists, and they are generally at liberty to develop guidelines for housing applications and allocation of houses. In this regard, eThekweni Metropolitan Municipality has used various means of housing allocation (Tissington et al, 2013). The methods include an 'expression of interest' in housing opportunities combined with random selection (a lotto system) in allocating houses. But, other provinces have continued to use the housing waiting list linked to the National Housing Needs Register and/or the provincial demand database (Tissington et al, 2013).

The extent to which any formal system is followed in practice, without any maladministration, irregularities or corruption, is questionable and is often not open to scrutiny given that it takes place 'behind closed doors'. However, as demonstrated in the case studies of this thesis, it is not uncommon for the urban poor to raise fundamental queries based on their own perceptions and experiences.

Ideally, title deeds should be issued to beneficiaries at the time the houses are handed over to them. In practice, the Department of Human Settlement fails to keep pace with the issuing of title deeds due to the legally complicated processes involved (Huchzermeyer, 2014a). Certainly, there is a huge title deed backlog in the Eastern Cape. The reasons for delay in title deeds registration, according to the Eastern Cape Department of Human Settlements, include: deceased beneficiaries, missing and untraceable beneficiaries, illegal occupations, divorces, encroachment over boundaries, and expired or undone township establishment and township registrations (Eastern Cape Human Settlements Annual Report, 2018/19:31). However, the bottom line for these delays is an attempt to speed up the process of housing delivery while, simultaneously, overlooking the registration of title deeds in the process. Typically, then beneficiaries occupy their houses only on the basis of a 'happy letter' handed to them. It is a

letter that shows that the beneficiary is the rightful occupant of the house, with the receipt of the letter taking place at a handover ceremony in the presence (at least possibly) of provincial department or municipal officials.

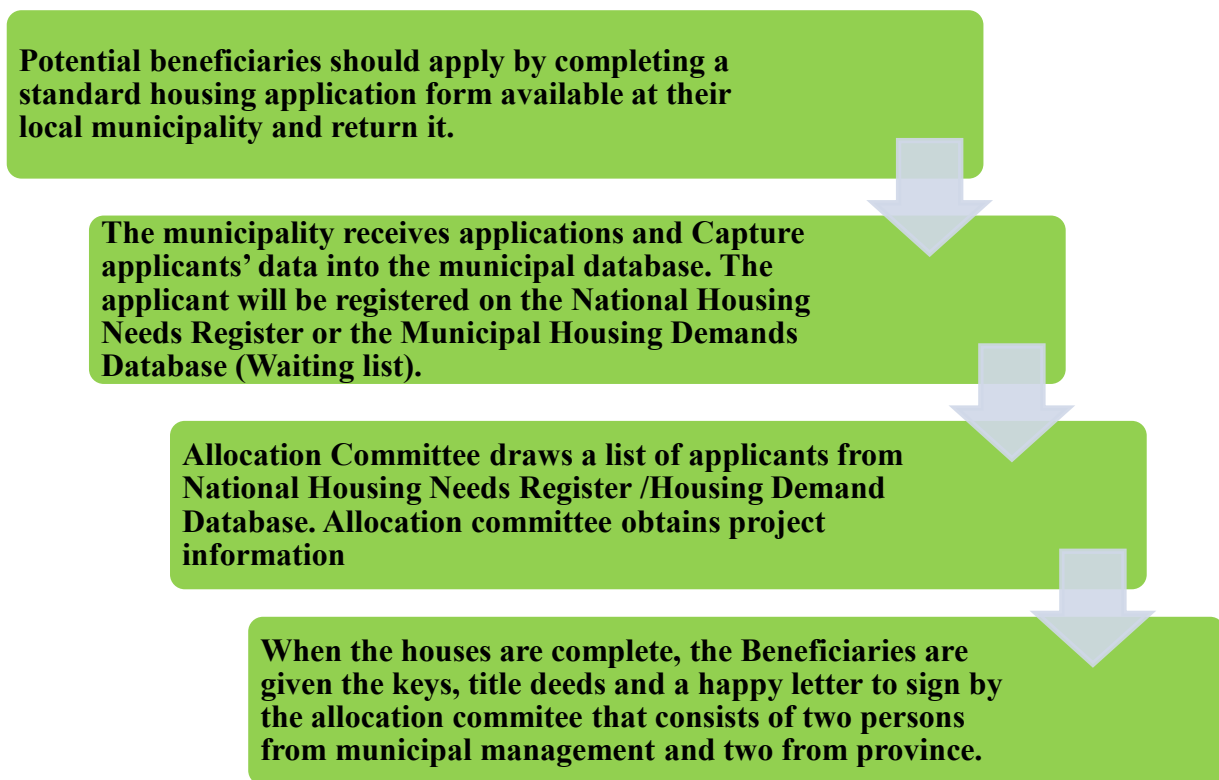
The formal housing waiting list system was adopted at the onset when the RDP began and was intended initially to work on a first-come first-serve basis (Tissington et al., 2013). However, other criteria now exist, including a specific focus (as indicated) on the most vulnerable. Insofar as this criterion is considered at local levels, it tends to raise complexities about defining and delimiting the most vulnerable, with contestations emerging on this basis because of claims of exclusion and marginalisation due to bias and partiality on the part of local power-holders (Levenson, 2017). In this context, local dynamics therefore mediate the application of the formal housing waiting system in specific urban locations, leading to a diverse and shifting array of processes spatially and over time.

For instance, Kabane (2012) undertook research about an RDP project in iCwili in Kei Mouth, Eastern Cape, that was an outcome of illegal occupation of land and then regularisation. The allocation process for these houses involved the community, with less input from the municipality, as community members used the official waiting list as a mere starting point to compile their own waiting list. A committee was formed from the beneficiaries to work together with the South African National Civic Organisation (SANCO) in this process. The community replaced any deceased household heads with the eldest child (over 18 years of age), added backyard dwellers, and removed those who had benefited already from other housing projects. The allocation of site numbers was done according to their list and, where permanent structures were built already after the occupation of the land, the occupants kept their site numbers.

As a general tendency, the official housing waiting lists have been subject to manipulation, resulting in some names disappearing from the lists and others moving up or down the lists (Levenson, 2019, Tutu, 2014). As well, in the case of Gauteng province and indeed elsewhere, several waiting lists exist simultaneously (Kihato, 2014). When allocation of housing is undertaken, it may be that some people whose names are not on the waiting list (or are near the bottom of the list) receive houses, while others near the top of the list are excluded – leading to significant frustration if not anger on the latter's part (Levenson, 2019). In some instances, municipal officials and ward councillors manipulate waiting lists for political ends (Manomano, 2019), including by making promises for houses in return for political votes.

The national Department of Human Settlements has acknowledged and grappled for many years with the challenges around waiting lists and beneficiary allocation. In a portfolio committee meeting that discussed the review plan for beneficiary lists in 2009, the Director General acknowledged that the Department had itself caused significant confusion in the process of housing delivery, including even giving contractors waiting lists and tasks to allocate houses (Parliamentary Monitoring Group, 2009). Although the project developer is the national or provincial department, the provinces tend to pass on the role of developing waiting lists to the municipalities. The capacity of the municipalities to develop waiting lists continue to be questioned.

Figure 4.3: Housing Allocation Process (Department of Human Settlements in the Eastern Cape)



The Eastern Cape Department of Human Settlements experienced many challenges with illegal occupation of houses and developed a policy around housing allocation. The new policy involved the provincial department more directly and fully in allocating houses, through establishing allocation committees. Figure 4.3 shows the process of allocation developed by the Department in 2018, to counter problems pertaining to illegal occupation of state houses. Through establishing allocation committees that include both provincial and municipal staff, the Eastern Cape Department of Human Settlements hopes to curtail corruption in allocation

of houses by removing councillors from interfering with the allocation process. The extent to which this change will stop corruption and misallocation of houses is yet to be seen.

4.7 Conclusion

This chapter has provided a historical overview of South African housing/human settlements policy development since 1994, outlining the legal framework that informs human settlements delivery. Understanding housing policy development (as anchored in human rights) is significant for purposes of analysis of how housing rights are expressed by both the state and the beneficiaries, and therefore influences the manner by which state houses are accessed by the poor. The chapter also highlights the existing housing backlog and increasing demand for state housing in spite of mass housing delivery since 1994. The growing housing need is reflected in the increased growth of informal settlements and a rise in housing related protests. These act as challenges to the state in its attempt through policy to manage urban populations. A right-based approach to housing delivery has its own shortcomings, with potential conflicts amongst beneficiaries emerging from the allocation processes of state houses to beneficiaries. Having provided the legal framework around state housing provision in South Africa, the next chapter provides the context for the processes of informal access to land and shelter undertaken through illegal occupations.

CHAPTER 5: ILLEGAL AND INFORMAL OCCUPATIONS: SELF-PROVISIONING OF HOUSING IN URBAN SOUTH AFRICA

5.1 Introduction

This chapter provides context to illegal occupation revealing the diverse and complex processes of illegal occupation of houses in South Africa. The chapter examines processes of illegal occupation of land, which through regularisation at times by government leads to the formal occupation of land previously occupied illegally. The formalisation of the informal has become by default a solution to urban land access and shelter for many poor South Africans, a primary means through which the poor claim housing rights. The state uses regularisation to manage informality. Occupation of state houses illegally follow a similar process of occupation first and ownership later. State responses to informal settlements and the illegal occupation of houses has been mixed, as the state grapples with providing shelter to the masses and ensuring respect for urban property rights. State policy shifted from eradication of informal settlements through mass provision of state houses to upgrading informal settlements. However, the state continues to face illegal land occupations which the state tries to manage without disregarding the poor's housing rights, though often unsuccessfully.

5.2 Informality-Illegality of Land and Housing Access

Illegal occupation of land is a common phenomenon for many developing countries (Stuurman, 2002:14). The context for land occupations, and the character of these occupations, differ depending on the history and political trajectory of a country. Although much of the contested land in Africa has been for agricultural purposes, access to urban land for housing has been of critical importance in South Africa. Hence, South Africa emerged in the post-Apartheid period with a pronounced politics of contestation around access to urban land for residential purposes (Beyers, 2013; Mpofu, 2017). Of course, the history of land dispossession meant that, in the post-Apartheid era, those previously deprived of land would desire the opportunity to live where they wanted in dignified shelter, in line with the promises of the Freedom Charter. Democracy meant renewed hopes for equality in access to urban services including houses. The prevalence of illegal occupations of land and self-provisioning of land and housing in urban spaces of South Africa, notably by way of informal settlements, is a manifestation of the failure of the housing programme.

Land invasions or illegal occupations emerge from competing and conflicting land claims that are used to “protect existing entitlements, assert perceived rights or promote future interests all made under the guise of legitimate behaviour” (Razzaz, 1993:342). As well, the Socio-Economic Rights Institute (SERI) of South Africa refers more specifically to “non-material claims of recognition, dignity and belonging” (SERI, 2019:71) that animate and mark the occupants of informal settlements. From the perspective of the occupiers, these actions find legitimacy and justification as corrective measures around historical land access injustices and in contemporary socio-economic deprivation.

Land occupations have a rich history in South Africa, dating back to as far back as the 1920s, through the Apartheid era and now widespread in the post-Apartheid period (Barry et al., 2007; Mabin, 1992). The informal and illegal occupation of land, and self-construction of houses, is thus not a new phenomenon. In the case of urban South Africa, the presence of informal settlements (and backyard dwellings) dates back to a century ago (Mabin, 1992). In his analysis of the history of land invasions in Benoni in the Witwatersrand region, (Royston, 1998:155) states that, “the only effective form of land delivery was community-driven land invasion, where the land either became a recognised settlement or forced the authorities to deliver alternative land for housing”.

In recent years, the rhetoric of the Economic Freedom Fighters (EFF) has been front-stage, as the EFF has repeatedly called for and mobilised land invasions in urban centres as a form of historical redress, thereby bringing party-politics explicitly into contestations around urban land. Perhaps in trying to out-manoeuvre the EFF and occupy the high moral ground, the ANC is now pursuing land expropriation. The Minister of Human Settlements, in her presentation of the budget vote in July 2019 for example, announced the Department’s intention to expropriate land especially for urban housing (Minister Sisulu, July 2019).

Under post-Apartheid conditions, land occupations and the establishment of informal settlements now form part of the unofficial state housing delivery processes. But, in the case of the two research sites for the thesis, these processes are not marked by party-politicisation. In fact, not all land invasions are driven by party-politics. As Huchzermeyer notes, so long as land access for the urban poor is not made possible, “the poor have no alternative but to resort to informally occupying land” (Huchzermeyer, 2004a:340). In doing so, occupiers put forward their own (emotional and cognitive) rights-claims in seeking to justify their actions as social citizens. This means, as Lund and Boone (2013:2) argue, that this form of contestation for land

tends to “circumvent, undermine or dissipate authority”, specifically state authority and its legalistic approach to housing delivery.

The growth of informal settlements before 1994 in South Africa and into the current democratic dispensation represent a quest for inclusion in the city, the hopeful realisation of a right to the city, and the right of access to dignified shelter (Huchzemeyer, 2014b). On a regular basis, the urban poor in South Africa find that their rights as urban citizens are not recognised by the state and that they cannot simply rely on formal democratic channels or governance structures for their housing needs to be met. Because of this, they may and do resort to informal access to land and housing (Dupont et al., 2016). Given the massive shortfalls in state housing availability, erecting informal structures, ideally close to employment opportunities, is the only alternative imaginable and indeed possible.

SERI attributes the emergence of informal settlements to ‘Apartheid era forced evictions and racial based town planning’, ‘poverty, inequality and unemployment’ and ‘inner-city occupied buildings’ (SERI, 2018), whereby those who occupy inner city buildings illegally (such as in Johannesburg) are prone to evictions and tend to go – or return back – to informal settlements along the periphery of cities (SERI, 2018). Though the racial planning and socio-economic inequalities generated under Apartheid set the historical context for the rise of informal settlements, the post-Apartheid state is failing to generate sufficient state housing for the urban poor and this remains a key factor for the continued presence of informal settlements (Marutlulle, 2017).

The continued expansion of informal settlements is due in large part to ongoing rural to urban influx into South Africa’s cities and towns, which was initially driven by the doing away of influx control measures at the time of the democratic transition. As well, as Marutlulle (2017) contends, the promise of ‘free housing’ in the post-Apartheid era contributed to heightened expectations about the possibilities ingrained in urban life, leading to massive in-migration into eKhuruleni Metropolitan Municipality and elsewhere. In entering into burgeoning informal settlements, these new residents await the delivery of state housing, in a place of waiting (Marutlulle, 2017), as discussed later.

Additionally, in terms of informal settlement growth, household formation within informal settlements is also of significance. When households split on an inter-generational basis, as often happens, and there is open land available nearby to build another informal shelter, informal settlements mushroom in size. This means that housing delivery projects may not be

able to keep up with the pace of household formation, thereby not reducing the percentage of urban households in informal dwellings (GHS, 2018). The General Household Survey 2018, for instance, indicated that household growth is outpacing overall population growth – the latter grew at a rate of 1.3% per annum between 2002 and 2018, while the former increased at 2.4% per annum during the same period (GHS, 2018). More than a quarter of households consisted of a single person, and 62% of households contained three or fewer members in 2018 (GHS, 2018). In this respect, Hunter and Posel (2012) observe demographic shifts in households towards smaller and thus more numerous households.

In urban areas, access to land is critical for accessing housing through both formal and informal means (i.e. official state housing allocations and self-provisioning via for instance informal settlements, respectively). This is because “the realisation of the right to housing is inextricably tied to the right to land” (Huchzermeyer, 2003:84). Informality and illegality may take on forms other than informal settlements, including – for the purposes of this thesis – occupation of state housing without ownership. There are also cases “where some minor regulations are not adhered to and where customary [or historical-cultural] land ownership is recognised against modern legal ownership” (Jenkins, 2001:629).

Illegal occupation in general refers to the unlawful stay on land or in a house (property) that is privately owned or belongs to the state. It is premised on interfering with the owner’s right to property. This includes informal settlements but it also incorporates cases where there is occupation of formal houses without ownership. While the phrase ‘illegal occupation’ relates to the legal status or form of stay on a property (or in a house), ‘self-provisioning’ is defined as a process or means of accessing land or housing without the approval of the owner. Typically, as a process, ‘self-provisioning’ is used in relation to the formation of informal settlements but, if used more broadly, occupation without ownership (of state housing) might also be considered as a form of self-provisioning. Irrespective of this, these two phrases (illegal occupation and self-provisioning) are clearly related and both involve unauthorised access to land and housing, with the former carrying strong connotations of legal rights and the latter describing a social process of accessing housing, albeit through informal means (i.e. without official approval).

Self-provisioning of both land and housing reflects diverse right-claims put forward by those who practice it. These informal practices disregard the law and are therefore described and labelled by the state as illegal. The state seeks to deliver houses to the poor within a (legal)

housing rights framework and this is countered by members of the urban poor who use illegal means to access land and build informal structures (or occupy houses), creating a divergence of distinct housing claims between the state and these urban poor. The illegal access to land and houses does not only circumvent the state's legal institutions and mechanisms of accessing housing, as it may also disregard the plight and right-claims of other members of the urban poor, resulting in intra-community contestation around land and housing – as will be demonstrated in this thesis.

The two concepts informal and illegal, in practice, normally overlap – as what is informal is also often considered illegal (by the state), and vice versa. But, as Jenkins (2009:81) contends, “the descriptor ‘informal’ for African cities is based on negative concepts of the ‘illegal’, ‘unauthorised’ and ‘unregulated’, yet these ‘informal’ activities in cities are often more socially and culturally legitimate, as well as economically essential for the majority”. Thus, from the perspective of those engaged in self-provision, what is illegal may still be legitimate. Both concepts pertain to the question of (and contestations around) housing rights and the right to housing. For Phakamisa and Fynbos (the two cases for this thesis), my main concern is with the right-claims animating and shaping the illegal and informal practices of occupiers (of state housing) without ownership, who also have a history of living in informal settlements.

One final point for clarification. It is important to distinguish my focus from what may happen within the confines of the formal housing market. This relates to cases of owners who cannot occupy the houses they purchase due to the previous owners resisting or failing to move out of the house. Whereas those who insist staying in houses that have been purchased by others become illegal by default, this form of illegal occupation differs from where occupiers (often from informal settlements) forcefully invade houses and stay without approval from owners or authorities as with the case of Phakamisa and Fynbos. Of course, these latter types of occupiers access houses in the formal market, but not as legal owners.

5.3 Informal Settlements: A Place for Waiting

Currently, in South Africa, the informal occupation of urban land and the subsequent formation of informal settlements is often a preliminary step which the urban poor adopt as they wait for formal, state housing. Hence, the increased expansion of informal settlements in post-Apartheid South Africa is not only a reflection of housing need, but forms part of the process of accessing state housing. The informal housing space, particularly the shack, has become the space to wait for a formal house. This entails a link between land occupations, the establishment

of informal settlements and self-provisioning for purposes of eventually accessing state housing.

Informality often both predate the accessing of formal housing (i.e. informal settlements) and is intrinsic to the very process of accessing (i.e. occupation without ownership). Normally, waiting for the state house, as a time of waithood riddled with uncertainty and precariousness, forms part of the process. The space of waiting is a socially-constructed space, or an active waiting. Thus, those in waiting do not remain dormant or passive, as they engage (strategically, politically, and systematically) in trying to maintain a foothold in their claimed space, as well as to navigate the formal processes leading to state house ownership and occupation.

This involves drawing government attention to themselves, including by way of seeking action from government in order to realise their housing rights. Royston and Ebrahim, in the *Daily Maverick* (4 July 2019) describe the agency in informal settlements in the following manner:

People organised themselves individually and collectively to secure access to land where the market, the economy and the state were failing. They organised their residential and economic land uses, they self-provisioned access to the most rudimentary services and imposed their own order on an environment that existed without, formal recognition. They defended against eviction often on multiple occasions. They made their voices heard in multiple spaces: the courts, the municipalities, ward committees, local representative committees.

Local forms of political activism through community protests, in order to make themselves visible to the state, has been central to seeking entry into the formal processes of the state. Indeed, most urban community protests in South Africa are attributed to land and housing amongst other service delivery issues (SALGA, 2015). Further, challenges of urban access to shelter, as displayed in popular struggles for land, entail land occupiers facing forceful evictions by the state, yet occupiers persistently return and build shacks. Whether, over time, these persistent struggles for urban land and housing led to regularisation and security of tenure (Barry et al., 2007) depends upon a myriad of fluid local dynamics.

Waiting in urban South Africa, as described by Oldfield and Greyling (2015:1101), often “takes decades but people continue to wait, to hope for and to expect a formal house and waiting requires staying in informal settlements and backyards persistently”. In this regard, the space of waiting and enduring the inevitably long (if not endless) wait become key to accessing a state house, at least potentially. In some cases, the state promises to build houses on the very land where the occupiers are living, leading to a waiting-on-site or in situ waiting. The case of

the Westlake housing project in Cape Town (Lemanski, 2011) is one where residents remained on the land and houses were built for them without any relocation. More often than not, though, the state's promise relates to land located elsewhere because, for various reasons, the occupied land is considered unsuitable. At the same time, the 'promised land' may be deemed unsuitable by the occupants in the informal settlement.

Kornienko (2017:35) captures the politics of hope and waiting among the urban poor living in informal settlements, speaking of "an organisation of waiting built around the Department of Human Settlements' housing list for state housing, and maintained by the promise for housing provision ... and repeated enumerations of informal settlements' shacks and residents' right to a formal dwelling". Waiting in these urban spaces in-itself is an affirmation of a housing need and an implicit moral claim. While having a name on the housing waiting list is a positive step, erecting and maintaining a shack in informal spaces, often involving multiple instances of hope deferred, is also an affirmation of rights denied. It is also an affront to human dignity. The environmental and health conditions, the lack of security and protection from elements like floods, shack fires (that often destroy informal settlements) and criminality are all risks associated with living in informal settlements (Hunter and Posel, 2012). The occupiers' demand for access to adequate housing includes eliminating these conditions and creating habitable environments for the urban poor. In cases of endless waiting, the period of waiting becomes a permanent fixture of life.

Levenson (2017:474) describes how Temporary Relocation Areas (TRAs) have been used to respond to housing shortages and to illegal occupations. Alongside a 'formally rational' means of housing delivery (through official waiting lists), this involves creating a 'substantively rational' means that seeks to address housing needs on an emergency basis. In such cases, while the government constructs houses, those in informal settlements have been moved into TRAs and would occupy those houses only once they are complete (Huchzermeyer, 2004b, Millstein, 2017). However, temporary shelters for many became almost permanent due to the long period of waiting, further reinforcing the precariousness and uncertainty in waiting (although government believes TRAs offer some relief while waiting). Thus, like informal settlements, temporary shelters have unwittingly become spaces for waiting for a promised formal house. The Eastern Cape Department of Human Settlements is shifting towards creating permanent human settlements solutions and not focusing on providing temporary shelter which involve a substantial amount of financial resources (Eastern Cape Human Settlements Portfolio

Committee meeting, November 2019). The focus now is on in situ upgrading of informal settlements.

5.4 Places of Waiting and the State

As mentioned above, the place of waiting is an active space in the sense that occupiers engage in struggles against the state to retain it. They do so by resisting evictions and sometimes seeking legal recourse. In other words, waiting happens under conditions of precariousness mixed with hope. The space where the occupiers encounter the state while waiting is a contested space, as the state counters the actions of the occupiers to the extent of labelling and treating them as queue jumpers.

Cases of illegal occupations have been brought before the South African courts either by local municipalities seeking relief to evict illegal occupiers or from private-land owners. Urban people facing possible eviction or those who feel they were evicted illegally also approach courts for protection. In the Buffalo City Municipality, in cases of illegal occupation, both the illegal and rightful occupants have used the courts to seek justice in what the parties think is a violation of their respective housing rights. In 2004, Port Elizabeth Municipality won a high court case against illegal occupants who built 29 shacks in a place called Lorraine (*Port Elizabeth municipality vs various occupiers*, 2004). The municipality argued that, by occupying the land, the occupants effectively sought to jump the queue through preferential treatment once the houses have been built; and, by doing so, they disrupted the housing programme procedurally and substantively (*Port Elizabeth municipality vs various occupiers*, 2004). Allegations of ‘jumping the queue’ through illegally occupying land and building informal structures is commonly used by housing officials against urban people living in informal settlements. Levenson (2019:427) problematises the discourse of ‘queue jumpers’ as an attempt by the South African state to delegitimise the un-housed surplus urban populations whose rights the state fails to realise.

The obligation on the South African state to provide alternative accommodation and not to render illegal occupants homeless may open up opportunistic tendencies amongst those who occupy land illegally, and certainly it has a tactical element to it. Indeed, the South African state sees land occupations as purely opportunistic, as a way of trying to circumvent the official waiting list and forcing the state’s hand. These illegal occupants, being aware of the state’s obligation, remain on the land they occupy on the understanding that the state cannot evict them without providing alternative accommodation. This is in reference to the Prevention of

Illegal Evictions (PIE) Act 19 of 1998 which prevents arbitrary evictions and seeks to protect the dignity of the urban poor who reside on illegal land (The South African Legal Information Institute, 2004). More specifically, Section 4 (6) and (7) of the PIE Act states that a period of 6 months or less of illegal occupation might allow the state to evict unconditionally but, beyond six months, the state must make available alternative accommodation for the occupiers. Section 6 (b) of the PIE Act stipulates the court may grant an eviction order if it is just and equitable to do so. The court must take the following into consideration:

- a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure;
- b) the period the unlawful occupier and his or her family have resided on the land in question; and
- c) the availability to the unlawful occupier of suitable alternative accommodation or land.

The rationale behind denying the right to evict without alternative accommodation after a stay of at least 6 months focuses on the semi-permanence of the settlement, such that evictions may destabilise such communities (The South African Legal Information Institute, 2004). The conditions attached to eviction legislation, if not considered or followed correctly by the state, implies that such evictions would be deemed illegal or arbitrary by the courts. Where the occupiers include the vulnerable such as the elderly, children and the disabled, it is even more difficult to institute evictions without providing alternative accommodation as their dignity and welfare must be of primary significance.

In the context of the existence of eviction legislation, illegal occupation of land and self-provisioning of housing by the urban poor is done on a seemingly never-ending basis, as occupiers seek to ensure that informal settlements become, by default, the gateway to house ownership (even subsequent to the introduction of in situ upgrading of informal settlements). With possible relocation from informal settlements to new state houses, it makes good sense for urban people to wait for houses while remaining steadfast in informal settlements. This is not done on merely legal grounds, as it has a moral element to it.

In research undertaken by Monson (2015:136), a respondent living in an informal settlement indicated: “Some of us were paying rent, and some were not working and did not have that money to pay the rent, so we said, ‘No, let’s go and start our own houses, shack houses, and maybe the government will provide houses for us.’ Socio-economic conditions are salient elements driving the urban poor into informality, as they lack income not only to purchase houses but even to rent. However, the statement ‘maybe the government will provide houses

for us' after shacks are built is a call for recognition by the state of the right to housing. Moving onto bare and open urban land, erecting shacks and living for an extended and indefinite period of time without water, electricity and sanitation is a challenge to the state's own claims about acting in the public good, and a test of its willingness and capacity to evict or provide housing.

As Monson (2015:136) puts it succinctly, "the express hope was that a ... move to the relative freedom of makeshift shacks might establish a transition into formal housing". It might not, because of the possibility of eviction or an endless period of transition (i.e. waiting). With hope mingled with doubt in accessing formal housing, the occupier needs to be at the right place (i.e. the shack) at the right time, because of the local contingencies embedded in each act of waiting.

As Kihato (2014:360) indicates in a story of a woman whose livelihood was later transformed due to access to state housing, "Winnie Mandela informal settlement was far from perfect, but it gave her a foothold in the city, a place where she and her husband could plan for their future". Being in the city, even with an informal presence, provides a starting point to improve lives and livelihoods, if only with a distant hope about the future; for those who are successful in realising rights to the city via state housing, it is likely worth the deferred wait. As an active period of waiting, though, this entails significant sacrifices as the urban poor in informal settlements pursue precarious and uncertain livelihoods (Oldfield and Greyling, 2015).

Evictions of urban people from informal settlements continue to this day in spite of the introduction of the current policy of upgrading of informal settlements. Simultaneously, the government faces resistance to evictions from informally-arranged networks as well as from established community movements like Abahlali baseMjondolo (shack dweller's movement) in Durban. As with every act of erecting a shack, these networks and movements claim urban space in ways that are unrelated to laws about property rights, in what Pithouse describes as "a politics of the poor" which constitute – he claims – a major challenge to technocratic conceptions of democracy (Pithouse, 2008:63).

Irrespective of this particular claim about the challenge to conceptions of democracy, it is clear that the continued growth of informal settlements does pose a practical and moral challenge to government in addressing housing shortages for the urban poor. This leads to a seemingly contradictory set of imperatives internal to the South African state's response, and may reflect tensions within the state. Overall, the government seeks to curtail the perpetual growth of informal settlements and to transition to formalised and regularised housing. Hunter and Posel

(2012:285) though describe the policy tension, which exists between recognising the legitimacy of informal settlements and aggressively removing ‘slums’ through evictions.

Although strong policy pronouncements exist against evictions and pro in situ upgrades, evictions especially in the larger cities are an ongoing reality. This contradiction has existed in practice for years despite, or because of, adopting the policy on upgrade of informal settlements. In 2018, there were 65 new land occupations in Cape Town which occurred in a single week (*Ground Up*, 27 March 2018). The mayoral committee member criticised these as “large-scale, orchestrated land invasions... a scourge” and in a single day, the municipality removed 1,200 “illegally, erected unoccupied structures” (Levenson, 2019:427).

5.4.1 Formalising the Informal

In South Africa, informal settlements used to be demolished due to their illegal status, and the insecurity often associated with demolition discouraged investment and the construction of permanent structures on illegal land (Amis, 1990). Where forced removals of informal settlers were successful, they were relocated to other places, where they might be provided with state houses often far away from the city centre (Huchzermeyer, 2014a:343). In other instances, the government constructed temporary shelters elsewhere, where people could live while state houses were constructed and they could only move in when their houses were complete (Huchzermeyer, 2011).

As intimated already, formalisation and regularisation of informalisation (specifically with reference to informal settlements) is now part of the South African state’s housing approach, through upgrading processes. Thus, rather than eradicating informal settlements, informal occupants acquire legal rights of occupation to land and housing on-site. According to the national Department of Human Settlements (2009), one of the objectives of the programme is to provide security of tenure by regularising the informal settlements.

Though not central to this thesis, this does indicate the emergence of a shelter discourse within official circles which legitimises – at least indirectly – informality in land and housing access (Meth, 2020; Berner, 2001; Nustad, 2004; Dupont et al., 2016; Jenkins, 2004; Stuurman, 2002; Lombard, 2016; Levenson, 2017). In this sense, informal settlement spaces become an area of convergence between the state and urban citizens, though on the state’s terms and in a manner whereby the state seeks to control more easily these urban spaces. From the state’s viewpoint, it also entails overturning the distinction between illegality and informality. However, in the

case of occupation without ownership (the focus of this thesis), the state continues to see these informal processes of occupation as illegal.

Further, because of the upgrading approach, informal settlements become increasingly visible from the perspective of the state in terms of prioritising the provision of state housing. Upgrading in effect officially recognises informal settlements as a place of waiting, with the state possibly even privileging the targeting of informal settlements in its housing provision. In this light, one stern criticism of in situ upgrading of informal settlements is that the South African government ends up prioritising those who illegally occupy land and build shacks, above the urban poor living within the law and waiting for housing as backyard dwellers (on RDP and BNG sites) or waiting in formal houses with relatives (Eglin and Kenyon, 2017). Tutu (2014:44), for example, describes how youth have benefited from formal housing before their older counterparts who have been on the waiting list for many years. These youth had erected shacks illegally on land in Nelson Mandela Bay Metro and soon received the attention of the municipality. As will be seen, this is relevant to the situation in the two study sites, in East London and King William's Town.

5.5 Illegal and Informal Occupation of Houses: Different Methodologies

Whereas the illegal occupation of land and the formation of informal settlements provides an important understanding of the link between urban land and housing access, particularly given the upgrading programme, the phenomenon of illegal occupation of houses is more central to this project. This takes on different forms.

Before considering illegal occupation of state housing, it is important to note that the illegal occupation of privately-owned housing also takes place. This includes the occupation of semi-completed and completed houses or apartment blocks (typically, privately owned) in urban inner cities like Johannesburg and Cape Town, but is spreading across other cities. The informal occupation of inner-city buildings is largely hidden, with occupants often living in worse conditions than those in informal settlements or backyard shacks (Huchzermeyer, 2014). The relaxation of urban influx control led to 'white flight' of middle to upper class families together with businesses from inner city Johannesburg to northern suburbs, leaving behind vacant buildings occupied by poor households who could not afford to pay rentals and municipal rates (SERI, 2018). This resulted in a total abandonment of these buildings by their owners and the cutting of services like water and electricity from the municipality (SERI, 2018). Thus, there have been media reports on the hijacking of urban buildings in big cities,

which are often followed by mass evictions by the city councils (*Businessstech*, August 2018, *Timeslive*, July 2017, *IOL*, May 2018). Pienaar and Muller (1999:371) also write that illegal occupants moved into newly built residential areas in Cape Town before the rightful occupants could do so, creating problems for owners and authorities.

