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A Long Road Home: Housing Rights in South Africa's Informal Settlement, Joe Slovo

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A LONG ROAD HOME:
Housing Rights in South Africa's Informal Settlement, Joe Slovo

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In partial fulfillment of the requirements for South Africa:
Multiculturalism and Human Rights
School for International Training
Cape Town, South Africa
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I would like to thank a number of people who helped me along the way in completing this project. First, and foremost, thank you to all of the residents of Joe Slovo who opened their homes and shared their lives with me. I could not imagine a more welcoming and helpful community. Secondly, I would like to thank my advisor, Bastienne Klein, who graciously took on my project at the last minute. Your experience in advising and with SIT has helped me immensely. I would also like to express my gratitude to everyone at SIT who has influenced my education over the past three months. Particularly, thank you Stewart for allowing me to change my focus and to pursue this topic; I feel incredibly fortunate to have had the opportunity to complete this research and meet such wonderful people. To Stephanie Jemilo, it is impossible to imagine walking around Joe Slovo with anyone other than you; I can't wait to make our ideas a reality. Finally, thank you to my parents, without whom this experience could not have been a reality.

ABSTRACT

Most countries legally consider housing to be a necessary human *right*. But for millions of individuals in this world, adequate housing is out of reach. Homelessness is evident in different manors throughout the world, but in South Africa, the problem of insufficient housing develops itself in the form of informal settlements. One such settlement, Joe Slovo¹, is situated just outside of Cape Town, and is the primary focus of this paper. Recently, Joe Slovo has been a prominent feature in the local news because of its involvement in a Constitutional Court case. On March 30, 2011, 20,000 residents of Joe Slovo won their right to stay in the settlement and avoid eviction to Delft². Through research for this paper, I aimed to find out what people in Joe Slovo knew about their housing rights, how they felt about the evictions and their victory, and since winning the case, what happens now in regards to housing?

I did my primary research through the course of 11 interviews in and around Joe Slovo. I talked to residents of the settlement, Task Team³ leaders, a housing developer and other individuals involved in the field of study. I was also able to utilize a lot of secondary research from previous case studies and literature on the topic.

My findings illustrate the need for change in the current housing crisis, particularly in the case of Joe Slovo. Research shows that the government would ideally like to have structural support for residents when developing new housing settlements so that the developments can be sustainable, and other social issues such as unemployment can be addressed as well. However, the history of Joe Slovo proves that government has not actualized this goal, and as a result, the causal factors in the housing crisis are not being dealt with. In this paper I will argue that although residents of Joe Slovo are concerned with their lack of adequate housing, their challenges will not be solved with the acquisition of a house. While housing is important, the residents will not be able to tend to their families, much less maintain the house and pay for utilities, without employment.

INTRODUCTION

The housing crisis is a pertinent problem in South Africa. As soon as one drives out of Cape Town, informal settlements are commonplace; whether they are secretly tucked behind formal dwellings, or settled in areas covered with thousands of shacks. One particular informal settlement, known as Joe Slovo [referred to as Joe Slovo for the remainder of the paper], has been the topic of crucial housing development debates for over three years now. The community was subject to the eviction of over 20,000 people for the sake of the N2 Gateway Housing Project⁴. After two years, the court's order was overturned, and it was ruled that the eviction of these people was illegal. However, now that the residents have won their right to stay in on the premises, the government still intends to supply public housing. The focus of this research will be to look at housing developments and land reform in South Africa since Apartheid⁵, with a particular concentration on the Joe Slovo case. In doing so I will assess the progress of the housing initiatives and evaluate their success in addressing the root, structural causes of the housing crisis. Ultimately, I argue that addressing the housing crisis in South Africa only skims the surface of much larger issues that are deeply rooted in social inequalities left over from Apartheid regime.

In 1996, when the new Constitution was implemented, it included a section devoted to the rights individuals have to housing. Section 26 reads:

Everyone has the right to have access to adequate housing. The government must take reasonable steps within its available resources to provide people with housing and access to land. Furthermore, no one can

be evicted from their home or have their home demolished, unless a court has heard the person's case and decided that he or she must leave. In this case the court must give a court order (Section 26.)

The understanding of these constitutionally recognized rights was vital to the Joe Slovo case. Are shacks considered adequate housing? And if not, is it up to the government to supply every citizen an upgraded form of housing?

Originally, the objectives of this paper were to look at these legal issues, but after initial research, the project additionally began to incorporate an evaluation of the underlying causes of the housing crisis and whether or not housing development will properly address these social issues. First, I will look at the case and why the residents won their right to stay in Joe Slovo. In doing this, I examine the constitution, and the rights it allots to both its citizens and the government. On paper, the South African Constitution is one of the most progressive constitutions in the world; however, are the rights it guarantees actually realized by the people? Secondly, I will focus on what happens now that the residents of Joe Slovo won the case. Though the residents of Joe Slovo fought to stay in their current location, does not mean that they want to stay in their shacks? What will happen to the development of Joe Slovo now; just because the government isn't allowed to evict the residents, does that mean that the government doesn't have to supply adequate housing to the Joe Slovo community. The last aspect of my research will seek to examine the root causes of the housing crisis, and whether or not supplying houses will solve the issues. Do the housing developers address the underlying causes of homelessness in this country, or does their work simply mask the problems?

