Risk and opportunity

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HOUSING IN INFORMAL SETTLEMENTS: A DISJUNCTURE BETWEEN POLICY AND IMPLEMENTATION

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INTRODUCTION

> There have been confusing messages from the South African state in respect of slums eradication and slums clearance...These messages...have certainly played a part in bringing about a measure of polarisation between the state and the urban poor and a loss of understanding between the two. (Misselhorn 2008: 28)

This article is concerned with the increasingly negative measures taken in South Africa to do away with informal settlements or slums. As the second decade of democracy progresses, the political vision of what is to be achieved by 2014 is assuming increasing importance in statements by government leadership. 'Vision 2014' has become a frequent point of reference. The current target of 'eradicating' or 'eliminating' (terms that are used interchangeably in the South African policy discourse) informal settlements by 2014 has become a component of this vision. However, an analysis of the evolution of the informal settlement eradication target shows a longer, less direct and more problematic shaping of housing politics around informal settlements and, indeed, eradication.

Attention is drawn to the distance between the legally entrenched indirect approach to doing away with slums or informal settlements (terms that often are also used interchangeably) and the increasing direct eradication efforts in this country that are having an impact on legislation.

On the one hand, there is the legitimately entrenched legal policy on elimination and prevention of slums/informal settlements, which focuses exclusively on positive or indirect measures. These are aimed at structural causes of informal settlement formation and encompass improvement of land, services and housing provision. This would reduce and eventually dissolve the need for informal housing solutions. Upgrading of existing slums or informal settlements forms a central part of the approach. This positive approach to slum upgrading and prevention is endorsed by the United Nations through its Human Settlements Programme (UN-Habitat).

On the other hand, there are the direct or negative eradication efforts aimed at the outcome rather than the cause. They rely on coercive means such as eviction and forced relocation from existing informal settlements, and criminalisation, arrests and forceful prevention of the formation of new informal settlements, even when it is clear that these settlements emerge out of benign responses to ever-deepening housing need. These coercive approaches are present in provincial and municipal practice and are increasingly informing proposed and adopted changes to legislation. They are discouraged by the UN and are contested by grassroots movements and housing rights lawyers in South Africa.

This article traces the evolution of the 2014 slum eradication target in the political position of the Ministry of Housing. It shows the interaction, as well as a worrying disjuncture, with the UN's Millennium Development Goals, and also traces interaction with South African legislation. In so doing, the difference between a positive and a negative approach to doing away with slums is highlighted, and the non-implementation of the National Housing Programme on Upgrading of Informal Settlements (Chapter 13 of the Housing Code) is associated with the widely practiced negative approach to slum elimination. The call is made here for a return to the exclusively positive approaches to doing away with slums provided for in the Housing Act 107 of 1997 and in the 2004 Breaking New Ground (BNG) policy of the Department of Housing (DoH), which was endorsed by UN-Habitat. Thus, it is argued that all spheres of the South African government need to adhere to and implement the existing indirect and positive policy and legislation rather than attempting to reintroduce negative and direct measures into legislation. In addition, the indirect and positive approach requires strengthening through more far-reaching planning and land management reforms than have unfolded to date.

ABSENCE OF A SLUM ERADICATION FOCUS IN THE 1990S

Until 2000, the term 'eradication' was applied by the then housing minister in relation to the housing 'backlog' (Mthembi-Mahanyele 2000). This was consistent with the 1994 White Paper (DoH 1994), which does not refer to eradication of slums or informal settlements; indeed, it hardly engages with informal settlements, other than regarding them as representing a housing backlog. *In situ* upgrading of informal settlements, namely the improvement of living conditions within an informal settlement with

minimal disruption to residents' lives and livelihoods, is implied only indirectly, depending on one's reading of the White Paper.