In relation to illegal occupations of state housing in urban South Africa, there are diverse practices taking place. For example, in a research study undertaken by the Eastern Cape Department of Human Settlements (2018) in 2018, some of the key troubling practices pertaining to housing allocations and occupations are as follows:

- People living in houses of their deceased relatives without formal transfer
- Original owners who illegally sold their houses
- Beneficiaries who were forcefully removed from their houses due to their political affiliation resulting in encroachment
- Cronyism: previous councillors giving out houses to their friends and relatives
- Desperate people moved into incomplete houses and occupied them
- The allocation of houses used as a political tool
- Multiple allocation of houses due to delays of issuing of title deeds
- Cases of beneficiaries with title deeds but no house
- Some beneficiaries sold their houses because they were allocated in settlements where they do not come from.

Many of these problems incorporate contestations around occupation without ownership and ownership without occupation (the focus of the thesis), but they also refer to other forms of illegal occupations of state housing, some of which I detail below. Combined, these problems contribute to potentially volatile urban communities or, at least, isolated moments of conflict around housing, as detailed later in relation to BCM.

In terms of state housing, there are – firstly – illegal forms of market-sale transactions. This includes the illegal sale of state houses sometimes to foreigners (which at times causes conflict between local South Africa and foreign nationals). On a regular basis, these transactions are an outcome of delays in the issuing of title deeds to the rightful owner, or for income-generation purposes. Hence, when the owner sells the house, it is done illegally awaiting formalisation through the issue of title deeds to the original owner. In general, a significant number of state houses have changed hands off register since 1994 (Barry and Whittal, 2016). These transactions through informal means allow for a speedy transfer (including in terms of

registering the sale), and without excessive costs (Lemanski, 2011). Further, according to human settlements policy, it is illegal to sell a state house within the first eight years of receiving it (Housing Act). However, informal sales take place because of this, making the new owner illegal. The Eastern Cape Department of Human Settlements seeks to go through verification of housing beneficiaries in order to curb such illegal occupations (Interview, Eastern Cape Human Settlements official, August 2019).

Secondly, renting of state houses takes place, and this is deemed illegal as these houses are built for the poor who are supposedly not able to afford housing in the formal sector, and are expected to make use of the houses provided by the state. Those who rent out (or sell) state houses often do so to receive an income for survival purposes, and they may return to informal settlements (HSRC, 2008). There are also accusations of corrupt activities in allocating houses which result in people who do not qualify benefitting from state houses, which they then sell or rent out for income (HSRC, 2008).

Thirdly, and linked to the above point, there are non-qualifying beneficiaries. These illegal occupants can be identified by the qualifying criteria for access to state houses, such that any person found to occupy a house, who does not fall within the income threshold, is the age of 18 or more, or is not a South African citizen, is illegal. Anybody who owns a house on a mortgage or has benefited from housing before, also becomes an illegal occupant and owner on his/her second house. As well, government employees do not qualify for state houses. However, as Maluleka et al. (2019) note, irregular awarding of subsidies to non-qualifying beneficiaries (especially government officials) are evident, and investigations have been instituted by the Special Investigating Unit (SIU) around civil servants who have fraudulently benefited from state housing. The Eastern Cape Province had the third highest cases under investigation after Gauteng and KwaZulu-Natal provinces.

The television programme *Checkpoint* (in July 2019) produced a documentary on 'homeless owners', showing the complexity of some of the issues detailed below (*Checkpoint*, 23 July 2019), as well as other pertinent issues. It focused on individuals who buy houses on the distressed housing market and do not occupy them as the previous owners are not willing to move out (*Checkpoint*, 23 July 2019). For example, one woman (whose husband had died) lived in a house for many years, with the view that the house was fully paid for by her husband. After the death of the husband, she discovered that the municipal bills were now in a different name, and later learnt that the house had been sold by the bank to someone else. The new owner

demanding occupation of the house, but the (now) old and frail woman (as an illegal occupant) refused to move out, as it was her house and she would die in it. In other similar cases, the local community mobilised in defence of the resident subject to eviction, and chased the new owner out of the community. In certain instances, this entailed the cooperation of the Economic Freedom Fighters (EFF).

Although the cases covered by *Checkpoint* refer to state housing purchased in the formal market, they reveal the diverse character of rights and claims put forward by the urban poor when it comes to contestations around housing access. In the case of the woman, this entailed a claim based on a historical right (of long-term occupation), against a claim emerging from a legal transaction between the bank and the new owner. As well, the old woman was not willing to leave 'her home' because she likely had nowhere else to go for shelter, and would return to a life marked by indignity (without proper shelter). While this is a claim based on a fundamental moral principle, it also resonates with the human dignity as a value embedded in the Constitutional Court's human rights jurisprudence (Liebenberg, 2005). Thus, a fluid and complex combination of claims and rights are articulated with regard to illegal occupations of state housing, which will become very clear in the examination of the case studies in the ensuing chapters.

5.5.1 Occupying without Ownership

To reiterate, the focus of this thesis is on a particular mode of illegal occupations: illegal occupations of state houses without ownership, in which the occupants take over state houses through force, or without the permission of the state or rightful owner. Like other forms of illegal occupations, the illegal occupation (without ownership) of state housing emerges because of the massive housing backlog, but this phenomenon also relates to maladministration and corruption around housing delivery processes. As well, unlike some of the other forms of illegal occupations, which often do not entail preventing others from legally occupying the structure, illegal occupations (without ownership) of state housing do involve this by deliberately disregarding the plight of those that are meant to rightfully benefit.

Sharpley (2018:210) notes that illegal occupation of state houses in the Eastern Cape is one of the key challenges in human settlement development. Likewise, the Performance Report of the Auditor General (2018:3) identified illegal occupations of state housing as a critical problem in the province. In the Buffalo City Municipality, as with other cities around the country, this phenomenon is followed by evictions from government, or at least attempted evictions. *The*

Sowetan for instance reported on a hundred illegal occupiers of state provided rental flats in Mamelodi East, Johannesburg. The Red Ants (a company hired to evict) and police were used to conduct evictions. They were faced with strong resistance with the illegal occupants vowing that “those who would occupy the flats after the evictions would not live there peacefully and expressed that they also wanted to be prioritised since they were on the waiting list” (*The Sowetan*, 30 January 2020).

5.6 The Politics of Urban Housing

The emergence of informal settlements and the various forms of illegal occupations of state housing do not occur in a vacuum, notably a political vacuum. Community leaders (self-acclaimed in some cases), political leaders (such as ward councillors, or local party-political elites) and a range of informal (community-based) organisations or networks may be involved in arranging the establishment of informal settlements as well as the illegal occupation of houses (Kornienko, 2017; Millstein, 2017; Pikhholz, 1997).

In the case of informal settlements specifically, groups or individuals “might be involved in finding land, arranging for plots, spatial arrangement of houses and communal facilities and taking payment for land transfers and rent” (Robinson et al., 2016:48). Communities identify an open piece of land, mobilise to occupy, erect shacks, protect their shacks against evictors; and where they are evicted, they come back again to erect shacks. With time, they may begin a dialogue for recognition and support from government, to ensure formalisation and regularisation. In doing so, informal settlers manifest “discrete modes of community organisation, unique communicative ecologies and ... diverse notions and ‘ideals’ of community and legitimacy” (Skuse and Cousins, 2007:979), alongside moral claims justifying self-provisioning and establishment of the informal settlement. The fact that local councillors or party-political members (notably, the EFF) are at times involved in these processes, does not undercut the legitimacy of these moral claims.

In the case of self-provisioning via occupations without ownership, these again entail a complex combination of political initiatives, from the urban poor themselves to local councillors and local government administrators. This will be shown in the case studies, with constant allegations of councillors working together with officials to facilitate the wrongful allocation of houses. That their involvement in many cases derives from political opportunism, corruption and even self-enrichment (by charging a fee for an illegal occupation) is likely beyond dispute (Atkinson, 2007). Intriguingly, because of maladministration, local political

representatives and officials might be responsible for the wrongful housing allocations in the first place, only then to ‘rectify’ this by encouraging those who apparently wrongfully lost out to occupy houses illegally.

Sometimes, though, the wrongful allocation, and the contestations around this, may be due to a simple error within government. In 2017, while working at the Public Service Accountability Monitor (PSAM), we received reports of wrongful occupations from a community member in the Sunday Rivers local municipality, in the Eastern Cape. The community member was receiving municipal bills for a state house officially allocated in his name but handed over to a wrong person. The house legally belonged to him as per the official allocation process, yet it was occupied by someone else. He needed assistance from the PSAM to follow up with the provincial office in order to get access to his house. Because of this, PSAM approached the Provincial Department for Human Settlements and was informed that the Department had made a mistake. The plot numbers for the wrong occupant and the rightful owner differed only on the last two digits out of the five digits (e.g. 32451 and 23415). The Department mistakenly handed over the house to the wrong person after misreading the numbers. After acknowledging the error, the Department realised that it would be problematic to have the rightful owner occupy the house, as the wrong occupant had stayed in the house for years and qualified for a state house. The Department decided to put the house in the name of the present occupant and put the complainant on the waiting list again.

The Eastern Cape Department of Human Settlements acknowledges the challenges in the allocation of state houses. In its Service Delivery Improvement Plan Implementation Report, for 2018/19, the Department detailed the common problems, besides legitimate errors. These included the (intentional) wrongful allocation to people who were not on the initial waiting list; and councillors allegedly giving houses to their relatives and friends (Eastern Cape Department of Human Settlements, 2019). A full assessment of the extent of the problem of illegal occupation of state houses in the province has not been undertaken, although the province embarked on evictions using the courts in order to reinstate the rightful owners.

Additionally, the lack of co-operation (and even conflict) between government levels or tiers (specifically, provincial and municipal government) is a serious concern with respect to proper housing allocations, alongside confusion about the particular housing roles of these two spheres of government (McLean, 2003). Added to the mix is also the lack of managerial experience and administrative capacity at municipal level to ensure that the housing waiting list is properly

constructed and maintained. However, Tomlinson (2011) places the blame primarily at the provincial level for housing delivery challenges in general. He argues that any alleged flawed procurement processes, corruption in hiring of project managers and contractors, and corruption in housing allocation processes fall outside the realm of local officials as the authority for delivery is placed on the provincial department. He further claims that often the provinces privilege their own housing beneficiary list, overriding the list of beneficiaries approved on the Housing Subsidy System, and that provincial politicians influence the allocation process to gain votes (Tomlinson, 2011).

Whatever level of government is ultimately responsible, it is clear that corruption (and not just the perceptions of it) is rife in housing allocations across urban South Africa (Maluleke et al., 2019) and that this is central to the growing phenomenon of occupations without ownership, as the urban poor feel compelled to access housing by illegal means if necessary. In this context, Kihato (2014) describes a woman's long wait for a house in Tembisa. She speaks about high levels of corruption at municipal level, and how she was on multiple waiting lists and waited for more than a decade for a house. In desperation, started to pay local councillors to facilitate housing access. After significant frustration from paying people and never getting a house, one day she went to the council in Tembisa and said to them, "you eat my money, you take other people and give them a house and because I do not have a husband you don't take me" (Kihato, 2014:366). It is only after this display of anger that she was allocated a house. In her case, she sought to work the (corrupt) system, but even that was not successful.

The nature of illegality in housing occupations differ. Wrongful allocation (from an error) results in the occupant being an illegal occupant. But, this differs from a situation where the illegal occupant walks in and occupies a house knowing very well that the house does not belong to him/her. It is the latter which forms the basis of this study.

5.7 Conclusion

Chapter five outlined the link between illegal and informal occupation of urban land as a way to access housing, with informal settlements as spaces for waiting for formal housing for the majority of urban poor South Africans. The waiting has not been a passive one, as community members engage in social and political activities which they think will secure them land and progressively housing. They engage in these strategies individually and collectively (Millstein, 2017). Forms of illegality in the occupation of houses have been detailed, including hijacking of buildings, informal selling and renting of houses. Understanding the various forms of

illegality provides context for the following empirical chapters. The dynamics of who is deemed illegal, and by whom, bring to the fore the various rights-claims that characterise access to housing in post-Apartheid South Africa.

The following chapters, based on interviews conducted with occupants of houses, community leaders and housing officials in Phakamisa (King William's Town) and Fynbos/East Bank (East London), provides an in-depth analysis of the Buffalo City Municipality case with regard to contestations around access to state housing.

CHAPTER 6: PRECARIOUS STATE, HUMAN VULNERABILITY – HOW ILLEGAL AND INFORMAL OCCUPATIONS OCCUR IN THE BCM

6.1 Introduction

Using Turner's theoretical perspective on the precariousness of state institutions and human vulnerability, this chapter outlines the processes of informal occupation in the research sites, and the administrative challenges from the time of registration of houses until they are handed over to beneficiaries. In addition, I consider the social and political dynamics around housing delivery, and the corruption carried out through manipulation of the waiting lists. These factors reflect the precarious character of the state as an institution that is central in the provision of housing in a democratic society. Despite establishing housing rights to ensure their realization within poor communities, the inability of the South African state to deliver effectively impedes the realisation of this goal. Although the state has legal instruments in place to deliver houses to the urban poor within a right-based system, it is fallible due to policy implementation failures, weak administrative capacity and corruption. Evidence from interviews conducted between August 2019 and March 2020 reflects administrative and political dynamics in housing delivery processes within the BCM which wittingly or unwittingly lead to illegal occupation of state houses. These ongoing political and administrative processes within the state, especially between the provincial and local government levels, lead to occupation without ownership and ownership without occupation.

6.2 Informal and Illegal Occupations in the BCM

In East London, illegal occupations began in 2018 initially but, on the 18th of June 2019, a group of coloureds moved in to illegally occupy the rest of the unoccupied houses. The occupations in Fynbos/East Bank (in East London) were literally carried out by breaking doors and forcefully entering the buildings. A month later, in July, evictions took place. However, the coloureds simply moved back into the houses with their belongings after Department officials, police and the sheriff left. The second attempt at eviction was done in November 2019. This resulted in the burning of about twenty houses, but the coloured occupiers were not removed from the houses. In King William's Town, illegal occupation of houses began in 2016 and happened gradually over a period of two to three years as the houses were being completed. This problem of illegal occupation was responded to through court-ordered evictions, at the same time as East London (in July 2019). In Phakamisa (King William's Town), illegal

occupations happened through breaking doors, collaborating with contractors to gain access to the houses, via corruption with those who keep keys at the municipal offices, and with the aid of the local councillor. Although there were many attempts to evict illegal occupants since 2016 in Phakamisa, the notable evictions were done in July 2019.

In the sections below, I first begin by describing the delivery processes (application, registration, allocation) and the existing loopholes within the process which causes illegal occupation. I describe corruption, maladministration and political interference as causes for illegal occupation. Apart from illegal occupants forcefully entering the houses, these other factors make illegal occupation possible.

6.3 Housing Delivery Processes

It is necessary to provide an account of how the overall housing delivery process takes place in the BCM, a process characterised by inconsistencies and confusion (at least from the perspective of local residents), and subject to considerable contestation. Because of contestations around the housing waiting list in particular, residents have lost a significant degree of confidence in the administrative processes of housing delivery. The state loses the moral high ground in the delivery process and, in response, citizens engage informally and illegally against the state. If the state is so imperfect in its housing delivery, the question is why should residents rely on the state procedures for accessing housing stock.

In questioning the legitimacy of the formal waiting lists and the process of housing allocation (mostly led by councillors), some residents capitalise on the inconsistencies in registration and allocation of houses to illegally occupy houses. Many others simply become frustrated by the entire process which appears, in a partial and biased way, to give priority or favour to some while excluding others. The sheer length of the waiting period (even 20 years and more) is of course a great cause for frustration for many who end up losing patience or hope and decide to illegally occupy state houses. Most interviewed residents in the BCM, whether they illegally occupied houses or claimed to be the rightful beneficiaries, identified corruption by councillors and municipal officials (and in some cases the Human Settlements Department) as the main source of problems when it came to the existence of illegal occupations (occupation without ownership).

State housing delivery, from the time of planning to when the project is launched, completed and houses handed over, involves the provincial and local governments, either the district

municipality and/or local municipality. For many years, post-1994, housing delivery processes did not have specific guidelines for allocation and the national Department of Human Settlements identified flaws with the waiting lists within the first decade of democracy. In 2009, a Beneficiary List Review Plan by the national Department revealed inconsistencies between beneficiary information collected from households and information in the National Housing Subsidy System which, among other responsibilities, manages the statuses of subsidy applications. The Housing Subsidy System (HSS), according to the national Department of Human Settlements, is:

A programme management system that enables the monitoring of compliance related to contracts, projects, claims & beneficiary approvals based on the various housing programmes contained in the National Housing Code. HSS is utilised by provinces to register contracts related to the delivery of human settlements, capture subsidy applications against the relevant contract & processing of payment claims based on the achievement of defined completion milestones agreed to during the project contract finalisation stages. HSS also manage the status of subsidy applications & the approval of a subsidy application. Approval implies that the household will benefit from a housing subsidy (Beneficiary) (Department of Human Settlements, 2020).

In addition to overall inconsistencies, there often exist many different (competing) waiting lists obtained through different local structures and institutions that are not verified for accuracy (Corruption Watch, 2009).

The Department identified gaps in policy and practice. These included lack of communication with the community, lack of consumer/beneficiary education, lack of a demand-based database/housing register and, most importantly, the lack of consolidation of identified beneficiaries from various municipality lists, church lists and community lists (Corruption Watch, 2009). The Department thus began to develop clearer guidelines for the allocation of state houses. However, some municipalities responded to the challenges by developing their own guidelines. For example, Cape Town City Council developed an allocation policy in 2004 with guiding principles which recognise three sources of RDP housing beneficiaries. These are membership of a 'target community', inclusion in a supplementary 'municipal submission' or listing on a housing waiting list (Seekings et al., 2010:9).

Interviews with residents in the BCM indicated a more or less common process in identifying housing beneficiaries. Within each community, including informal settlements, residents

would be identified by elected ward councillors, and community and church leaders, with identified residents then registered with the ward councillor and/or with the municipality. What was not very clear from the perspective of residents, however, was how all the registered names (from different sources) are consolidated to form a waiting list or the housing data base which is captured subsequently at provincial level and later used officially for the allocation of houses. In fact, there appeared to be a lack of one consolidated list, leading to the existence of a number of lists when the allocation of houses takes place. These lists would be compiled through past and present councillors, the municipality, civil organisations or at the provincial level.

Thози, a male respondent in Phakamisa, claimed that that the provincial Department in the Eastern Cape is expected to be present when the handover of RDP houses takes place (Phakamisa, August 2019). According to him, though, the Department comes simply to open the official ceremony with the cutting of the ribbon and the handing over of one house (for example, to one 99-year-old beneficiary) in front of the media cameras and leaves immediately thereafter. The rest of the allocation process is then left to the ward councillor and local municipal officials, who use their waiting lists to allocate. This results in conflicts over occupation in the absence of the provincial Department.

The Eastern Cape Department of Human Settlements official described the following stages involved in state housing delivery:

The municipalities working with the ward councillors develop a municipal data base/housing list which is endorsed by the council. They then request for funding from the Member of the Executive Council (MEC) for Human Settlements in the Eastern Cape. The BCM checks which projects are in the pipeline according to the budget. Consumer education is done with the people to educate them on the criteria of applying and qualifying for a house. The application forms are captured at municipal level or at regional level depending on where the funds to construct houses are coming from. The one with the funds is the developer. The Eastern Cape Provincial Department goes through the application forms to check if all the necessary documents and information is submitted with the forms. Once the documents are checked they are sent to the national Department for verification against the qualifying criteria which is done with all the relevant departments before approvals. The project starts and community meetings are held to provide a status report on those who have or have not qualified. Once the project is complete, handover is done at regional level. Delays in handover are often a result of untraceable beneficiaries (Naledi, August 2019).

Of course, the BCM housing delivery process (as outlined by the provincial department official) is the official procedure for RDP housing provision for the Department. It is the ideal standard when all systems are functioning properly and effectively.

However, evidence shows that the BCM, like most other municipalities across the country, fail to deliver RDP houses as per the outlined procedures due to challenges around for instance corruption and maladministration. These challenges, which seem systemic, provide spaces for manipulation of the waiting lists by councillors as well as by residents, who may seize the opportunity to benefit personally from housing delivery. Alternatively, because of the lengthy waiting period and increasingly dim prospects for a housing stand, they may engage in self-provision through the illegal occupation of housing stock.

A male resident, Jonny, in Fynbos detailed the housing delivery process as it unfolds in practice, and clearly expressed frustration in doing so:

Yes, they [ward councillors, ward committee members and other community leaders] first make an announcement. Then they will have a meeting. Then they will say you have to come register your name, then you go with your ID and write down your name. Then after months or a year they have another meeting to talk about the progress; and then when they have the master list. They take those names to the municipal department of housing to check if you actually qualify for the RDP house. It is called pre-approval. They come back and call out the names of those who do qualify because sometimes people had houses before then they sold their houses. So, they check if you do not have a house somewhere else so the system will automatically kick you out. They call out our names and then after a very long time they will tell us that we have to register again for these houses and then you have to go again with your ID and children's birth certificates (Jonny, Fynbos, August 2019).

On this basis, the process is more convoluted than the Department of Human Settlements would care to admit. Residents are not always certain where the verification of applicants takes place, with some thinking that it happens at municipal level when in fact it is done at national level, at least officially. They do know, however, that verification takes place to ensure that beneficiaries do not receive houses more than once. In this context, like in other places around the country, the application and registration process in BCM takes a lengthy period of time.

In this regard, an ongoing presence within the same area conditions whether residents would be able to complete the entire application and registration process for a house given the lengthy period it takes. Moving from one city or town to another before the registration process is

complete compromises the chances of being allocated a house, unless residents are prepared to go through the registration process again in the town or city to which they move – which likely means being listed at the back of the queue. Further, for those who move to another town or city after completing the registration process, and then houses are allocated to them in their place of origin, their allocated houses may be illegally occupied. There is even a case of one beneficiary who only learned after 16 years that he had been allocated a house in the town in which he originally applied, and he had applied for another house – in another area – where he lived at that time (Corruption Watch, 2014).

The Department of Human Settlements' policy makes public participation a key element of human settlements delivery and the Department is mandated to engage with communities throughout the process. This is in accordance with the Constitution and the Municipal Systems Act 32 of 2000, Chapter 4, which promotes community participation. Community meetings are significant throughout the whole process, including from registration onwards. They are important in providing feedback to residents and allow, at least potentially, for open communication and engagement about procedures and outcomes. In his 'state of the city' address in 2019, the BCM mayor described how, through the Ward Committee Public Participation Framework, the municipality seeks to ensure that residents seamlessly participate in decision-making processes and how councillors are obligated to have monthly meetings in their wards where they receive residents' suggestions and report on progress (BCM State of the City Address, 2019:23), including around housing.

Once the municipality receives the list of those who qualify for state housing, it must communicate this to the community. Information from the municipality is crucial for transparency purposes and so that residents know the status of their applications, which takes place many months after the applicants submit their applications. The political representative at local government level, the ward councillor, plays a central role in this regard. Although deemed important, the effectiveness of public participation in state housing delivery in the BCM was questioned by residents.

This is part of a wider problem. As Mafukidze and Hoosen (2009:380) argue, community-council interfaces in urban South Africa result in unintended consequences, such as entrenchment of mistrust of the government and overall disillusionment and alienation. In BCM, there are suspicions that ward councillors hold meetings for the sake of formality, as they already have identified specific residents to benefit from RDP housing whom they meet

privately. In practice in the BCM, according to some residents, all parts of the community processes are undertaken at superficial levels and are hindered by political interference.

6.4 Application, Registration and Waiting Lists

Although meetings are held and those whose applications are approved are announced publicly, irregularities in registration and allocation of RDP houses are prevalent in BCM. A woman from East Bank in East London explained the challenges they face with the registration process, as they are expected to attend the meetings with ward councillors in order to register for a house:

Yes, I applied, the only thing I did not do was register. That time my mother was very ill and I work night shift so there was no chance for me to go there but my name is on the master list. It is there by the municipality. It just needs to get registered by the councillor....I do not know where my councillor is; I have not seen him (Gladys, East Bank, August 2019).

In Fynbos, another woman explained:

The problem starts with the councillor because if you are a councillor you must know your people and the people must know you. That is the first thing because you have to communicate with your people, it is very important. But most of the people here do not know that lady [councillor] here because she does not even come out when there are meetings here. She says she is coming but she never comes (Marrian, Fynbos, August 2019).

Registration for a house depends on the availability to attend community meetings where residents can meet with the ward councillor to register. Where there is no interaction with the ward councillor or where the beneficiaries for other reasons do not participate in the meetings, they are excluded when registration is done with (or by) the ward councillor.

Officially, the registration process is done at the provincial department where potential beneficiaries must present their Identity Documents and those for their spouses, the children's birth certificates, proof of income and affidavit in the case of an extended family member. The application process involves completing a housing subsidy application which ensures one's registration on the National Housing Needs Register, or the Municipal Housing Demands Database (also called a waiting list). Once registered, one gets a Form C which indicates the application number and date (*Briefly*, 23 December 2019). The official process is not followed in many cases as registration often begins at community level with the ward councillor or, in some cases, with civic organisations.

Typically, registration in Phakamisa was said to be done in the presence of the provincial Department officials but, in some cases, registration took place with the ward councillor only. In many instances, residents expressed significant frustration due to lack of availability of their ward councillors. As Thози put it, where and when meetings are held, ward councillors conduct these as a mere formality and with only a few of their 'favourites' and not with every member of the community (Thози, Phakamisa, August 2019).

But some residents spoke about registration at local level with both the councillor and the municipality (as if this involved two separate processes). The interview cited with a woman from East Bank indicates this, as she speaks firstly of the municipality where the resident's name appears in the master list and secondly registration with the ward councillor. Registration at both levels appears important for residents but this is a source of confusion too. Because of this, there is some un-clarity, certainly amongst residents, about the link between the application and registration stages.

In speaking about the challenges of registration, and the failure of some residents to attend meetings with councillors for purposes of registration, Martina in Fynbos spoke of multiple calls for registration by ward councillors (Martina, Fynbos, August, 2019). While some potential beneficiaries would register once only and then wait impatiently for a house, for many others a call to register (no matter how many times it is made) entails registering on multiple occasions. Multiple waiting lists emerge in the process. In King William's Town, multiple registrations (and multiple lists), according to some respondents, was the cause for houses being claimed by up to three people. As Seekings et al. (2020:10) highlight, the registration date in some cases has been used to select specific individuals. For example, if the ward councillor would like to add people of his/her choice who are not on the list, he or she sets up a date and calls for registration. Every opportunity to register can be used to informally add people to the list. This explains several calls for registration that the BCM respondents were describing.

Jonny explained the irregularities that exist in the capturing of housing data within the BCM:

Last week I went to the housing Department. Three weeks ago, we went to Billy Francis Hall to register for houses. Then that man asked when I did apply. I said in 1995 then he said I must go with my blue card. He didn't write my registration number. On that card they said I applied in 2009 and I asked that guy to check on the computer because I applied in 1998. I don't know what happened. I have 3 different blue cards for one house. When I looked on the computer it is 2009.

I don't know how these things work. And they didn't explain they just say they don't know what happened. At that time, I was staying here. In 1990 I went to apply again then I got a white card; on the white card it says 1990 (Jonny, Fynbos, August 2019).

Clearly, this potential beneficiary could not make sense of how the process of registration works, which caused him to be registered multiple times with different dates for registration on the system and on registration cards. An attempt on his part to seek clarity as to why he was listed as applying in 2009 when he applied in 1995 did not yield a positive response. He ended up with multiple registration cards for one house with no valid explanation from municipal officials. It is also somewhat unclear about the difference between the blue card and white card. But the interviews tended to indicate that the holders of the blue cards in Fynbos happened to be predominantly coloured whereas blacks had white cards. Rabia, the leader of the coloured community, thought the different cards have to do with when one applied, as 'blue cards' were issued at some point and white cards at a later time. However, she could not explain how the blue cards were predominantly carried by coloureds, with blacks carrying white cards (Rabia, Fynbos, August 2019).

A number of respondents in the BCM showed an absence of understanding and clarity on the registration processes. They register multiple times, always checking again and again to make sure their names are still on the beneficiary list, otherwise they may find their name having been removed from the system. A 33-year-old (Marrian) described her frustration with the registration process:

You just have to go re-register, go again in the next 10 years. We the coloured people must register several times because most of us were taken off the system. I do not know how. I cannot say why. So, we had to go re-register last month. Some of the people had old blue cards registered for housing for 10 years. After 10 years they had to re-register again. What happened? (Marrian, Fynbos)

In some cases, potential beneficiaries would register and be given their plot numbers immediately upon registration yet, in other cases, the registration took place and no plot number is given. This resulted in some residents claiming to know exactly where their houses would be built, as they could request for maps from municipal officials. Those who did not have plot numbers were disadvantaged because, when illegal occupations took place, they had no basis on which to claim their houses without the plot number.

To further complicate matters, in King William's Town, the chairperson of the South African National Civic Organisation (SANCO) described parallel registration that took place at different centres within a distance of about a kilometre from Phakamisa, a display of the extent of confusion among beneficiaries due to political influence in the housing processes. He detailed the following:

In this case, on the same day when the councillor called the community to come and register in that housing project, a former councillor decided to call people too. There is an old building there. It is burnt down there, when you entered Phakamisa on your right-hand side; there is a rondavel there. That rondavel was burnt down by the community because of anger and this guy decided to call his meeting there. There was a loud speaker for the councillor early in the morning so that the people came to the community hall to register. There were police to certify affidavits and at 12 o'clock the former councillor decided to call his meeting to register beneficiaries and made allocations: not to register only but to register and say this is the number of your house. That is when the problem started (SANCO chairperson, Phakamisa, August 2019).

Because of this, some Phakamisa residents became very perplexed and found it difficult to decide with whom to register and where to register: between the former councillor in the rondavel or at the municipal hall where the housing officials and the current councillor was registering people. The registration taking place at the hall was a formal one where, according to the chairperson of SANCO, the Eastern Cape Provincial Department officials and the elected councillor were both present. The rondavel registration was an informal (illegal) one, with a former councillor who had lost power in the previous local election but had sought to regain support by promising people houses. The chairperson for SANCO indicated that the confusion was such that there were a number of people who registered at both places, as they were not sure which list would be approved so that they would receive houses eventually.

Power dynamics manifest in the registration process, as residents seek to register with those political figures they think wield legitimate political power bestowed through elections, as well as those with power derived from informal networks and connections (such as the former councillor). Further, if a potential beneficiary is not certain who will be in power when the actual allocation of houses takes place, it is only safer to register with both. This lack of certainty also contributes to the illegal occupation of state houses as beneficiaries are not fully confident that they will be included amongst those who are allocated houses. They simply do not trust the local political system, or are concerned about shifting bases of power within their local community. The incident here confirms the observation by Benit-Gbaffou and Oldfield

(2014:286) that “local politics and practices of clientelism through party representatives or traditional leaders draw on a mix of formal and informal politics”.

The Parliamentary Liaison Officer (PLO) for the Eastern Cape Department of Human Settlements discussed how illegal occupations might arise in the BCM in the context of the convoluted construction of the waiting list from the time registration takes place:

In terms of RDP processes, the list of beneficiaries is being developed by the municipality. It is the responsibility of the municipality to do that, not the responsibility of the Department. Then, obviously given that the development is taking place at a ward level, therefore the person responsible for that development of the housing list is the ward councillor. Now the dynamics or politics of municipalities and the dynamics and the politics of the ward are at play. This ward councillor will have preferences (people he/she prefers to be included in the list), that is whether you support her or not. Then obviously that means that the way this list is developed is not developed in a proper way where you develop the list according to the guidelines that are there, I am not sure if there are guidelines but what I am saying is the list at that level is manipulated then obviously there will be fights amongst the beneficiaries (PLO, Eastern Cape legislature, March 2020).

These administrative inconsistencies, the lack of clear guidelines in the development of waiting lists by the municipality and political interference from (former, prospective or existing) ward councillors add to the lack of confidence with the system amongst potential beneficiaries. As well, the councillor in Phakamisa indicated that people are removed fraudulently from the waiting list (Interview, Phakamisa, August 2019). The perceptions of the system as manipulated, inaccurate and not inclusive of everyone entitled to housing, result in some people deciding to disregard the formal processes and move into houses before the houses are formally allocated to them. The long waiting period and the flawed (and politicised) administrative processes become a source of frustration resulting in people moving into houses illegally as well.

6.5 Allocation of RDP Houses

Seekings et al. (2010:5) describe how allocation of state houses occurs in the Western Cape Province. The state identifies the community members to benefit, the land to build on, allocates the budget and then appoints the developer. Quotas of sites are allocated to particular communities and further allocated by communities to individuals; and, when houses are completed, the project manager allocates specific houses and hands over keys to individuals on

the list. The final stage of allocation for a long time after 1994 had no clear guidelines or principles to such an extent that the project manager used discretion and sometimes consulted the beneficiaries when allocating houses (Seekings et al., 2010).

Similarly, the BCM had no clear guidelines for allocation until 2018 when the Eastern Cape Provincial Department developed a Beneficiary Allocation Policy in response to what was clearly becoming a serious problem of conflict over occupation and ownership of RDP houses. Rodyn expressed his frustration with the lack of policy guidelines on allocations:

People simply wait for houses – it is not so clear about the whole process of allocation from the time we apply. We wait over 20 years and when some check they are no longer on the waiting list. Some people fight over these houses (Rodyn, Fynbos, 2019).

In the BCM, when the waiting list is developed, verified and those who qualify are added to the national database, the qualifying beneficiaries are informed. When the project is complete, the standard procedure for allocation requires that the provincial Department come to the community to officially open the houses and hand over to the beneficiaries, a role which the Department though tends to leave to the municipality. It is not clear whether the province does this deliberately to allow for the inevitable politics of allocation to play out (and turn a blind eye to this) or that they do not have the capacity, time and inclination to go through the allocations until everyone occupies their house.