This paper will illustrate my findings on each of the previously stated issues and address how the challenges of housing rights, faced by both the government and the residents of informal settlements, must be addressed in congruence with the racial and class inequalities that continue to hinder the progress of unification within the country. To begin, I will present background information on the Joe Slovo case and cover the various arguments the Joe Slovo residents made. I will examine the ruling and how it came to be that the Joe Slovo community was able to win after years of fighting. In doing so, I will also look at the constitution and the rights it guarantees its citizens. Although the constitution is incredibly progressive, often times, the rights are not implemented, and underprivileged areas are not served appropriately. In the case of Joe Slovo, the constitution eventually worked in the favor of the Joe Slovo residents, but only after many evictions, and years in court. Although the residents of Joe Slovo fought to stay on their land, they were not fighting to stay in their shacks. The next section of my findings will examine the expectations of Joe Slovo residents today. Through talking to residents and housing developers, I found that while people want to stay in Joe Slovo, they also want housing development to continue. They do not like the way they are living, but the location and community are crucial to their lives. The final portion of my findings will illustrate that the constant problem in the housing crisis is not the lack of housing, but rather, the lack of jobs. Most people in Joe Slovo come from the Eastern Cape⁶ in search of jobs, not housing. So by providing them with housing, you will give them some shelter, but without the resources to find employment, they cannot have a sustainable life. The housing crisis is rooted in the social and economic inequalities that are left over from decades of Apartheid; giving the poorer populations housing will satisfy their shelter

needs temporarily, but it will do nothing to enable them to provide for themselves in the future. I found that the real problems in the country stem from lack of equal education and unemployment, not inadequate housing.

BRIEF HISTORY OF the N2 GATEWAY PROJECT in JOE SLOVO



In 1995, Joe Slovo was created 12 km outside of Cape Town, next to the township, Langa. The informal settlement grew to be the home of well over 20,000 residents. In 2004, the ANC Cabinet adopted a Comprehensive Housing Plan that incorporated the N2 Gateway Housing Project. As a part of the 25,000 unit-housing plan, Joe Slovo would become a formalized settlement. In 2005, a fire in Joe Slovo left 12,000 people homeless. Subsequently, they were moved to Delft and promised priority in the allocation of N2 Gateway housing. In 2006, after the first phase of N2 Gateway was completed, only three Joe Slovo residents could afford the housing. In order for the housing development to continue, Thubelisha Homes took over construction, and 20,000 Joe Slovo residents were given eviction notices. In 2007, Joe Slovo residents formed a Task Team and began their fight to remain in the area. After numerous protests, the High Court (2008) and the Constitutional Court (2009) ruled in favor of the government and the evictions. After further investigations, however, the residents of Joe Slovo finally won their right to remain on the premises on March 31, 2011. HDA has taken over the project and plans to finish the construction of 2,886 fully subsidized houses by June 2013...all of which will happen without any evictions.

LITERATURE REVIEW

There is no doubt that the topics of homelessness and inadequate housing are pertinent worldwide; but what is the best method to solve the variety of housing challenges? This question has been debated by many scholars in a wide expanse of literature on the topic. The following texts illustrate the various opinions on the international housing crisis, and more specifically, on the lack of adequate housing and development in South Africa.

Housing – A Human Right

The UN Habitat Agenda outlines the right to housing as meaning the right to live somewhere in peace and dignity, with adequate privacy, space, security, lightning, ventilation, basic infrastructure, all at an affordable cost and most importantly, within a reasonable distance from job opportunities and social services (United Nations Thematic Committee 2001). Housing rights are rooted in the “concept of human dignity and are as an integral part of economic, social, and cultural rights within the United Nations, European, Inter-American, and African human rights instruments (Kenna 2008: 41). Patrick Wakely (1996) bases his argument on the right to housing on the success of Habitat II, which included agreements such as adequate shelter for all and sustainable human settlements in an urbanizing world. He argues that the fact that many countries, South Africa included, signed the Habitat Agenda, demonstrates their commitment in principle to its implementation. While Wakely’s opinion may have been valid when Habit II was first implemented, and while his stance on housing as a human right is still valid,

the arduous process of supplying housing has proven far more difficult to physically accomplish.

Internationally, housing is often identified as a fundamental human right (United Nations Thematic Committee 2001). In South Africa, access to housing and land are rights are enshrined in section 25 and 26 of the Constitution. However, while the constitution seems very progressive, many scholars argue that land redistribution and equal housing opportunities are inhibited by the very constitution that is supposed to guarantee these rights. Professor Ntsebeza (2007: 4) writes that on one hand, the constitution serves to protect the existing property rights of landowners, the vast majority of whom are white, at the same time, it makes a commitment to redistributing land to the dispossessed majority. An article published by the Western Cape Anti-Eviction Campaign agreed by stating, “while protecting rights, the constitution also explicitly empowers the state to expropriate property and specifies that property may be expropriated in the public interest, including “the nation’s commitment to land reform” (Ntsebeza 2007: 4). The authors raise contradictions within the constitution that make the process of housing formalization and distribution even more difficult. Robins (2009) explains that while many citizens take enormous pride in the seemingly progressive constitution, it has become more and more clear that “constitutionally- enshrined rights can be very hard to realize. This is especially the case for poor people, for whom “rights” and “the Law” seem to be particularly remote and elusive”.

Ways to Address the Housing Crisis

Different countries have approached the process of solving the housing crisis in a variety of ways. Some countries, like China, have not had great success in supplying affordable households to their target population, but have focused their efforts in employer matching programs and subsidized construction (Duda, M., Zhang, X., and Dong, M. 2005: 28). Chile, which also using subsidies, started one of the world's most progressive housing policies (Gilbert as cited in Navarro 2005). The government started reforms in the financial sector and in public housing programs, which eventually led to the first program to subsidize the demand for housing. The Chilean model of "enabling housing markets" (Kimm as cited in Navarro 1986) was followed and promoted by numerous international organizations. One such organization was the U.S. Agency for International Development (Rojas, Jacobs and Savedoff as cited in Navarro 1999). The United States has a similar program in which most public housing is heavily subsidized. The United States also uses homeowner tax benefits to entice buyers (Schwartz 2009: 3). As a United States citizen, I have grown up seeing homeless people living on the streets; informal settlements rarely, if ever, exist in the States. Rather than allow citizens to build shacks on public land, organizations exist to provide shelter and resources to the poor. But, what is perhaps most interesting is that in the United States, it is actually cheaper to house an individual for an entire year than to provide them with emergency resources (Jichlinski 2010: 112). Unfortunately, the government and organizations have not quite grasped the reality of this statistic, so homelessness is still a pertinent problem in America. In South Africa, there have been a series of housing initiatives designed to combat the issue, specifically by providing housing to the poor. Mafukidze (2009) explains that the South African

government adopted international legislation that supported community participation in housing delivery such as the United Nations Habitat Agenda embraced in 1996. By 2006, the government had supported the construction of approximately 1.9 million housing units, but an additional 2 to 3 million were required. At the time, “community participation” was seen as a policy level tool to implement the creation and success of housing developments (Mafukidze 2009: 3). Mafukidze highlights how involving community members in the developmental planning process can lead to instances where community participation tends to yield negative instead of positive results (Mafukidze 2009: 16). Ballard further explains that there is evidence to support that while in theory, institutional participatory mechanisms could be an effective method to create sustainable communities; the mechanisms are not working in practice (Ballard 2008).