Whereas slum or informal settlement eradication had not captured the political imagination of the late 1990s, the Housing Act does make reference to 'slum elimination'. Section 2(1)(iii) of the Act reads as follows:

> national, provincial and local government must promote the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the *elimination and prevention of slums and slum conditions*. (emphasis added)

The Housing Act, thus, legitimises only an indirect or positive approach towards doing away with slums. It promotes improved urban, economic and social development to the extent that slums will no longer be required. There is no principle in the Act on which one could base the type of direct interventions that were instituted by the apartheid government in its attempts to eliminate or eradicate slums, which consisted of active control over slum expansion, eviction, forced relocation to controlled transit camps, criminalisation of land invasions and mandating of municipalities and land owners to institute evictions. While reversed by the Housing Act, all of these have since found their way back into practice and, despite contestation, have been incorporated into proposed and approved legislation – in contradiction with the Housing Act.

In 2000, the South African government was far from embracing informal settlement upgrading (a component of positive slum elimination) and, instead, focused on relocation to formal housing, as well as to transit camps or temporary relocation areas, the latter in particular continuing apartheid practice (see Huchzermeyer 2003). However, the Ministry of Housing began to recognise the absence of upgrading in South African housing policy and indicated interest in learning more about this approach from countries such as Brazil (Mthembi-Mahanyele 2000).

MISINTERPRETATION OF THE MILLENNIUM DEVELOPMENT GOAL ON SLUM IMPROVEMENT

The term 'eradication of informal settlements' entered official ministerial statements for the first time in 2001. Minister Mthembi-Mahanyele (2001) in her 2001/02 Housing Budget Vote referred to the need to eradicate informal settlements, which she refers to as a 'daunting challenge', suggesting a shift from the focus on mass delivery of houses.

What the minister articulated as a challenge was understood by her officials as a directive. National Department of Housing officials interviewed in 2001 referred to a new political vision of a 'shack-free city', with the Department being mandated 'to "eradicate informal settlements" in the next 15 years' (see Huchzermeyer 2004a: 335). The confusion between challenge and directive has permeated housing practice and, particularly in the term of the current housing minister, has informed legislative changes.

The source of this confusion can be traced to South Africa's response to the Millennium Development Goals (MDGs) and targets developed by the UN, to which the South African state committed itself in 2000. The slogan 'Cities Without Slums' is officially attached to MDG 7 Target 11, which is to significantly improve the lives of 100 million slum dwellers by 2020 (UN 2000). Internal to this MDG target is an unfortunate divergence between, on the one hand, the target of significantly improving the living conditions of 100 million slum dwellers, and, on the other hand, the slogan of slum-free cities. The target of 100 million slum dwellers represents only just over 10 per cent of the estimated global slum population. UN-Habitat (2005a) estimates that 924 million people were living in slums globally in the year 2000, a figure that is expected to more than double in the first three decades of the new millennium and then to double again every 15 years. The target, therefore, does not correlate in the slightest with the slogan of achieving cities without slums. Significantly improving the lives of 100 million slum dwellers is considered to be achieved once this number has received relief in relation to any one of the UN-Habitat slum criteria – access to water, access to sanitation, improved structural quality of housing, reduced overcrowding and improved security of tenure (UN-Habitat 2005b). However, a separate MDG target of halving the population without access to water and sanitation by 2015 (Target 10) compliments and supports the slum improvement target.

In South Africa, slum or informal settlement figures are monitored at municipal level. In 2004, between 18 and 23 per cent of households in South Africa's six largest cities lived in informal settlements (Huchzermeyer, Baumann & Roux 2004). In a recent review of municipal responses to informal settlements, McIntosh Xaba and Associates (2008a) were unable to update these figures due to inconclusiveness of available data. Like most studies before them, they interchangeably use figures for households in 'informal settlements' and in 'informal structures'. The latter may be in backyards, on formal serviced sites or in authorised tempo-

rary relocation areas. This further weakens their attempt at making any statement on the growth of informal settlements in South African cities.

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Similarly, the 1996 and 2001 census categories, repeated in the 2007 Community Survey questionnaire (Stats SA 2006), accommodate informal settlements in their dwelling types only as 'Informal dwelling/shack NOT in backyard e.g. in informal/squatter settlement' – this includes shacks in authorised temporary relocation areas and on formal serviced sites. Under tenure types, the questionnaire accommodates informal settlements under the category 'occupied rent free', a category that applies equally to other forms of dwelling, notably temporary relocation areas or serviced sites for which ownership has not been transferred, and depends on exact interpretation or perception of ownership. Thus, the census and community surveys provide no conclusive data on the number of informal settlement dwellers and on increases or decreases in that number. Therefore, the Ministry of Housing, in support of its 2006 and 2008 proposed amendments to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (both turned down by Parliament), put forward the *unsubstantiated* argument that it was the 'nature and increase in land invasions' that required the government 'to make it an offence for a person to arrange the unlawful occupation of land' (RSA 2005).