Whatever the case may be, the officials at the Eastern Cape Department of Human Settlements identified delays in handover as a result of untraceable beneficiaries as the major cause for illegal occupation. A report tabled by the Human Settlements MEC to the legislature in 2017 indicated that 150 out of the 258 houses vacant in the Eastern Cape Province (since 2013) because of untraceable beneficiaries (*Daily Dispatch*, 15 November, 2017). A call out for untraceable beneficiaries is often made on the Department website (Eastern Cape Department of Human Settlements, 2019). The Department traces the missing beneficiaries and goes through the verification process again to check if the concerned people are still alive, still qualify based on their income, or have benefited already from housing elsewhere. The process of removing residents (who have benefited already or no longer qualify) from the National Housing Database was explained by the Eastern Cape Human Settlements Parliamentary Liaison Officer (PLO). The national Department of Human Settlements set up guidelines for the deletion of beneficiaries subsequent to provincial departments submitting their deletion

requests, but a lengthy process follows before the beneficiary is finally removed from the database.

This is a significant cause for delays in allocating houses, which results in some houses staying empty for very long after completion and is a cause for illegal occupation by those who see these houses empty and do not have houses of their own. Thus, because completed houses are left unoccupied for extended periods due to untraceable beneficiaries, illegal occupations occur. Intriguingly, there are claims by some illegal occupants that they occupy these houses to look after and protect them from being vandalized. While untraceable beneficiaries are one reason for illegal occupations, this certainly does not explain the mass illegal occupations that have happened in BCM where, in East London alone, close to two hundred houses were occupied by people who were not officially allocated these houses.

Additionally, the Provincial Department official (Naledi) indicated that:

There were about 72 000 people in the Eastern Cape Province who were verified since 1994, qualified but never benefited. The processes were not done effectively and the system was not used properly. There are some houses that were built and these people benefited but their names were not captured. Verification has to be done again (Naledi, Eastern Cape Department of Human Settlements, August 2019).

The official thus acknowledged the severe shortfalls in the process of state housing delivery in BCM which have resulted in some residents who qualified since 1994 not benefiting from state housing, while others have benefited (i.e. received a house) yet their names were never captured on the national database. This contributes to explaining the inexplicably long wait that some residents cited during the interviews. They simply could not understand why others have benefited while they continue to wait for over 25 years – yet, they applied for houses earlier or at the same time as those who now have houses.

The level of frustration with waiting, which likely animates the possibility of illegal occupations, comes out in the expressions of Rodyn in Fynbos:

So, which means I will need to rent for 20 years? We have kids so by that time my daughter is going to be thirty something years and my son is going to be twenty something years which means they will only get their own houses when they are fifty something years. Why does it take so long to build these houses because it's not like the money is not there? The money is there but it just takes too long for these houses to be built; and it's not like these houses are like the houses

in Vergenoeg – my grandmother’s house – that are stronger. Their houses are super nice. I don’t see why they now build these houses rushing (Rodyn, Fynbos, August 2019).

In this case, the frustration is openly couched in terms of the slow housing delivery by government as well as the poor quality of the houses that are now being built. These expressions, however, are a manifestation of deeper concerns about housing allocations in BCM. After all, if state funding for housing is not the problem for why he and his children may end up as life-long tenants across generations, then there must be other systemic challenges locally (including perhaps beneficiaries who never registered), for his 20 year-long period of waiting.

The fact that there are beneficiaries who occupy houses whose names never appeared apparently on any beneficiary list or were never captured in the national database raises even further complications, according to Department officials. More specifically, these beneficiaries can apply successfully for houses again if the database is not updated and verified and a physical check of occupants against the database is not undertaken. This confirms claims made by BCM residents that there are people who own more than one RDP house while others have been waiting for many years without a house. Some allege that these people (who own more than one house) sell or rent them out to tenants. Apart from arising from corruption, double ownership can be an outcome of loopholes in housing administration. Pastor Timmy in Phakamisa described how his relative ended up owning more than one house and sold them:

As we speak, one of my cousins had five houses then she sold them. You can imagine selling a house that is worth hundreds of thousands for R2500 or for R5000. Why? Simply because there are people who are so fed up with the leadership and they do anything (Pastor Timmy, Phakamisa, August, 2019).

This interviewee draws a link between frustration and illegality whereby frustrated people take the law into their own hands and act in a manner that goes contrary to formal processes. A chaotic housing delivery and allocation process presents every opportunity through existing gaps for individuals to benefit through buying and reselling of state houses. Interestingly, in Fynbos, the illegal occupants named the area they invaded ‘*Gatvol*’, an Afrikaans word which means ‘fed up’. They did so to pass on the message to government that they were tired of the unfair distribution of state houses. They indicated that they would change the name to Riverside once they secured formal ownership rights. Naming of places is symbolic and useful for passing

on a message. Names like ‘*Enkanini*’ in isiXhosa (which means ‘forceful’) have been used when people forcefully occupy land to establish informal settlements.

The scenario described by the Department officials shows the effect of the lack of proper coordination between the housing lists developed at local government level and provincial and national databases where all beneficiaries must be captured accurately. The allocation of houses to registered beneficiaries is not properly managed, which means that some beneficiaries are allocated more than one house or, as some residents allege, every adult member of a particular family gets houses when some families receive no house at all. State incapacity and maladministration, including corruption, around the allocation of formal housing has unintended consequences, with some residents using their space of waiting to claim what they believe is rightfully theirs. As Seekings et al. (2010:6) put it:

If groups of claimants are aggrieved at their allocation – whether because their ‘community’ was not allocated sufficient houses in total, or as individuals were not allocated a house by their community – they might invade the land or occupy houses earmarked for other people. Faced with such direct action, the state often reallocates houses in the particular project to the land invaders, and placates the beneficiaries with the promise of housing on a different project.

The BCM, and the Eastern Cape Department of Human Settlements more broadly, are no exception to the apparent rule, namely, the lack of systems or mechanisms backed by clear policies and procedures to ensure the smooth allocation of RDP houses. Frustrated residents arise, as do illegal occupations, with local municipalities sometimes bending to the heightened presence and visibility of the occupiers and granting them formal housing – at the expense, of course, of others.

Given all these challenges, the dilemmas that residents in the two research sites face can be illustrated with reference to the experiences of a 75-year old woman in Phakamisa who resided in formal housing, though seemingly not officially. One day, ward committee members gave her two white pieces of paper with house numbers on them. She was told to occupy one of these and to move out of the house she was currently occupying. The house numbers on the pieces of paper were already occupied by others, but the ward committee members claimed that these houses were in her name. She had moved into her current house on the instructions of the councillor who told her never to leave that house as the councillor was going to fight for her to stay. The councillor wrote an official letter to acknowledge that the woman was the rightful occupant of the house (house number 4562). The letter would be useful for her when

faced with possible eviction from the Buffalo City officials. An affidavit was also signed by the police to support her stay in the house she was occupying. The woman refused to move from the house she occupied. It did not make sense to her how her name would be allocated to two different houses yet the councillor allocated her another (see Figures 6.1, 6.2 and 6.3).

Figure 6.1: Pieces of Paper with House Numbers

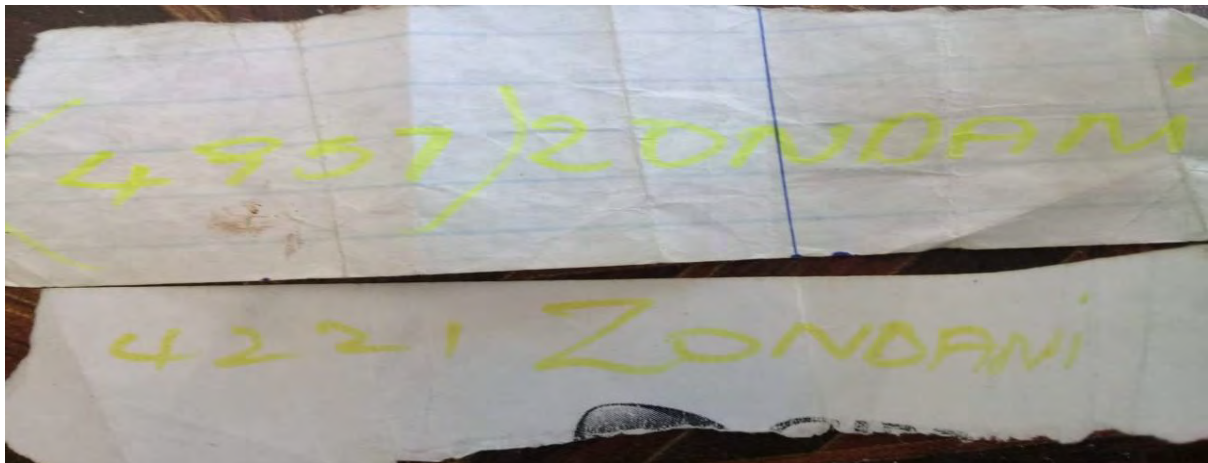


Figure 6.2: Letter of Acknowledgement by the Councillor

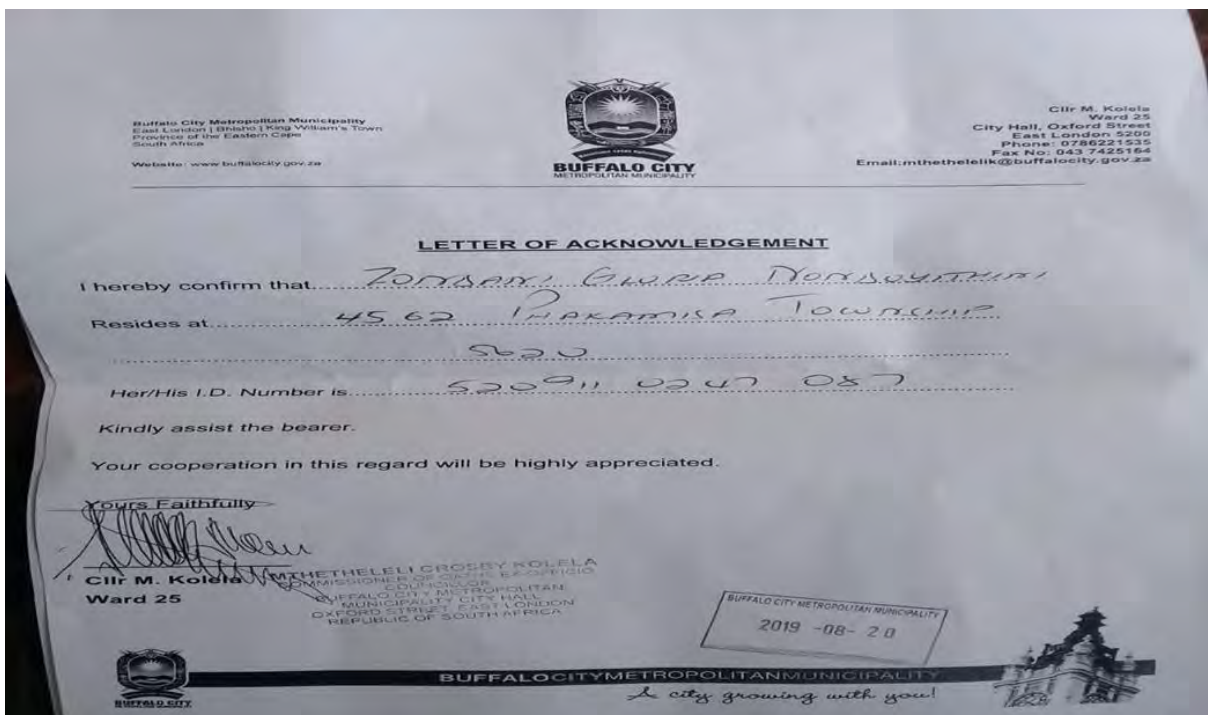
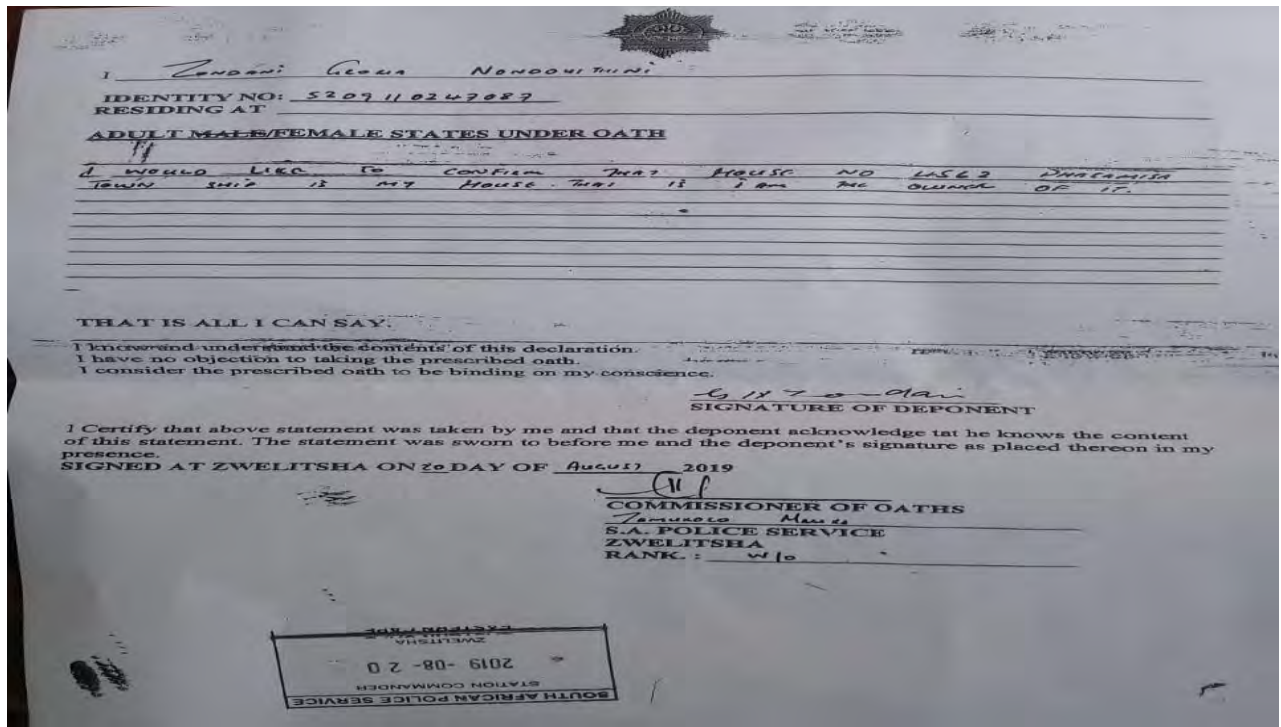


Figure 6.3: Affidavit Signed with the Police by the Occupant of the House



The case of this old woman in Phakamisa reflects the many inconsistencies in the allocation processes. The ward councillor became directly involved in protecting those he believes were victims of the allocation process and wanted to ensure that they retain their houses because they had lived on the land for many years waiting for houses. The pieces of paper presented to the woman by ward committee members were a cause for confusion to the beneficiary. In this case, the woman stuck with the advice of the ward councillor with the hope that he would successfully fight for her. This was the general stance taken by the elderly in Phakamisa who occupied houses that were contested. They looked up to the councillor for assistance in order to keep their houses.

6.6 Political Interference, Administrative Failure and Corruption

In East London there are two separate locations about three kilometres apart, where the pertinent RDP houses were constructed. Fynbos and East Bank are both close to an area called the Buffalo Flats. Fynbos 1 and Fynbos 2, as RDP housing projects, were undertaken by the BCM in Fynbos and East Bank respectively. The East Bank is an extension of an area called Vergenoeg. In King William's Town, Phakamisa has a section called Kuwait in the western part where over 800 RDP houses were constructed. What emerged in the BCM (East London and King William's Town) was primarily the role of ward councillors in facilitating the

registration and allocation of houses to the housing beneficiaries, but in a manner characterised by patronage and clientelism. It appears that ward councillors use houses to reward their political supporters. The fieldwork interviews revealed that the blame for maladministration and political interference as well as corruption is shifted between the local government and the province by various officials. However, the majority of community members attributed their problems to the local municipality and the ward councillors. Thabo in Phakamisa described how the role of councillors plays out in housing contestations:

When you try to investigate what really happens with these houses, it is the problem of councillors. Since that woman [the ward councillor] came in charge and they started building [houses], the fights started and we got divided into two groups, with some fighting that they do not recognise what the councillor is doing (Thabo, Phakamisa, August 2019).

Clientelism and patronage amongst party representatives are major problems that hamper effective delivery and cause conflict among beneficiaries. Local politics around housing delivery entail the politics of local legitimacy. That section of a community which votes a particular councillor into power gives legitimacy to him (or her) and they therefore expect the councillor to ensure that they benefit from the state's housing programme. The other section that does not support the existing councillor is more likely not to benefit and therefore seek to delegitimise the councillor by challenging his or her authority. As Benit-Gbaffou and Oldfield (2014) note, sometimes these local politics may end up in violence.

Corruption is one of the major factors that affects state housing delivery in the country and BCM is not an exception, with strident allegations about corruption arose throughout the interviews. These allegations ranged from manipulation of the waiting lists and selling of houses by councillors, as well as the selling of houses by illegal beneficiaries who own a number of RDP houses (and should own in the first place).

Corruption in state housing delivery in South Africa is pervasive and has been documented by many scholars, although some authors limit their arguments to 'allegations' of corruption in order to avoid the burden of proof. Seekings et al. (2010:7) notes alleged corruption in Cape Town RDP projects with some cases exposed, yet he says it is not clear whether corruption had become the standard or the exception. The Department of Housing in 2004 acknowledged that the growth of informal settlements in South Africa was a product of corruption among other practices (Huchzermeyer, 2006:45). Corruption Watch describes the waiting list system as being abused, stating that "its susceptibility to corruption has marred efforts to deliver on

government's promise in 1994 to house over 12 million South Africans" (Corruption Watch, 2013).

In 2017, residents of Unit P, in Mdantsane in East London, claimed they had to buy RDP houses, claiming that they were victims of corrupt officials from the BCM, ward committee members and officials from the Department of Human Settlements (*Dispatch Live*, 28 November 2017). After struggling without a house and being on the list for over 20 years, one woman decided to buy a house from a ward councillor and lost R15,000 in the process as no house was forthcoming. These were common stories of corruption among the people in the BCM. In some instances, residents in the BCM protested, demanding that the ward 20 councillor be removed after being suspended on allegations of corruption (*Ground Up*, 30 May 2019). Pastor Timmy, a church leader in Phakamisa, described a cause for illegal occupations as a crisis of leadership that is corrupt and has failed the people miserably:

There is an issue of community leadership conflict and it has been there for a long time. When there is no proper governance those things happen because [lack of] proper governance can mean that people have lost hope in the leadership of the community; and once they lose hope in the leadership of the government, that simply tells you they will do anything. They will do anything [including illegal occupations] and no one will stop them because they have already picked up some mistakes or gaps in the leadership. So that is exactly what happened with the Phakamisa situation and unfortunately, we have got a councillor that does not care... there are people so fed up with the leadership (Pastor Timmy, Phakamisa, August 2019).

Corruption disrupts formal procedures as local residents indulge in informal and illegal activities as an outcome of a lack of adherence to formal processes by the political leaders and administrators, who themselves often engage in illegal practices. The acts of corruption create local webs and networks connecting individuals or groups in political and administrative offices with ordinary residents in such a manner that it is not easy to pinpoint the core of the problem. Those accused pass their own allegations on others. Describing corruption in Phakamisa, the chairperson for SANCO explained how a councillor in Phakamisa was once dismissed by his own political party after being involved in corruption over a Phakamisa housing project. This led to the stalling of the project. He indicated:

We found out there was a lot of corruption between him and the other guys that are close to him in such a way that the African National Congress [ANC], [because he was elected on an ANC platform], decided to open up investigations against their councillor [in 2000]. Later in 2009, the ANC decided to terminate the contract of that guy because there was fraud and the Buffalo City

decided to throw a lot of questions to him in the council chamber. Now the councillor decided not to attend the meetings. He decided to run away from the meetings and the council decided to dismiss the councillor from the council. Later that year, there was also the termination of the agreement between a so-called section 21 company [the building contractor] and Buffalo City. That stalled the housing project. There is also a lot of corruption inside the [Eastern Cape] Department [of Human Settlements] (SANCO chairperson, Phakamisa, August 2019).

Because of allegations around corruption, housing projects are stopped in order for investigations to take place, further delaying the housing delivery process. An interview with the ward councillor in Phakamisa revealed that the Phakamisa housing project stalled some years back due to corruption and politics. His suspicion was that the Department of Human Settlements was involved in corrupt activities. Thus, he claimed:

So, there is corruption. What is paining the people most is that the Human Settlements Department made an application to the Grahamstown High Court to evict some of the people occupying certain houses. Fine, we supported them but something strange happened. Not all the people who were cited [in the case] were removed and some of the people were left out purposely. In that particular project there are erven with dwellings which don't appear on the status [map] but there are houses built there and we are asking one question: who funded that? There is some suspicion; it is a suspicion that there is collaboration between some Human Settlements officials together with some people from the community and contractors at that time when the building took place (Councillor, Phakamisa, 2019).

Corruption during the construction of houses often stalled projects as cases are brought before the courts by those who are not satisfied by the process and suspect corruption, and the court cases take time before they are concluded. This was also partly the cause for lengthy periods of time before construction is completed, with inflation causing budget implications and therefore increasing the need for more funds to complete projects.

The SANCO chairperson further described how corruption occurs in the allocation of houses, based on evidence from the master housing list, a copy of which he received from the provincial Department of Human Settlements:

I do not think this is policy, the thing that I am going to show you now is corruption. Because by giving a person two houses this is corruption. This lady is born in 1944 and does not own any house here. What the councillor did, he took one of the ward committee members and put the member in that house. That ward committee member was born in 1988. He is staying in that house of that old woman. That committee member never applied for any house here but he is

staying in that house. All those in red highlights [in the master housing list] are owning nothing but they are approved in this list. This is the master list from the Department. This is what happened.

What I can say to you is number 4229 is allocated to a person owning house number 4968 – the same person is allocated two houses; mind you, they are in his name. Now you ask yourself why this person is given two houses whereas we have a backlog; we need more houses for the people. It is not only that person. Another lady who stays in 2313 is allocated to house number 4305 as well. The question is why? You can assume that something happens in terms of money, someone at the Department is being paid to double allocate. The lady I was talking about – the lady who is owning 4229 – is running a creche. To me, maybe they are going to create another creche in that area (SANCO chairperson, Phakamisa, August 2019).

Allegations of houses being used, inappropriately, for businesses like grocery shops or creches were common.

Cited below are some of the views on corruption expressed by residents in East London and King William's Town, which illustrate the depth and breadth of corruption:

Look at the corruption. The people that live here come from Tsolo and Tsomo [about 300km and 150km away from East London respectively]. The people who have been living here for many years do not have houses. They are still living in shacks yet they have been on the system for more than 25-30 years. They did not get houses because their blue cards are not on the system anymore (Ray, East Bank, August 2019).

So, the problem lies with the housing department. It knows how to change things from the office. It is a corrupt system (Thabo, Phakamisa, August 2019).

In an article published by the *Eastern Cape Rising Sun*, there were allegations of corruption made by those who were evicted as illegal occupants in East Bank. They insisted that they would not leave the houses, as these houses were sold to them by the councillor for between R5,000 and R40,000. They simply moved back after evictions. In defence, the councillor claimed that these illegal occupants were using widespread corruption in housing allocations as a pretext to justify their illegal occupation (*Eastern Cape Rising Sun*, July 2019), and that she (the councillor) was being scapegoated. Although this ward councillor did not admit her involvement in corruption in this case, she acknowledged that there is widespread corruption in housing allocation.

There were also allegations of corrupt activities around the so-called ‘Happy Letters’, which led to the illegal occupation of houses. A happy letter is handed to the legal owner of the RDP house by the Department officials. It is proof of ownership. This phenomenon, involving the selling of these letters, was described by the ward councillor in Phakamisa as follows:

[T]here are bogus happy letters, you understand, when you get a house you sign a happy letter. Some of the happy letters are fake. They are fake letters written by people and some are sold for R100 and some for R500 (Councillor, Phakamisa, August 2019).

A male resident elaborated upon the confusion that results from people having happy letters while claiming ownership at times of the same houses. During evictions, people would produce happy letters from nowhere:

And when the Eastern Cape Human Settlements Department officials call out a certain house number during evictions, many people would pop up claiming the same house number and fight over it. Last month the Department came and they said they will chase the people *banganaantsikiyo*. I do not know what they meant. The councillor was also here; he said ‘they will chase the people who moved into the houses without permission you see?’ I was standing there. We were a big group of people, we went and saw them chasing people, and they would go on checking the numbers that had problems. We would follow. One gave a happy letter as they were taking their clothes out and said ‘here is the proof that this is my house’. Even there, there would be confusion because others would say, ‘this is not the correct happy letter, it’s been made somewhere else’ (Anganathi, Phakamisa, August 2019).

Banganaantsikiyo is a phrase in IsiXhosa which can be directly translated as ‘people without support’. Anganathi shows the confusion around allocation of these houses, even where happy letters were made available because some happy letters would have been sourced informally. Although ‘*banganaantsikiyo*’ could refer to supporting documents for occupation, the politics around allocation meant that, apart from having a happy letter further informal support from some local authority would be necessary to secure occupation. A lady in her mid-forties described how she had secured occupation on the support of the councillor without a happy letter and did not worry much about what would happen in the future as she believed that title deeds would be issued.

6.7 Contextual Character of Illegality

Interviews in the BCM revealed a common process in allocation of land in the 1980s when they built shacks. People migrated from the rural areas, other towns or neighbouring locations,

settled on open land and built shacks, a phenomenon that led to an increased growth in informal settlements. When the new government came to power in 1994, the housing programme aimed to provide houses for those previously deprived, who predominantly lived in shacks in informal settlements.

In East London, the urban poor in informal settlements were relocated to temporary shelters while their houses were being constructed, at least supposedly. In Phakamisa, in King William's Town, there were no temporary shelters built. Instead, people continued to stay in the informal settlements, with promises that formal housing would be built on the land where they stayed. According to the ward councillor for Phakamisa at the time of the fieldwork, who was also the first councillor in 1994 at the dawn of democracy, the informal settlement land in Phakamisa (post-1994) was allocated legally through town planning regulations, with further land allocated for those arriving where shacks were then constructed. All state houses, therefore, would be built on the demarcated plots where they were already staying.

The councillor for Phakamisa described how 'illegal' occupations arose (illegal here is used in quotes because it refers to illegality according to the councillor and not in an official sense). He disputed the idea that the government called the people who were occupying houses in Phakamisa as 'illegal', as they occupied plots that were allocated to them legally before 1994, where they built shacks and waited for RDP houses to be built where they already lived.

What is causing problems is that after me there were three councillors, some who were not familiar with this project. The last councillor together with the provincial steering committee reallocated those particular sites without looking physically who is occupying them. They just did it, drew the map, that is, the plan without looking. When they built houses, they built houses without following the proper way of allocating houses. Like for example, when you are building [houses] in squatter camp [informal settlement]: before you allocate those sites, you have to look if physically there are no shacks and, ironically, the people who were living in those shacks occupied those shacks legally. It was a process that was agreed on. And the bad part now is that when we were about to install services, some people were told to move from their shacks to pave way for those people (I mean for the services they wanted to install); and they had to demolish their shacks. But when they wanted to come back, they found out that their sites were given to other people – you get my point (Councillor, Phakamisa, August 2019).

The ward councillor describes a situation where some of the people who lived in shacks were temporarily moved to allow the installation of infrastructure like roads and a sewage system. This was after a new plan was done with no regard to the previous plan, which had placed

people on the plots they were staying. When houses were eventually built, those who were displaced when infrastructure was installed were denied an opportunity to come back and occupy houses in the area where they were displaced. The councillor argues that, if the original plan was adopted, the allocation process would have followed the original plan after houses were completed; and, thus, there would not been any displacement of people in the first place to make way for infrastructure as per the new plan. What the ward councillor describes is an array of administrative failures of the Phakamisa RDP project due to councillors changing at the end of their term in office.

There was no clear handover of information about the project to new councillors to carry on from where the previous one left off. The municipality did not keep important records useful for housing development projects. A new housing plan was drawn up without recognition and consideration of the old plan, such that those who drafted the second plan were either not aware of the initial plan or choose to explicitly ignore it. The result was that some shacks, under the new plan, would appear in the way of roads, sewage and water pipes. This meant that some previously-demarcated plots were removed when construction took place to make way for infrastructure. In building the formal houses, they did not verify the occupants of the plots in order to align their names with the plots they are living on – this led to a shifting around of the occupants to different plots and others losing their plot numbers in the process. When the houses were completed and allocation done, houses were being allocated to people other than those who had been living in the shack on the same plot waiting for the house to be completed in order to move in. This entailed perhaps waiting for more than 25 years, watching the house being built and another person moving in, and still remaining in a shack. From the perspective of the councillor, the people who waited in the shacks on the same plots were the legal owners of the RDP houses despite the fact that their names were not on the lists to confirm ownership of those houses.

The Department of Human Settlements rigidly uses the waiting list as the only legitimate space that determines whether one is a legal or illegal occupant of the RDP house. However, as the case cited above shows, legality or illegality is a very contextual matter which depends on the basis and character of the claim made for ownership. Interviews with Phakamisa people still living in shacks alongside the RDP houses that were occupied by others, expressed a historical claim to ownership of land where the houses were built. Like the ward councillor for Phakamisa, they distinguished themselves from those the government declared as legal occupants. The councillor also drew a distinction between these rightful owners (the shack

dwellers) – rightful on moral grounds but non-occupants – and others who break into houses and forcefully occupy them. The latter he calls illegal, whereas the former are victims of administrative failures and political interference. In Phakamisa, pastor Timmy spoke of these administrative blunders, indicating that at some point the official waiting list went missing from the municipality and they had to make a new list. This was also confirmed in a portfolio committee meeting on Human Settlements held on 9 June 2020. The Department described in detail the challenges they were facing in addressing Phakamisa cases of illegal occupation as the original list for housing projects disappeared, for reasons unknown.

In East London, those who came to live in informal settlements in East Bank and Fynbos, as indicated, were moved into temporary shelters provided by government while houses were constructed. All their shacks were demolished and the temporary shelter became their next place for waiting. When the temporary shelters (*Bangalas*, as they call them, meaning Bungalows) were built, the residents were informed that they would stay for six months only (see Figure 6.4). At the time of the interviews, they had stayed in temporary shelter for five years. While waiting for the houses to be completed, other people broke into the houses and occupied them, disregarding the waiting list.

Figure 6.4: Temporary Shelter (*Bangalas*)



Participants in Fynbos and East Bank described how they forcefully occupied houses:

We came from that side because that side it was still open (there were houses that were not yet occupied on that side). It is now or never, all of us ran. If you break that door down it is your house; that is how we did it. Break the next house, then us here we are neighbours. Make fire, camp outside, sleep until the morning then we make sure we were making shifts. The ladies were sleeping in the house, the men, the husbands standing making shifts to sleep relieving the others. That is how we worked (Rodyn, Fynbos, August, 2019).

Rodyn describes how they forcefully entered the houses, breaking doors and moving from one house to the other, and then went on to guard the houses in the night while the women and children are sleeping. This went on for six months with some claiming that they lost employment while they guarded their houses. Many of them indicated that they were not going to leave the houses as they were committed to die for the houses. One woman indicated:

They must kill me first before I leave this house. We did not sleep here the first days because of threats. There was no communication from government – we asked to see the mayor and never got attention from government. The threats [from those who wanted the houses back] resulted in us stopping to send our children to school. We made fire in every street to see danger coming (Phillis, Fynbos, August 2019).

The potential beneficiaries on the list and still living in temporary shelter, whose houses were illegally occupied, described how others occupied houses that were meant for them. The houses were occupied before they were complete. The beneficiaries whose houses had been occupied forcefully spoke of the illegality of the occupations as they went contrary to the official housing waiting list. They adopted this position despite the common observation by many that the waiting list was manipulated and misused. They still had hope that sticking to the waiting list would ensure that the rightful beneficiaries occupy the houses. On the contrary, those who disregarded the waiting list and occupied houses thought that, if they did not occupy houses illegally, the waiting would never end. They saw illegal occupation as the only option. They had waited long enough, so ‘it was now or never’ as the respondent above said. They thus explained how and why they were persistent, even moving back into the houses after they were evicted:

So, what we did the evening after they threw us out. While all our stuff was outside, when they moved away, we brought our stuff back inside because there was no house [elsewhere for us]. There was not even temporary shelter for us to move into. (Chantelle, Fynbos, August 2019)

Although we invaded these houses, I feel we are the first owners of these houses because we have been here longer than a year. They say I am illegal. I am not illegal. This is my house. I have been here over a year. How can you say someone is illegal but then you come and evict them after 6 months – does it work that way? I do not know if I am wrong but I feel personally I am the first owner of this house. I belong to this house because I have been here for over a year so why am I illegal? That is our question. (Christopher, Fynbos, 2019).

Those who moved into houses forcefully did not out-rightly justify their action on any basis of legality or with reference to the official waiting list. However, Christopher was quick to point out, with reference to the law, that evictions cannot take place so as to leave people homeless. The law on eviction in South Africa makes it relatively easy to evict within the first six months of unlawful occupation. Beyond six months, alternative accommodation has to be provided and therefore it becomes more difficult to evict. Although the respondent did not explain the law in great detail, he was aware that after staying in the house for more than a year, it was going to be very difficult for officials to evict them. They thus guarded the houses for six months through the nights, hoping that beyond the six months they would have some legal ground to either defend the occupation or defy the authorities successfully.