Though critiques such as Mafukidze and Ballard illustrate how community participation has gone wrong in South Africa, they also acknowledge that the idea has potential with “adequate knowledge and conflict resolution skills” (Mafukidze 2009: 16). The *Comprehensive Plan for the Development of Sustainable Human Settlements*, developed by the South African government in 2004 sought to develop a plan for updating informal settlements that would eradicate poverty, remove vulnerability and promote inclusion (Huchzermeyer and Karam 2006: 44). Rather than continuing housing formalization that “reinforces the marginalization and stigmatization of the poor” (Bond and Taint 1997: 28), the program would ideally provide housing and support aimed to alleviate the causal factors of poverty. Community participation would of course, be included in this support. While the plan seemed to address the correct issues, many critiques such as Mangena explain that “post-apartheid state promises of free water,

electricity and housing can only lead to citizens becoming passive and dependent clients of a paternalistic state” (Mangena as cited in Robins 2009). Though I do not believe that citizens willingly become “dependent clients”, if they are not supplied with the resources to enable them to help themselves, such as employment opportunities, dependency becomes an unavoidable truth.

Is South Africa Headed in the Right Direction?

One has to look past the visible housing inadequacies to understand the housing crisis in South Africa. In 2005, the Department of Agriculture released a statement in which they explained, “rapid and consistent urbanization, unmatched by sufficient housing, land and delivery of basic services, entrenched the significance of informal and illegal informal housing and economic opportunities in both the urban and rural context of South Africa”. As Wilkinson (1998) argues, traces of the apartheid still linger in the forms of social polarization, economic inequalities and spatially and racially divided cities. These factors make the process of building a new society and even more challenging one. “His main argument is that the housing policy failures to address the fundamental social and spatial divisions which continue to characterize the country’s cities” (Wilkinson as cited in Baloyi 2007).

Huchzermeyer and Karam (2006) explain that the South Africa’s current housing development process aims to provide land tenure and service intervention, designed to create employment and empowerment, along with housing updates; however, in the case of Joe Slovo, this did not occur. Because the World Cup was to take place in 2010, visible settlements, such as Joe Slovo, situated on the N2 Highway, were targeted first and fast.

The World Cup seemed to add an “additional agenda to the Informal Settlement Upgrading Programme” (Huchzermeyer and Karam 2006: 45). In the case of Joe Slovo, the physical appearance of the community, rather than sustainability and structural support, was the most important aspect of developing the area.

If residents are given housing without other support, then Mangena might be correct in foreseeing a community of government-dependent individuals. People in informal settlements such as Joe Slovo do need housing, but more importantly, they need other forms of support as well. Community participation and the promotion of inclusion are ideal scenarios, but without fundamental, income-generating necessities, such as education and employment, no matter how many housing developments are created, informal settlements will continue to exist.

METHODOLOGY

The primary research I conducted for this paper consisted of a series of 9 formal interviews, two informal interviews, and 6 days, approximately 22 hours, spent in Joe Slovo. Before conducting any interviews, I used available case studies and local literature to become acquainted with the Joe Slovo court case, the South African constitution as well as the problems surrounding the housing crisis. I also developed a number of standardized interview questions that would seek to familiarize me with each of my interviewees and spark additional conversation. Interviews were the most appropriate type of research method for this project because they enabled me, the researcher, to get a wider view of the issue at hand. In each interview, I could tailor my specific questions to the interviewee's role in the Joe Slovo case. In doing this, I was able to learn from the most active residents in Joe Slovo, as well as those who knew nothing about the case; as I was also able to talk with specialists in both housing development and land reform. My research enabled me to get both sides of the court case and multiple views on the importance of housing development. In research, I find it is important to connect with the individual, and in this case, having personal interviews were the best option. I was lucky enough to spend six days in the informal settlement to conduct some participatory research, but most of my findings and facts about the case came from personal, structured interviews. The structured interviews were recorded and transcribed; this enabled me to look back on the interviews and have all the facts accurately noted. The two informal interviews were not recorded, however, I was given an array of documents from both the housing developer and the land reform specialist that enabled me to use pertinent information in this paper. Each individual that I talked to was vital to the understanding of this topic and the eventual conclusions that I came to.

Interviewees (*names have been changed for purpose of animosity)

1. **Sizwe* (15/04/11):** has lived in Joe Slovo since 2000. He is one of the original coordinators of the Joe Slovo Task Team. He was of vital importance throughout the court case and was instrumental in the Joe Slovo victory. He gave me a detailed background of the case and Task Team and explained what will happen now in developing Joe Slovo.
2. **Thando* (15/04/11):** has lived in Joe Slovo for nine years. He lives with his wife and three children, and runs a corner shop in Joe Slovo. Thando is one of the most eloquent speakers I have ever talked to. Although only having a primary school education himself, he perfectly explained the importance of education and jobs in the future of South Africa. He illustrated how spoon-feeding people housing is not going to alleviate any of the unemployment or inequalities in education that will continue to broaden the economic gap in the country.
3. **Doris* (22/04/11):** A woman who has lived in Joe Slovo since 2003. She is employed as a domestic worker, but would like more education for herself and her children. She came from the Eastern Cape, but would move back if she could get a job there.
4. **Liter* (15/04/11):** Liter has lived in Joe Slovo since 1999. He lives with his wife and three children. He is a part of the Task Team and took part in the protests in both Joe Slovo and Johannesburg.
5. **Nonyameko* (14/04/11):** has lived in Joe Slovo since 1999. Works selling crafts at a stand outside her shack, but still struggles to make ends meet. She is on the list to receive housing, but is on the far side of Joe Slovo, so will probably be one of the last families to get housing, likely not for another 5+ years.