Likewise, the Minister of Housing's figures (MoH 2008) for an increase in the 'number of households living in shacks in informal settlements and backyards' of 26 per cent between 1996 and 2001, presented in the Constitutional Court on 21 August 2008 in the case of Various Occupants v Thubelisha Homes and Others (CCT 22/08), are inconclusive.

The direct reference in Goal 7 Target 11 to the slogan 'Cities Without Slums' is derived from an earlier programme of the Cities Alliance, which was incorporated into the UN's MDGs (UN 2000). In UN-Habitat's *Global report on human settlements 2003: The challenge of slums*, which supports the slum improvement target, reference is made to 'the long journey towards cities without slums' (UN-Habitat 2003: vii, 53). The actual target of improving the lives of 10 per cent of slum dwellers is to be achieved through the positive approach of 'participatory slum upgrading programmes that include urban poverty reduction objectives', which the report promotes as 'best practice' (UN-Habitat 2003: vii). UN-Habitat lists 'unsuccessful' approaches to dealing with informal settlements. Among them is eviction, which was common practice in the 1970s and 1980s. 'Squatter evictions have created more misery than they have prevented' (UN-Habitat 2003: 104). Regarding the longer-term goal of achieving 'Cities Without Slums', UN-Habitat acknowledges that measures are required to 'prevent the emergence of more slums'. However, within the same indirect or positive approach set out in the Housing Act, UN-Habitat urges that slum upgrading programmes be combined with:

> clear and consistent policies for urban planning and management, as well as for low-income housing development...[which] should include supply of sufficient and affordable land for the gradual development of economically appropriate low-income housing by the poor themselves, thus preventing the emergence of more slums. (UN-Habitat 2003: xxvii)

UN-Habitat takes a strong stand against a direct approach to slum eradication, one that would promote criminalisation of land invasions, relocations, evictions and controlled transit camps as measures for prevention of the emergence or re-emergence of slums. UN-Habitat is even cautious of the term 'eradication' itself. In its index, UN-Habitat associates 'eradication' with 'clearance' and 'eviction' – the direct and negative approach, which was taken by the apartheid government in South Africa. UN-Habitat states very clearly that:

> eradication and relocation destroys, unnecessarily, a large stock of housing affordable to the urban poor and the new housing provided has frequently turned out to be unaffordable with the result that the relocated households move back into slum accommodation... Relocation or involuntary resettlement of slum dwellers should, as far as possible, be avoided. (UN-Habitat, 2003: xxviii)

As is shown below, the South African state's political response to its commitment to the MDGs is informed by the compelling 'Cities Without Slum' slogan, rather than by the actual MDG target of significantly improving the lives of 10 per cent of slum dwellers by 2020. Further, it perceives the slogan as a directive rather than a mere challenge. Thus, in his report on a mission to South Africa, the UN Special

Rapporteur on Adequate Housing points out that:

> there may have been a misunderstanding as to how to respect international commitments, such as the Millennium Development Goals, that may have led to efforts being directed to the eradication of slums rather than the improvements of the lives of slum dwellers. (UNHRC 2008: 17)

THE POLITICAL TARGET TO ERADICATE INFORMAL SETTLEMENTS BY 2014 VERSUS THE POLICY TARGET TO IMPLEMENT INFORMAL SETTLEMENT UPGRADING

Beyond mere political vision, a determination to reach the target of eradicating informal settlements was articulated for the first time by the current Housing Minister in June 2004. It was provincial bravery that linked this date to the vision of a city without slums, informal settlements or shacks. In her 2004/05 budget speech, the newly appointed Minister Sisulu applauded the Gauteng Premier for his 'bold assertion that informal settlements in his province will have been eradicated in ten years'. She further announced: 'What we shall then be delivering to Cabinet by the end of July is the how, and how many. That is our commitment.' (Sisulu 2004)