6.8 Racial Places of Waiting

In one of the research sites (East London), the contestations around ownership and occupation have a distinct racial tone, which adds another layer of complexity to illegality and informality.

While on paper, South African policy seeks to reverse racially-biased urban planning, racially-based urban locations remain intact many years after the end of Apartheid. This is clearly evident in the case of East London with, in large part, different areas for coloured and blacks. Historically under Apartheid, Fynbos was a coloured area. The coming in of blacks to establish informal settlements in Fynbos and East Bank in the early to late 1980s increased the black population in the area. Thus, one respondent, described the Fynbos/East Bank area as strangely different in that there lived a mixture of blacks and coloureds:

There are plenty of RDP houses here in East London, besides the old Mdantsane houses. Old Mdantsane is massive, it is divided into units, from N1 to N17 so it's very big and in between there are informal settlements and RDP houses. But there it's very rare that you will find coloureds because there are only blacks living there. Then Duncan village, Funzana are all Xhosa townships. Here in Fynbos, strange enough, we live mixed. Here you will find coloureds and Xhosa mixed. This is something I have learned here in East London, because I was born in Port

Elizabeth and in Port Elizabeth coloureds live on their own and Xhosas on their own but here in East London in some places we are mixed. When we got here in 1992 in East London we saw that we are mixed, in the class we are all together, in the community we are altogether. ... In East London even, the coloureds speak fluent Xhosa (Travis, East Bank, 2019).

During the 1980s, the rising influx of blacks into urban areas led to the growth of informal settlements housing the black population. It is during this period that the tricameral parliament was involved in supplying houses for coloureds and Indians (Parnell, 1992:54). Compared to blacks, coloureds were privileged as the state provided housing for them within the coloured designated areas. The increasing entry of blacks into urban spaces, including building shacks within the coloured area, was regretted by some coloureds as the interviews revealed. Christopher strongly believed that Fynbos is for Coloureds and allowing blacks to build shacks in their area back then (under Apartheid) was a mistake made by their elders. In this context, Blacks were now being allocated houses built in the Coloured area, which would not have been possible if blacks had not been permitted in the past to settle in the Coloured area. As Christopher said:

We grew up here and our parents lived here long before [black] people moved from Mooiplas, Transkei [a former Bantustan] and other places to East London. Our parents allowed them [blacks] to stay because they also needed a place to live. Our [coloured] families now remain in backyard shacks and in crowded houses. Before I moved into this house, I was living with my aunts, mother, two brothers, sister, her children, my daughter, cousin and daughter in the same house. There was no space, and overcrowding was unhealthy (Christopher, Fynbos 2019).

This has a strong sense of ownership, entitlement and belonging to Fynbos which he thinks was interrupted by the past entry of blacks who built shacks in their area. The end of Apartheid, and the consequence stop to coloured privilege in state housing access, meant that coloureds continued to expand their household size while living with their parents, leading at times to the building of backyard shacks to accommodate household members. The post-1994 government gave first priority to blacks living in informal settlements in terms of state housing.

One coloured man, whose wider family stayed in Fynbos and surrounding places like Pefferville and Duncan Village for over 50 years, described how his grandmother used to help some blacks get state houses during Apartheid:

My grandparents moved from Westbank to go to CC Lloyds [Westbank, CC Lloyds and Pefferville are townships near Duncan village in East London]. Then my grandfather moved and

I stayed with my granny for 20 years. We used to stay in Pefferville and CC Lloyds, two different townships but in the same area with different names. My granny was working in the community for more than 20 years.... and helped people. This is what she did during Apartheid. Everybody [including blacks] wanted a house during Apartheid, yet houses were not given to black people during that time. So, a black lady came to granny's house. This lady wanted a house. Granny said there is no problem. She said change your name to a coloured name, and we can go to Parkside, at the housing department in East London. When they got there, granny spoke to the lady by the name Brown, a Coloured lady who was working there in the housing Department. Granny got the form, and filled in that form; she put down the black lady with the coloured name and surname. Two weeks after that, that black lady got a house in CC Lloyds. Whatever happened, but after that she got the house. Somewhere between 20-100 black people, my granny helped to get houses. At that time, it was very difficult for a black person to get a house (Labanson, Fynbos, August 2019)

To access state housing in coloured areas, blacks had to change their identity and get coloured names. Some blacks were now trying to reclaim their real names after changing them in order to benefit through the Apartheid system.

Coloureds criticised the post-1994 government and blacks as well for being inconsiderate of the fact that there were some coloured people who assisted black households during the Apartheid era, like the cited grandmother did. The grandmother had a street named after her due to community work yet, according to her grandson, all the good work had been forgotten. There was a strong suspicion amongst the Fynbos coloured community that the new government would extend benefits to blacks, neglecting the coloureds because they might be considered as former beneficiaries of the Apartheid system.

The Fynbos coloured community in fact see the RDP housing programme being used to perpetuate racial exclusion. The black ward councillor was accused of deliberately denying coloureds access to state houses. It was alleged that she stated in a meeting that the coloureds were not going to benefit from housing during her term of office. The councillor was alleged to have said in a meeting, "*Haziko aMalau nandizifumana indlu*" – translated to mean, "no coloured will get a house" (Phillis, Fynbos August 2019). *Malau* is a derogatory term to describe coloureds. The origin of the term and the meaning is unclear, but a Xhosa lady in her fifties indicated that the term *amalau* replaced the term *amaqeya*, which the Xhosa people used to describe coloured people in the past. *Amaqeya* meant coloureds have no identity as they are a mixed race (Busisiwe, Makhanda, October 2020). This woman indicated that the Xhosa

recognised that the term *amaqeya* was derogatory and unacceptable in a democratic South Africa, so they decided to call coloureds *amalau* instead. Rabia (from Fynbos) indicated though that the term *amalau* was also insulting (Rabia, Fynbos, October 2020). From the perspective of coloureds, on the other hand, blacks should go and live in Mdantsane where the majority of blacks live. In other words, there was an expectation from coloureds that blacks must be restricted to previously-designated black townships and leave places like East Bank and Fynbos for the coloureds.

This racialised history became embodied in different places of waiting along racial lines. Post-1994 state housing provision, from its inception, has favoured residents in informal settlements over the backyard dwellers or those who live in overcrowded conditions (Lemanski, 2009). In East London, contestations over access to RDP houses partly emerged from government's approach on housing delivery that prioritises people living in informal settlements above those residing in backyards of formal housing plots. The national programme on informal settlements sought to eradicate informal settlements by building top structures for all people living in informal settlements. By doing so, the state un-wittingly excluded backyard dwellers who in Fynbos are predominantly coloured.

The coloureds who forcefully moved into RDP houses in East London felt excluded as shack dwellers in backyards. Most of them opted not to move into open fields to build shacks in the 1990s, but built shacks in the backyards of their parents' houses and ended up living in crowded conditions. The coloureds in Fynbos were not migrants from rural areas and they claimed the right to live in the area as it was a coloured area in which many households had lived for generations. Justin questioned why he should build shacks in the bush in order to access formal housing. Gareth spoke only about his suspicions that they were not getting houses because they had not been staying at any time in informal settlement shacks:

In Vergenoeg [East Bank is an extension of Vergenoerg] where a lot of invasion of houses took place, coloured people did not get houses because they did not stay in informal settlements shacks. The majority of those people who were allocated houses stayed in those informal settlement shacks. So, I think these ones who did not stay in informal settlement shacks did not get houses (Gareth, East Bank, August 2019).

The exclusion of backyard shack dwellers caused housing contestations imbued with racial tensions. In its Integrated Development Plan Review for 2020/2021, the BCM noted that there was a focus on people living in informal settlements and not backyard shacks regarding housing

provision (BCM, IDP Review 2020/2021). The coloureds living in backyard shacks forcefully occupied houses in Fynbos which, according to the waiting lists, were meant for black people who lived in informal settlements (whose shacks were destroyed to pave way for the construction of RDP houses, and were living in temporary shelters). Not more than seven coloureds were on one particular waiting list out of a total of 211 of which the vast majority were black. This is based on the beneficiary list for Fynbos 1 as shown to the researcher by Nomonde, the black community leader from the temporary shelter (*Bangalas*). Nomonde, living in the temporary shelter, reiterated that the lack of coloureds on the list was due to the fact that the vast majority of coloureds had not previously lived in informal settlements, as the announcement to come and register was made to people living in informal settlements and now living in *Bangalas*, not in backyard shacks. She went on to say about coloured backyard dwellers:

They didn't go to register. There was an announcement that the people in informal settlements must go and register at Bill Francis Hall. It was not the first time. Each year that was done. I never heard registration for backyard shacks being announced. They didn't register because they did not form part of the informal settlements. The announcements were made in the informal settlements for people currently living here in the *Bangalas*. They registered through [*Bangalas*] shack numbers. At the beginning of this month, everybody must come and register. The coloureds living in backyard shacks didn't register because they said they had registered many times in the past and nothing happens. Some of them couldn't register because they had not legally divorced from their husbands who had left them. The registration happens continuously. They just announce and request people to come and register. A few coloureds who live here in the *Bangalas* some of their names did not appear in the list. We don't know what happened for their names to be missing (Nomonde, Fynbos, August 2020).

In this particular case, the post-Apartheid state housing programme perpetuated racial divisions which the Apartheid government created. The councillors played a central role in this racially-biased housing delivery. For example, when an elected councillor is coloured, he or she is inclined to support coloureds in accessing housing and the same applies when a black councillor is elected. The interplay of politics and race thus continues unabated in relation to local housing delivery. And both blacks and coloureds felt marginalised from housing access. Blacks who stayed 'in the bush' for more than 25 years waiting for houses felt that they were denied the right to own and occupy houses. Coloureds who stayed in backyard shacks also felt excluded from accessing houses on the basis of where they currently lived (in backyards).

Some black residents held the view that RDP beneficiaries must be those who lived in informal settlements because they had done so at the expense of the supposed luxury they would have from living in backyard shacks: “They were in the backyard shacks by their mothers’ houses” (Nomonde, Fynbos, August 2019) being cared for. Malaika in Fynbos (living in the *Bangalas*) therefore described, from her perspective, how coloured people would not move to live to build shacks in the 1990s.

The coloured children didn’t want to move into the bush to build shacks. Maybe they didn't want to stay with the baboons as they call us. They stayed in their houses; [for us] there were no toilets, no water, and 300 shacks shared one tap. They said, “we can't stay there’ because of the sufferings. We stayed, I've been there since March 1996. My last born was attending school here already, he got his award in this hall here, and then we stayed; my shack was made then. In 2013, I got a job and I was getting paid R250 per week but I have three kids. I supported them with this R250. We'd make lists taking them to the municipality asking for water, and then we had 2 taps. A few coloured people managed to stay with us there, until one coloured’s shack got burnt and died there. He left and said he wouldn't be able to continue staying because his brother died in the shack. We continued staying there, we didn’t know what we were waiting for but we continued waiting. The coloured children said, they'll never stay there because they are not baboons (Malaika, Fynbos, August 2019).

Thus, black interviewees believed that, to occupy a formal house, it is necessary to come from an informal settlement and not a backyard, thereby proving their worthiness through suffering. By virtue of living in the relative comfort of a backyard shack, where municipal services would be nearby, coloureds showed themselves as not willing to sacrifice during their period of waiting. Hence, they did not deserve formal housing or, at least, they should not be prioritised.

This perspective was consistent with housing policy until such time when the backyard dwellers in Cape Town challenged government through protests and demanded that they be also included in housing allocation. In 2013, backyard dwellers in Delft, Cape town mobilised to demand housing for backyard dwellers who were predominantly coloured (Millstein, 2017). In response, the government has included backyard dwellers as beneficiaries of state housing. In 2020, after violent conflicts in November 2019 in East London, Rabia confirmed that the coloureds were asked to register again and they now received confirmation of their registration through text messages on their cell phones (Rabia, Fynbos, October 2020).

The coloured people realised that the informal settlement shack is an important space in order to acquire government recognition and to access housing and therefore demanded that the

backyard shack be recognised as such as well through policy. One coloured man living in a backyard shack argued:

The blacks used to say coloureds don't want to move from their mother's houses. Our parents also made shacks for us in the backyards because blacks get houses through squatting (Ray, East Bank, August 2019).

The statement made by the Ray is a clear acknowledgement of the fact that they were not being recognised because they remained in their parents' yards and because they did not become squatters in informal settlements as blacks did. The coloureds wanted recognition of their backyard shacks in government policy and they argued that they did not have to live in informal settlements for their need for shelter to be acknowledged. However, it seems that the construction of shacks in the backyards was intended, at least in part, to show that there was need for shelter for the coloureds too – as the erection of a backyard shack symbolises housing need.

6.9 Conclusion

This chapter outlined the issues that emerged from BCM leading to illegal occupation of state houses. These range from the weaknesses embedded in the administering of housing programmes, corruption and political interference. These weaknesses and the lack of proper guidelines in registration or allocation of houses, open up opportunities for illegal occupations. The long waiting period is a source of hopelessness which drives others to forcefully occupy houses. Failure by government to disrupt the Apartheid racial spatial planning and allow racial integration has also contributed to the current housing contestations between coloureds and blacks in East London. Contestations also emerge from poor administration and manipulation of the waiting lists, resulting in the young jumping the queue and benefiting before the elderly (who stayed on the plots for many years waiting for the houses to be built). Faced with hopelessness, some of the elderly moved into the houses illegally. Having presented the causes for illegal occupation emerging from state failures, the next chapter analyses the various claims made by illegal occupants to legitimise their actions.

CHAPTER 7: COMPETING RIGHTS BASED CLAIMS IN BUFFALO CITY MUNICIPALITY

7.1 Introduction

Using evidence from the field, this chapter focuses on human rights-based claims that emerged within the BCM. It addresses the questions - on what bases do those who illegally occupy houses do so, and what claims do they make to justify their illegal actions? There is a complex interconnection of competing claims used by the beneficiaries, some of which relate to historical access to urban land, housing, and general access to the city. The illegal occupants evoke diverse claims that often disregard the legal framework within which state housing is provided. They make moral claims and seek to legitimise the occupation of houses which do not belong to them. These claims are vivid in different statements the beneficiaries made, that were often emotively expressed.

I argue that the enactment of rights-based claims is one important way for poor urban populations, via their moral economy, to meet their everyday shelter needs. Although administration deficiencies and political interference condition illegal occupations (as discussed in chapter 6), embedded in human actions (involving informal and illegal housing occupations) are deep-seated moral claims that are derived from and find justification in historical and contemporary settings of socio-political and economic struggles, as well as in ideas of justice, fairness and human need.

7.2 Competing Right Claims

Based on a discourse of legality and the legal right to formal housing, the South African state makes a distinction between legal occupants (those owning and accessing state housing via the official waiting lists) and illegal occupants (those accessing housing without ownership illegally and thus outside any rightful legal claim). The rightful owners and occupiers qualified according to legal criterion outlined in the Housing Code, including in terms of age, income and other factors make them eligible for state housing. This is even though many of these owners may have acquired legal ownership and occupation through maladministration, nepotism and corruption involving the manipulation and abuse of official housing lists. Of course, ownership acquired in this way involves informal and sometimes illegal practices. But these owners (with occupation) may nevertheless make claims to houses on illegal grounds, sometimes based on need or fairness. Additionally, those occupying illegally without

ownership have their own claims and rights (beyond the legal, or extra-legal), including claims about maladministration and nepotism alongside moral and historical claims. Hence, an array of rights and claims exist amongst those who occupy state housing, and some of these are inconsistent with the state's legalistic notion of housing rights.

In this context, there are many challenges embedded in the South African state's housing delivery process. On the one hand, there are challenges internal to state institutions, as state officials and elected politicians act contrary to the delivery process as officially set out; for instance, through corrupt practices. On the other hand, and sometimes arising indirectly from the fraught practices of state officials and elected politicians, there are disruptions external to the state by way of illegal occupations. The various claims and rights emanating from the state as well as from legal and illegal occupants of state housing combine in complex ways resulting in both legal and illegal occupants of housing. Claims made by both legal and illegal occupants are made against a state which employs legal rights while engaging at times in illegal and informal practices.

RDP housing occupants in BCM make different arguments for occupation and thereby claim ownership of state houses. The Department of Human Settlements 'legally' provided houses as established and set out in the housing legal framework, the constitution and housing code. The Department expects ownership to take place through legal standards and processes and beneficiaries are expected to wait for due process to unfold via waiting lists before being allocated, procedurally, a particular housing unit for occupation. Apart from those who waited for the legal processes to conclude prior to ownership and occupation, and without any manipulation of waiting lists, occupants of BCM housing claimed ownership and occupied houses based on moral and historical claims around justice, equality, and fairness as well as the basic need for shelter as constitutionally-affirmed. For example, in the case of coloureds in East London, though they may have been advantaged under the racial classifications of Apartheid South Africa vis-à-vis blacks, they spoke about their marginalisation under post-Apartheid South African when it came to the housing delivery process. In providing houses as a corrective measure for past historical injustices, the South African state is faced with moral questions which are not necessarily reducible to legal principles.

Although certain moral values are embedded in legal documents around housing as guiding principles, the enactment of these principles when it comes to housing delivery may be out of tune with moral stances circulating within local communities, amongst both residents and local

officials. This is evident in BCM, where residents occupied houses based on what they think is fair and just, arising in turn from their own contingent understandings and experiences. Political representatives and any community leaders involved in local housing allocations also made moral decisions at times of what is, from their perspective, just and fair. In Fynbos for instance, the black ward councillor indicated that she would ensure that blacks benefit while she was in power locally. For her, correcting past inequalities meant ensuring first and foremost that those who suffered the most under Apartheid (i.e. blacks) were given priority in accessing state housing. This creates grounds for contestation between coloureds and blacks, with the former claiming that injustices are being perpetuated against them in attempts to redress a past injustice. Feeling marginalised under the new democratic dispensation, they occupied houses in Fynbos illegally even before some of the houses were complete.

Although the illegal occupants (without formal ownership) took over houses based on claims that are outside legal rights, they sought intervention against evictions using legal representations and they also appealed to the courts on a tactical basis for recourse. In Phakamisa, King William's Town, a non-profit organisation called Lawyers for Black People was instrumental in trying to defend these 'beneficiaries' whom the state deemed as illegal occupants. The company was formed in 2017, composed of black lawyers who defend the rights of poor people who are evicted from houses and from the pieces of land they would have occupied (Madikane, 2020). Typically, such legal representatives challenged the legal status of the eviction procedure to support the stay of those who occupied the houses, though eviction notices were often successful through the courts. This kind of response from the South African judiciary is reminiscent of how the courts responded to the evictions of slum dwellers during the 1980s under Apartheid.

Illegal occupants in East London and King William's Town always held out hope of some kind of legal protection from evictions, despite their illegal actions. This emerged from an understanding of their vulnerability as urban poor and that this vulnerability would be considered by the courts as the determining factor. Though evictions took place, a female pensioner in Phakamisa, who illegally occupied a house because she did not have alternative shelter, deeply appreciated the support she received from the lawyers (as well as the councillor) to remain in the house.

As we discuss more fully the character of the illegal occupations, it will be clearer that the local contestations around housing did not only take place between government and the occupants.

A complex array of intra-community conflicts also arose, considering the many competing claims and rights existing.

7.3 Inclusive Citizenship, Identity and Belonging: ‘I Also Want a House’

State housing contestations in South Africa are entrenched in racial, socio-economic, and political conundrums. The housing contestations reveal rights-related themes of inclusivity, citizenship, identity and belonging. As Millstein observes for Cape Town, “housing rights and policies have been mediated through and imbricated with racial identities, residential status and notions of belonging in the community” (Millstein, 2017: 253). Although rights talk, as well as questions of belonging and identity, were not articulated explicitly in most of the conversations during the interviews, there was an implied language of rights and rights-based practices (rights walk) that expressed various claims to housing.

Ashanda, a female respondent in her thirties, in Fynbos, East London stated quite simply that “I also want a house”, a phrase loaded with meaning. Embodied in her stance is clearly a sense of exclusion and a lack of belonging, a yearning for inclusion and emplacement in contemporary South Africa, literally a place she can call home. It is a place from which she has been denied and she believes her exclusion is neither deserved nor justified. She has been left out from realising a right to housing. In this short quote, ‘I’ speaks of one’s identity: ‘I’ as ‘a citizen’, ‘a member of the deserving community’, ‘a member of the deserving social group’, ‘a member of a deserving racial group’, ‘a member of the previously disadvantaged’, ‘a youth’ or ‘a resident of the area’.

The racial dimension, at least in relation to coloured and blacks, is exclusive to Fynbos and East Bank (East London) and not King Williams’ Town, but all other dimensions of contestations apply both in King William’s Town and East London. But the legacy of Apartheid in BCM, like elsewhere, had led to a deeply racialised post-Apartheid South Africa, such that realising rights to housing intertwines with issues of race, citizenship and belonging. Beyond questions of race (i.e. blacks who demanded social citizenship through housing, or coloured-black tensions), claims were couched in generational and historical undertones, with exclusions experienced on the basis of being young or old, or and being an outsider or stranger compared to longer-term residents. Perceptions about recent migrants into BCM as outsiders and foreigners who should not benefit from state houses were prevalent.

The word ‘also’ in the short quote from Ashanda also captures notions of exclusion in accessing a house. It means ‘in addition to those’ or ‘like others’ who benefit. In this sense, there is a yearning for inclusion via shelter, so as not to remain outside a place of belonging. The word ‘want’ in the caption is critical as well, as it is an expression of a demand or an entitlement, which is different from an expression of need. Fleshing out the quotation further while incorporating the identity of the person interviewed would read for example: ‘I, a coloured person like others demand a house’ or ‘I am, as a poor person like others, entitled to a house’.

BCM contestations over housing have not been marked by tensions between foreign nationals (non-South African citizens). Such contestations have been observed in other cities where, for instance, claims are made that officials corruptly sell state houses to non-South African citizens. Xenophobic attacks have been attributed to these and other factors, as local people claim that foreigners take houses, which are rightfully theirs (HSRC, 2008). However, beyond national eligibility in accessing housing rights, Patel (2016:2738) observes additional localised criteria which demand that residents use identity and social relationships for access to housing, which Patel argues may sow seeds of conflict, whether ethnic, xenophobic, or political. This happens as local formal or sometimes informal structures and relationships are used to allocate houses based on individual connections, racial identity, and political affiliation. In Phakamisa, there were concerns among residents about a house that was sold to a foreign national who converted it into a grocery shop. The case has been published in an article in a local newspaper called *I’solezwe lesiXhosa*, entitled “*itengiselwe igrigamba indlu yam*”. *Grigamba* is a derogatory term to refer to a black foreigner and refers to a dirty little animal, a dung-beetle, and the apparently indistinguishable ugly “noises” that the foreigners make when they speak – their nonsensical *grigamba* language (Meleko, 2013:12). The woman from Phakamisa interviewed for the newspaper article described how her house was occupied by a foreigner:

I have been waiting for a house for a long time on this site where I built a shack. When I had to sign in, I was told that I was not on the list. A man from Somalia told me that he had paid money to the working officers and that my house was sold to a foreigner (*I’solezwe lesiXhosa*, 07 December, 2017).

According to the members of the community, the case was resolved when the foreign national was forced to leave. The large container which he used for the shop was still in place at the time of the fieldwork.

The idea of citizenship is strongly evoked in cases like these where houses are sold to non-South Africans, and this becomes a source of conflict between South Africans and the foreign nationals. But citizenship is also evoked by different racial groups to affirm inclusivity in a country where the history of racial segregation has shaped the cities. This claim to citizenship may result in forcefully occupying state houses, in the following sense. Access to housing affirms one's citizenship rights, and those who forcefully occupy houses make their claim for inclusivity based on a 'right' of occupation which, in their own view, is unrelated to legal rights. If 'I also want a house' then I can occupy one – and my informal actions make moral sense because they counter the vulnerability to which I am exposed due to racial inequities in housing access.

7.4 Desert and Entitlement to State Housing

This section deals with the moral claims of desert (a state of deserving) and entitlement: "Desert is a normative concept that is used in day to day life which is based on the belief that being treated as one deserves to be treated is a matter of justice, fairness and rightness" (Internet Encyclopaedia of Philosophy, 2015). Desert is a philosophical term used conveniently to describe the state of deserving. Legal rights have given rise to legal entitlements which emanate from the obligation of the state to act, and therefore residents demand action from the state based on what they are entitled to legally, in this case, access to shelter. Those so entitled all who fall within the beneficiary selection criteria stipulated in housing regulations, in terms of age, income, citizenship, marital status and number of dependents. Desert claims, however, do not derive from legal rights or formal institutional arrangements and practices, but from moral views of justice where good or evil is attributed to particular courses of action and specific outcomes (Stanford Encyclopaedia of Philosophy, 2015).

Vuyokazi an older resident in Fynbos spoke implicitly about the notion of both desert and entitlement in saying that through "the struggles ... for [freedom] ... we didn't get the freedom. The small children are getting the benefit of our struggle." Desert and entitlement, from the perspective of Vuyokazi, are derived (perhaps exclusively) from participation in the struggles against Apartheid which led to political and economic freedoms and the progressive realisation of housing rights. Access to state housing is perceived as a reward for the sacrifices made during the struggle, and hence it is a moral claim based on desert and entitlement linked to the past and the emergence of the present out of the past. It is a claim to the recognition of 'freedom fighters', who brought the Apartheid system to an end through organised resistance and mass

demonstrations (Kurtz, 2010). The fact of simply being of that generation (from the 1980s or earlier) was sufficient grounds for housing entitlements. To base claims on participation in past or present struggles, though appearing as morally sensible, can create problems around who qualifies as a beneficiary. This is because the nature of struggles during and after Apartheid are different. The former sought to undercut a segregation-based regime and the latter (current) period is about affirming socio-economic rights. In any case, the re-imagining of rights tactically positions the urban poor in a place where they can access housing outside the legal framework.

The Parliament Liaison Officer described how, during Apartheid, they organised Residents Associations (RA) and street committees to fight for access to infrastructural services, and against increasing rentals and the hostel systems that barred families from living together in the urban areas. At that time, he was the chairperson of Duncan Village's Branch Executive Committee in East London. The PLO described the battles of resistance to the Apartheid system:

We were fighting these unjust laws at the time, issues of rent, fighting Bantu education and bad condition of schools and everything that was affecting our communities. The major strikes in which we were involved were consumer boycotts. We said we must boycott their shops, so we stopped buying from the white communities. That caused business people to approach ANC in 1985 because they felt the pinch. The other one was the bus boycott of 1983. The buses belonged to the Ciskei regime. We were fighting those things as Residents Associations. The political organisations were banned so we were playing the role in the absence of their existence. The umbrella organisation that was coordinating us was the United Democratic Front (UDF). All of us as Residents Associations, worker organisations, SAWU at the time, the student movement, women's organisations and the progressive churches were fighting under the banner of UDF (PLO, King William's Town, March, 2020).

Participating in such struggles, as described by the PLO, meant that benefits which came with freedom would be enjoyed by all who were involved. The democratic dispensation would bring about a right of access to housing, a key site of struggle under Apartheid. A life of ongoing marginalisation in post-Apartheid South Africa, and the undertaking of renewed struggles for socio-economic rights since 1994, also speak to claims about a state of deserving, as a condition of sacrifice which requires compensation via access to shelter. Even the younger generation can draw upon such claims. As a result, illegal occupation of RDP housing has emerged due to moral claims about who is rightly deserving, and who is not.

When movement into East London took place in the years just prior to the end of Apartheid, shacks were built on urban land, though it is not clear if there was any formal process of allocation. For instance, Nomonde, a community leader in Fynbos, described how her mother came to East London from Queenstown in search of work in the late 1980s and found employment as a domestic worker. She said when they arrived in the area, they had to ask for permission to build shacks by writing a letter to the Buffalo City Executive Committee that was allocating pieces of land to build shacks. However, other residents in Fynbos indicated that anybody could move from anywhere to East London to build a shack in the bush.

After occupying the land and erecting shacks during the late 1980s, the new settlers after 1994 went through phases of protests demanding toilets, electricity, and water from government. When the services were eventually provided – in the late 1990s and early 2000s – in their informal settlements, the next phase was to demand formal houses to be built for them. Nomonde describes the struggles against the state they went through before electricity, water and toilets were provided in informal settlements and how thereafter they began to fight for houses. She indicated at length:

So, we finally had to fight. We had to negotiate, burn tyres and the municipality gave us toilets and water; there were 10 toilets and taps but it was fine for us because we didn't have anything before. And it was a little bit nearer to us. Right from there we wanted our houses where we are. So, we fought and fought and fought for those houses; they said we are not on the map, so they don't recognize us. But it felt strange when they said so. We applied for taps and toilets; they are here but they said they don't know us. The councillor came, and he said we are not on the map, so it was strange. We fought for that also, why are we not on the map. After we fought, we were on the map. So, after that, we fought for our recognition. We were not recognised but they know us when we vote. They know us; there is a [voting] station for us but when we must find our deliveries [services] we have to put ourselves out. We have to fight and *toyi-toyi* and negotiate and we did everything, and everything was fine after that. We fought for the houses; there we fought and we *toyi-toyi* and we burned tyres. There was shooting because we were *toyi-toying* for our houses. But after that shooting, they said come guys, come register, we got a home. They called all living in informal settlements to come register so we all were there to register. My mother passed away already 1996. So, we registered after some years, ok it was 1995, it was approved in 3 years. So finally, they came with a list, an approved list. There were only 211 and the rest were left behind in the squatter camp. We have been fighting for all these years. We have been fighting since 1993 until now. It is twenty-three years this year since we began to fight for these houses and I still do not live in a house (Nomonde, Fynbos, August, 2019).

Nomonde lived in the *Bangalas* with the rest of the black community whose houses had been occupied. Nomonde's aggrieved story describes the struggles for access to shelter and other basic services which began during the Apartheid era and continued into the new democratic dispensation, even to this day. She exhibits a certain recognition and consciousness of unrealised deserts that characterise poor black urban South Africans and which give birth to common struggles for survival in post-Apartheid South Africa. The 'fight', as she calls it, is a fight for survival and is a crucial part of the processes towards accessing housing rights. After fighting once, it is necessary to fight again and again until the right of housing becomes a reality.

Although the progressive realisation of housing rights is enshrined in the South African constitution, the residents in the two research sites are fully aware that these rights may only materialise after going through bitter struggles. These struggles entail not only a fight for basic needs and services, as they are a fight for their recognition as people deserving of a place in the city, despite living currently in informal settlements in squalid conditions. They are struggles for visibility and legibility, in the eyes of the state, of those who are politically and socially excluded by the state. Even if this means being allocated a state house indistinguishable from all other houses, at least the resident would fall within the realm of the state's universalised template of urban planning. Nomonde's quest to be identified on the 'map', and the sense of accomplishment in being so mapped, speaks to this. The informal settlements, as a maze of disorder and illegibility from the perspective of the state, fall outside the state's scope of vision and hence remain unrecognisable, unworthy of housing provision.

In this context, every right or battle, no matter how unsuccessful in its outcome, is part of a process of becoming more deserving in accessing state housing, or at least a sense of deserving on the part of those battling. At the same time, this also becomes a source of conflict as everyone feels deserving despite when and how the battle was fought. In Fynbos, coloured respondents indicated:

Our people [coloured people] were also in the struggle; they were also fighting Apartheid but now they turn around and do this to us. It's like reverse Apartheid (Magrette, Fynbos, August 2019).

This was the last ground available in our area. We handed in a petition and burnt tyres to say we also demanded houses as coloured people. We get overlooked as coloured. It is unfair treatment (Bianca, Fynbos, August 2019).

In struggles against Apartheid, and in post-1994 struggles under the democratic dispensation, coloureds in Fynbos also heighten their contributions. Being part of the struggle (or struggles) legitimises a moral claim for a just reward to those who sacrificed for post-1994 freedom and those who continue to struggle for a place in the city.

However, whereas Nomonde's expectations fall within the realm of legality and formality, whereby the state has to put them on the map and in the future allocate houses formally, coloureds did not perceive formal procedures as the mechanism for granting them occupation of houses – and this was evident in their stance to forcefully occupy houses. Nomonde and other blacks in Fynbos appear to have some confidence in state housing delivery processes despite state limitations due to poor administration and corruption. Blacks in Fynbos are indeed beneficiaries of the housing allocation system because they constitute most beneficiaries on the list, and therefore believe that, by following the waiting list, they will ultimately access state houses. They make housing struggles black struggles, and therefore claim desert on a racial basis, on the understanding that the post-Apartheid government must give priority to blacks (who were most severely affected by past segregation). They appeal to constituted rights and formal delivery processes for recourse, considering the history of racial segregation. In Phakamisa, the housing struggles do not have a racial dimension because it is a black community, and the residents make legal or moral claims (or both) depending on how they view the level of probability in accessing a house. Phakamisa reveals internal contradictions embedded in a democratic human rights regime.

This is also reflected in the experiences of an area called Egoli. A black community leader (Noma) in this area (close to East Bank) described the struggles they went through to access state houses, to have them rectified for defects. This was after their area was declared a disaster area by government due to the poorly constructed houses that posed a huge risk on the lives of the people:

We forced Human Settlements to approve 382 [houses] for rectification; they were all supposed to be fixed. Of the whole project of 382, there was only 252 rectified. People are still fighting for their houses to be rebuilt. The provincial department got the money and they ate the money. Where did the R14 million go which was meant to rebuild 382 houses? There are no gutters and ceilings. The sewage is not right. Windows fall, doors fall (Noma, East Bank, August 2019)

Involvement in struggles translate into people claiming the intended benefits of these struggles, whether pre-1994 or post-1994.