6. **Pumla*** (17/04/11): A woman who has lived in Joe Slovo for nine years. She lives with her husband and has three children. She would like a job and more education for her children. She likes Joe Slovo, but considers the Eastern Cape her home.
7. **Waya*** (14/04/11): An adolescent who lives in Joe Slovo. He has lived in the settlement for eight years and just recently built his own shack. He was very helpful with connecting me with interviewees and in showing me around the community.
8. **Nomhle*** (14/04/11): Woman who has lived in Joe Slovo with her husband and two children for ten years. She explained how a lot of people know very little about the housing development in Joe Slovo, but that they trust the Task Team to ensure their rights.
9. **Lungisile Ntsebeza** (12/04/11): Professor Ntsebeza, a professor at the University of Cape Town specializing in land redistribution and rights in South Africa. He explained how land reform correlates with housing rights.
10. **Senzwa*** (10/04/11): Works at the HDA (Housing Development Agency). Discussed the goals of the housing initiative and how the agency will work with the Joe Slovo community members during the development process.
11. **Robert*** (18/04/11): Works at Land Reform Khayelitsha. Works in Khayelitsha with a nonprofit focused on reclaiming agricultural land. Explained the importance of land reform and structural support in social change initiatives.

Limitations of the Study

As with any research, there are a variety of limitations in this project that should be acknowledged. First and foremost, the research was confined to a very limited time frame. We only had three weeks to complete this research, but luckily, within this time, I was able to gain access to many key players in the Joe Slovo case. Although I would have liked to be able to speak with more people informed about the case, such as lawyers and other academics, I was able to gain a wide array of knowledge and opinions from a spectrum of professionals and residents.

Another limitation of my study was the language barrier. The interviewees that I talked with all speak isiXhosa as their first language. While I have very elementary knowledge of the language, the interviews were for the most part conducted in English. For the majority of my interviewees, this was not a problem; they could effectively articulate themselves in English; however, there were a couple instances in which a translator would have been helpful. I was, however, able to use one of my interviewees as a translator for one of my last interviews. This method was effective, and may have been useful for a couple of my other interviews as well.

BACKGROUND

Rapid urbanization and mobilization has left South Africa with a severe shortage of low-cost houses to accommodate millions of its poor citizens. This problem can be traced to the country's pre-apartheid regime, and is further intensified by population growth, unemployment and failed housing and land distribution methods. "Millions of South Africa's poor black households live in shacks, hostels and crowded houses in marginalized townships and informal settlements awaiting access to government-availed land and houses" (Mafukidze 2009: 2). At its start in 1994, the democratic, post-apartheid government inherited a housing pileup of 1.3 million units (Goebel 2007). Since then, the government has been implementing various approaches to combat the housing crisis that continues to fall on the shoulders of the socially marginalized, and racially diverse populations. The post-apartheid government enacted policies that focused on these inadequacies, and although there has been some progress made, the policies have failed to rectify the discrepancies in access to "guaranteed" rights of citizens. The policies that the South African government has initiated include the Housing Act of 1997, Rental Housing Act of 1999, Housing Consumer Protection Measure of 1998 and Home Loan and Mortgage Disclosure Act of 2000, all drawing from the South African Constitution of 1996. The constitution explicitly states that "everyone has the right to have access to adequate housing" and in so doing treats access to housing as a human right that would be violated through its denial or deferment (Republic of South Africa 1996). By 2006, the government had constructed 1.9 million houses, but by then, even though Apartheid rule was over, marginalization of particular social groups had resulted in the demand for an additional 2 - 3 million houses (Goebel 2007).

One such governmental initiative is the N2 Gateway Housing Project. It was started in March 2005 by the three tiers of government – the national Department of Housing, the Western Cape Provincial Government, and the City of Cape Town (Kgafela 2009). The project aimed to replace the informal settlements along the N2 highway with formal dwellings. This project was designed to be the lead pilot project of the Comprehensive Housing Plan for South Africa which was adopted by the Cabinet on 1 September 2004; however, the project did not succeed as planned” (Kgafela 2009). Originally, 22,000 units were supposed to be delivered within 6 months, with the initial building to take place in Joe Slovo. In 2005, the government ordered 20,000 Joe Slovo residents to vacate the premises for the purposes of building new houses. At this time, Thubelisha Homes⁷ took over the development. However, the residents of Joe Slovo appealed the evictions to the court in 2007 and after losing, protested the decision again in 2009. For a number of reasons, including: additional, unforeseen expenses, an unrealistic timeline, inadequate distribution of houses to the target population and defects in construction, an auditor’s report was tabled in Parliament in April 2009, revealing that the project had “not been managed economically, efficiently or effectively” (Kgafela 2009). Two years later, in 2011, the residents of Joe Slovo finally won their right to remain on the land. Additionally, a new housing developer, HDA⁸ (Housing Developing Agency) has taken over the initiative and will continue to build the public housing while Joe Slovo residents continue to live in the area.

FINDINGS

As I started this research, I sought to examine the shortcomings of the South African legal system. My research questions focused on the Constitution, the Constitutional Court case, and the knowledge of housing rights within the Joe Slovo community. As I delved into primary research, however, the legal terms and constitutional justifications were not incredibly important to most Joe Slovo residents. While Task Team leaders and key players in the court case were privy to legal jargon and development statuses, I found that most residents were more concerned with the present. My research then began to encompass housing rights, but additionally, the root causes of the lack of housing in Joe Slovo. I soon found that other social disparities are inhibiting the residents, and not being addressed by the government.