Despite this pronouncement, Minister Sisulu's 'Breaking New Ground': A Comprehensive Plan for the Development of Sustainable Human Settlements (DoH 2004a), approved by the Cabinet in September 2004, makes no reference to a target to eradicate informal settlements by 2014. Whereas UN-Habitat would discourage the use of the term 'eradication' altogether, it is used in the BNG policy only in the positive and indirect approach to doing away with informal settlements, which is entirely in line with the positive and indirect approach in the Housing Act and is supported by UN-Habitat. 'Breaking New Ground' sets out six clear steps in the shift 'from housing to sustainable human settlements' (DoH 2004a: 11). The first is termed 'progressive informal settlement eradication', and introduces:

> a new informal settlement upgrading instrument to support focussed eradication of informal settlements... a phased *in-situ* upgrading approach to informal settlements, in line with international best practice. Thus, the plan supports the eradication of informal settlements through *in-situ* upgrading in desired locations, coupled to the relocation of households where development is not possible or desirable...Upgrading projects will be implemented by municipalities and will commence with nine pilot projects, one in each province building up to full programme implementation status by 2007/8. (DoH 2004a: 12)

The 'lead project' is the 'N2 upgrading project from the Airport to Cape Town' (DoH 2004a: 12). 'Breaking New Ground' notes, in addition, that:

> It is recognised that high rates of urbanization within larger cities and secondary towns will also necessitate the introduction of a fast-track land release and service intervention mechanism to forestall the establishment of informal settlements. (DoH 2004a: 12)

'Informal settlement upgrading' appears first in the list of three 'existing and new housing instruments' presented in 'Breaking new Ground'. The wording of this instrument reinforces an exclusively indirect and positive approach to doing away with informal settlements: 'A more responsive state-assisted housing policy, coupled to delivery at scale is expected to decrease the formation of informal settlements over time' (DoH 2004a:17).

Beyond this, it sets out an approach to community engagement that is aligned with the 'participatory slum upgrading' model promoted by UN-Habitat:

> There is also a need to shift the official policy response to informal settlements from one of conflict or neglect, to one of integration and cooperation, leading to the stabilization and integration of these areas into the broader urban fabric. (DoH 2004a:17)

This positive and indirect approach of participatory slum upgrading wherever possible, coupled with responsive state-assisted housing delivery, in addition to the fast-track release and servicing of land, is weakly supported by the South African government. What is lacking is a substantial reform process that would promote and enable the upgrading and the responsive land release, servicing and housing delivery. In Brazil, where the terms and targets for 'eradication' have not taken root, a National Forum for Urban Reform relentlessly demanded reform. This culminated in a change to the Constitution in 1988 and in the enactment of a Cities Statute in 2001, paving the way from incremental to more far-reaching reform (Huchzermeyer, 2004b: 130).

'Breaking New Ground' refers to 'greater detail in the Informal Settlement Upgrading Programme Business Plan' (DoH 2004a: 17). This appeared also in 2004 in Chapter 13 of the Housing Code (DoH 2004b). However, as is shown below, implementation of the programme received no

political support. Wider reforms that would promote and enable appropriate land release and servicing (other than through controlled transitional relocation areas, TRAs), and forestall the formation of informal settlements, have not been developed or promoted. Therefore, the positive and indirect approach to doing away with informal settlements exists only partially in policy and legislation; and, even where it exists, it is being ignored in favour of a target to forcefully eradicate informal settlements by 2014.

IGNORED POLICY TARGET: THE NON-IMPLEMENTATION OF INFORMAL SETTLEMENT UPGRADING

To date, 'Breaking New Ground', and Chapters 12 (Housing Assistance in Emergency Housing Situations) and 13 (Upgrading of Informal Settlements) of the National Housing Code have not been added to the National DoH's website. In June 2006, Gauteng Province permitted a leading engineering consultant, in a feasibility report for developing the informal settlement Harry Gwala, which is home to over 2 000 households, to state that 'compliance with the new Comprehensive Plan for Integrated Sustainable Human Settlements' ('Breaking New Ground') could not be established, as 'VIP was to date unable to obtain' the document (VIP 2008: 7). Instead of considering *in situ* upgrading, the consultants propose demolition of the very orderly and eminently upgradeable settlement, and its replacement with no more than 389 residential stands under the Province's Essential Services Programme. This plan, which has been met with resistance from the Harry Gwala Civic Committee, involves the forceful relocation of the majority of the households.