Moral claims for housing founded on involvement in ‘the struggle’ (or struggles) is part of broader claims based on past and present sacrifices. Admittedly, it is the struggle for liberation which normally qualifies as a sacrifice and is deserving of compensation and reward. In the case of South Africa, this is relevant to all anti-Apartheid activists, but it has particular reference to military veterans of the anti-Apartheid struggle – such that the South African state has prioritised military veterans in state housing provision (Heinecken and Bwalya, 2013). The significance of military veterans is heightened in the case of Zimbabwe, where war veterans (or former guerrillas) have received a variety of benefits for their specific contribution to the war of liberation (Chitiyo, 2000). But, even for Zimbabwe, all those who struggled against Rhodesian colonialism are now referred to officially as veterans, though not war veterans. Extending this to South Africa, all those who struggled against Apartheid conceptualise themselves as veterans of the struggle, though not recognised as officially as such by the state. Hence, the desert and entitlement, or the expected moral obligation on the part of the state to provide for sacrifices for freedom.

Though the ‘struggle days’ are said to be over (ending in 1994), and sacrifices were supposedly made only up until 1994, residents today nevertheless argue that contemporary struggles are no less important and are worthy of recognition as acts of deserving when it comes to rights to housing. They are now ‘veterans’ of post-Apartheid struggles, no matter their age.

7.5 The ‘Illegal’ Youth vs the Elderly: “The Youth of 1994 are Taking our Houses”

The term ‘illegal’ occupant relates to those housing occupants who have not been allocated housing by the Department of Human Settlements and who are faced with evictions by government, including after the passing of court judgements. In East London, these were mainly coloureds. In Phakamisa, the illegal occupants were also faced with evictions if they were not officially allocated houses by the Department of Human Settlements. However, in Phakamisa, the illegal occupants were predominantly members of the younger generation, taking older people’s houses. Certainly, in Phakamisa, not all young people broke in and forcefully occupied houses, as others were legally allocated houses by the Department and still others were on the waiting list. According to the ward councillor, even those youthful occupants who were officially allocated housing were not the rightful occupants, in the sense that they unjustly took over houses that were meant for older people who lived on the land for many years before the youth came to apply for houses. It is therefore important to make sense of the term ‘illegal’ when used by the participants, as the term was used in different contexts

and was subject to contestation. Officially, the state has a notion of illegality pertaining to official housing delivery processes. All illegal occupants of houses in the BCM, could not claim legal rights of occupation as their actions (the modalities of occupation) were illegal.

By virtue of being involved in the anti-Apartheid struggle, or post-Apartheid struggles, many older residents believed they rightfully deserved to benefit as a matter of priority and therefore should get houses first. Those who were not part of, or central to, struggle(s) were predominantly the youth born after 1994. Amongst the older generation, the year 1994 became a signifier, marker and identifier of those who deserved or was entitled to benefit. Hence, there was a common sentiment about the born-frees (those born after 1994) as taking houses illegally, even if allocated officially by the state. This created major contestations around the right of access to state housing on the basis of age or generation, couched with claims of desert. Simply put, the youth born after 1994 were deemed illegal occupants by the older generation by virtue of being young at the time when political struggles were going on (i.e. they had not come of age for making any claims to housing). The official waiting lists would, if not subject to any maladministration or corruption, ensure that the youth would only benefit after the older generation benefited – by virtue of the fact that their names would be further down the list. However, this was complicated by one key factor. Besides members of the older generation who participated in the struggles and are still alive, yet are without formal housing, there are youth who were not part of the struggles whose parents had participated in the struggles and had died. Prioritising between an orphan and an elderly resident became a nagging issue.

A lack of clear policy guidelines on who was to be prioritised meant allocation was implemented on a discretionary basis among all the poor and qualifying beneficiaries. A decision could be made for instance on a moral basis by councillors. In Phakamisa, as intimated already, the councillor insisted on supporting the older generation who occupied the land long before any houses were built. Contrary to this, the SANCO chairperson in Phakamisa described how SANCO demanded that a particular house be given to a youth whose parents died while on the waiting list (as everybody knew that the house belonged to them). If allocation occurred by way of SANCO's proposal, youths would benefit from a house that was meant for deceased parents, such that in any case where the parent or parents died, the child inherits the house for occupation purposes. This was an attempt not to allow the claim to a house to lapse as a result of death, as houses not only act as places of shelter but as fixed assets that could be passed on from generation to generation.

Up until 2018, the Eastern Cape Department of Human Settlements had no policy directive that gave priority to specific group of beneficiaries, whether orphans or the elderly, in its allocation procedures. The Department developed the *Eastern Cape Beneficiary Allocation Policy* in 2018 to set out the criteria for allocation. The Beneficiary Allocation Policy was introduced belatedly in 2018 as a response to the outbreak of illegal occupations of state housing in the BCM, in King William's Town and East London. In 2020, the provincial Department (before the implementation of the Beneficiary Allocation Policy) further drafted a *Policy on Reprioritisation of the Destitute Persons on Allocating of Housing Opportunities*, that sought to focus on the destitute in giving priority in housing provision. According to the Eastern Cape Department of Human Settlements, the policy objective is "to provide a model that will reprioritise provision of integrated and sustainable human settlements for the destitute in the Eastern Cape" (Eastern Cape Department of Human Settlements, 2020). Included in the list of the destitute are child headed households and the elderly in addition to those who lose their homes due to disasters or foreclosure. This may not stop housing struggles in urban communities because the policy excludes the bulk of the people who were once included as beneficiaries. Faced with structural challenges of poverty and inequality, the policy is thus unlikely to stop housing contestations. Corruption, cronyism, cross-generational hopelessness and acute competition for scarce resources will present and remain a challenge to policy regarding the reprioritisation of beneficiaries. The question of who is more deserving between the young and old is a moral (and political) question with which the state has to grapple.

Christopher in Fynbos stated: "By right they must give the houses of the deceased to the children but that never happens" (Christopher, Fynbos, August, 2019). The right that Christopher refers to is not a legal right as there was no legal framework in place (which he was aware of) giving preference to orphans in the BCM at the time illegal occupations began as early as 2016. Albeit not explicitly stated, 'by right' is made with reference to what he thinks is morally right, that is, to prioritise the children in need of shelter who are left by parents due to death. It may be morally right to consider the plight of the child whose parents have lost an opportunity to benefit from state housing due to death. At the same time, this occurs by virtue of the orphan 'jumping the que' and questions arise as whether it is fair for the other young people who would have to wait for 20 years if ever they will get their houses. As well, ownership of the house becomes further complicated in a case where the remaining children are more than one.

In Phakamisa, a number of cases of illegal occupation were undertaken by the youths who forcefully moved into houses that belonged to older people according to historical land ownership claims. There were also other cases where elderly people of over seventy years illegally occupied houses, fearing that they would miss an opportunity to own houses in their life time – and not only because the youths were busy occupying state houses illegally. *SABC News* reported about an 89-year-old woman who illegally occupied a house in Phakamisa after she was told three more people were allocated to a house that was under her name. She lost hope of getting the house that was in her name (and the name of three others) and decided to illegally occupy another one (not allocated to her) and vowed not to move. The woman described her pain of having to vote in elections all the time yet, when the time comes for houses to be handed over, she is forgotten (*SABC News*, 25 June, 2019). Thus, although allegations of illegal occupation of houses were made mostly against the youth in Phakamisa, whom the elderly said would overpower them if they attempted to challenge them, this 89-year-old woman successfully occupied a house illegally and was prepared to resist attempts to evict her. She makes her claim based on a social contract between her as a voter and the government, whose obligation is to provide shelter in a democratic order. Failure by government to do so leads her to illegally occupy a house of her choice.

For the elderly in Phakamisa, there was a common expression, namely, “I would like to die in my own house”. Dying without a house meant missing an opportunity of a life-time to own a house of your own, with nothing to bequeath to children or grandchildren. But their attempts at accessing housing were challenged by the youth. There was a story widely circulating among the residents in Phakamisa of an elderly woman who was physically assaulted by a youth over occupation of a house and the councillor described this as an unfortunate occurrence. One woman described the incident: “There is an old woman (granny) [name withheld] who was moved by the young man. His wife grabbed the granny by her legs and beat this granny. She then went to the Police station”.

One elderly couple in Phakamisa described how they were living in fear for their lives because they were living in the same yard with “their enemies” who occupied the house in front of their shack where they had been living for many years while waiting for the house which, upon completion, was occupied by a younger person. The occupant of the house fenced around the house, including their shack in which the family stayed, and this terrified them. They described

how the occupant in the RDP house could be heard often shouting for them to leave but they had nowhere to go. They said they lived in fear all the time.

Describing the mood when evictions occurred in Phakamisa, King William's Town, the journalist from the *Daily Dispatch* indicated:

There is always tension in these illegal house invasion stories. In most cases, the communities are always divided between those who claim to be the rightful owners and those who forcefully take the homes without following the legal processes. There were elderly citizens, some over 70-years old who had been waiting for a house for many decades, only to have their homes taken by youths who also claim that they have a right to have houses. The old people are always sad, some cry; there was confusion and hopelessness painted on their faces when this happened. However, hope was restored to the rightful owners during the evictions. There were also threats and intimidation from those who were evicted. The evictions were however sparrred from any violent action taking place from the community members (Jacob, Phakamisa, August 2019).

The youth's actions are a response to their own sense of exclusion from the benefits of South African democracy, and age or struggle-history is irrelevant to them when it comes to rights to housing. They have a legal claim to housing ascribed to all South Africans. However, knowing the frustrating experiences of waithood amongst the older generation, waiting for a life time on the official list would breed further hopelessness, impatience and despair. In East Bank, whereas some youths thought that the government still had significant funds to continue to build houses, others exhibited fears of a possible end to the supply of state houses. The latter were more inclined to illegally occupy houses to secure houses while government can still supply.

A middle-aged male resident in East Bank blamed the councillor for being corrupt and giving houses to young people who (according to him) did not deserve to own houses. He illegally occupied a house which he claimed to occupy for his elderly father, who had been excluded from getting a house due to corruption. He stated at length:

The owners [of the house he occupied], we don't know what happened to them. Some owners are around here. ... We can't get these houses, but small children get these houses. Many of these people that are renting these houses out are small children that do not even qualify for these houses. They are too young. Now people that are really in need of a house are people that are not working and people that have been on the waiting list for a long time. Now, a minor born in 1993 or 1997 qualifies for a house when this minor is still staying with his or her parent. [Minor is used

randomly to refer to the younger generation born in the 1990s; they are not minor in the legal sense of the South African age of majority of 16 years]. What is he or she going to do in that house? Because they are so used to get everything from their parents? So now he gets a house for nothing and he doesn't know what to do with the house now she is renting it out, so which means she doesn't deserve the house. What about the people that have been staying without a house, you understand? Staying in flats renting and things like that, I have an example of my father. That's why I did this [occupied a house]; I am doing it on behalf of my father. My father is 70 years old, he is a senior citizen. Automatically it means he is getting SASSA pension [old age grant] so automatically he qualifies for a house. There are no stories about him, if he is a pensioner he qualifies for a house. She [councillor] was giving houses to young children and to people from afar, renting the houses, selling the houses. She forgot that she didn't want my father to get a house; she was coming up with stories like, your father has a house. So, I asked her, "you are a councillor, you are working for BCM, you have all the authority to go into the housing list, go to BCM and find out where is my father's name and surname and his ID number; check it out, check. Where do you find he has a house and then you come back because now you come with stories and saying my father has a house and he had a house before but now he never had a house before. When we got here in 1994 we were renting all this time until we got a plot here where my father came and built his shack". [Saying to the interviewer]: Just come and stand here. You see that shack there that is where my father lives, so I did all this because of that man because that house where he lives in, he has been in that place since 2007 up to now. From 2007 till now how many years has he been staying in that shack there? People are getting houses around him, no one worries about him; he is an old man. He is sick (Lewis, East Bank, 2019).

The key issue highlighted by Lewis is the question of who deserves to benefit between the young and old generation. By virtue of having waited for so – in fact – too long, Lewis is of the firm view that older people deserve to benefit before the youth. He describes the youth as not only undeserving, but also irresponsible when looking after the houses, even going so far as to rent them out (a sign of unworthiness). At 42 years of age, he qualified for a house but decided to occupy a house for the sake of his father, whom he strongly believes is unjustly excluded from benefiting from state housing. His stance speaks to the complexity of the contestations around ownership without occupation, including generational and historical dimensions and the administrative failures of the state.

The existence of corruption around housing allocation and provision adds fuel to the fire, configuring an informal environment within which illegal occupants engage in illegal occupation and find justifications in doing so. The justification for their illegal actions entails appealing to the vulnerability and sacrifices of people they think deserve better care from state

and society. The moral question is on how the state and society must treat the vulnerable members of the community, the poor, who compose of the young and old.

7.6 Disabled Residents

In Fynbos, a family with a disabled member illegally occupied a house. The family claimed that they had done so to ensure they accessed proper shelter for their disabled member. In a video accessed by the researcher from the interviewee, taken during the evictions in Fynbos, the female family members shout insults, resist police evictions and call on police to shoot their disabled family member if they want, because they were not moving from the houses. A woman is seen and heard in the video saying:

They are not taking this house. We are going to see who is going to come throw him out this 30-year-old child [referring to the disabled man sitting on the door]. Let's show them, everyone is inside now. We are going to see who is going to laugh last. You are quick to shoot. They are people being shot [sound of what appears to be rubber bullets is heard in the background]. We did that. We are not afraid. We want you to shoot us. Shoot him dead, don't let him live (Video taken in Fynbos, 2019).

Putting forward their disabled family member is an appeal to conscience and a call for moral consideration of people that are not only poor but are disabled and need appropriate shelter. Their actions do not hinge on what is legally right even if the state employs legal rights against them. Their claims are based on what they think is morally justifiable, that is, to take it upon themselves to provide shelter to the disabled. Hence, they expressed their willingness to physically show police and state officials the sordid condition of their disabled family member, challenging the police to shoot him, which they knew would not happen. This is not an appeal to the state through legal rights, but by way of any moral values which remain embodied in the foot-soldiers of the state.

Illegal occupants, legal occupants and others (including those still not occupying state housing) put forward an array of claims to privilege their stories of those of youth, including having participated in past and current struggles, long-term sacrifices and extended periods of waithood. This is despite the youth being legally entitled to access state houses if they meet the beneficiary criteria. In return, youth propagated their own rightful claims to housing, whether accessed via the waiting list or through illegal occupations. In addition, others felt they deserved state housing because of their vulnerabilities, notably as elderly or disabled persons

whose futures (or the future of their children) would otherwise be bleak. In this way, residents draw upon the past, the present and the future in articulating their claims to housing.

7.7 Moral Justice Claims: “It is Unfair”

The narrative of unfair treatment in accessing housing runs throughout most of the arguments of residents, from illegal occupants to formal housing beneficiaries whose houses had been illegally occupied. Those in Fynbos carry racial undertones. Coloureds in East London illegally occupied houses because of what they described as unfair treatment from both national and local governments (including councillors), as blacks are favoured at their expense. Claims of lack of fairness (based on moral justice) are also made with regards to potential beneficiaries who are coming from places outside Fynbos/East Bank or those from outside the town of East London entirely (migrants). Those who felt unfairly treated often illegally occupied houses.

In this regard, in relation to coloureds occupying houses in East London, *Ground Up* reported about conflicts over occupation of houses, including evictions and the torching of a number of state houses. The basis of the conflict was the view that coloureds were unfairly deprived of access to state housing. Interviewed by *Ground Up*, one evictee indicated:

This is unfair for coloured people because we were also born and grew up here; we don't have homes like the people that are given these houses. This is a problem of housing allocation in this city. It favours a particular group ... This is supposed to be our government and when it is allocating houses, we need to be treated fair and equal (*Ground Up*, 15 November, 2019).

In this current research, coloured residents in East London repeatedly highlighted moral justice claims of unfairness based on racial grounds, as indicated in the following quotations:

We have been treated unfairly; we've been treated like animals like dogs without children. Yes, that's how we feel, and I feel it's unfair and unlawful. They are treating us so bad, and they don't follow the constitution, so why is the constitution of South Africa there in the first place – that's my question. This is so unfair; this is heart breaking, this is unfair. I was born in a shack, I was raised in the shack. I must grow my children in shacks, now I must raise my grandchild also in a shack, no it's unfair. (Emilly, Fynbos, August 2019).

It's unfair that neither me nor my brother got houses. My mother has also stayed here for very long. We have been staying here for many years but not one of us got a house, whereas in certain cases you will find 3 or 4 people from the same house getting houses (Alice, East Bank, 2019).

The only ones that got houses here [besides blacks] were 11 coloureds; that's why it was so unfair. Out of 500 houses, only 11 families got houses which didn't make sense you see, and there are people there in Vergenoeg who have been signing for 25 years even with their ERF numbers but got nothing (Aldora, East Bank, August 2019).

In addition to these moral claims based on racial injustice, as the last quotation implies, coloured residents also spoke about outsiders who had only entered East London comparatively recently, yet were accessing housing legally. Though, in this instance, the outsiders were also black, claims of injustice regarding the presence of outsiders and strangers also occurred amongst black residents. Two coloured residents argued:

We were in such a corner. We felt it was unfair towards us as a coloured community you see. What made things so difficult is that Vergenoeg is mostly a coloured area and East Bank is an extension of Vergenoeg, so people felt it is unfair. Why must people come from Queenstown, Transkei, the surrounding rural areas to live here [and access housing], but Vergenoeg has got its own backyards – there are people that have been signing for 25 years with blue cards for houses, they have been staying in backyards in shacks and others are renting inside Vergenoeg. These houses have been built for everyone (Emilly, East Bank, August 2019).

Ok, so what happens now: she [the councillor] took those people and other black people and she made this a racial thing because on that beneficiary list there's about two or three coloureds and the rest are black. And she didn't go according to the plan and the needs of the people, and this housing project is supposed to be for backyard shacks. She got a beneficiary list made out for those people only [blacks] and we as the coloureds think it's unfair towards us. I've been staying in a backyard shack for more than 20 years. I was born in a back yard, and I ended up staying in a back-yard shack. My daughters gave birth last year September. I must now raise my grandchildren in a backyard shack. Which is unfair I've got a blue card since 2008, I've got a blue card for 2011 but I'm not on the beneficiary list. People younger than me are on the beneficiary list. People that are coming from the rural areas and Mooi Plaas and so on, they are on the beneficiary list. This means she [the councillor] is doing this as a racial issue. We would have understood if it was 50/50 no doubt; and we would have expected it to be fair but, at the end of the day, you can't see us in our area benefitting from these state houses: do you understand my point? (Ashanda, Fynbos, August 2019).

In their own view, the overall treatment of coloureds, which is exclusionary in nature on grounds of race, is not only unconstitutional but unfair, hence they decided to occupy houses illegally and resisted when eviction processes arose. The constitution of South Africa contains values of equality. In Chapter 9 (3) of the bill of rights states:

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Constitutionally, the state must uphold values of equality without discrimination. Constitutionally, and in terms of their own moral conception of fairness, coloureds called for a 50/50 percent allocation of state houses between coloureds and blacks and considered anything less to be unfair and discriminatory: “We are in the move of standing our ground. Whatever happen must happen if it comes to push, it must be 50/50” (Gareth, Fynbos, August 2019). While their proposal may or may not be consistent with any valid interpretation of equal rights as set out in the constitution, it largely arises from a claim based on moral justice, or at least moral justice as conceived by them.

Further, according to them, the areas of Fynbos and East Bank belonged historically to the coloured population, and not to blacks – and certainly not to black migrants who came from rural areas and far towns. Ironically, this historical-justice claim of the place of coloureds is rooted in the injustice of the urban racial geography of Apartheid South Africa, as Fynbos was not a place for blacks under Apartheid. The right of access to housing in post-Apartheid society, between different racial groups that were subject to spatial separation within a racially-constructed hierarchy of humanity during Apartheid, brings about complex processes of negotiation and contestation around housing within which the state becomes implicated. This entails underlying issues of who belongs and where, as well as conflicting rights to urban placement, along racial fault lines which remain unaddressed. Residents have continued to self-identify as per Apartheid categories and have not gone beyond the historical construction of racial communities. The lack of a more focused housing policy with deliberate programmes to address unequal access to housing in terms of race hinders progress towards racial integration.

Coloureds demand fair allocation on a 50/50 percent base, as a form of compromise given their historical attachment and belonging to Fynbos. One coloured respondent indicated that government had proposed a 20% allocation of houses to coloured backyard dwellers but even this was not followed through on. At the same, the claims by coloureds are challenged by the majority black population whose marginalisation under Apartheid was more intense: any moral justice claims for housing, at least along racial grounds, would entail their unquestionable prioritisation.

In 2017, the Buffalo City Municipality had 747,000 black residents out of a total population of 859,000 (representing 86.9% of the population), while there were 49,000 (5.7%) coloured residents (BCM, IDP Review, 2019/20). In terms of housing at the national level, in 2018, over 5 million blacks lived in informal settlements (11.4% of the entire black population) and 276,348 coloureds lived in backyard shacks (5.7% of the coloured population (Africa Check, 2018). While I do not have recent statistics for housing by race for BCM, there were about 15,000 free-standing shacks in informal settlements (mainly blacks) and 3,400 shacks (for coloureds primarily) in the backyards of municipal houses by the year 2000 (Kienast, 2000). In purely statistical terms regarding size of populations, providing houses on a 50/50 coloured/black basis would not be fair, particularly given that significantly more blacks than coloureds still need access to state housing. However, on both sides of the equation, (competing) moral and historical claims condition arguments for and against access to state housing on racial grounds.

Racialised claims occur against the background of the transitioning from a racialised past into the democratic dispensation. The post-Apartheid government wanted to locate its policies within the idea of a racially inclusive community. But, the government underestimated the need to deliberate on racialised access to housing with regard to all the previously-deprived racial groups. Wittingly or unwittingly, housing delivery programmes show that the state took a blind eye on race or, at worst, became racially biased in favour of the majority black population.

Claims for unfairness dominated among coloureds who illegally occupied houses in East London. Blacks whose houses were taken by these illegal occupations had lived in informal settlements for many years while waiting for the house to be built. They had been deprived of occupying houses they did not only fight for (through past struggles) but to which they were legally entitled. From their perspective, the actions of coloured occupiers did not pass the test of fairness. A black respondent explained:

I think it's unfair. Even those people, the beneficiaries of those houses, they have waited a long time for those houses. Now their wait is just prolonged, whereas they should just have an honest conversation with their councillor and ask her 'so now what about us, what about the rest of us' (Magrette, Fynbos, 2019)

Moral justice claims also extended to calls by those still deprived of housing for the ongoing supply of state housing by the state, as it would be only fair for all those in need of housing to benefit like others who had already benefited. It would be unfair on the part of the state if some

had benefited from state housing while others were now faced with a possibility of not getting a house due to resource constraints or lack of availability of urban land. Most of the residents called for continued state supply of houses until such time as all realised their housing rights, despite the acknowledgement by some that the state will find it difficult to continue to supply. In the meantime, housing protests (including illegal occupations) and corrupt housing delivery practices will continue, as demands and pressures for decent shelter continue unabated.

In this context, residents were not familiar with state budget allocations state housing provision and, insofar as the state continues to promise housing for all, it creates unending expectations. The budget for Human Settlements nationally, as indicated earlier, is being reduced and the government is finding it more and more difficult to supply housing stock for deserving beneficiaries. These funding constraints not only condition the sheer quantity of housing units which can be delivered, as they also feed into the character of housing delivery in terms of decisions about who becomes prioritised. This, in turn, raises questions about what is fair in the face of funding constraints, thereby perhaps deepening moral claims about unfairness on the part of certain residents.

The Parliamentary Liaison Officer for the Eastern Cape Department of Human Settlements described how government must make tough choices within their limited resources in the face of unlimited need:

The money is allocated nationally and for this financial year we have got X amount of money. That has got nothing to do with individual priorities for shelter;...it's about how much government has at its disposal to spend. There is demand on the one hand, ... but government must be able to say 'this is what we have', then prioritise (PLO, King William's Town, March 2020).

Reprioritising beneficiaries requires specifying further criteria that then delineates more specifically who can benefit among those who qualify within the general qualifying criteria. By implication, this implies allowing the 'most vulnerable' to jump the queue, possibly leading others on the waiting list to never receive a house. In other words, those who qualify in broad terms may not benefit in the end. By doing so, the process automatically excludes those who were formerly included as definite beneficiaries. The most vulnerable include child-headed households, the elderly and military veterans. Child-headed households are defined as minors or children with deceased parents while the elderly incorporate women over 60 years and men over 65 years (Eastern Cape Beneficiary Allocation Policy, 2018). It has not been easy for the

Department to identify military veterans as the definition tends to incorporate all those who have worked for the South African Defence Force (Portfolio Committee on Human Settlements, 2019). Military veterans more specifically are supposed to have been part of the military wing, *Umkonto Wesizwe* as well the youths who protested against the government in 1976 (PMG, 2017). However, some beneficiaries in the military databases are too young to be military veterans (PMG, 2017), such that the qualifying criteria for military veterans causes contestations around, amongst, military veteran beneficiaries. As alluded to earlier, a focus on providing housing to the most vulnerable is unlikely to pacify the urban poor or ease the racial and generational tensions.

The objective of the 2018 policy is “to set out the criteria, process and procedures for the effective implementation of a fair, transparent and equitable allocation process of housing opportunities to beneficiaries and implementation of a new allocation criteria” (Eastern Cape Department of Human Settlements, 2018). The values, philosophy and principles embedded in the policy (of fairness, transparency, equity, and social cohesion) are seen as central to addressing housing conflicts because certain groupings feel unfairly treated. Consistent with this policy is an attempt to ensure that political and administrative capacities exist to ensure that delivery process is transparent and strengthened, including being devoid of corruption. From the viewpoint of the state, then, the policy is grounded in a notion of fairness. At the same time, this will not be acceptable to those not considered ‘most vulnerable’ and who now will have an extended period of waiting. As a result, there will continue to be disagreements and contestations between the state and residents, and amongst residents, about what is deemed fair, deriving from competing claims of moral justice. This is a breeding ground for ongoing illegal occupations, with many disputing morally the new legal standards around housing allocations. Nevertheless, understanding rights in relation to fairness offers an opportunity to the urban populations to act informally and find justification in doing so.

7.8 Need-Based Claims: “Where Must we Go”

The phrase “where must we go” was repeatedly mentioned by residents and also captured on television at a time when evictions took place in Fynbos and Phakamisa. It is a question posed in order to express the plight of those who need shelter and ‘do not have anywhere to go’ or have no alternative options when it comes to access to shelter. As discussed, informal settlements and the shack specifically became a place for waiting, and residents living there perceived themselves as temporary sojourners and in a particular stage of progressing towards

house ownership. Those who were moved into temporary shelter remained in a state of (relocated) waiting and at no point consider the bungalows as a long-term residence. Once they left behind their places of waiting and obtained access to formal housing (by whatever means), the beneficiaries would not want to return to a shack or bungalow, the space for waiting. Therefore, those who moved to new houses including illegal occupants would either destroy or sell their shacks, and they resisted strongly all attempts to be evicted by the Department of Human Settlements. Those who were evicted had nowhere to go and they placed the burden on the state to find alternative temporary accommodation, with many of them accommodated in churches and tents immediately after the evictions (*The Eastern Cape Rising Sun*, 26 November, 2019). Respondents in Fynbos who illegally occupied houses described their desperate basic need for houses, as further kind of housing claim with moral connotations:

I have three children, my elder one is 13 years old and is in high school now. Then the second one is 6 years old. Then this one. It's me and my husband and our 3 children living here. We are not prepared to move out of this house to go anywhere even if we have to fight. Where will we go to? The thing is, if they say there are people that already own these houses, it is fine; then we must get other houses. Where must all of us go ... everyone that's staying here? We have nowhere else to go (Bianca, Fynbos, August 2019).

What about the kids? That's the only problem we have. We are trying to build something for the future of our children, so what must we do, where must we go? There's nowhere else, what are we going to do? (Emilly, Fynbos, August 2019).

My husband and I have nowhere to go, we have been staying in this incomplete house for two years fixing it. The house we were promised was taken over by people who claim they had been on the list ahead of us. We have no money, but a neighbour will keep our stuff for now while we go look for a place to stay. I don't even know where to start. We have been given until 11am to be out (*The Eastern Cape Rising Sun*, 12 November, 2019).

The elderly couple was faced with eviction after occupying a house illegally because the house they were meant to occupy was illegally occupied by another person, and they said they feared that they would not get a house in their lifetime (*The Eastern Cape Rising Sun*, 12 Nov, 2019). The illegal occupants, including the elderly couple, were reflecting upon their desperate and fundamental need for shelter as families expand and households grow bigger. The elderly in particular hope to own houses which they can leave for the future generations.

The question ‘where must we go?’ is not a rhetoric question. It is a cry for help directed at the state whose constitutional obligation is to ensure that their housing needs are met. But, first and foremost, it is a call to be acknowledged and recognised not as citizens but as humans worthy of a dignified life. For many who illegally occupied houses, they insist that government take the responsibility to provide them with alternative shelter after the evictions. An illegal occupant interviewed by *SABC News* was forthright to direct her demand for a house to the state president while on television, after the burning down of houses in Fynbos. She raised the burning question:

Where must we go? We have lost hope, but no matter what, we are going to approach the president. What have we done to our houses [by torching them]? Why are we in this situation today? Who will assist us if not BCM? (*SABC News*, 20 August, 2019).

The illegal occupant interviewed by *SABC News* in effect speaks of an existential dilemma, of life devoid of shelter. As a citizen and as a human, she appealed to the state president (as the personification of the state) to intervene in the situation that led to the torching, by evicted illegal occupants, of several RDP houses in East Bank, leading to the loss of formal housing stock already in short supply. In this case of torched houses, contestations around access to state housing and the resultant conflict undermined the overall objective of the state to maximise the availability of housing supply. The illegal occupant interviewed by *SABC News* questions her own actions (and the actions of others) after torching the houses, but she reflects more broadly on the conditions (not of their own making) which led them to do so, ultimately placing the blame on the state. She brings to the fore the existence of an incapacitated and uncaring state unable and unwilling to deliver sufficient housing and sets this alongside her own human precariousness and vulnerabilities. In other words, the state must maintain a moral high ground if housing rights are to materialise.

The Parliamentary Liaison Officer for the Eastern Cape Department of Human settlements also considered ‘where must we go?’. Without the researcher prompting the question at all, at the very end of the interview, he stated:

These people are asking: ‘if you are removing us where must we go?’ But the government is saying you must go where you came from. We don’t have any obligation to know where you come from or where you will go. People are taking chances sometimes. (PLO, King Williams’ Town, March 2020).

Whereas the state is aware of its constitutional obligation to provide shelter, the statement from the Parliamentary Liaison Officer displays an inadequacy in the state's capacity to deal with the complex challenges of housing provision. More vividly, though, it demonstrates a lack of empathy for the very humanity of those spoken about, including the dignity which comes with access to decent shelter. The state is aware of the vulnerabilities of the urban poor who do not have adequate shelter and have been living in ongoing conditions of squalor in shacks, but their lack of a place in the city (beyond waithood) is itself beyond the state's control and obligation. At least according to the Liaison Officer, they for now belong to the very same place they are seeking to escape.

Ironically, the South African state whose role is to bring salvation for the poor within a rights-based framework unwittingly finds itself thinking and acting in a self-contradictory manner. On the one hand, the state wants to address the housing needs of the poor, and is expected to do so constitutionally. On the other hand, in large part due to financial, administrative, and political incapacities, the state simply wishes the urban people to go away, to return to invisibility. To ask the poor 'to go back where they came from' is to call for a return to a place of perpetual abject poverty, a place of exclusion, to a place of denied urban rights. It is a call for the impossible, a call 'to return to a mother's womb' as described by an illegal occupant of land in an area called Brazzaville in Gauteng (Monson, 2015:139). For the poor, life in a shack is temporary and counts for a waiting space, not adequate shelter. This is despite state provision of electricity, water and sanitation in informal settlements through upgrading programmes.

The residents described in brutal detail their living conditions to show their basic human need for housing. Housing ownership would be significant in transforming their living conditions and to break the reproduction of homelessness through generations. Many demonstrated how the shacks leak when there is rain and how extremely cold they get during winter or very hot in summer. Responding to a question on how significant owning a house was to him, a male respondent indicated:

I don't know how to explain it. It's very important. My grandfather was 88 years old, and he didn't have a house. My mother has two sisters and a brother, all of them never had houses. Even my grandfather's children, even his grandchildren none of us own a house. Others are living in shacks there at Pefferville (Fatima, Fynbos, August 2019).

One elderly couple who occupied illegally a house in East Bank explained that they did so because they needed a house, any house, and could not continue to live in shacks (particularly

as houses were corruptly handed over to young people). The house they invaded was in fact incomplete as it did not have windows, a ceiling and electricity. They said they did not mind living in a house that was not complete and were prepared to makeshift windows from wooden and plastic material as they waited for government to finish the houses. Describing their living conditions, they stated:

Now we old people are invading houses because we can't stay in shacks for all these years. She [councillor] sells houses to people who rent to young people. The government must continue to build houses. We live in the cold and we are cold (Anastasia, East Bank, August 2019).

Despite their house being incomplete, they felt more complete as humans because of access to state housing. A woman living in the bungalows in Fynbos likewise described her plight and need for a house and the significance of owning a house of her own:

It's very important for me because this place we stay here now, it's a very cold place. The toilet is far, the water is far. There is no yard for us here and like me I'm a diabetic, I'm cholesterol, I'm hypertension; when its night, it is cold. When you open, you freeze. It's cold here. Before there were a lot of people dying because of the coldness in these houses (Nomzamo, Fynbos, August 2019).