Joe Slovo vs. Thubelisha Developers: Evictions and the Constitution

Since 1994, there have been a series of housing projects designed to improve the living conditions of people staying in informal settlements and townships. In September 2004, the N2 Gateway project was launched to “build housing opportunities, 70% of which would be made available to them and 30% to backyard dwellers from Langa” (Sosibo 2011). In order for the housing to be built, 20,000 residents of Joe Slovo, an informal settlement located on the outskirts of Langa, would have to be evicted.

In a June 2009 judgment, the court handed down an eviction order and a supervisory execution order that insisted the state had to meet several timelines and other requirements in order to proceed with the public housing project (Sosibo 2011). However, in March 2011, the same court ruled otherwise. The ruling stated,

“The government had claimed that the development of the informal settlement was impossible while the residents continued to reside there. It became clear shortly after the order was granted, however, that the government no longer intended to carry out the eviction in terms of the order, because it had come to the conclusion that it was better to develop the property while the residents remained on site” (Sosibo 2011).

While the ruling shows that residents of informal settlements do have rights to property, it also shows how long attaining their rights actually takes. The government is attempting to address the drastic marginalization of underprivileged communities, but at the same time, the government is failing to recognize that they must first address the social structures that lead to the marginalization of these communities. The Constitution guarantees everyone, despite their class or race, the right to housing, but due to the disparities of the past, the right to housing and land is not actualized. One of the reasons why it is so difficult for some individuals to claim land lies in the very constitution that guarantees it. “While protecting rights, the constitution also explicitly empowers the state to expropriate property and specifies that property may be expropriated in the public interest, including “the nation’s commitment to land reform” (Sosibo 2011). One of the key issues before the Constitutional Court was whether or not Joe Slovo residents were “unlawful occupants” within the meaning of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (PIE) Act, whether it was just and equitable for the national and provincial

authorities to seek an eviction order, and whether the state had acted reasonably within Section 26 of South Africa's Constitution in seeking the eviction order.

After discussing the issue with Joe Slovo residents, I found that before the residents formed their representation, the Task Team, hundreds of residents were evicted to Delft. Most of these evictions were semi-voluntary based on the promise that people would be given adequate temporary housing in a settlement known as Delft, and that once housing was completed in Joe Slovo, they would be able to move back. Sizwe, Task Team leader, explained what actually happened,

“Most people who moved to Delft hoped they would move back, but they won't come back. They were promised that they would only stay there about 3 months and then come back to Joe Slovo. That didn't happen. Only three people from Joe Slovo got houses in the first stage of N2 development” (Interview 1, April 15, 2011).

The individuals that were moved to Delft were under the false pretenses that the move was only temporary, and that within a few months they would be able to move back to their home, Joe Slovo. However, because the community was transferred to Delft as an isolated one, the government had power over them and influence over their rights. Though the residents should have been allowed to stay in Joe Slovo, due to their social and economic status, at the time they didn't have access to the resources that would help to defend their rights to Joe Slovo land. Although the evictions were in theory not illegal - the housing developers did receive a court order to have the residents move - the logistics of the evictions made it a different scenario. As stated previously, adequate housing can be defined as housing in an environment that ensures “adequate and accessible location with

regard to work and basic facilities: of which should be available at an affordable cost” (Smit 2000: 4). In the case of Joe Slovo, the habitants were to be moved to Delft. In my research, though most residents believe that “the government doesn’t have any right to make us move” (Interview 2, April 15, 2011), their support for this argument isn’t based on the constitution. Rather than being concerned with Sections 25 and 26 of the constitution, I found that every single interviewee agreed on one thing: they don’t want to be evicted because they “don’t want to move to Delft, (they) want to stay here, in Joe Slovo” (Interview 8, April 14, 2011). When I asked why, residents explained that Delft is very far away. While Joe Slovo has a train station, and is close to Cape Town, Delft is 20km away and one has to take a R20 minibus ride to get there from Cape Town. For someone who is unemployed, work and school transport from Delft is not feasible. Thando explained the situation, “Delft is like an island. To start with, it’s the transport. What makes your life easier is the transport. Here, the train is accessible, as well as a bus. Delft is like drought. Living in here is better than Delft” (Interview 2, April 15, 2011). Although their living conditions in Joe Slovo are not ideal, moving to Delft would compromise their likelihood of finding work. The fact that the proximity of the township was such a determining factor in the case illustrates how important access to jobs, rather than housing, is to underprivileged populations. The fact that being moved to Delft would not provide people with housing that included affordable accessibility to jobs, was one of the main justifications for the residents of Joe Slovo’s plea to stay.

Furthermore, while the housing developers initially agreed to dedicate 70% of the new housing to Joe Slovo residents, the first stage of building proved otherwise. The Task Team leader explained that in the first stage, only three Joe Slovo residents ended up

getting housing. This was in part because the residents had been moved to Delft, but also due to the cost of the flats. The first stage of houses was available “for rent”. But as the developers knew very well, most of the most of the residents in Joe Slovo are unemployed, and as such, they cannot afford monthly rent. As a result, “they allowed everyone to apply for those houses. People from Khayelitsha, Gugulethu, Kensington; all those places” (Interview 1, April 15, 2011). Clearly, the promise of 70% of the housing going to Joe Slovo residents was not kept.

After witnessing the disparities between what residents had been promised, and reality, a few individuals from Joe Slovo decided to fight the government on their rights to the land. Sizwe explained how the Task Team was formed:

In the beginning it was only 14 men. We decided to oppose things that government said. We used to hold meetings during the night. Around 7:00-9:00; it was only men who attend those meetings. We didn't want women at that time because we don't want everyone to hear what we are doing because we are scared of our government; maybe we get arrested, all of those things. Then, after a month, we take it to everybody. And we got a lawyer. (Interview 1, April 15, 2011).