There is no evidence that the nine informal settlement upgrading pilot projects were carried through under Chapter 13 of the Housing Code and in accordance with its innovative principles, let alone attempting to achieve full implementation of the programme by 2007/08, as targeted in 'Breaking New Ground'. The 'lead project' for informal settlement upgrading (the 'N2 project' in Cape Town), as well as the broader interpretation of the intentions of the BNG policy, have undergone political mutations since 2004. These have been reflected in the media – in 2005, the *Mail & Guardian* referred to the 'flagship N2 Gateway Project' as 'the government's pilot initiative to eradicate shacks', and reported that it:

> is the first of 18 projects country-wide, two per province, under the new Sustainable Human Settlement Plan. This aims to *clear shack settlements* and establish integrated, safe and people-friendly communities. (*Mail & Guardian*, 6–12.05.05, emphasis added)

Clearing shacks is not an approach promoted under Chapter 13 of the Housing Code, nor is it experienced as an improvement in the lives of those living in informal settlements. By mid-2008, resistance to continued shack clearance and forced relocation from the Joe Slovo informal settlement to make space for the third phase of the N2 Gateway housing project had taken its legal course. On 21 August 2008, the Constitutional Court heard the Joe Slovo residents' application to have the controversial High Court eviction order (for forced removal from Joe Slovo to a controlled TRA in Delft) overturned. The learned judges were surprised to hear evidence from *amici curiae* (friends of the court) that residents of the N2 project, identified in 'Breaking New Ground' as an informal settlement upgrade, had a legitimate expectation to have Chapter 13 of the Housing Code (Upgrading of Informal Settlement Programme) implemented in the Joe Slovo settlement. The *amici curiae* demonstrated that this programme applies not only to upgradeable informal settlements, but to all informal settlements, including those deemed not, or only partially, suitable for upgrading (CLC & COHRE 2008). Their argument was that current implementation of the 'N2 Gateway Project in relation to the Joe Slovo residents is fundamentally at odds with the principles on which BNG is based' (CLC & COHRE 2008: para. 16).

In her response to the Joe Slovo applicants, the Minister of Housing admits to a shift from an original undertaking to upgrade the N2 informal settlements, stating that the project had 'evolved over time' (MoH 2008: para. 155). She refers to the N2 Gateway broadly as the 'pilot project of the BNG policy' (MoH 2008: para. 167.5). The Minister states a number of reasons for not attempting upgrading or relocation as set out for informal settlements under 'Breaking New Ground'. In doing so, she refers to an affidavit by the former Deputy Director-General of Housing, Ahmedi Vawda, who 'was tasked specifically with rewriting national policy' (MoH 2008: para. 142), i.e. under whom 'Breaking New Ground' was formulated, when setting out these reasons:

- 'South Africa as a nation has little experience with *in situ* redevelopment and none of it on a scale such as would be required at Joe Slovo';
- 'high degrees of skills' and 'human resources' are required;
- delivery is slow;
- partial relocation would require consensus to be reached in the community 'on who would go and who would stay';
- implementation is 'hard';

- 'engineers, builders and surveyors are generally averse'; and
- 'there are no institutional mechanisms available to the Housing Department to undertake an *in situ* upgrade' (MoH 2008: para. 226.1–8).

Four years after the adoption of Chapter 13 of the Code, and at a time when full implementation was originally envisaged in the Cabinet-approved 'Breaking New Ground' programme, each of the above challenges ought to have been addressed through the identified pilot projects. The very purpose of pilot projects, according to Mattingly (2008: 129), is 'to create experience from which others can learn', rather than to shy away from such experience. Experience, skills and support from the professions needed to be built actively and institutional mechanisms developed. The resources and time available for the contested construction of the first two phases of the N2 project could have been used for upgrading under Chapter 13 of the Code. As Charlton (2006) points out, various *in situ* upgrading programmes, notably the large-scale Besters Camp upgrade in Durban in early 1992, have resulted in the acquisition of professional skills and experience that should be identified and built upon.