Andrea, a coloured woman who lived in an informal settlement with black people, and moved to bungalows to wait for houses to be built, described her condition in the bungalows and how the conditions affected her health. She decided to build a shack in the bush at the time when informal settlements were developing. Even though most coloureds did not build shacks in the 'bush', she was desperate for a place to live. She spoke in great length about his, with much passion:

I stayed with my sister [in a backyard shack]. I couldn't stay there for a long time. I had to look for a place to stay, a shack for me and my children. I had to look for a place in the bush since that time I was struggling. I raised 3 kids there. They are big today. It was very bad, I got sick. I am asthmatic. There was a couple of years back when people who came around to ask us about our situation. We told them we can't stay like this. I am sick. It was cold that time. It's been 24 years we were staying there. We sit on buckets [bucket system for toilet use]. It was terrible times when it rained, I had to sit on the bed with my kids. It was flooding. The house was very cold. Sometimes the wind blew my house. I had to make the place comfortable for my kids. Sometimes I had to go to my sister, when my place is too wet. When I came there [to my sister] with my kids, her husband didn't want me there with my kids. We had to go back to that wet shack and we had to sit there. My place [bungalow], it's been four years now since the Government moved

us here. I'm sick, this place has been so cold especially at night. I can't even breathe because it's too cold; the moist is too cold for me and my baby is also asthmatic. We didn't sleep the whole winter. I was coughing the whole night; I could not breathe because the moist was so ice cold. I was sick. Really, there are people who were dying of the cold here. Old people died and when we were supposed to move in they said it's going to be 6 months but it has been 4 years we are here. And it's unhealthy to stay like this (Andrea, Fynbos, August 2019).

Those who had morbidity were more vulnerable and in greater need of shelter, including the elderly people, the sick and the disabled. They attributed a number of deaths to their unhealthy living conditions in temporary shelters and demanded that the state provide a solution to the illegal occupations that led them to continue to stay in bungalows.

The illegal occupants in East Bank were equally concerned that living in shacks would continue to expose people with health issues to further health complications. Alice who illegally occupied a house in East Bank described how she was struggling as a cancer patient. She said she needed to live in a house where there is good access to water and a proper bathing space. Rodyn also described life in backyard shacks.

We don't have accommodation. Where must we go? If this house belongs to someone I can move only when there is house provided to me. I have a disability so I would not move to the bungalows. To stay in someone's backyard is not easy; sometimes you are denied visitors and you are stopped from having birthdays. There is also conflict over who buys electricity (Rodyn, Fynbos, August 2019).

Whether they lost access to housing because of illegal occupations, or had illegally occupied houses, residents spoke about their dire need for housing. In a popular moral economy, rights-based claims are useful in so far as they carry the capacity to end human vulnerability and ensure access to basic needs. Vulnerable communities therefore enact rights-based claims that enable them to counter vulnerability, without having to resort to legal recourse in a context where legal recourse often does not lead them to securing shelter.

However, what the BCM housing contestations reveal is not only shelter needs, but the need to own a house, to have a house of your own which can provide shelter to future generations in the family. House ownership, even an unfinished or incomplete house, comes with freedom which one cannot access when renting a backyard shack or living in an informal settlement. The basic need for shelter meant that those who illegally occupied houses were not prepared to

leave those houses, while those on the waiting list cling desperately to the hope of house ownership in the indeterminate future.

The residents in Fynbos described their inadequate shelter and poor living conditions in backyard or informal settlement shacks, in temporary shelter and in incomplete houses with hopelessness that their condition will never change. A journalist from the *Daily Dispatch* spoke about what he observed during the evictions in Phakamisa and attributed the contestations over houses to the desperation, poverty and pain of people who have been living in appalling conditions for decades, and who may end up doing whatever is necessary to access formal housing even if it is illegal (Jacob, August 2019).

Nomonde in Fynbos reflected upon her hopelessness and detailed her long-term stay (close to five years) and living conditions in the temporary shelter waiting for a house to be built. The place was overcrowded, riddled criminal activity, without refuse collection taking place – waste (including human waste) from the people living in Bungalows was piling up in front of the bungalows. Communal toilets were far away from the temporary houses, so that people dumped waste including human waste within a few metres from her house. Residents did not want to go to the toilets during the night and used buckets and disposed the waste next to the houses. She stated:

It was better in the [informal settlement] shacks where we came from. By the shacks we had 3 rooms; we had a toilet, we had everything you see. Here if I have to go to a toilet.... I will show you when we walk out.⁴ So now people can't go out far; we take buckets and we throw it here you can see. We can't blame them. It's night time that's the problem. But, why do we say it was better where we were? Because there are a lot of deaths here. It's lucky that you came early. Like if you came five o'clock or later, this place feels like a fridge, water is falling. Even outside it is defrosting. And when it's winter, ... we have to put our stoves on; if you have a heater you must put it in the room. It's cold, even me now I would wear a jersey before I sleep. I can feel the coldness in the air. You see, I wear a jersey. I don't wear a nighty so I have to wear something. So, in the afternoon it's hot like this. We can't even handle the heat (Nomonde, Fynbos, August 2019).

⁴ The toilets were communal toilets located at the edges of more than 200 bungalows which made it very difficult to use in the night. The researcher went in a house where she found a young lady bathing in a big dish from inside the house, as the public bathrooms were far and often too congested.

In addition, hopelessness is a time of stress. The knowledge that their houses had been illegally occupied after the long wait brings upon significant stress, without any hope that they will recover. Nomzamo thus explained:

From 2017 until now the elderly, because of heart attacks, they go to sleep and don't wake up. Because they knew it was a waiting place. They will see, there [pointing to the state houses] are our houses but they can't move in. Only eyes can see. Elderly people will pass away. Even last week a coloured man passed away (Nomzamo, Fynbos, August 2019).

For many who live in temporary shelter, all hope is lost although they keep waiting.

7.9 Historical Claims: "Take out your House and Leave my Land"

At times, in seeking to understand contemporary contestations around housing in the two research sites, reference has been made to historical developments in South Africa; for end, contributions historically to the struggle against Apartheid. In Phakamisa, though, the contestation over ownership and occupation of state houses was framed explicitly in a historical manner based on restitution-type land claims. The councillor for Phakamisa explained in detail how the people living in Phakamisa were legally given the land to stay on, long before state houses were built. Phakamisa was formed in 1982, being the latest township to be established in King William's Town long after the establishment of old townships like Zwelitsha in 1946, Schornville in 1959 and Dimbaza in 1968 (Booth, 2019:16). The land where RDP houses were built in Phakamisa was said to have been donated to the people by the Ciskei government (Councillor, Phakamisa, August 2019). The councillor of Phakamisa argued:

The older people who are staying there on those erven [plots] were informal dwellers but they never occupied those houses illegally. It was an agreement between the King William's Town Transitional Local Council (TLC) and the Housing Board and the Phakamisa Development Forum which was representing the community. So, the Development Forum at that time was given a task by One Property Developer and the King William's Town TLC to settle the people there formally so that they can be able to install services (Councillor, Phakamisa, 2019).

Erven is plural for erf which means a plot or piece of land where a house is built. The councillor details how the plots in Phakamisa were legally apportioned to the people long before the dawn of democracy. So, although they were living in informal settlements, they were placed there formally. Unlike the ongoing land occupations in South Africa, Phakamisa developed at a time when the local council was given permission to settle people on land that belonged to the TLC. The contestation for ownership of houses that were later built after 1994 were imbedded in

rights to land which older residents claimed as theirs, and this was supported by the ward councillor. The main argument from the older generation in Phakamisa is that the land was allocated officially for them to stay. They have land rights first and foremost, hence the call for those who claim rights to houses built on their land to leave their land.

7.10 Conclusion

This chapter presented a range of claims around citizenship, belonging and moral justice, regarding fair allocation of houses between two racial groups (coloureds and blacks) and between the young and the old. Claims are often made based on questions around who is more deserving to access state houses. Politics of race and access to housing cause illegal occupations and conflicts between coloureds and blacks in the BCM, bringing to the fore the question of racial equality in access to housing rights in post-Apartheid era. Additionally, fairness is questioned with regards to those who were active in the struggles that ended the Apartheid system. The majority (blacks), who have been living in informal settlements, claim they are more deserving as they have been waiting for many years in these settlements. The lack of clear guidelines on who to prioritise between different age groups also resulted in the qualifying youths taking over houses illegally and some of the elderly doing the same, fearing that they would miss an opportunity to access a house and they will die without a house. Owning a house breaks the chain of lack of shelter that is perpetuated from generation to generation as the poor continue to live undignified lives in undignified places.

Residents make claims that are not legally-based arguments through the reinterpreting of rights. This is made possible because rights discourses and practices, by nature, are intrinsically embedded with contradictions between the legal and moral realms, in turn creating spaces for contestations. Residents can draw on the legal, the moral or both in making claims and this creates conflicts between residents, as some residents continue to depend upon legal and formal processes and keep waiting for houses, while others forcefully occupy houses.

CHAPTER 8: MORAL ECONOMY OF RIGHTS AND THE COMMUNITY OF THE (UN)SYMPATHETIC

8.1 Introduction

We observed in the previous chapter how residents respond to what they perceive as the state's moral low ground, emanating from poor administration, corruption, and policy failure. In their response, the poor conceive and exercise imagined rights to facilitate access to housing and counter their own vulnerabilities. They capitalise on a state that is weakened through patronage, corruption, and political and administrative disorder. Their actions create contentions with the state while also disrupting the state, and also cause tension and conflict among the beneficiaries, thereby reconfiguring socio-political relations. The irregular (and un-procedural) practices of officials, whether sympathetic or unsympathetic, go contrary to the moral high ground revolving around formal, procedural allocations. The result is that the members of the community judge their actions of informality against what they see as state failure to uphold the moral high ground in their allocation process. I argue, in this chapter, that whether post-Apartheid urban society (including the state's engagement in it) develops into a sympathetic or (un)sympathetic society is dependent on the perceptions of it as an upholder and promoter of moral values of equality, justice, fairness, dignity and so on. Continued maladministration, corruption and policy failure contribute to creating and reinforcing an unsympathetic post-Apartheid community.

8.2 Occupation and Use

Illegal occupations of state houses disrupt state order as the occupants defy legal processes but, in doing so, they also disrupt social relations with other citizens. In this section, I speak firstly to the effect of illegal occupations on formal housing delivery processes and, secondly, I consider illegal occupations as means to an end in securing shelter. Occupation and use of houses become the primary step in securing shelter and it is not conceived by the occupiers as a legal right and therefore is undertaken by disregarding formal rules.

8.2.1 Disrupting State Order

As demonstrated in the previous chapter, in the context of state failures around housing provision, moral rights-based claims are used discursively to justify illegally occupying state-built houses in Phakamisa and Fynbos/East Bank in Buffalo City Municipality. Such informal

access to state houses transcends and even contradicts legal housing rights which involve formal processes. Through informally occupying state houses, the urban poor refuse to allow the state to reduce them to patrons or victims whose fate is purely dependent on state decisions and processes. As Dupont et al. (2016:193) indicate, illegal occupants express themselves not as passive recipients, or victims of public policies and external interventions, but as agents worthy of dignified lives. They engage the state through intervening in the process of allocating houses, thereby disrupting and rejecting this process by disregarding the state's waiting list in order to secure occupation. Illegal occupation, however, is just that – occupation, not ownership. Hence, it is a stage in a wider and longer process of securing the critical housing right of ownership through title deeds. This may or may come to fruition, such that illegal occupation may be a dead-end in the journey towards ownership.

The South African constitution recognises the right to housing in relation to its various dimensions, namely, the right of occupation, use, and ownership, the right not to be evicted arbitrarily; and the right to dispose or sell a house. The ultimate prize is ownership, as reflected in the widespread contestations in BCM when it comes to the formal housing waiting lists. Typically, ownership comes first, then occupation (or they occur simultaneously). Considering the maladministration and corruption regarding the waiting lists, those pursuing illegal occupation navigate around the state through strident moral and rights claims, and then act upon these through accessing housing informally. They pursue occupation as a crucial stage in eventually achieving ownership. This is not an in-principle stance against legal and formal processes, such that the urban poor use legal rights when it suits them, such as to defend and protect their informal access to housing once accomplished. Illegal occupation is used tactically and politically to challenge and reorganise the social imbalances (i.e. the right of access to housing) in urban spaces that were created over time through an unjust and fraught housing delivery system. Illegal occupation sends a strong message for recognition and inclusion, whether based on existing age, class, or race.

The poor working class also seeks recognition and inclusion through access to RDP houses. The issue of the missing middle (explained in detail earlier), predominantly civil servants, is pertinent to the case studies of illegal occupations in the BCM because there are common claims that civil servants were illegally occupying houses corruptly through formal waiting lists. Justin and Gareth indicated:

Like she said, people that are working and earn more than R3500 can't live here, but here we are living with policemen, nurses, security guards, they are earning much more (Justin, Fynbos, August, 2019).

They [civil servants] don't qualify for an RDP house but they stay in the RDP houses. How did they get it right? Not even here only, even in Secondary and Park side. It's the same, police, nurses, prison wardens stay in these RDP houses. It's not only here. It's there also Egoli, by all these RDP houses. It's the same. Those working for the state stay in those houses (Gareth, East Bank, August 2019).

Those excluded through the income threshold secured occupation of state houses informally to meet their shelter needs with the hope of future ownership of those houses. Although rental units provide shelter to those outside the RDP income bracket, house ownership remains a preferable form of tenure, especially when there is an ownership opportunity presented by the state. Illegal occupation of state houses by civil servants, or those above the income bracket more broadly, is another way of asserting rights to occupation and ownership of houses.

The act of illegal occupation by the poor working-class entails questioning and criticising the moral logic behind classifying the urban poor based on income, as this often is not inclusive of every low-income earner who wants to own a house and it takes away a life-time opportunity of home ownership from them. In this respect, It was common for these civil servants to claim that they qualify for RDP houses according to the income threshold. However, by merely observing the standard and quality of their furniture, as well as the improvements made to some of the houses, it became clear that the occupants likely earned considerably more than the threshold. Sindiswa from Phakamisa refused to proceed with an interview by indicating that she just returned home from work and would like to be excused. The quality of furniture in her house did not tell a story of poverty. She indicated:

I don't want to take much of your time because I am not bothered by these things [the evictions and conflicts over RDP houses] you see on TV, and I am not involved so I don't know what to explain to you. I work for myself and do not want to be involved in other people's business. I was working at the office and I came home late so I don't think I will be able to provide information about people moving each other out of their houses. My house is not giving me problems (Sindiswa, Phakamisa, August 2019).

Sindiswa who seemed to earn above the income threshold for state housing, showed discomfort in doing the interview and quickly dismissed me and my research assistant, as it

would unsettle her as an illegal occupant to have an interview where her status of occupation would be potentially questioned. She was therefore quick to disassociate herself from the housing contestations in Phakamisa by arguing that her own house was not claimed by anyone, and hence she was not interested in talking about the housing issues. The poor working class occupy houses illegally as a response to their view of the state as not fully inclusive of everyone in need of housing.

8.2.2 Occupation and the Basic Need to Shelter

Regarding land occupations and, by extension, illegal housing occupations, Stevens (2019:288) calls for “an understanding of land [or house] as a resource, possession of which, irrespective of ownership, gives effect to the fundamental rights associated with access to a home”. Put differently, informal occupation of land and housing leads to the satisfaction of the basic need to shelter as a fundamental human right. In doing so, these occupations challenge a (legal) rights-based approach to housing delivery as well as the state’s formal delivery processes by articulating the stance that, in order to occupy and make use of a state house, it is necessary to have ownership rights conferred by the state. The case study of BCM clearly shows that informal occupation of state housing is a manifestation of ordinary people’s ability to defy state procedures and in the process negotiate access to housing. They make moral claims to demand what is constitutionally entitled to them, capitalising on the fluid and contested character of rights.

The state expects housing ownership rights to be conferred first before occupation takes place, by way of the waiting lists or housing databases supported by the handing over of a happy letter during allocation. In the absence of title deeds, the legal right to ownership cannot be conferred immediately. However, from the perspective of illegal occupants, ownership of state houses is not reducible to legal rights. Occupation and use rights, and the time-period during which occupation exists, becomes significant in claiming ownership, or at least *de facto* ownership. When illegal occupations take place, a sense of entitlement to the particular housing unit arises, such that formal delivery processes and existing housing lists become irrelevant. This entails challenging and reconfiguring housing delivery mechanisms, including countering the state’s logic of order and its formal housing processes which have failed, over time, to deliver on its promises. The long waiting lists and lengthy delays in allocation only cause delays in realising legal rights to housing. Informal access to state housing seeks to prioritise, tactically, rights of occupation over rights of ownership.

Overall, informal occupations place the state in a perpetual situation of uncertainty and precariousness, either seeking to rectify informal occupations through strident evictions or, in some cases, trying to negotiate and allow permanent occupation of those who have informally occupied houses while meanwhile promising other beneficiaries houses in the indefinite future.

When the state formalises the informal and illegal, it affirms the logic of the notion of rights as social claims which the urban poor put forward in order to realise their basic needs. The existence of constitutional rights and the setting out of legal procedures for accessing housing alone are not meaningful to those who have been in periods of waiting indefinitely. Where the implementation of policy and legislation is either prohibitive or limiting in accessing housing needs, the urban poor (and even the missing middle) may opt for informal access. However, they at times use the law pragmatically (or for the sake of convenience) as a means to an end, as in the case of the legal evictions.

In formally accepting or approving the informal occupation of state houses, the South African state acquiesces and becomes complicit in the challenge to its own authority over housing processes. This process of formalisation, at the very least, gives others the impression that informality fast-tracks the provision of housing; and, additionally, it tends to legitimise informality. Once the state enters into the realm of informality (a space not of its own making), illegal access to housing may take on a life of its own and thereby further heighten levels of contestation. While this might at first sight appear as a more inclusive housing delivery process, with different modalities of allocation existing, there is an element of exclusion intrinsic to it. The process of accessing housing illegally entails an uneven playing-field. There are categories of people in urban spaces in South Africa who are disadvantaged when it comes to informal access, including the elderly, women widows, and the sick and disabled. This is because acts of informality are not 'a walk in the park', as informal occupations involve strength, power and force (for example, breaking down doors) while preventing others (i.e. the weak and vulnerable) from gaining access. As well, informality often benefits those who are politically connected and have the support of the powerful. The actions of informality and illegality are undergirded by and also support, a community of the unsympathetic.

Occupation and use of houses informally, though illegal, may entail some residential stability in that it is backed by the right to lawful evictions. Though subject to the possibility of eviction, evictions of illegal occupants must follow due legal process. This right to lawful eviction is used to defend illegal occupations and, additionally, eviction processes are challenged legally

in order to retain occupation. Illegal occupation of housing, with the support of the law on evictions, offers opportunities for future regularising of the illegal occupation or a possibility of some form of legitimacy of the informal that resembles the formalisation of informal settlements. Certainly, in some cases, occupation of land informally has successfully led to ownership through formal legislation and policy.

But forced evictions of illegal occupants have been strongly resisted by informal occupants in the BCM. Often typically invisible to the state, and not organised in the way of formal civil society groups, the urban poor's open defiance of state ordering and control by occupying houses illegally places the state in a dilemma, of formalising and thereby recognising that they do indeed have a place, or evicting them forcefully either within or outside the bounds, thereby placing them out of place once again. The South African state often chooses the latter. In this regard, the BCM described the actions of the informal occupants in Fynbos as "acts of lawlessness" and stated that "it is important that we uphold the law and abide by the constitution of the Republic as part of democracy" (BCM, Fynbos Facts of the Matter, 27 June 2019). At the same time, both legal and illegal evictions are subject to acts of refusal or resistance (including via the legal route), and often couched in discourses around a "wider political struggle to realise the human right to housing" (Hoover, 2015:1093).

The growing trend in informal occupation of houses in South Africa, alongside resistance to evictions through both legal and illegal means, reveal the extent to which the urban poor use occupation at all costs, as the first and significant step in the struggle for permanent housing access, drawing upon moral claims in the process. Moral propositions arise from the opportunity that informal occupations provide for those who cannot access shelter formally and legally. In doing so, this reveals the extent to which human rights are conceptualised, imagined and applied in diverse ways, therefore revealing the elusive character of rights. On the one hand, the South African state adopts legal rights and procedural arguments stringently (even when formalising the informal) in pursuing housing provision and, from its perspective, it finds legitimacy in the process. On the other hand, the urban poor reimagine, reconfigure and apply rights according to their own character and tempo of existence. From their viewpoint, informal access is a viable and legitimate option, pointing them in a direction and pathway towards addressing their housing rights outside state-governed systems.

In the end, illegal occupation is a way of navigating and negotiating the urban space for purposes of housing access. Indirectly, the post-Apartheid state's housing delivery failures

opened up and conditioned these processes of navigation by the urban poor. To rightful owners of state housing stock, ownership through formal means guarantees their security of tenure. However, for those who informally occupy houses, permanent security of tenure is only the ultimate aim. For them, securing simply occupation and the right of use takes priority in the short-term. When the state responds to illegal occupations through evictions, defending the right of use becomes critically important to the occupants, with wider implications for both the state and the local community. As Guevara (2016:1) discusses in relation to informal occupation of state houses in Milan undertaken, and the possibility of eviction, there is a “triggering [of] social conflict and tension concerning the public institutions, formal residents and informal ones”. This occurs throughout Europe more broadly (Miligan, 2018:3).

While illegal occupations in both research sites led to tensions between the urban poor and state, as well as amongst the urban poor, it was only in Fynbos that this resulted in violence and the destruction of state houses. It is in Fynbos also where contestations took a racial form. In both cases, though, those who were evicted would return to occupy the houses once the evictors left, further asserting occupation rights.

8.3 Use of Law to Resist Evictions

Opposition and resistance to evictions by illegal occupants arose from a basic awareness of the law on evictions. This awareness was sufficient to stimulate action, despite any significant legal literacy amongst those engaged in informal occupation. Where legal representation was sought, this was meant to challenge the state when it came to unlawful evictions, based on legal eviction procedures. Attempts were made to challenge any court order applications for evictions by the BCM. The BCM, in outlining facts about illegal occupations in Fynbos on its website, described how the illegal occupants sought and were granted legal representation when the BCM applied for court orders to evict them (BCM, 2019).

In Fynbos, the illegal occupants occupied the houses on 18 July 2018. At the time of the interviews, they had stayed in the houses for a year. Christopher, a resident in Fynbos, describes what he believed was a violation of his rights to housing through evictions. He stated:

I feel now that we are in these houses over a year and according to the law you cannot evict someone and leave them homeless. There is no place to put a temporary structure according to the ruling of the judgement of the high court. They didn't do it. People think we are not aware of our rights. Our rights have been violated; they evicted us unlawfully and they left us homeless. What were we supposed to do? We must move back in. The constitutional law of South Africa

and Cyril Ramaphosa [the president] under the law, they say you cannot evict someone and leave them homeless. Where are we going? We are going nowhere. And what they did, on Facebook, on the municipality wall, they heard [were made aware] that we are invading these houses on the 8th of July. They were supposed to come on the 9th or 10th to evict us. Before, they used to come within 48 hours after illegal occupations occur but they came two or three months afterwards with old eviction notices. Outdated eviction notices (Christopher, Fynbos, August 2019).

Reference to the law on evictions was common in Fynbos, although not everyone could articulate it clearly in the same manner as this resident. Others would simply claim that they would not be moved from their houses because they had stayed for six months or more. The Grootboom case, which set precedence on evictions, is a judgement that was made on the moral basis of human dignity. The result was that the judiciary established a moral standard to which the state must adhere when the issue of evictions arises. The state in a way is expected to be sympathetic. When the state fails to exhibit the kind of sympathy expected by the urban poor, it is no longer seen to occupy the moral high ground; and, therefore, citizens act against the state in ways that display a lack of sympathy for those who are affected by their actions. This extends to acts of violence.

The law on evictions in South Africa has resulted in what Strydom and Viljoen (2014) describe, with reference to illegal occupations of inner-city buildings in South Africa, as a conflict between constitutionally guaranteed property rights and the law on lawful evictions. Illegal occupants work around and through the conflicting legal instruments on the right to housing in South Africa. By doing so, they conveniently use the law to defend and protect their occupation rights.

Some who claimed to be illegally evicted sought legal recourse to challenge the eviction process, although the majority simply resisted evictions by re-occupying houses. Additionally, they would make use of threats to inhibit the rightful owners from taking up occupancy. Through these actions, the illegal occupants do not necessarily seek legitimacy from the law, which they recognise is often used against them by the state. Legal rights at times are useful to them, in so far as these rights protect their occupation. However, when legal rights challenge their occupation, they use other forms of resistance.

8.4 Negotiation: State and Media

In this context, attempts at times to raise issues and concerns with the municipality and local political representatives were made in Fynbos/East Bank in a bid to resolve contestations around the occupation of houses.

For example, Elsie in her mid-fifties occupied a plot where she built her informal structures in the 1990s. The Department of Human Settlements was supposed to build two houses on the plot she (and her husband) was currently occupying. The couple bought an RDP house from its previous owner close by and they were supposed to move into that house. However, the RDP house they bought was already falling apart before they moved in. She requested that the Eastern Cape Department of Human Settlements fix the house before they moved in, but she did not get assistance from the Department. As a result, she decided not to move from where she stayed, and therefore did not pave way for construction of the RDP houses on the plot she was occupying. She tried to engage the Department, the mayor, the Public Protector's office, human rights lawyers and the councillor for assistance to no avail. She then resorted to the media to get her plight out to the public. She described her experience in the following way:

We went to the councillor. We even have letters to prove we went to her but she didn't like my husband. So, there's a guy there to help us when the councillor doesn't want to help. We went to the mayor and we were told to write all our grievances; and we wrote them down and gave them to the mayor but he never even once contacted us. So, we went to the human rights lawyer. Yes, we went there and also wrote a letter there and they gave us the Public Protector's address in Bhisho and we also wrote to the Public Protector but they contacted her [councillor]. The councillor said we moved into that house and we broke that house down [thereby, misinforming the Public Protector], so we never got any help from them. That's why we are not moving from here before they finish my house because once we move they will never help us. Here two houses are supposed to be built on this site where we stay. We even went last year again to the Human Settlements Department. The public protector said we must go back there. We went back but there was no answer. We put the issue in the *Daily Sun* and *Daily Dispatch* (Elsie, East Bank, August 2019).

Engaging with the councillor was the starting point for the negotiations yet, as pointed out earlier, the councillors tended to be partisan and divisive and therefore could or would not bring about any solution. The informal occupants were left with no option but to resist persistently all attempts to evict them, and they also had their story published as a last resort.

The *Daily Dispatch* (4 September 2017) published a story on East Bank occupations and the challenges arising from these. From the article, it became clear that certain residents were threatening people like Elsie (the woman in the interview above) who was mentioned in the article. These people, including Elsie, refused to move from where they were staying to make way for the construction of state houses. It was said that residents fell and dropped a tree on top of one woman's informal housing structure to compel her to move away from where she lived. Important to note in Elsie's story is the extent to which defiance against the state negatively impacts on further progress on housing provision as the two houses that are meant to be built on the plot she occupies will not be built until her issue is resolved. Her perception of the state as not helpful, not trustworthy and not supportive influences her decision not to make way for construction to take place. Her actions might come across as unsympathetic to the beneficiaries earmarked to occupy houses that were intended to be built where she stays.

Publishing stories in the media is one way which residents use in trying to put additional pressure on the state to resolve occupation contestations. However, ensuring that their stories are told in the press is not an easy and straightforward process. Lewis, who I interviewed and whose name was mentioned in this particular *Daily Dispatch* news item, described his experience about publishing the East Bank story in the local newspapers in 2017:

I helped her [Elsie] also to get access to the *Daily Dispatch* and the *Daily Sun*. We did our interviews and we were just telling the truth. Some of the stories didn't come out. For instance, if you are a reporter of a certain newspaper and you hear a story from me, you will have to confirm it with the councillor; and, if that councillor denies it or tells you not to write and say you don't write that or else I will sue you, the reporter stops to publish. Some reporters did not even believe us and many of the stories weren't printed because of that. I was lucky because I organised with my councillor to get me a reporter that will not hesitate. So, he organised me a reporter from the *Daily Dispatch* after several attempts with the *Daily Sun*. They came out and took pictures, then three reporters came out and my story was published September 2017 and many people said you are going to get killed. So, I said if it is my time to go, then I must go; at least I am fighting for our fathers (Lewis, East Bank, August, 2019).

The local politics around housing access made it difficult to get stories published. The media is not a neutral place. In an environment where informal occupants are considered as perpetuating lawlessness, publishing a story from an illegal occupant and in a manner that does not condemn the act would appear to be condoning violence. However, as events escalated to dramatic public contestations at the time evictions were implemented in 2018, the media

heightened their presence in BCM and increased its coverage as events unfolded. Lewis assisted Elsie in getting her story published. Such support is a result of shared experiences of vulnerability to which the state has exposed them, which requires collaboration whenever possible in the struggle for shelter.

Section 8.5 below further discusses the various means through which the residents sought to access housing rights, to the extent of using violence. This reveals more fully how the urban poor experience their vulnerabilities due to lack of shelter. Although the poor act against the state in occupying state houses, the consequences of their acts are felt among themselves as citizens.

8.5 Navigating Housing Rights in Fynbos/East Bank, East London

In a context of scarcity, contestations over occupation and ownership of houses often shifts between negotiations, threats of violence, and violence. In this regard, this section describes the manner in which (coloured) residents in East London employed a number of acts that included physical resistance, defiance, violence, intimidation and destruction, as well as negotiation with the state through the media, in order to defend their informal occupation of state houses (meant for black residents). Community cohesion and collaboration were central within both the coloured community and the black community in Fynbos in order to win the struggle for occupation against the opponent.

In Fynbos 1, the houses that were forcefully occupied by coloureds belonged, according to the municipality waiting list, to the majority black residents. Coloureds in Fynbos resisted state evictions and by all means prevented blacks from occupying those houses. The members of the coloured community resisted any possibility of being moved to the outskirts of the city away from schools and work. Though the houses were meant for blacks as per the formal waiting list, this does not mean that they were the morally rightful occupants given that housing processes (including the waiting lists) are highly contested, as they are easily manipulated and used to advance political agendas and patronage. The analysis of these contestations is made against the backdrop of South Africa's urban historical context of racial segregation in housing access and spatially imbalanced urban geographies.

8.5.1 Physical Resistance and Defiance

In Fynbos 1, a trench was formed across the road which led to the area where coloureds had illegally occupied houses, in order to prevent police, housing department officials and sheriffs'

vehicles from entry (see Figure 8.1). The trench was dug and later covered with a huge log placed on the road as a blockade. The digging of trenches as a form of protection from hostile intruders was a common tactic during the liberation struggles against colonial rule in Africa. For instance, Brittain (1986:51) describes how, in Angola, young boys dug trenches during the anti-colonial war to protect the liberation army when they moved into new territories. In South Africa, ‘defence trenches’ as they were called, were also used as a defence mechanism (Houston, 2013). Resisting evictions through such tactics shows that the informal occupants in Fynbos did not perceive evictions as simply a legal process requiring legal responses. Rather, the state was waging war on them by seeking to hinder their concerted attempts at securing access to housing. The state left with little choice but to turn to the politics of the street.

Figure 8.1: Huge Log to Prevent Traffic Entry



There is a single entry into the area in Fynbos and the illegal occupants made it impossible for government officials to enter after their first attempt to evict them. The trench in fact presented a danger to any stranger who drove into the area, particularly at night, without anyone first alerting them of the trench. This acted as a protection, as any unknown person who drove unsuspectingly into the trench was automatically viewed with suspicion. After digging the trench, though, they realised that they could not drive through as well, and so they decided to close the trench and add the log. When entering the area, drivers come from the right side (see Figure 8.1) where the log behind a heap of earth (that covered the trench) would not be visible, causing a risk for drivers. However, to the community of illegal occupants in Fynbos, who put

the log in place, this arrangement was convenient as they could easily drive in and out by removing the log.

It was not easy for me to access the area to conduct interviews, because of the volatility in the area. I needed someone they knew to introduce me. Because of this, the research assistant and community leader from the black community, Nomonde negotiated my entry carefully by connecting me with a coloured lady that she knew. This lady then organised my initial meeting with the leader of the coloured community of illegal occupants, Rabia. I required assistance to remove the log to enter to conduct interviews, and I felt uneasy knowing that I would be talking to people who were prepared to take direct action to defend the occupation of the houses they were living in. Many times, I was congratulated by interviewees for my supposed bravery in entering the area.

8.5.2 Violence, Intimidation and Destruction

Other forms of resistance against forced removals and evictions included intimidation and violence in Fynbos and East Bank. There were claims that people had illegal firearms to protect themselves after they forcefully occupied the houses. One male respondent described how they protected houses:

When we moved in here for the very first two weeks to two months, we did not sleep: we had to sleep during the day at night we had to be alert and awake. You make your fire outside because there were rumours from the Xhosa people that they were going to come kill us and take their houses back. These things that were going to be done, so the coloured people said we are waiting for them. People were carrying guns here, illegal guns. That was for two months. It was tense because guys organised themselves illegal fire arms to protect themselves because everyone sat out of the house he occupied. I invaded irrespective whose house it is. I'm taking this house because I've been here [in Fynbos] all my life (Justin, Fynbos, 2019).