After further threats of evictions, the official Joe Slovo Task Team was created in 2006. Even with the help of costly lawyers, their first attempt to stay in Joe Slovo was denied by the court in 2009. Their court appearance was coupled with a series of peaceful demonstrations, one of which ended in police violence. It wasn't until over four years

later, in 2011, that the Constitutional Court finally recognized the residents' of Joe Slovo right to stay in Joe Slovo. Although, unfortunately, nothing can be done for the individuals who already had to move to Delft, the 20,000 remaining residents can now peacefully stay in their temporary housing in Joe Slovo while they wait for formal residences.

Joe Slovo Today

Sixteen years down the line...we got liberation in 1994...so it's been sixteen years. For us, this is very much unfair. We participated in the revolution, but the unfortunate thing is that, we are the majority here. We live in slums; we don't have anything as the majority. In this current day, the system that we are using is dehumanizing. See this place, even your animals probably live in a better place, a concrete structure. They don't live like us. For we, for our kids, see them playing in those dirty places? This is low level of hygiene. To live here, you don't grow as a person. It's like we are still left in 1993. How can you feel liberated when you take yourself to a bucket system? (Interview 2, April 15, 2011).

Today there are approximately 20,000 people living in Joe Slovo in the conditions described above by one of the residents. What this research has revealed is that although the residents fought for their right to stay in Joe Slovo, they still expect to be given public housing. The fact that they fought against moving to Delft doesn't illustrate their desire to remain in their current living conditions, but rather their need to stay close to job opportunities. For a population that continues to be haunted by the discriminations of the

past, access to employment is the most prevalent issue when choosing housing location. At the same time, just because the residents of Joe Slovo now have the right to stay in the area, does not mean that the government can disregard their rights to *adequate* housing. In his interview, what Thando effectively articulates is that housing rights are rooted in the “concept of human dignity and are as an integral part of economic, social, and cultural rights within the United Nations, European, Inter-American, and African human rights instruments” (Kenna 2008: 41). Adequate housing is guaranteed by the South Africa constitution, but I don’t know of anyone who could argue that the conditions Thando describes are adequate. Many countries, including South Africa, accept that the most appropriate definition of adequate housing is that which appears in the Habitat Agenda. The agenda reads:

“Adequate housing means more than a roof over one’s head. It also means adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting, heating and ventilation; adequate basic infrastructure, such as water supply, sanitation and waste management facilities; suitable environmental quality and health related factors; and adequate and accessible location with regard to work and basic facilities: all of which should be available at an affordable cost” (Smit 2000: 4).

Joe Slovo residents may have roofs over their heads, but the other guarantees of the Habitat Agenda are not satisfied by the thousands of temporary shacks that crowd the community. As a result, due to the constitution’s assurance of the right to *adequate* housing, the government has taken on the responsibility of supplying formalized housing

to residents of Joe Slovo and other informal settlements. Additionally, Joe Slovo residents cannot be evicted, for the move to Delft would also compromise their rights to land and accessible work and basic facilities.

Thubelisha Homes, the developing company appointed to the N2 Gateway Project in 2007 has since been released from the contract. Now, the HDA (Housing Development Agency) has taken over the project. The HDA is a “public development agency that promotes sustainable communities through the provision of well located and appropriately planned land and buildings” (HDA 2011). The HDA, the Department of Human Settlements, the Western Cape province and the City of Cape Town are working together to build dignified human settlements and creating healthy and cohesive communities in the N2 Gateway. The project is driven by the Western Cape province with the HDA as its implementing agent (HDA 2011). When the HDA took over the project in 2009, they faced many challenges, “involving policy, invasions, project management, negative racial perceptions, stakeholder relationships, court actions, community protests, and allegations of corruption”, left over by the previous overseeing agency. In order to overcome these issues, the HDA has implemented measures to increase communication within the community and address the shortcomings of the previous housing plans (Interview 10, April 10, 2011). In fact, through speaking with an employee from the HDA, Senzwa, I learned that one of his jobs is to have regular contact with the Joe Slovo Task Team members, all of whom have had significant influence on the proposed development. Housing is underway in Joe Slovo, and while some residents believe that they may still have to wait five or more years for housing, every single interviewee is under the impression that they *will* obtain a house in the future. Furthermore, Sizwe explained that a

number of the Task Team members are now also involved in the construction process; they “now represent the Joe Slovo community and the housing development” (Interview 1, April 15, 2011). Though this may seem like a conflict of interest, Sizwe assured me that their employment and association with the development agency works to insure the rights of the residents of Joe Slovo. At the very least, it proves that the HDA is striving to keep its promise of improved communication with the Joe Slovo population. Unfortunately, to date, the mission of the HDA seems like a romanticized version of reality. While they have made some strides in increasing transparency and human involvement, the amount of sustainability present within the development is still uncertain.

In Joe Slovo, the third phase of the N2 Gateway project is currently underway. After the 2004 fire, hundreds of families were moved to Delft. Although the fire was devastating, it left an area of land that could be developed, it has enabled housing development to continue without having to move more residents. Land rehabilitation is complete on this vacant site, and the building of 462 houses has been approved. The HDA anticipates that 2,886 fully subsidized houses, accommodating the majority of the existing Joe Slovo community, will be complete by June 2013 (HDA 2011). The progress of the housing development is promising, however, the positive effect on the lives of Joe Slovo residents is still questionable. Without income to pay for utilities, food and education, how can the communities housed by the N2 Gateway Project possibly be sustainable?

Will Housing Have a Lasting Effect?

Walk into Joe Slovo and ask anyone where they came from and the majority will tell you that they came from the Eastern Cape. Ask them why they came and they will tell you for work. So why is it that the government's main concern is to build these individuals houses? How long will the unemployed be able to maintain their new houses before falling prey to the inequalities of the socioeconomic realities that have left them without an education and without a job? In doing this research I came to the conclusion that while housing is an important right, the underlying racial divides in education and employment that have prevented social and economic unity within South Africa will only continue to manifest if the root causes of the housing crisis are not addressed. Housing may improve the physical appearance of Joe Slovo, but the underlying truths of social inequalities and poverty will remain.