However, the Minister of Housing further justifies the approach to the N2 Gateway project through the need to eradicate informal settlements. The frequently mentioned TRAs (in effect, controlled transit camps) in relation to the N2 Gateway project are a disturbing, negative and direct eradication component. This is also evidenced by the Joe Slovo residents' objection to being moved to the TRAs. Consensus on partial relocation would almost certainly have been easier to negotiate under Chapter 13 of the Code than was the case with the deeply contested relocation to TRAs in Delft, via litigation in the High Court and Constitutional Court.

While target-setting is an important component of performance monitoring in the current model of urban management in South Africa, the wrong target has informed the approach to informal settlements. What has been ignored politically is that an explicit target was set in the BNG document, namely to achieve full implementation of the Upgrading of Informal Settlements Programme by 2007/08. This target was never politically promoted. Instead, coupled with an increasingly negative and direct approach to doing away with informal settlements, the target of achieving shack-free cities by 2014 filled the void left by the Reconstruction and Development Programme (RDP) target of delivering a million housing opportunities in the first five years of democracy, which was reached around 2001.

As confirmed by a recent review conducted across a range of municipalities for the DoH (McIntosh Xaba and Associates, 2008b), and a similar and simultaneous study by Urban Landmark for the Presidency (Misselhorn 2008), upgrading of informal settlements under Chapter 13 of the Housing Code has not been implemented by any of South Africa's large cities. Only the City of Cape Town, in response to initiative, lobbying and groundwork by the NGO, Development Action Group (Macgregor 2008a), applied for funding in 2008 for *in situ* upgrading under this programme and in accordance with the principles defined in the programme. Phase 1 of the Hangberg informal settlement upgrade was recently approved by the Provincial Administration of the Western Cape (Macgregor 2008b).

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Although there is no mention of the 2014 slum eradication target in the 2004 BNG policy, a year later it had been adopted as a national target and was directly associated (though with little concern for accuracy) with the MDGs:

> Thus, in line with our commitment to achieving the Millennium Development Goals we join the rest of the developing world and reiterate our commitment to progressively eradicate slums in the ten year period ending in 2014. (Sisulu 2005)

DIRECT OR NEGATIVE SLUM ELIMINATION INFORMING LEGISLATIVE CHANGES IN SOUTH AFRICA

Despite only indirect and positive measures to do away with informal settlements in the BNG policy, disturbing legislative changes have been attempted to allow for and enforce direct and negative eradication measures. The first of these was at national level, with a 2006 amendment to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. Among various proposed amendments, it sought to tighten the criminalisation of land invasion. In the context of a Constitution that protects private property, Section 4.3(1)(a) of the Act legitimately criminalises receipt or soliciting of 'payment of any money or other consideration as fee or charge for arranging or organising or permitting a

person to occupy land without the consent of the owner or person in charge of that land'. However, the amended Section 4.3(1)(b) extends this to the benign occupation of unused land by desperately poor people with an urgent need for housing: 'No person may arrange or permit any person to occupy land without the consent of the owner or person in charge of the land'. This is a direct, negative and forceful measure to prevent the benign formation of informal settlements, whether arranged by households themselves or by grassroots social movements representing people living in desperate conditions, in a context where municipalities are clearly not managing to release enough suitable land for occupation by the urban poor, and the urban planning and land management system is not sufficiently reformed to allow for affordable legal access to appropriate land. The lack of substance to the justification for this tightening of the Act, namely 'the nature and increase of land invasion', has been referred to above.

This concern was raised among several formal submissions made on the 2006 amendment (see Huchzermeyer 2007a). The amendment was tabled in Parliament unchanged and was turned down. A subsequent Amendment Bill, covering largely the same proposed amendments, had the exact same wording as its predecessor regarding the criminalisation of arranging the unlawful occupation of land. This Bill too was turned down by Parliament (Thatcher 2008).