On the one hand, the illegal occupants had to resist formal evictions from officialdom, by moving back into the houses after the officials left. On the other hand, they were also protecting themselves from the rightful owners of the houses. Rumours and threats of killing were common amongst both the illegal occupants (coloureds) and the rightful beneficiaries (blacks) in Fynbos. Fear and violence are pervasive in high-density residential areas in urban South Africa (GPI, 2018). Causes for violence include economic inequality, frustrated masculinity, lack of social cohesion, firearms and alcohol (CSVR, 2019). Clearly, added to this mix are contestations around access to state housing. In this context, a male respondent in East Bank

indicated that he would defend his house and his sister's house with his firearm and, if anyone came to take their houses, he was going to shoot.

On 11 November 2019, another eviction attempt was undertaken by housing department officials and the sheriffs in the presence of police. Unlike the previous eviction, the belongings of the coloured illegal occupants were taken away to ensure that they did not move back immediately into the houses after the evictors left. Nomonde, the black community leader, described the events of that day as war between the coloureds and the isiXhosa people. She stated in a What's App audio message to me:

Yoh, today it's a war between coloureds and blacks, amaXhosa speaking people. Today at East Bank, they [officials] started to take the coloureds out. They were taking people out of the houses and started to put the rightful people, the approved people, in. It was a big war, but the police came with the sheriffs. Some of the people were arrested because they were fighting also, those people that occupied the houses. Ten of them were arrested at East Bank. So, at 15h40 the sheriffs left. It is also raining today and all their belongings were taken away. So, the approved people were back in in the houses. But now, while I am speaking to you, it's a war between coloureds and blacks. In my life I have never seen that. They are stabbing and slaughtering each other. We are trying to call police but the police are saying they are coming tomorrow. But here in Fynbos, where I am now, the police say they are coming tomorrow. So, it means there is going to be war even here (Nomonde, Fynbos, 2019).

Two days later, Nomonde reported through what's app on events in Fynbos. She exclaimed:

Too bad. It's war and we are going forward not back. Blood can be spilt all over as long we fight for what belongs to us. It's so bad, we are fighting each other, but I can see we [blacks] are winning the battle because of what we have done. We just chased them out, that is in East Bank. So, Fynbos and East Bank helped each other. So, we have to move with Fynbos and East Bank and the other people who came from other areas, nearby areas. So, we help each other. So, what we have done is just fighting, doing everything, using *pangas* [long knives] and swords. But we won because what we have done; we chased them out of those houses. So, no coloured is in those houses and the houses are empty but twenty of them are burnt (Nomonde, Fynbos, 2019).

The *Eastern Cape Rising Sun* reported on the violence that ensued in East Bank and how residents were living in fear of one another. The news report stated:

As soon as the police left, the evicted residents came back to taunt the rightful owners who had just moved in. They broke windows, damaged furniture and manhandled women and children

demanding their houses back. The violence continued into Wednesday morning with spells of brief attempts of intimidation with both groups carrying *pangas*, knives and other types of weapons (*The Eastern Cape Rising Sun*, 13 Nov 2019).

Violence, intimidation and destruction, in a context of what the antagonists described as a war, became an extreme method for accessing, and retaining access, to state houses. This took place at the expense of the housing stock, with twenty houses burnt in East Bank (see Figure 8.2). Where state intervention through legal evictions could not reorder occupation arrangements in a conducive manner, local residents devised and employed their own strategies, whether successful or not. Fear, anger and pain, all conditioned by state failures around housing provision and the racialised legacies of Apartheid, became expressed in a surge of violence which in the end likely exacerbated community instability, notably along racial lines.

Figure 8.2: One of Twenty Houses Burnt in East Bank



Source: Photo taken by black community leader.

This destructive violence also further affected, negatively, the relationship between the coloured residents and the state, likely deepening suspicions on the part of both state and residents. However, in this particular case, it is notable that state officials did not act drastically and decisively in a coercive manner. In particular, no arrests were carried out by the police and the latter's involvement was limited to merely controlling and managing the situation during evictions. The reasons for this remain unclear. Whatever the reasons, what happened in Fynbos and East Bank over those short days was – strictly speaking – one battle in a long and protracted war of attrition around housing occupation and ownership.

8.6 Navigating Housing Rights in Phakamisa, King William's Town

This section presents the processes adopted by the Phakamisa occupants in negotiating and defending their occupation of state houses. Unlike in Fynbos, threats among Phakamisa residents did not result in physical harm and destruction of housing stock. The ward councillor in Phakamisa was central in the negotiation processes between the beneficiaries and with the Eastern Cape Department. There was also the constant use of police to assist beneficiaries with the signing of affidavits where occupation was approved by the councillor. This was done amidst legal battles with those deemed illegal by the Department.

8.6.1 Local Political and Community Leaders

People were moved from Zwelitsha and settled in Phakamisa in 1979 due to overcrowding. They were allocated plots to stay in temporary structures and the Ciskei government at the time started to construct two roomed houses and subsequently four roomed houses (SANCO chairperson, Phakamisa, April, 2020). These houses were built in the upper eastern side and formed part of the houses that were built during Apartheid. These are not part of the housing stock subject to current contestations.

Those who settled in the area from the 1970s and did not benefit from houses provided during Apartheid, claimed the right to the land they occupied before the houses were built. When houses were built post 1994, these 'settlers' claimed to be the legitimate occupants of these houses whether they are on the housing list or not. The councillor played a role in defending and protecting the occupation status of these residents, and in mediating between the Department and the community more broadly. Although some occupants admitted that they occupied houses without the approval of the Department, they did not consider themselves as illegal occupants. Thembeni, a woman in her mid-forties, describes how the occupation-based contestations started in 2016 in Phakamisa. She stated:

The Department came here first in 2016 to allocate houses. We knew the first five people that were allocated houses from the Department list and the rest of the names were now youngsters. That is when the fight started. We did not win on the first round of allocations in 2016 because the councillor stopped the process. Because of politics, it stopped. The councillor claimed that he was unaware of the ongoing allocation being undertaken by the Department. Then he called other community leaders to stop the allocation. But the Department came again, giving houses on the western side of Phakamisa. There were fights again because they were given to other people whom we didn't know. We then decided to get into the houses forcefully. One would just get

inside the house from the shack on the same plot where one lives. If you have a shack here you just break in and get into the house. Then the police came in December 2016 and arrested people. (Thembeni, Phakamisa, August 2019).

Allocation of housing would not go ahead without the involvement of the ward councillor and the councillor exercised his political power to stop the Department from allocating. By stopping the official processes, the councillor wanted an opportunity to endorse the people he believed were the rightful owners of the houses who, according to the Department's official list, were illegal. Thembeni, who indicated that she was part of the local ANC women's leadership, was one of the people who had the support of the councillor regarding the occupations (as people who had long stayed on the plots awaiting the completion of houses).

Thembeni highlights two key issues with regard to the formal allocation process as attempted in 2016 in Phakamisa. Firstly, the role of the councillor was significant to the allocations. The Department could not allocate the houses, at least successfully, without the approval of the councillor. The councillor wields local political power, to such an extent that the Department hesitates in allocating houses without his presence. This is despite the fact that the Department carries the administrative mandate to allocate state houses. Secondly, also important was the role of the community in confirming the identity and status of individuals as bona fide members of the community. If an individual was unknown to other community members, being allocated a house was typically next to impossible. Though community approval was crucial, the identity of legitimate community members and therefore approval was open to contestations. Those who occupied houses without formal approval did so in large part because people they did not know (or, at least, did not recognise as fully-fledged community members) were allocated houses.

The SANCO chairperson strongly condemned the actions of the councillor and blamed him for the occupation contestations in Phakamisa. He confirmed that people were settled in Phakamisa in the late 1970s. However, he indicated that many of the people who were staying on the land as far back as the 1970s (i.e. the older generation) did not, for whatever reason, apply for housing after 1994 when registration was introduced. Meanwhile, younger people did and the contestations arose on this basis. The coming in of the registration process in 1994 led to the formal housing waiting lists and official housing database as central to housing delivery. However, despite not registering, the older generation claimed a right to the housing units. They based this on their right of occupation over time, including the historical allocations of

plots. They trusted that the promises of those past officials (as representatives of the state), who advised them to stay on the land and wait for their houses to be built and then move in, were to be fulfilled. Trust was thus at the centre of the realisation of their rights to shelter, and this overrode any official route of registration introduced post-1994. For these older residents, the state has an obligation –and is morally bound - to act on these historical claims.

The older generation had moved from rural areas (during the 1970s), where customary rights were at the core of land allocation and a traditional authority was responsible for allocation. In rural areas, they experienced allocation via verbal statement without formal documents, and they expected that the same informal arrangements would be honoured in urban spaces. Their reluctance to engage in formal urban processes arises from this historical practice. Further, because of their unfamiliarity with formal bureaucratic procedures (including around housing), they would have required support from those in the know, those who have knowledge and experience about these procedures. In their case, in post-Apartheid Phakamisa, these enablers would be local political representatives and community leaders. As a result, when the local councillor assures them to stay on their plots and move into the houses when they are complete, they go by his word unreservedly.

The movement into, and settlement in, Phakamisa during the 1970s was but an earlier period of migration, and it is distinct from the 1990s' migration from nearby Zwelitsha, a township not far from Phakamisa. Even during the 1980s, others migrated to settle in Phakamisa from Cathcart about a hundred kilometres away. Zanele, a female participant over 50 years old described how she moved from Zwelitsha, having been informed that there was available land to stay in Phakamisa. After she arrived, she was given a site in 1995. Later, she became an informal occupant in the house where she was staying currently:

Yes, I have that problem, as this site belongs to someone else. I know him. He also has a place that belongs to somebody else. He is also staying on a site that he was given just like me, but now his name doesn't appear on the site where he stays. I knew even before that his name will show here because, when I came here, that time we were given sites. I was told that this site was given to him and he refused to take it. He said that it is a bush and he cannot stay here, so I took it because I wanted a place to stay (Zanele, Phakamisa, August 2019).

While it is clear that a formal registration and site-allocation process took place in the mid-1990s when people moved from Zwelitsha, some people would choose a place to stay without consideration of whether the plots where they stayed were allocated in their names. In a process

of self-allocation, such people would simply come to Phakamisa and find themselves a place to stay. Others came to access a place via formal allocation, but then continued to live in Zwelitsha while monitoring the building of houses on their plots. For instance, a male respondent who applied for a house in Phakamisa and continued to live in Zwelitsha would come on occasion to observe the construction of his house, as he knew his site number. He described how strangers broke into the house and occupied it before he had a chance to move in. He never got to know who they were because, whenever he came to check on progress, he would not find the people in the house. He then decided to break in and move into the (his) house.

Unlike the Fynbos/East Bank case in East London that has a clearly-defined line of contestation for occupation primarily along racial lines (between coloureds and blacks), in Phakamisa (King William's Town) the contestations related to generational dynamics, that is, between the young and the old within the black community. The contestations in Phakamisa hinged on the contested waiting lists/housing databases and the troubled politics of housing delivery. Informality was determined on the basis of whether the occupant was allocated a house according to (the admittedly contested) housing lists.

To ascertain the status of the occupants in Phakamisa was not simple compared to Fynbos/East Bank in East London – where the informal occupants are coloureds who were not on the housing database and who physically broke into a number of houses within the same area. In East London, the informal occupants (coloureds) were open about their informal status and openly defended their informal actions. In the case of King William's Town (Phakamisa), one would ascertain the status of the occupants during the interviews because those who occupy at the behest of the ward councillor would not outrightly describe themselves as illegal. These, like Thembeni, were open about their status and placed confidence in the support they received from the councillor. Ironically, the younger generation was reserved and not willing to be open about their status, whether they were formally allocated houses by the Department or forcefully occupied. Because the youth is a strong political constituency, my suspicion was that some of the younger generation could also have the backing of the councillor in illegally occupying houses, making the situation even more complex. The extent to which those who illegally occupied houses defend their actions openly was greater in East London than King William's Town.

Overall, though, the councillor in Phakamisa sought to play and indeed did play a role in allocating houses, a number of residents circumvented the process and broke into and occupied houses. There were claims that some people used spades to enter forcefully or connived with constructors to get hold of the keys. A male resident, Makina in Phakamisa described how he informally accessed a house:

Let me say, we have not yet been officially given the keys but I have a key. Yes, there are keys that were left by the painters. I opened the house and put up curtains and a couch when they were painting (Makina, Phakamisa, August 2019).

Pastor Timmy, a church leader in Phakamisa described how he was encouraged to occupy houses but did not take heed:

There is a lady that used to come to my house and said, ‘man you are sitting on the couch while people are taking houses there’. The lady further said to me, ‘I have to take a house for my brother’. Coming back from East London where I work on a Saturday, another lady saw me and said to me, ‘did you hear that the people are taking houses?’ Then I said where and she said in Phakamisa. Then she said to me, ‘as a matter of fact, I am calling my sisters to come and get theirs and they are from the villages’ (Pastor Timmy, Phakamisa, August, 2019).

These particular acts of informal occupation, but not all such acts, were what the local councillor declared as illegal, such that evictions were necessary in certain cases.

The role of both the councillor and the housing Department in the allocation of houses made it difficult to determine the status of the occupants because the Department carries the official mandate to allocate and therefore those allocated by the Department are legal/formal. Yet, in a context where the local political authority wields a level of power and authority to approve the allocation, those allocated by the councillor bear some level of legitimacy under local political structures which the administrators cannot ignore. Where permission to occupy was granted by a ward councillor, who is a local political representative, the occupants did not necessarily regard themselves as illegal, although they did not adhere to the formal administrative processes of the state. These informal occupants had ongoing backing and protection from the local councillor, in return to the occupants’ political support.

Although the Department effected evictions as the state’s housing administrators, it had to navigate the space carefully in order not to be seen as completely overriding or undercutting the role of the councillor because of the latter’s direct connections to the community. In a

portfolio committee meeting, the Head of Department for the Eastern Cape Department of Human Settlements was asked how the Department was intending to address informal occupations in Phakamisa. In her response, she referred to the complex character of the issue including its historical dimensions, in the absence of any historical housing-project documents for reference purposes. Further, and importantly, she highlighted the importance of working together with the local municipality, councillors and community leadership to resolve the matter as the Department would not succeed if it acted alone (Portfolio Committee on Human Settlements, 23 June 2020).

In Phakamisa, the older generation was more willing to participate in the interviews than the youths. This generation was constituted by those who came to Phakamisa as early as the 1970s up to the early 1990s. Their ages ranged from the late forties to as old as ninety years. Interviews with those of the older generation who were still without formal housing appeared to offer them an opportunity to share their story with the hope that their story would be heard somewhere and by someone, and therefore help to bring a solution to the problems of houses that had been taken by the youths. The desperation and frustration of these older people during the interviews was palatable.

Other older people who occupied houses with the help of the councillor were also open for interviews. Mlamuli, a male respondent occupying state housing which was not contested, explained how the elderly were losing houses to the young generation. He indicated:

Some really came long before there was even the application of sites, but now their sites have been taken by someone born in 1993. The older person is left with no house. The other old lady that I know cried when her house was given to a young 23-year child (Mlamuli, Phakamisa, August 2019).

As well, Kamva a female respondent described another case of contestations between the youth and the elderly:

They [younger generation] got their house by force. Yes, there is someone old; her house was taken by a young person born in 1983 [37 years old]. That old woman whose house was taken is born in the 1920s (Kamva, Phakamisa, August 2019).

There was constant reference to the significance of age in Phakamisa, and common use of the words 'young', 'child', 'youth', and 'born 1994' to describe the generation which was deemed illegal. Though age was a critical foundation of the contestations, the 'youth' were not

necessarily youthful. In certain instances, there were contestations between residents in their forties and those in their seventies or older. So ‘young’ as a descriptor did not mean a specific age category, as it was used in relative terms. Where the older ones are in their forties, the ones in their twenties would be the ‘young’ taking the older person’s house. In an article published in *I’solezwe Isixhosa*, a 70-year-old resident was reported to have been forced out of his house after he was told that he withdrew his application for the house. His house was being taken by someone born in 1976 yet he was born in 1948. He explained:

There were young boys who came here after I had entered the house and took my clothes and put them on the street. I went to the police and opened a case and demanded that they come with proof that I withdrew my application (*I’solezwe IsiXhosa*, 07 December 2017).

Ironically, the younger generation in Phakamisa were not very open to interviews. At one point we were directed to a home where a youth in her twenties had occupied a house and was staying with her mother. We had been informed that the house was in the young woman’s name. She was not willing to be interviewed. Instead, she referred us to her mother for the interview, insisted on not recording and stopped the interview before we went any further. The general sense gathered during the interviews, through observing the unwillingness to be interviewed on the part of youth who occupied houses, was that some (but certainly not all) of the young occupants were formally allocated houses according to the housing list. However, there was an overall narrative put forward by the older residents of Phakamisa that these ‘youth’ were taking houses on an illegitimate basis. This placed the younger generation, both those legally and illegally occupying houses, in a space where their moral values were questioned and this made them quite uncomfortable. This was in stark contrast to Fynbos/East Bank in East London where the informal occupants were keen to let their story be known and to use their story to seek visibility, recognition and legitimacy.

8.6.2 Resistance and Defiance

One female respondent, in her late forties in Phakamisa, who occupied a house informally state emphatically: “They said move out of this house and I told them, I won’t move”. This was in response to ward committee members who came to evict her from the house she was occupying, a house which had not been in her name on the waiting list. Because of the ongoing and bitter contestations around occupation of houses in Phakamisa, she was not confident that moving from that house would secure her a house elsewhere in the area. She was simply not prepared to move out of the house, even with full knowledge that the house was not formally her own.

Such defiance was common in Phakamisa, as much as it was in Fynbos/East Bank in East London. Mvuso, a male resident in Phakamisa described how informal occupants defy the government and eviction authorities:

They stayed even now. The guys from the Housing Department would come and take people out of those houses and again, later, people put back their furniture and got back into the house (Mvuso, Phakamisa, August 2019).

The informal occupants defy state orders and this puts the state in an awkward and precarious position. On the one hand, the state is expected to act against illegality; on the other hand, it needs to act cautiously because of the significance of maintaining political support emanating from high-density areas in BCM.

Defiance in Phakamisa also means that the police are unable to effect successful evictions because the issues first have to be resolved between the Department of Human Settlements and community leaders. All the police could do was to move the informal occupants from the houses repeatedly, with instructions from the state. However, successful evictions were often not achieved, as a woman in Phakamisa attested:

We went to the police station. We were plus minus hundred in the police station but the Department handed over to the police maybe four people out of many. So, we decided to stay there in our numbers. We filled the police station. They asked questions so that they can open cases. We said they must call the councillor first so that we can fill the dockets. We filled the dockets. They called the councillor. The councillor talked to us and said we must fill the dockets and told the police that we came in Phakamisa in 1992 so we are the rightful owners. After sometime the prosecutor said that the case is in the hands of the councillor and housing department. This is a local thing and they can't do anything about it (Thembeni, Phakamisa August 2019).

In Phakamisa, these community members navigated between their community leaders and the police, in order to achieve some form of settlement over their housing issues. They received occupation approval on an affidavit from the councillor, and were able to ensure the police signed off on this (see Figure 9). This entailed finding some sort of amicable means to resolve the occupation contestations without violent conflict arising. Defiance in Phakamisa was thus mixed with negotiation in an attempt to resolve issues.

8.7 Occupation Contestations and Social Tensions

Informal occupation of state houses has reconfigured relations in the BCM. Tension and, at times, clashes between those who remain without housing and those who forcefully occupied houses have led to mistrust locally. This is despite the fact all of these residents may be entitled formally to state housing, with some still in a period of waiting and others jumping the queue through their illegal occupations.

8.7.1 Fynbos/East Bank

In the case of Fynbos/East Bank, many older residents complained about houses being given to the younger generation. However, the bone of contention was largely to do with houses being allocated with a racial bias. The race issue overrode all other factors, and it became intertwined with issues around corruption and other political factors.

Direct conflict ensued between the informal occupants and those denied the occupation of houses which they believed were rightfully theirs, resulting in what residents described as an all-out war. Such intense conflict around access to houses in Fynbos and East bank meant that whoever occupied the houses illegally did not so procedurally or peacefully, and threats of violence and revenge became inevitable. Wittingly or unwittingly, the occupation-based conflicts resulted in enmity and local people existing in perpetual fear for their lives. Richard a resident in East Bank described what he perceived to be the outcome of the occupation contestations:

There is gonna be war, because now what they do, they are putting a black person in my house and I must go to the streets. That person will live in fear because I will call my uncle from Joburg and my brother from Cape Town and tell them this is what happened. Now they phone cousins in Cape Town and Durban and a cousin in Pietermaritzburg. It's gonna be a blood bath, it's gonna be war. Because at the end of the day, those people won't live comfortably in these houses; because there are now sick people, disabled people, old people, and children on the streets while there are people younger than me staying in my house (Richard, East Bank, August 2019).

Racial tensions between the coloured and black communities in East London/Fynbos pre-dates the recent housing conflicts, but these conflicts have exacerbated – on racial grounds – the frail social bonds existing over time. This is a far cry from the building of racially-integrated communities in post-Apartheid South Africa, as sought by the state since 1994.

In this context, as local people experience fear and feel threatened, they stand together intra- racially, ganging-up so to speak in preparations for fighting the common ‘enemy’. As Arnold put it:

If we don’t stand together, then nothing will go forward. The black people stand together. Same as our coloured people: they realise now that we are also going to stand together from the start until the end. That’s why we are saying if we have to kill each other, this will take place. We don’t want to do that but if it comes to that point, anything will happen on that day (Arnold, Fynbos, August 2019).

The call to unite in battling the ‘enemy’ was a strong one existing within both the coloured and black communities. In instances where a coloured person was said to be ‘on the side’ of blacks, like the case of a coloured woman who was living with blacks in the *Bangalas*, that person was called a sell-out. Rose, a coloured woman detailed her relationship with other coloured people in quite graphic terms:

They don't talk to me. They hate me. When they see me in the street, they talk about me. But I don't care because I'm not guilty of anything. ... Here they don't greet me but there are some of them that know I was staying there [in the shacks with blacks], they understood that. They ask me why I don't go with them to meetings. I'm not going with them to meetings. I'm approved [for state housing], they are not approved. That's why they don't talk to me; they are cross with me. Yes, they did ask me if I'm going to come and invade and I said ‘no’, I don't do things like that. I'm approved; I don't want to make trouble for myself you see. I must wait, I can't do my own thing. I have to wait for housing. What if I get evicted [after illegally occupying], where would I go? (Rose, Fynbos, August 2019).

This coloured woman had lived together with blacks in the informal settlements before they were moved into temporary shelter (*Bangalas*). She was an approved housing beneficiary, waiting for a house, and was not willing to occupy houses illegally (only to be evicted later). Access to dignified housing trumped any solidarity she may have had, or was expected to have, with other members of the coloured racial grouping; even if this meant experiencing daily acts of ostracism and abuse.

The intensity of the situation is clear from Justin’s claim that a child of a ‘sell-out’ was almost killed during a particular incident:

What they did in 2018. There is a coloured lady that is a beneficiary that is also staying here. They [such coloureds] have been treated cruelly. They [other coloureds] are fighting with her.

They are saying they are sell-outs. ... So, one of the sell-outs' children went to go play with the other coloured children. They took the child and hanged him but he didn't die. Suddenly, the people came and took him down. The child was 15 years old (Justin, Fynbos, August, 2019).

Insofar as there is an element of truth in this story, it demonstrates the extreme enmity existing against those who collaborated with the enemy. As stated earlier, derogatory and abusive terms were widespread within Fynbos/East Bank, with coloureds referring to blacks as kaffirs, and blacks labelling coloureds as *Amalau*.

Both black and coloured residents had informal political formations, with leaders appointed by the respective communities, who represented them in meetings with the municipality and the housing Department. Talks and negotiations though were in large part unsuccessful in resolving the housing issues, taking the matter to the brink and leading to the racialised communities restoring to intimidation and violence.

These housing contestations were fuelled by the councillor through unfair treatment and favouritism on her part, thereby perpetuating the racial divide. As Christopher explained:

She is unfair towards us [coloureds]. It makes us hate those [black] people because how would you feel if you see an African [black] person move into this place? How would we feel? We have been living here for how long? I'm 33 years old I was born here. Never could I get a house here, then suddenly you see people come from other places from Johannesburg maybe an African person. Then you just see that person moving into that house. How must we feel we who were born here and were raised here and don't get that opportunity? (Christopher, Fynbos, August 2019).

Housing allocation in Fynbos has been politicised along racial lines with councillors at the centre of the processes. When a coloured councillor is in power, he or she ensures that coloureds get houses, and a similar situation exists when a black councillor is in power. In this respect, councillors (black or coloured) work together with local housing officials in manipulating waiting lists. In the absence of a centrally managed housing database being used in allocating houses, corruption and patronage systems thrive. Racial tensions are at the core of these contestations due to the historic past of racialised housing access. Housing provision continues to be crystallised around the legacy of Apartheid's racial divisions. It is not easy, or even possible, to undo the racial divide using housing delivery programmes that are undergirded by racialised politics. Racialised politics induce and perpetuate unsympathetic practices and they continue to shape post-Apartheid communities. The violence ensuing from

these contestations is an outcome of the character of urban societies that are unsympathetic, with no regard to the plight of (racialised) others in the process of accessing housing. Along racial lines, community members respond to their own vulnerabilities through self-protective mechanisms that include engaging in informal or illegal activity which may lead to violent actions.

8.7.2 Phakamisa

Phakamisa was also not spared from social tension and fear because of occupation contestations. Nomvula, an elderly woman feared for her life. She said ‘we can die anytime; they said they will burn us’. Nomvula is one of the elderly people who had lived on a plot with the hope of securing occupation of the house that was built on the same plot, which one of the younger generations occupied. Suspicion of others as posing a danger to accessing shelter was rife between government’s intended beneficiaries and those who moved into houses informally either at the instruction of the councillor or on their own accord. Although Phakamisa did not erupt into violence, there were many cases of conflict between individuals. Lulama, a male resident described how conflicts started in Phakamisa:

Yah, most of the people out there [in Phakamisa], they are illegal occupants. They just come and they stay and when you come as the owner, you see, that’s where the conflict is because that person will say I am not going out and yet you’re the owner (Lulama, Phakamisa, August 2019).

Nomvula detailed how she and her family relate to the young man who occupied a house she claims to be hers. The house was right in front of the shack where she lived long before houses in the area were built. The elderly woman and her family felt quite insecure and unsettled by the fact that the man occupying ‘their’ house (and which they wanted to move into) was erecting a fence around them, thereby enclosing them in as prisoners. She stated:

We can’t be buddies, ... we can never be fine you see. We don't swear at each other but we are not on good terms at all. When you see a person is putting up a fence and there's no proof that this is their house you see, it’s painful. We don't know where to go from here, we have no place to go (Nomvula, Phakamisa, August 2019).

In cases where the elderly had houses occupied by the youth, which they had waited for while living on the plots, the elderly felt helpless and miserable, yet they could not physically confront the youths. Some would just cry. The human pain emerging from informal occupations brought about feelings of anger and fear, hardly conducive to peaceful co-

existence. This elderly woman feared for her life and the lives of her family, including grandchildren. She said she was told by the young man occupying the house that he would burn their shack down in order to compel them to leave 'his' place.

One scenario involved conflict within a family, in which Thembeni described 'a big' fight that ensued between her and her niece who was born in 1993. The housing Department allocated a house to the family, leaving Thembeni and her uncle, who is her niece's father, to fight over the same house. The house had been built on the plot which Thembeni lived over the years so, as stated earlier, Thembeni moved into the house without the Department's approval as the house was allocated in the uncle's name. Thembeni refused to move and asked her uncle to take his daughter's house that was allocated to her by the Department. Though this created significant tension between family members, Thembeni (in her mid-forties) indicated that they were able to resolve the matter by letting the father occupy the other house (which was in his daughter's name), while Thembeni keeps the one she was occupying (which was in the uncle's name). The niece was asked to wait for another chance to get a house in the future because she was still young. Asked about how resolution of legal ownership of the house would take place in the future when title deeds are issued, she did not worry about what happens in the future. She simply told the housing Department that she was not going to give the house she was occupying to her uncle and the Department must write her name against that house.

8.8 Collective Sympathy, Housing Rights and Morality

As discussed earlier, Turner (1993) proposes a sociology of rights based on moral sympathy, that is, rights as social claims for (often institutionalised) protection supported by collective sympathy for the plight of others. Drawing upon this perspective, this section analyses informal occupations and their effects on social relations in the BCM to assess the need for collective sympathy with regard to accessing housing among the urban poor. In this chapter, it has become clear that a community of sympathy is highly dependent on residents' perceptions of a state that upholds values that are sympathetic to the plight of the poor.

8.8.1 State Sympathy

The state is an institutional arrangement such that, analytically, it would be problematic to claim that it has, or can express, human emotions such as sympathy. To do so would entail an argument for anthropomorphism. However, even amongst scholars, it would not be out of character to speak about a sympathetic or unsympathetic state, as measured in terms of some

notion of social justice. The fact that the post-Apartheid state has pursued a reasonably vigorous state housing delivery programme for those subjected to the inequalities of Apartheid, could act as a signifier a sympathetic state. Whether or not there are other factors animating this housing programme, such as instilling and deepening loyalty amongst a crucial sector of the voting population, would not necessarily distract from the state's sympathetic dispositions.

The state is not simply an institutional arrangement but also a set of practices with personnel (including ward councillor, housing department officials and police). Typically, it is in and through these practices that the urban poor experience, understand and reflect upon the state. Further, it is the state personnel engaged in these (state) practices which enter directly into the lives of the urban poor. Insofar as the urban poor come across incidences of state corruption and maladministration, they are bound to consider the state (as personified in its personnel) as unsympathetic to their plight. Evidence for this exists within East Bank/Fynbos and Phakamisa, leading to levels of moral contempt for the state. Evictions bring further challenges for conceptions of the state as a sympathetic moral agent.

There are numerous instances, though, of sympathetic state practices existing in Fynbos/East Bank and Phakamisa. In some cases, respondents reported that the police would refrain from treating harshly those being evicted, especially the elderly. At time, the police would tell the evictees to move back into the houses when those who evicted them left. Anastasia and husband, an elderly couple in East Bank, who occupied a house illegally, described the actions of the police when the police were sent by the former councillor to evict them:

She is no longer a councillor but this year she asked police to come and take us out. The police were not rude. We took our furniture out and when they were gone we put it back. They told us you can put your furniture back because it was not our job to do this. They felt sorry for us (Anastasia, East Bank, August 2019).

In Phakamisa, the police endorsed letters or affidavits (which affirmed ownership of houses) brought to them by informal occupants from the councillor. Most residents seemed to indicate that the police did not want to (or could not) become directly involved in housing matters, because it was not their area of jurisdiction but that of the Department of Human Settlements. Nomvula in Phakamisa described the limitations of the police in assisting with her case, after being given a letter from the councillor:

I went there and he [councillor] wrote me a letter to take to the police so they can chase this person. When we got to the police, they couldn't investigate. If human settlement [the

Department] or the councillor could go with the people, the police could act. (Nomvula, Phakamisa, August 2019).

Residents were aware that police had a duty to become involved in evictions, if called upon to do so. But, particular police officers expressed sympathy for their plight, sometimes going against their assigned duties. At the same time, there were reports of some police officers (and other government officials) formally occupying state houses though they did not qualify for it in relation to the set-out criteria. As state agents, police have multiple identities which go beyond their official status as police officers, including as members of local communities who, like others, seek dignified shelter.

The informal (illegal) occupants appealed to the state for sympathy despite the fact that the state as an institution, through its housing delivery processes, showed itself as bound by legal procedures and formal mechanisms. The appeal was often made to the president as the apex of the state, and as the very embodiment of the state, as someone who could perhaps rise above and beyond the legalism of the state. Through medium platforms, the president was called upon to intervene in the ongoing conflicts but also to ensure that formal houses would be forthcoming for all.

In an article published by *Ground Up*, an elderly woman who informally occupied a house in an area (Nigel) contested between coloureds and blacks in Gauteng province, and who feared the prospect of eviction, appealed to the government in the following way:

The government must feel for me and allow me to continue staying here. I am now an old lady who no longer has strength to do a lot of things. I want to stay here for the rest of my remaining days on earth (*Ground Up*, July 2020).

Here, the government is personified in the mind of this woman and is imagined to be capable of feeling, in particular by recognising her frailty and vulnerability. An eviction order had been given by the court to evict people who had illegally occupied houses in Nigel, including this 79-year-old woman who described the thought of Red Ants (evictors) coming to drag her out of the house as unbearable.

A retired single woman in Phakamisa, who lived alone and whose only child (a son), who she thought would take care of her in her old age, had passed away. She had informally occupied a house in Phakamisa. Her name was not on the formal housing list at all because she was new in the area and when, she retired, she left Zwelitsha to come and stay in Phakamisa. She had

illegally occupied a house with the desperate hope that a caring government would consider her plight and allow her to stay. She remained deeply uncertain about her future. Although, institutionally, the state as such cannot express sympathy, its practices and personnel may embody sympathetic dispositions, and this woman (like so many others) sought to draw upon this possibility in appealing to the state. It is an appeal to morality against the uncaring exercise of power.

In fact, one outcome of the contestations around occupations in the BCM has been the development of a housing policy on reprioritisation of destitute persons in the allocation of housing opportunities. The policy, which was in draft form at the time of writing this thesis (mid-2020), seeks to give housing to the most vulnerable and to develop a housing delivery model that could achieve that objective. The policy defines and classifies groups of destitute persons which qualify for state housing. I had an opportunity to provide input into the draft policy as part of civil society engagement on Eastern Cape Human Settlements policy formulation. It became clear that the housing Department observed and recognised the limitations in the current delivery model which fails to protect the most vulnerable. This policy is in line with the appeal to government for sympathy from the elderly and other vulnerable members in the area.