As Mangena stated, government promises of water, electricity and public housing leads to a population of citizens who are dependent on the state. While this may very well be true, Joe Slovo residents "don't want to be spoon-fed" (Interview 2, April 15, 2011). One resident, Doris, said, "If I can get a job, I can pay for everything. I can pay for a nice house" (Interview 3, April 22, 2011). Numerous residents expressed a similar sentiment in that if they had cash, they wouldn't need an RDP house because they could build or buy their own. People don't come from the Eastern Cape for houses, they come from jobs. Nonyameko explained, "If there are jobs in the Eastern Cape I would have stayed there and worked there. The Eastern Cape is my home, but the only thing I want is a job" (Interview 5, April 14, 2011). After talking to numerous Joe Slovo residents I found that the most important thing to this community was employment, not housing. Although

housing is the topic in the news and may be the immediate answer when I asked someone what they “need”, once I delved further into the issue, I realized that what the residents truly strive for everyday is making ends meet and finding a job.

One possible explanation as to why the government is addressing the housing crisis first lies in the fact that the scale of prevalence of informal settlements is often an indication of the performance of the public sector of the government; as a result, “most governments are concerned with the presence of such settlements in their cities” (Huchzermeyer and Karam 2006: 20). This rings true in Cape Town, where the evictions of Joe Slovo residents coincided with preparations for hosting the World Cup. Although the original housing plan focused on avoiding the processes of “housing formalization that “reinforce the marginalization and stigmatization of the poor” (Bond and Taint 1997: 28), and instead, aimed to provide housing and support aimed to alleviate the causal factors of poverty, the latter was not attained. As a result of the World Cup announcement, the government decided to first focus on formalizing “visible” informal settlements, in particular, they addressed the visibility of Joe Slovo. While informal settlements were supposed to receive land tenure and service intervention, designed to create employment and empowerment, along with housing updates, the visible settlements targeted as a result of the World Cup preparations were not supplied with such structural support. The N2 Gateway project was concerned less with addressing the root causes of the housing disparities in South Africa and more with putting on a façade for its international visitors.

I would argue that on one hand, the new housing developers, HDA, have succeeding in improving transparency and increasing community involvement; however, the government has failed to address the fundamental issue of poverty within the

community. South Africa's measure of the degree of inequality, the Gini coefficient, is one of the highest in the world. The poorest 40% of households account for only 11% of total income, while the richest 10% of households (Barry 2007: 173). Providing housing to individuals in the lower socioeconomic classes is not going to change this statistic; the government must face the reality of the matter and work to equalize education and job opportunities if they wish to truly help their citizens achieve their rights.

The problem is not a difficult one to understand, if only people would talk to the residents about their most basic needs. Although he is thankful for what he has received, Thando described the rudimentary problems in the government's social change initiatives:

“The government, they don't feel what we feel. They don't live how we live. We are the majority here, but we live in slums. We don't have anything as the majority. The government can be doing other projects, but they need to address the issue of poverty...the imbalances of the past. For the government to address the backlog of housing, to address the crime.... we only need cash. IT's a matter of cash and the only way you can access cash is by working. Our government knows clearly that to come here to Joe Slovo looking for someone who has a degree, a diploma, a BA in whatever, there is no justice there. How do you expect me to go there and look for a job that needs someone with a senior certificate? That's unfair. Even if you say you have 10,000 jobs, to me that is zero jobs if you need a certificate. Or enough of these jobs are for people with experience. Where are we supposed to get experience? I am hungry now, me, I need a job now. Until then, we must sit and fold our arms and watch them eating

while we starve. Let the hungry be fed. Let the naked be clothed. Let the sick be nourished ” (Interview 2, April 15, 2011).

In his explanation, he touches on a variety of problems that the government faces in addressing the social issues within the country. Housing and crime are visible, so they are confronted first; but what the resident tried to emphasize was that, if he, and others, had a job, then the visible problems may fix themselves. Of course, not all crime is committed by the unemployed, and not all crime will be prevented by social and economic integration, but equality is a start. Thando went on to explain that the injustices of the past have a huge bearing on his status as a shack dweller. He, like many others, was exiled during apartheid, and as a result didn't receive a proper education, and never had job experience. Consequently, when he attempts to find a job, he has neither the education nor work credentials to be employed. The unfortunate truth is that under the current government, many of the residents of Joe Slovo seem trapped in their situation. They couldn't find work in the Eastern Cape, so they came to Joe Slovo; they tried to find work here, but they don't have the experience; they want to better their education to improve their chances in the work force, but they don't have the money to...and any money they do have goes towards their children's education in hopes of "a better future and greener pastures for them" (Interview 6, April 17, 2011). If nothing else, I found that the marginalizing cycle seems like a perpetual one that will not be solved by the creation of housing units.

Looking Forward

Unfortunately, the mass disparities that plague South Africa have deep roots in years of discrimination and injustices. The social, political and economic inequalities that continue to racially divide this country cannot be solved quickly or externally, but rather, must be dealt with by facing the underlying causes of the recurrent problems. The housing crisis is no different; upgrading the living situations in informal settlements only fixes the exterior. But behind the new houses, families will still be unemployed and uneducated. From the residents I spoke with, I learned that most people in Joe Slovo wouldn't move to the Western Cape if they didn't have to; they would much prefer to stay in their homeland, the Eastern Cape. However, because of the lack of jobs in the Eastern Cape, people come to Cape Town in hopes of finding employment. This trend will not stop once Joe Slovo is reconstructed into a formalized settlement. People will continue to come from the Eastern Cape looking for jobs, and informal settlements will continue to form on the outskirts of Cape Town. We must trace this issue back to the very beginning and address the issue of unemployment in the Eastern Cape.