In 2006, the KwaZulu-Natal Legislature produced the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Bill. This Bill clearly aligned itself with the direct and negative approach to doing away with slums. The preamble states the objective of the Bill as being 'to introduce measures which seek to enable *control* and elimination of slums, and the prevention of their re-emergence'. By introducing direct and negative measures for slum eradication, the Bill goes further than the erstwhile proposed amendments to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act. The Bill not only criminalises the arrangement of unlawful occupation, but, through Section 4(1), the occupation itself. Further, it mandates landowners, 'within twelve months of the commencement of this Act, [to] take reasonable steps...to prevent unlawful occupation'. Under Section 15(1), these steps include fencing off vacant land and 'posting of security personnel'. Owners of land already occupied unlawfully are required by Section 16(1) to 'institute proceedings for the eviction of the unlawful occupiers concerned', and, if the owner fails to do so, the relevant municipality is required by Section 16(2) to seek an eviction order. Among the formal objections to the Bill was concern with the return to the direct and negative measures of the repealed Prevention of Illegal Squatting Act 52 of 1951, which mandated landowners on whose property poor people had settled with instituting eviction procedures (Huchzermeyer 2007b).

Despite many formal submissions objecting to this and other aspects of the 'Slums Bill', it was enacted on 18 July 2007 with no changes to the clauses mentioned here. In February 2008, the Durban-based grassroots social movement Abahlali BaseMjondolo submitted an appeal to the High Court arguing the unconstitutionality of the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act and its contradiction of the principles of 'Breaking New Ground' and Chapter 13 of the Housing Code (Abahlali BaseMjondolo 2008). At the time of writing, the case was yet to be heard.

Notwithstanding the court challenge to the 'Slums Act', in early 2008 the Housing MINMEC (constituted by the Minister of Housing and all the nine provincial Members of the Executive Council) announced that 'all provinces should formulate provincial legislation on the eradication of informal settlements', and the terms of reference stipulated 'that by November 2008, all provinces must have the legislation in place, using KwaZulu-Natal as a base or reference as they already have the legislation on the eradication of informal settlements'. In the official correspondence, this requirement is linked to the 'presidential priority on eradication of informal settlements' (Eastern Cape DoH 2008).

The instruction to provinces to promulgate provincial legislation to do away with slums can be argued to be in accordance with Section 2(b) of the Housing Act, which, under the larger obligation of provincial governments in terms of Section 7(1) to 'promote and facilitate the provision of adequate housing in its province within the framework of the national housing policy', provides that 'every provincial government must through its MEC promote the adoption of provincial legislation to ensure effective housing delivery'.

However, such provincial legislation may not contradict the principles of the Housing Act. With regard to doing away with slums, Section 2(1)(iii) of the Act (as quoted above) promotes only a positive and indirect approach, requiring all tiers of government to establish, develop and maintain 'socially and economically viable communities' and 'safe and healthy living conditions' in order to 'ensure the elimination and prevention of slums and slum conditions'. The KwaZulu-Natal 'Slums Act' is clearly based on political sentiment rather than legislated policy.

CONCLUSION

This article has contrasted a positive and indirect approach to improving the lives of informal settlement dwellers and preventing the emergence of new informal settlements with a negative and direct approach to doing away with slums coupled with the political target of shack-free cities by 2014. The negative approach focuses on measures of control and of forceful prevention of the emergence of new informal settlements. It has been shown that this approach remains unsupported by entrenched policy, yet has been promoted through contested legislative amendments that contradict policy. This direct promotion is underpinned by a confusion between the broad challenge of doing away with slums and an increasingly politically articulated directive of ensuring shack-free cities by 2014.

The alignment has been highlighted between the Housing Act, the BNG policy (with Chapter 13 of the Housing Code) and UN-Habitat's approach to improving the lives of slum dwellers, all exclusively supporting an indirect and positive approach to doing away with slums. It is paramount that the South African state recommits itself to this positive and indirect approach by widely promoting the principles of 'Breaking New Ground' and Chapter 13 of the Housing Code, patiently piloting these, building the necessary skills and expertise and professional support, building on existing expertise and creating relevant institutional mechanisms. While these would be the first steps in reversing the current polarisation and lack of understanding between the state and the urban poor, expressed in the quote by Misselhorn (2008) with which this chapter is prefaced, the positive and indirect approach to doing away with informal settlements requires more far-reaching urban planning and land management reform.

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CHAPTER 4

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