8.8.2 Community Sympathy

At local community level, questions also arise about the possibility of collective sympathy for others, and the ways in which occupation contestations run counter to such sympathy. The urban poor in the BCM are presented with difficult choices, in a context where by virtue of being poor, all tend to live under vulnerable conditions, yet among them are particular individuals who are more vulnerable due to disability, age and other factors.

In Phakamisa, youths were legally entitled to houses and some had received houses officially from the Department Human Settlements. However, the overriding narrative of the youth as ‘illegal occupants’ (when age and historical occupation of land is taken into consideration), gave the youths a sense of guilt – although they continued to occupy the houses. The elderly, who shared openly their experiences as victims of formal systems and processes, received only minimal sympathy from the youth. The councillor in Phakamisa, who strongly defended the older generation, generally sympathised with them and described as unfortunate incidences where elderly people were abused and berated by the youth.

However, there were allegations that the same councillor (who supported the elderly) collaborated with the youths in the ward committees. He would recruit and use them when campaigning during elections and then reward them by arranging for their access to state housing. These ward committees, composed of youths, were said to be responsible for adding young people to the official housing list, thereby facilitating their jumping of the queue in accessing houses before the older residents did. This clientelist and patronage-based approach thwarts or erodes moral values and sympathy, with the councillor in particular politicking in trying to please different categories of residents (old and youth) simultaneously. This makes it difficult for him to rectify some of the occupation contestations between youth and old as his values are compromised by the politics of clientelism for political gain.

In this regard, there are some elderly couples who had waited in vain for interventions from the councillor in receiving assistance in houses occupied from the youth. Nomvula stated:

We haven't seen any help from the councillor, for how long must we wait? Here is a house, we see it. We can't move in; the person has his stuff in. He does not even live there. He took another house elsewhere. The councillor is not helping much and our lives are at risk with these young people, while everything takes time to get resolved. You see we are getting old and this house will be inherited by other people (Nomvula, Phakamisa, August 2019).

The possibility is strong that the councillor faces a situation where a youth occupying a house wanted by an elderly couple is a loyal supporter of the councillor, making it difficult for him to evict the youth and thereby making good on his promises to the elderly. Resolving such a case would require finding another house for either the youth or the elderly, which is near impossible because all houses (even those in the process of construction) are occupied or have ownership claims over them. The councillor becomes conflicted because of his political interests, and any genuine sympathy is overshadowed by his political inclinations.

There was some meaningful sympathy towards the elderly in general from some members of the community in Phakamisa, with Thembeni describing the actions of the youth occupying houses as 'bullish', as they all knew the houses are supposed to be for those older people who came to live in Phakamisa in 1992 (Thembeni, Phakamisa, 2019). The woman described cases of contestation between the elderly and younger generation, as follows:

This elderly woman, her house was taken. She was born in 1927 and her house was taken by the young one, born in the 1980s. So, there are houses with problems, but those with the young

ones in a house and the old one in the shack are very bad. It's difficult to deal with such. We tried by all means but we can't do anything (Thembeni, Phakamisa, August 2019).

Faced with the possibility of waiting for years if not decades to get a house through official and procedural means, the younger generation was not willing to surrender houses to the older generation. The long waiting period made the present opportunity to get a house more preferable than the uncertainty of ever getting a house. Sympathising with the elderly woman would entail leaving a house now and the younger generation was not willing to suffer such a loss. Where conflicts around fulfilling basic needs like housing are involved because of long-established shortages, community sympathy and the quest for human dignity for all becomes side-lined by personal concerns and projects, namely, realising personal access to dignified housing at the expense of others, even the most vulnerable. In the context of scarcity, the prospects of never accessing a house brings about emotions of dread, hopelessness and fear, inhibiting the prospects of an inclusive collective sympathy.

8.8.3 Trust

Trust between citizens and the state, and among citizens, is a significant factor in shaping the dynamics of occupation and ownership contestations in the BCM. Firstly, citizens trust that the state delivers on its promises of housing for all and will do so effectively. They trust that the post-Apartheid state will fulfil its political mandate of bringing about redistributive justice after decades of racial segregation. When the state shows slow progress, and when its institutions become weak and corrupted, citizens lose trust in the state and find ways to meet their housing needs, sometimes through illegal means. Secondly, the state's response to occupations through evictions, sometimes by way of force, develops citizens' mistrust even further as the actions of the state are seen as disregarding, in a very vivid manner, the plight of the urban poor. Citizen mistrust breeds citizen resistance often through informal and illegal activity.

Trust (and mistrust) also became central to relations amongst citizens themselves. People wait for many years before they receive houses, and for reasons which they are unable to identify clearly. The tampering and manipulation of the waiting list, or suspicions about such abuse, created significant mistrust in the local administrators of housing delivery. Consequently, those who lost confidence opted for illegal and informal means to access housing. The effect is that those who kept trusting the system lost the opportunity to occupy houses officially, as illegal occupation overtook them while waiting. These occupations without ownership drew upon pre-existing underlying tensions (for example, racial ones) within the urban communities, and

deepened them as well, thereby heightening levels of mistrust between residents. Threats of violence and violence between the occupiers and those claiming ownership exacerbated mistrust among residents.

8.9 Conclusion

This chapter examined the actions of the illegal and informal occupiers, which are characterised by all manner of resistance against the state including physical resistance, defiance, violence and at times negotiation. Post-Apartheid racial tensions persist due to unsympathetic Apartheid tendencies born through urban racial segregation; and other tensions, including along generational lines, also come into play with regard to occupations without ownership. The extent to which the post-Apartheid poor urban community develops into an unsympathetic one is highly dependent on the state's capacity to uphold values of trust, dignity, justice, and fairness in its housing delivery programmes. In this context, the chapter ended with a reflection on the significance of collective sympathy in relation to those who are in particularly vulnerable positions. Although there is a recognition of the universal right to housing to be realised, it is difficult for many to express sympathy for others when faced with the possibility of not accessing dignified housing in their life-time. Both within the community, and between state and community, there are very fluid and contested relationships existing over an extended period.

CHAPTER 9: CONCLUSION

9.1 Introduction

The thesis has investigated and analysed intra-community contestations over ownership and occupation of state-provided housing in contemporary South Africa with reference to Buffalo City Municipality (BCM), Eastern Cape Province. Although these contestations are conditioned and configured by the inadequacies of current administrative and political processes in housing delivery, they are also framed (discursively) by conflicting rights-based claims. Informal or illegal occupations in the BCM emerge when the poor re-imagine rights and thereby create popular notions of rights-based claims that conflict with constituted housing rights. The poor justify their actions of informality and illegality through a fundamental re-articulation of rights to the extent of indulging in acts of violence not just against the state, but against each other. In a society that has been fractured and weakened by historical segregation and is now marked by precarious state institutions that are unable to deliver effectively urban resources, those exposed to persisting vulnerability seek to protect themselves (and advance their lives) through informal and illegal means. The social and political practices (of occupation without ownership) imply the existence of unsympathetic urban communities while also reinforcing conditions of vulnerability for those residents who own but do not occupy state-built houses.

The contextual chapters (chapters 4 and 5) provide the socio-political, economic and historical backdrop for locating the illegal occupation of state-provided housing in the BCM, including the manner in which the post-1994 state's housing delivery programme conditioned the emergence of diverse housing right-claims in urban spaces. In this concluding chapter, I first demonstrate the way in which the empirical chapters (chapters 6, 7 and 8) were able to address the three main subsidiary goals of the thesis (section 9.2). In section 9.3, I speak about the investigation of the main thesis goal, which emerges indirectly from addressing the subsidiary objectives. In doing so, I highlight the relevance of the analytical framing (as set out in chapter 3) for pursuing the main objective and the contribution of the thesis to the prevailing literature. In the last section (section 9.4), I refer to important areas of further investigation which flow from this thesis.

9.2 Addressing the Research Question and Goals

To remind the reader, the main research question is: *What are the causes and character of the contestations over ownership and occupation of state-provided housing in contemporary South Africa with specific reference to Buffalo City Municipality (BCM), Eastern Cape Province?* A subset of research questions emerges from the main research question:

1. What are the current administrative and political processes that guide housing delivery and to what extent do these contribute towards informal occupation of state-built houses in the BCM? Who does the allocation of houses and how is it done?
2. Can diverse rights-based claims be useful in making sense of individual or community decisions to occupy state-built houses? What do the narratives of those involved in informal occupations reveal about their claims for ownership and occupation?
3. What do contestations around housing reveal about the way the urban poor construct their realities in the face of housing scarcity?

The overall objective of the thesis, built on the main research question, is *to investigate and analyse the causes and character of contestations over ownership and occupation of state-provided housing in contemporary South Africa with specific reference to Buffalo City Municipality (BCM), Eastern Cape Province*. The subsidiary goals, which align broadly with the set of research questions above, are:

1. To investigate both official and unofficial processes of housing allocation and, in particular, the manner in which people access state housing not officially allocated to them as beneficiaries in BCM;
2. To examine diverse housing claims and determine whether those claims are animated or legitimised by popular constructions and understanding of rights.
3. To understand the way in which the urban poor respond to vulnerabilities emerging from inadequate housing and the state's failure to realise their housing rights.

The subsidiary goals were addressed through the three empirical chapters as the following discussion shows. In addressing the first subsidiary objective, Chapter 6 reveals maladministration processes and a lack of clear guidelines in housing allocation as contributing factors to illegal occupations. It outlines the formal processes which the Department of Human Settlements, nationally and provincially, pursue in order to deliver housing to the urban poor. These processes are characterised by significant administrative loopholes and weaknesses by

way of corruption and political interference. Informal processes of allocation of state houses (including illegal occupations) emerge from (and because of) these bureaucratic and political weaknesses. Chapter 7 addresses the second subsidiary objective by examining the diverse rights-based claims (arising and existing in the BCM) of those who forcefully occupy houses, and how these are legitimised by popular notions of rights. The complex links between different rights-based claims are unraveled in the chapter. Consistent with the third subsidiary objective, Chapter 8 focuses on the role of the state in the contestations and how, in condoning unethical practices, the state contributes to the creation of an unsympathetic community characterised by all forms of resistance including violence, intimidation and destruction.

9.2.1 Housing Registration and Allocation Challenges in the BCM

The challenges of providing state housing by the Buffalo City Municipality (like in the rest of the country) has led to the unprecedented outcome of illegal occupations. Maladministration, corruption and political interference drive illegal occupations of state-provided houses, as individuals take advantage of the weaknesses in the housing system or simply disregard state processes due to frustration with the system. Individuals experience long waiting periods (20 years and more), just waiting - typically impatiently – for their chance to get a house. While waiting, the official waiting lists are tainted by manipulation in order to facilitate the jumping of the queue, resulting in losses of confidence in the delivery processes from the time of application, to registration and through to allocation. The length of waiting time and the multiple registrations that take place mean that intended beneficiaries have to permanently reside in an area until such time as they are allocated a house. Moving to another town in the meantime causes further delays in getting a house as the person goes through the process of registration again in his or her new place of residence. In this context, impatient and frustrated (possible) beneficiaries forcefully occupy RDP houses.

The socio-political dynamics in housing delivery and the precarious character of state systems and institutions condition the emergence of BCM's illegal occupations. The Eastern Cape Human Settlements' officials attribute illegal occupation of RDP houses to delays in handover to beneficiaries, specifically due to the Department's failure to locate those beneficiaries who are to be physically handed-over houses. The Department's viewpoint does not, however, adequately explain illegal occupations as it ignores the corrupt character of the state and the politics around free housing delivery in post-Apartheid South Africa. Through details of the housing delivery process as provided in chapter 6, this is clearly shown. The lack of clarity in

compiling and consolidating official waiting lists results in competing waiting lists and manipulation of lists. The systemic absence of clear and consistent guidelines for allocation of houses over an extended period makes the allocation process easy to manipulate.

An important observation is how local politics play out in the registration process, causing confusion and uncertainty in the allocation of houses. Residents align to local political elites who are often constructing their own waiting lists, including both present and former councillors. They register multiple times to increase their chances of accessing houses through formal means. Every opportunity, both formal and informal, is used tactically as a way of securing a house when housing allocations take place. The ward committee members also interfere with the process of allocation, causing more confusion amongst residents as the latter have to make difficult decisions on where to place their allegiance – between the councillor or councillors, ward committee members or any other local community leader claiming to have a role in influencing the delivery process. Clientelism and political patronage in registration and allocation of houses is common as councillors reward their political supporters with houses. The interference of politics in administrative processes makes contestations of ownership and occupation almost inevitable and this is evident in the BCM.

The Phakamisa housing project in particular had historical administrative challenges which, according to the ward councillor, led to misallocation of completed houses – from his perspective, this was the fault of administrators and other councillors who did not coordinate the Phakamisa project effectively. The councillor argues that the Eastern Cape Department of Human Settlements did not take into consideration the historical formation of settlements in Phakamisa where settlers were formally allocated plots and were permitted to build shacks within town planning regulations. The councillor deems illegal those occupants who forcefully occupied houses and not those who were staying on the plots over the years waiting to occupy the houses (and whose houses were allocated to others by the Department). Illegality is therefore not a straightforward matter in Phakamisa and chapter 6 provides context to the illegality in Phakamisa. In East London, illegal occupants are specifically Coloureds who forcefully occupied houses that officially belonged to black Africans.

9.2.2 Rights Based Claims in the BCM

This section summarises the right-based claims that emerged from the studied respondents. Claims made by occupants (both legal and illegal) include both legal and illegal claims, such as arguments based on ideas of justice and historic claims about access to land and housing.

Weaknesses in state processes provide justification in particular for those who choose the informal route to access shelter. The Apartheid context and the requirement for redress conditioned and enabled residents to make claims based on injustices that characterised housing delivery in the past.

Inclusive citizenship, identity and belonging emerged as central to the claims made by residents in the BCM. In East London, racial tensions emerge from historic racially-biased spatial planning. Residents in BCM felt excluded and unfairly treated on the basis of race, age, the physical space of waiting (informal settlement shack/backyard shack), historical factors of privilege or deprivation and place of origin as urban migrants. Access to housing in the BCM and in urban South Africa generally translates to access to the city, given the history of exclusion of blacks in the urban area. Rural-urban migrants experience exclusion in relation to those who perceive themselves as legitimate residents and ‘owners’ of urban space. Additionally, inter-urban migration has become problematic as claims for state housing have been localised – to the extent that those who come from other towns or other urban locations outside the area are perceived as outsiders.

Desert and entitlement often have become the basis for claiming access to shelter. Although these factors emanate from a general appreciation of the right of access to shelter, the historical context of housing in South Africa creates entitlements that are not based purely on the constitution. There are moral views of justice; for instance, access to housing is understood as a reward for sacrifices made in resistance to Apartheid. Desert claims go beyond arguments about involvement in Apartheid resistance and include claims from the younger generations who presently engage in various forms of protests for service delivery. Resistance and protest is used as the means for state recognition, legibility and a quest for inclusion by the urban poor, young and old alike. At times, this leads to conflict between the different generations as the elderly feel more deserving, given that the ‘born frees’ had not participated in the foundational struggle that brought about emancipation from a repressive racist regime.

The claims made based on age/generation are quite complex as questions of who is more deserving between the young and old are moral questions not easily dealt with in housing policy. Housing is an asset that can be passed on from generation to generation – if an older person dies while on the waiting list, any child of the dead parent deserves to get the house that was written in the parent’s name. Nevertheless, giving a young person (in these circumstances) privileges him/her above all other youths who have to wait for a prolonged period of time with

uncertainty. As well, local community leaders in the BCM become conflicted over allocating houses between the young and old. In the case of Phakamisa, SANCO supported housing access for youths while the local councillor supported the elderly members of community. The elderly would not want to die without houses, but the youth want to equally participate in the fruits of a democratic country through access to housing. In the interviews, the rights of the disabled and the elderly emerged as significant for occupation and ownership of RDP housing, raising moral questions on desert. Illegal occupation was done, for example, to secure shelter for a disabled or elderly family member. The disabled and elderly alike, living in inadequate shelter like shacks or bungalows, considered themselves particularly vulnerable and felt that the state must seriously consider their vulnerabilities when it came to allocating houses.

Those who illegally occupied houses would resist evictions and demand that the state give them alternative accommodation before they move out of the houses. Need-based claims were central to the demand for shelter and the subsequent drive to informally occupy houses, at least where meeting the need for shelter could not be done formally. Illegal occupants did not want to return to a place of waiting and face the uncertainty of ever receiving a house. In this regard, the claims made were based on the need for shelter as legally provided in the constitution (though the state falls short of this obligation). The urban poor ground their claim in the idea that the state must recognise the dire need for shelter in poor urban communities and therefore make it possible for the poor to get shelter.

9.2.3 Contestations and State Relations in the BCM, and the Urban Poor's Response to Vulnerability

Having observed how the state enables illegal occupations through maladministration and political interference, this section refers to the last subsidiary objective of how the urban poor respond to their own vulnerabilities. Through their actions, the illegal occupants disrupt state order and defy formal procedures through self-provisioning of state houses; and, in doing so, they become active agents determining the processes and outcomes of housing delivery. Because illegal occupation happens regardless of existing formal processes, it challenges the (legal) rights-based approach which the state uses to deliver houses. Ownership of houses, for the urban poor, may be achieved informally by taking the step to illegally occupy RDP houses and resist evictions by all means in order to retain occupation. Resistance sometimes results in violence, destruction and internal fights within the community causing discord and lack of cohesion.

Housing occupation (while awaiting ownership) as a strategy for the poor in securing the right to shelter defies the state's regime of housing delivery. The state is sometimes left with no option but to negotiate these housing rights with the urban poor; as a result, formalisation of the informal has become generally accepted, particularly where formal processes cannot be stringently followed, and evictions are not successful. Evictions, perhaps the preferable approach from the state's perspective, are resisted strongly by illegal occupants and they are often associated with significant violence and destruction (like with the case of East London). The state is placed in a position where affirming formal processes becomes a challenge, and it cannot simply ignore the plight of the urban poor as a constituency. The use of the law is also of importance in tactfully resisting evictions as the illegal occupants seek legal assistance to challenge the procedure on evictions by the BCM. Basically, where alternative arrangements for evictees is not made before evictions take place, this is considered illegal, and the illegal occupants use that provision to resist evictions.

In East London, physical resistance, defiance, violence, intimidation, and destruction were all means to resist evictions, with even death threats made against each other. Additionally, some residents made attempts to use the media to highlight their plight in trying to access houses and to call on government to resolve local conflicts. In Phakamisa, negotiations among residents, with the ward councillor playing a mediating role, was the main approach. The contestations in Phakamisa did not result in violence and destruction of houses, as in the East London case. The police also played a role in settling disputes working along with the councillor; however, at the same time, the Eastern Cape Department of Human Settlements continued to pursue legal battles against illegal occupants. Simultaneously, the Department acknowledged the need to work together with local community leaders in order to resolve the Phakamisa housing problem as it is a deep and complex historical problem.

Illegal occupation has been critical also for creating dialogue leading to policy reform, as the income-qualifying criteria for state housing unwittingly leave out certain groups of people who are not necessarily able to purchase houses on the market (but are excluded from benefiting through the housing programme). The missing-middle has at times used informal means, including illegally purchasing houses through corrupt ways or forcefully occupying. In doing so, the missing-middle negotiates its rights of ownership through informal and illegal occupation. The state's provision of subsidised rental housing does not secure ownership rights although it offers occupation rights. In order to secure both, the missing-middle finds the opportunity through informal access to houses. The missing-middle, like others, seeks

recognition from the state as a group whose shelter needs cannot be addressed adequately through the existing housing programmes. This causes conflict with the qualifying beneficiaries through illegal occupation.

In all these contestations, community tensions are rife between the rightful owners and the illegal occupants. These tensions manifest in racial, generational and other local contentions. The result is that fragile urban communities will persist in the BCM if the housing issues are not fully resolved.

9.3 Addressing the Main Objective

This section shows how the analytical framework was useful in addressing the main objective of analysing housing ownership and occupation contestations in the BCM. Housing provision is anchored in human rights as access to shelter meets one of the basic needs of citizens. The thesis has therefore drawn upon a rights perspective in its analysis and, in doing so, reflects upon the manner in which the urban poor seek to realise their housing rights. Human rights are highly contested and there is no consensus about their very constitution, character and conditions of existence. Natural rights for example have moral ideals of right and wrong embedded in them, with humans assumed to have inherent capabilities to distinguish between right and wrong (Heyden, 2001). As the BCM case shows, the interpretation of rights and the moral question of wrong and right is not only subjective but contextual, resulting in unprecedented actions by those who seek to apply rights to real life socio-economic contexts.

Housing contestations emerge from the meanings of housing rights espoused by the poor within their context, and as espoused in terms of the poor's worldview of what is wrong or right. In their legal form, human rights fall short in translating rights to real life experiences for the poor, and the poor make moral claims which run contrary to legal rights. Although the state may rigidly work within the legal rights framework, a range of moral ideals of right and wrong characterise the everyday life of ordinary citizens. Citizens capitalise on the fluid and contingent character of rights and therefore apply rights to real life contexts in a manner that is normally of immediate benefit to them. Therefore, the inherent contradictions in human rights – discourse as legal on the one hand and moral on the other – creates tensions in practice.

As a result, the urban poor highlight the state's precarious nature (incapacity, maladministration and corruption) and they justify their own informal actions in accessing shelter. Socio-economic rights in general, and housing rights in particular (as this thesis seeks

to show) are also often institutionalised social claims supported by collective sympathy (Turner, 1993). Without collective sympathy and a regard for the suffering of other humans (which remains a serious challenge in the BCM), residents indulge in activities that cause pain for the other in order to realise housing rights. In the light of a precarious state and unsympathetic collectives, the various claims made by illegal occupiers point to the existence of a poor urban community ready to apply a moral-economy perspective in determining the outcomes of a right-based housing delivery system that excludes them. Their actions reveal the struggles faced by the urban poor in securing shelter and the right to belong to the city, a quest for recognition and visibility from the state. Additionally, these actions speak to the everyday tactics employed by the poor urban community for survival by way of informal means.

In seeking to further understand the actions of the urban poor in occupying houses informally, the thesis drew upon a diverse range of theories, including Chatterjee and the uncivil space within which the poor operate outside formal civil spaces. The space of uncivil society as described by Chatterjee (2004) does not exist in legal or formal spaces. Chatterjee (2011) describes uncivil society as ‘political society’ consisting of those who are not legitimate members of civil society with unquestioned access to formal rights, but rather populations to be well governed and controlled by the state. Through illegal means, these populations (for example, the urban poor) access basic services, which also form a basis for seeking visibility and recognition from the state and thereby affirm their citizenship and belonging.

The thesis contributes to housing literature on South Africa because of its intense focus on informal practices around access to state-built houses. The thesis provides a nuanced analysis of the conditions animating informal access to housing by the urban poor, bringing to the fore the various rights-based claims used to justify informal actions. It highlights various social-fault lines (like race and age) that give rise to housing contestations in the BCM and likewise elsewhere in urban South Africa. It does this by way of an innovative and unique theoretical framework.

9.4 Future Research

Further research on housing in South Africa remains important. Housing research on South Africa has focused on state incapacity; housing policy development success and failure; urban informality; urban social movements; housing, health and liveable environments; and post-occupation housing (dis)satisfaction.

In analysing housing contestations in particular, future research on housing in South Africa could in the first instance incorporate more fully a focus on non-state actors and their role in advancing housing rights for the poor. Civil society organisations engage in social accountability work, including monitoring housing department performance and resource management systems in order to enhance service delivery. Secondly, research around housing contestations needs to focus on symbolic representation, particularly the unofficial naming of places as political acts during contestations in urban communities. While undertaking this research, I was struck by the importance of naming residential areas as a political strategy to express the discontentment of urban communities with their living conditions and the means to claim urban spaces. It is hoped that this thesis will stimulate other researchers to focus on these and other key housing themes in the years ahead.

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Appendix 1: Interview Schedule for Official RDP House Beneficiaries

1. Tell me about your background (your name, age, marital status, household status, race)
2. Please indicate to me if you have any form of disability, which you are free to share with me.
3. Where were you born and when did you come to live in this area?
4. Did you move from somewhere and if so could you explain when and how you moved from the area you lived before?
5. How important is owning a house to you?
6. Do you own a house and if so is it the one you are living in now?
7. If you are not the owner do you know who owns the house?
8. Do you know how the owner came to own the house, e.g inherited or received from government, bought etc.
9. If you are the owner could you please explain to me how you came to own this house. Eg inherited, received from government, bought?
10. If you are not the owner, are you renting the house?
11. Do you own an RDP house elsewhere, which you are either renting out or someone is living in it or you have given away or sold?
12. If someone is or was living in your house, could you please provide me with more information on how the people/person living in that house that belongs to you came to live there.
13. Have you tried to get back the house and if YES how?
14. Do you think the government must continue to provide houses to the people for free?
15. If YES explain why you think so. If NO explain why you think so.
16. Describe to me the process of waiting for a house after one is on the waiting list. How long does a person have to wait for a house before it is finally handed over to him/her?
17. Do you know how the construction of RDP houses takes place until the time they are handed over to their beneficiaries?
18. Could you provide me some detail on the RDP housing allocation process until the time someone lives in the house?
19. How smooth is the process and who are the parties involved in the allocation process?
20. What are the common challenges that people face in the allocation process and how do you think they affect people?

21. Do you know if the people living in the RDP houses in this area have title deeds for the houses they live in?
22. If someone does not have a title deed yet for the house she/he lives in, what documents does such a person hold in order to confirm ownership?
23. How long does the process of having a title deed for a house take from your own experience?
24. Do you have a title deed or any document that shows ownership of your house?
25. Do you think the people living in your house do so because they think they have a right to do so?
26. Do you think they care at all that the house they are living is for someone else?
27. Do you still hope to get the house back and how do you think that is possible?
28. In your own thinking who deserves to live in the house you are saying belongs to you between you and the person living there? Could you provide reasons for what you think.

Appendix 2: Interview Schedule for Illegal Occupants/Previously Illegal Occupants

1. Tell me about your background (your name, age, marital status, household status, race etc)
2. Please indicate to me if you have any form of disability, which you are free to share with me.
3. Where were you born and when did you come to live in this area?
4. Did you move from somewhere and if so could you explain when and how you moved from the area you lived before?
5. Did you move with all the members of your family?
6. How important is owning a house in your opinion?
7. Do you own one at the moment?
8. If NO are you renting the house you are living in?
9. Do you remember when the construction of these houses was done and when it was completed?
10. Did you move in at the time the houses were completed or you experienced delays in occupying this house after it was completed?
11. If you experienced delays what were the reasons for the delay in occupying your house?
12. What are your thoughts about what the government is doing to provide houses to the people for free?
13. Do you think government must continue to do so and if so why? If NOT why?
14. Describe to me the process of waiting for a house after one is on the waiting list. How long does a person have to wait for a house before it is finally handed over to him/her?
15. How long did you have to wait for the house before it was handed over to you?
16. Could you provide me some detail on the RDP housing allocation process until the time someone lives in the house?
17. How smooth is the process and who are the parties involved in the allocation process?
18. What are the common challenges that people face in the allocation process and how do you think they affect people?
19. Do you know if the people living in the RDP houses in this area have title deeds for the houses they live in?
20. If someone does not have a title deed yet for the house she/he lives in, what documents does such a person hold in order to confirm ownership?

21. How long does the process of having a title deed for a house take from your own experience?
22. Do you think some people end up living in houses that do not belong to them?
23. If so, could you provide some more detail as to how this happens?
24. Could you narrate to me of any incident that you know of people who have been in conflict over who should live in a particular RDP house?
25. When such conflicts occur how are they often resolved?

Appendix 3: Interview Schedule for Government Official-Human Settlements Department-Beneficiary Directorate

1. Tell me about your background (your name, age, job title (optional))
2. How long have you been working for the Department of Human Settlements?
3. How long have you been in the Beneficiary Directorate and in the job position you are now?
4. Kindly describe to me what work you do.
5. Do you directly work with the beneficiaries of RDP houses and how?
6. Are there cases of illegal occupation of RDP that have been reported to the Department that you are aware of?
7. Could you explain more about such cases.
8. How often are they reported in King Williamstown?
9. Do you have any figures that I can have access to?
10. What exactly do you think result in other people occupying houses that do not belong to them and the rightful owners are not able to do so. Provide a number of scenarios you may think cause illegal occupation.
11. Is the Department managing to address the problems and how?
12. What do you think has been the outcome of such contestations over ownership and occupation of RDP houses on the people in the community?
13. Do you think the beneficiary are aware and make use of their rights to access housing? WHY do you think so?
14. How do you think the people use their rights to access housing?
15. What do you think aside from rights drive people to occupy houses that are not their own?

Appendix 4: Interview Schedule for Community Representatives

1. Could you provide background of yourself (Age, gender, status in the community)
2. How long have you been living in this community?
3. Could you explain a little bit more what role you play within this community?
4. What observations have you made on the processes of RDP housing delivery to the community?
5. Do you think people in this community are aware and make use of their rights to demand houses from government?
6. If YES how do you think they exercise their rights to housing.
7. Are there any challenges in the delivery process and if YES what are those challenges?
8. How do the problems of access to housing manifest in this community?
9. Are you aware of any problems to do with occupation and ownership of houses after they have been allocated to the people?
10. Could you explain to me how this happen and how it affects the community?
11. Have you directly been requested to assist in a situation where people contest over ownership or occupation of a particular house?
12. If YES could you provide a little more detail how complex the case is.
13. Have there been any attempts from you to provide a solution to such a case and to what extent have you been of help?
14. Why do you think those who move into houses that are not allocated to them do so?

Appendix 5: Introductory Letter and Consent Form

Information Sheet /Letter

Good day sir/madam

I would like to invite you to participate in this research project, which is entitled, Ownership and occupation contestations in South Africa, The case of State Housing In Buffalo City Metropolitan Municipality, Eastern Cape, South Africa. The research project is part of my *Doctoral Degree at Rhodes University*. The purpose of this research is to find out about the nature and extent of contestations over occupation and ownership of state houses and the impact thereof on the realisation of housing rights in South Africa.

If you accept to take part in this research project you will be required to sign a consent form – indicating that you fully consent to taking part. I will conduct one, single interview with you during which I will ask you questions from a pre-designed interview guide. The interview is expected to last no longer than 90 minutes and is a once-off event.

Upon the completion of the research project I will put together a clear and concise summary of the findings. Kindly note that I am not in a position to reward you in cash and/or kind for your participation.

If you agree to take part, your name will not be disclosed to anyone. Your responses to the questions will be used for the purpose of this research project only. You can be assured that if you take part in the project your identity will remain anonymous and your information will remain confidential. This means that if you write your name in the Informed Consent Form, this will be kept confidential. You can also choose to not to write your name and write a mark (X) instead.

Your participation in this research project is voluntary. You are not obliged to take part, and you have the right to withdraw at any time. If you do not wish to take part you do not have to give a reason and you will not be contacted again.

This research has been reviewed and approved by Rhodes University's Faculty of Humanities Higher Degrees Committee and has received ethical approval. If you have any further questions or concerns about this study, please contact:

Name of researcher: **Esteri Msindo**

Full address: **Rhodes University Department of Sociology**

Tel: +27 (046) 603 8827

E-mail: g08m1835@ru.ac.za

You can also contact the Research Supervisor: **Prof K Helliker**

Full address: **Rhodes University Department of Sociology**

E-mail: k.helliker@ru.ac.za

Informed Consent Form

TITLE OF RESEARCH STUDY: Ownership and occupation contestations in South Africa, The case of state Buffalo City Municipality (BCM).

NAME OF THE RESEARCHER: Esteri Msindo

DEPARTMENT: Department of Sociology, Rhodes University

CONSENT BY PARTICIPANT

THE UNDERSIGNED..... (Full name and surname or Mark (X) of the participant)

Hereby confirm as follows:

1. I was invited to participate in the above-mentioned research study which is being undertaken by Esteri Msindo, from the Department of Sociology in the faculty of Humanities at Rhodes University in Grahamstown.
2. The following aspects have been explained to me:
 - 2.1. Aim: The main goal/aim of the research is to investigate the causes of housing ownership and occupation contestations from a housing rights perspective
 - 2.2. Purpose: I am aware that this study is for academic purposes.
 - 2.3. Possible Risks: I am aware that the researcher is asking me to share with him some very personal and confidential information, and that I may feel uncomfortable talking about some of the topics. I do not have to answer any question or take part in the interview if i don't wish to do so, and that is also fine. I also do not have to give any reason for not responding to any question, or for refusing to take part in the interview.
 - 2.4. Possible Benefits: As a result of my participation in this research study, there will be no direct benefit to me, but my participation is likely to help us find out more about how professionals and partners can become better informed about how housing rights can be realised in South Africa and elsewhere.
 - 2.5. Confidentiality: My identity will not be revealed in any discussion, description or scientific publications by the investigators.
 - 2.6. Anonymity: I understand that anonymity will be ensured in the write-up by disguising my identity.
 - 2.7. Voluntary Participation: My participation is voluntary. My decision whether to participate or not will in no way affect the current help and support I receive, from Esteri Msindo and/or Rhodes University.
3. I understand that I can withdraw from the study at any time, without giving any explanation.
4. I give consent that my interview can be tape-recorded

I HEREBY CONSENT VOLUNTARILY TO PARTICIPATE IN THE ABOVE-MENTIONED RESEARCH STUDY

Name of Participant	Date	Signature
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Name of Researcher	Date	Signature
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