

Department of Housing

PROVINCIAL AND LOCAL GOVERNMENT SYSTEMS

Thank you for your invitation of 25 October 1994 to make submissions with regard to provincial and local government systems.

Housing is, in terms of the interim Constitution, a Schedule 6 functional area and is thus a concurrent legislative and executive competency of the provincial and national governments. In terms of section 126 (1) of the Constitution provincial legislation will prevail over a national law inconsistent with it, except where the grounds provided for in section 126 (3) apply and national legislation is required.

Since the concept of housing is not defined in the interim Constitution, it may be concluded that the nation and provincial governments are themselves to give content to the concept and determine to which level of government the various State functions implicit therein should be allocated. This they may do in co-operation with or independently of one another. It may be done by the passing of laws or by convention or agreement.

In practice uncertainty and conflicts arise with regard to the roles, responsibilities and accountability of political functionaries and administrations at the national and provincial levels. It is precisely this "qualified concurrency" provided for in the interim Constitution that leads to such conflict between national and provincial governments in connection with the Schedule 6 functional areas.

The principle of subsidiarity with regard to the execution of State housing assistance is supported. Indeed housing as a State function cannot be driven successfully at any one level of government alone. National provincial and local government have a role to play. However, it is essential that functions at national and provincial levels should be clearly demarcated.

Housing is a matter of national interest. With a view to the maintenance of sound national economic policy and the rendering of social services on an equitable basis nation-wide, it is essential that the national government be enabled to play a leading role with regard to housing as a State function through the determination of national housing policies and strategies for implementation on a uniform basis at second and third tiers of government. This implies a monitoring and directing role for the national Department of Housing.

It is similarly essential that the housing process be facilitated and controlled from a national perspective and that the funding of housing assistance in accordance with national norms and standards be budgeted for nationally which funds should be allocated and controlled nationally in the interests of equity and

fairness. The expenditure of the housing budget must be monitored nationally to ensure that national objectives are achieved and that it is applied efficiently. The draft White Paper on Housing proposes a division of functions upon which agreement between all the principal role players, including the provincial governments, was reached. The proposed institutional arrangements in this regard, are dealt with in section 5.2 of the draft White Paper, a copy of which is attached for easy reference.

At present, the Minister of Housing meets regularly with the MEC's responsible for housing in the provinces. Similar meetings between the housing officials at the national and provincial levels take place. The new Constitution should not necessarily formalise this type of structured relationship, but it should be possible to continue therewith.

DIRECTOR-GENERAL

DATE: 24/1/95

5.2 Institutional arrangements

Current institutional arrangements for housing within government and in the parastatal sector are still fragmented, inconsistently funded and is characterised by a lack of clear role definition and defined lines of accountability.

A significant degree of duplication and confusion is still evident, despite the implementation of interim adjustments which has resulted in some rationalisation during late 1993 & 1994.

It is believed that rationalisation of existing institutional capacity within a coherent long term framework can significantly improve efficiencies and ensure enhanced and sustainable delivery" at the levels required to deal with backlogs and new family formation

Taking due cognisance of the basic points of departure outlined in Part 4, the following framework within which the restructuring of the housing sector will be undertaken, is

envisaged:

5.2.1 Government

5.2.1.1 The Ministry " and Department of Housing

Schedule 6 of the Interim Constitution of South Africa determines that provincial legislatures and national government have concurrent competency to legislate, *inferred* in respect of housing, regional planning and development as well as urban and rural development. The intent, however, is clearly that appropriate housing functions and powers should be developed to the maximum possible extent, to the provincial level

Against this background the National Housing Ministry and Department are envisaged to fulfill the following:

Setting broad national housing delivery goals and negotiate provincial delivery goals in support thereof, determining broad national housing Policy, in consultation with relevant other national departments and provincial governments where relevant, in so far as it relates to-

- land title and registration systems,
- minimum national norms and standards,
- national subsidy programmes,
- fund allocation to provinces,
- fund allocation to national facilitative programmes,
- mobilisation of funds for land acquisition, infrastructural development, housing provision and end-user finance

guidelines for the spatial restructuring of cities and towns and rural settlement patterns; adopting or promoting legislation to give effect to national housing policies, establish a national institutional and funding framework for housing; monitoring national and in liaison with provincial governments, performance against housing delivery and budgetary goals and accounting to national parliament in this regard; overseeing and directing the activities of national statutory advisory and facilitative institutions & accounting to national parliament in this regard; negotiate for the systematic increasing of the national apportionment of State budget to housing; and account to national parliament for the performance of the sector against set targets and efficiency/effectiveness parameters.

5.2.2 Role of provincial government

Provincial government has a critical role to play in ensuring effective & sustained housing delivery at scale

Within the overall Institutional and constitutional framework It is envisaged that the following housing functions will be executed at a provincial level:

setting of provincial housing delivery goals and performance parameters within the context and In support of national delivery goals;

determining provincial housing policy (within broad national guidelines, so far as it relates to -

minimum housing norms and standards in the province,
development priorities and programmes,
urban and rural development.
land identification and planning Within the province including performance criteria,
urban spatial restructuring
rural settlement restructuring;

Monitoring provincial housing delivery and accounting to the provincial legislature in this regard.,
Overseeing and directing the housing activities of provincial statutory advisory and executive bodies, local
authorities as well as the activities of provincial facilitative institutions and accounting to provincial
legislature In this regard;

liaising and negotiating with the National ministry and Department as well as national statutory and
facilitative bodies in respect of -
transfers for housing to the province,
provincial priority status in respect of national facilitative programme for
housing, and
national housing policy and programmes.

It is recognised that Provincial governments are accountable to the people who have democratically elected
them in the Provinces for the delivery of housing. A leading role for these governments in enabling
sustained delivery of housing in the provinces, within broad national housing Policy guidelines, is
envisaged.

At the same time, it has to be recognised the Minister of Housing is accountable to the Parliament for
overall sectoral performance. A balance between the functions and powers at national and provincial level
to reflect these accountabilities will be vital to success.

5.2.3 Role of local rural and metro government

The physical processes of planning and housing is very much a local community matter.
The *role* of metropolitan and esp. local government is enabling, promoting and facilitating the provision of
housing to all segments of the population in areas under their Jurisdiction can therefore not be over
emphasised. The absence of legitimate, functional and viable local authority structures will jeopardise both
the pace and quality of implementation of housing programmes.

The following housing functions are envisaged to be performed at metropolitan and/or
local level:

Setting metropolitan/local housing delivery goals;
identification and designation of land for housing purposes;
the regulation of safety and health standards in housing provision;
the creation & maintenance of a public environment conducive to viable
development and healthy communities,
the mediation of conflict in the development process..

the initiation planning coordination, promotion and enablement of appropriate housing development.,
facultative support to housing delivery agencies,.

planning. funding **and** provision **of bulk** engineering **services:**

provision and maintenance of revenue generating **services** (if not provided **by** Specialised
utilities/**suppliers**),

provision **of** community and recreational **facilities** in residential areas:

welfare housing;

land planning in areas **under** their jurisdiction (in **terms** of laid down **performance Criteria**, Possibl
at provincial **and even** national)eve]); **and** regulation **of land** use **and development**,