Professor Ntsebeza notes that a key issue impacting the social imbalances in South Africa is land reform. In his article, "*The Land Question*", he explains how land reform in South Africa is undeniably slow. Whites still own most of the agricultural land in the country, and consequently, they still have most of the power. Ntsebeza argues that in order of equality to prosper in this country, land must be returned to the black citizens. I agree with Professor Ntsebeza, and hypothesize that this land redistribution could do even more to help solve the problem of informal settlements. Residents relocated from the Eastern Cape come to Cape Town looking for jobs. If land redistribution were successful in the

Eastern Cape, and created jobs in these people's homelands, then they wouldn't be forced to move to Cape Town. Attempts at land redistribution have been made, but they were done so unsuccessfully. In order for these programs to be successful, they must enable the black farmers with education on agriculture and structural support. As with jobs in the Western Cape, the government cannot expect citizens of the Eastern Cape to be prosperous farmers without the education or experience.

Apartheid undoubtedly left South Africa with a generation of unskilled and uneducated individuals. However, just because this population now inhabits shacks and lives under the poverty line, it does not mean that they are unmotivated or unintelligent people. Unemployed individuals living in informal settlements, such as the ones I interviewed in Joe Slovo don't want to be spoon-fed. From my research I gathered that they would much rather be able to attain their rights themselves than have to rely on the painstakingly slow governmental projects to provide their rights for them. Housing is one of these rights, and a right that people could achieve themselves if they had the economic means to do so. While the government is obviously taking strides to improve the overall status of their citizens, housing is only a temporary fix; for the country to prosper as a unified group of people, the "imbalances of the past" must be addressed first.

CONCLUSION

This research, which started as an attempt to assess the constitution and the government's responsibility to address the *right to adequate housing*, developed into an analysis of the government's attention to the broader social issues and inequalities that serve to perpetuate the housing crisis.

Though I no longer believe that the court case, nor the definition of housing in the constitution, are driving forces in the housing crisis, the debates did help me to reach my conclusions. When looking at why the residents of Joe Slovo fought to stay near Langa, it is clear that the reason was due to the proximity of Joe Slovo to Cape Town. For residents of Joe Slovo, being near a city, for work prospects, is of vital importance. Looking at the larger scheme of things, it is clear that what the residents are really fighting for, in the "housing debate" is the right access employment. The housing debate in Joe Slovo took years to solve, and even now, it is of importance within the Joe Slovo community; however, in my research I found that the most important aspect of the case was not whether or not they were receiving housing, but whether or not they were being moved to Delft.

The most significant influences in this case are the economic disparities that exist between informal settlements and more affluent populations. Informal settlements around Cape Town are inhabited primarily by black residents; they are individuals that suffered through years of forced segregation and marginalization. But now, seventeen years later, the same individuals are still suffering from the remains of Apartheid. The socioeconomic inequalities from 1948-1994 have created an adult population that is, as a result of past

discrimination, unskilled and unemployed. It is a generation that is stuck in the perpetuation of marginalization and poverty.

Unfortunately, one result of such inequalities has been the discrepancy of housing. Even though I agree full heartedly that housing is a fundamental right, after completing this research, I have come to the conclusion that housing should not be the first thing to address when trying to unify a divided country. Free public housing is a temporary, aesthetic fix, but it will not solve the root causes of the housing crisis. In order for sustainability to be possible, the residents of Joe Slovo must be enabled to help themselves now, and for the future. For the adult generation, sustainability means being able to afford a decent dwelling and being able to provide for their children. As Thando said, in order to survive on his own, “We need cash. And to get cash, we need a job” (Interview 2, April 15, 2011).

To understand where the problem of unemployment in Joe Slovo, and other informal settlements, comes from, we must look past the immediate problem. Most dwellers of informal settlements, in and around Cape Town, come from the Eastern Cape; they come to the West in hopes of finding more opportunities. If the people living in Joe Slovo are provided with formalized housing, it will not prevent more job seekers from coming to the Western Cape. As long as there are no jobs in the Eastern Cape, people will continue to come west and develop new informal settlements. Thus, in order to prevent further poverty and marginalization in the Western Cape, the problem of unemployment must be solved in the East.

This brings me to the question of land reform rather than housing. While the housing policies are not going seamlessly in South Africa, neither are land redistribution

attempts. A lot of the agricultural land is in the hands of the white population. The government hoped to overturn a lot of this land to its original owners, the black farmers; however, the process has not gone as smoothly as planned. In order to address the root of the housing crisis, the government needs to reassess the importance of land redistribution and development initiatives in the Eastern Cape. With structural support, these initiatives could provide for sustainable employment opportunity in the Eastern Cape, which in turn would decrease the amount of migrants the West. As a result, there would be more job opportunities throughout the country, and the cycle of the informal settlements wouldn't perpetuate as quickly. Although this would clearly not be a simple fix to all of the challenges faced by the South African government, if the individuals of this country are ever going to unify as a common, equal people, the social, economic and political inequalities of the past must be addressed in how they continue to negatively impact the present.

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APPENDIX

Interview Questions for Joe Slovo Residents

1. Please state your name.
2. Where do you live?
3. How long have you lived there?
4. Where do you come from originally?
5. What is the living situation there? *Ask about housing and land availability*
6. Do you still have family there?
7. What do they do for a living? *If family members are not employed, how do they have the money to survive?*
8. Why did you move here?
 - a. *If to find work...Do you have a job now? If not, are they still looking? What problems have they run into in finding employment?*
9. Have you moved around at all in Cape Town?
 - a. *If so...Where to? Did they start off in Joe Slovo? If so, how did they know to come here? Were they ever evicted, or encouraged to move out of Joe Slovo?*
10. Do you like Joe Slovo? *If so, what about it do they like? Location, convenience, community?*
11. Do you want to move?
 - a. *If so...Where to? Into a house? Is this move feasible?*
12. Have you applied for public housing?
 - a. *If yes...What was the application process?*
 - b. How long have you been waiting?
 - c. Do you think you will get a house?
 - d. How long do you think you will have to wait?
 - e. How did you know to apply for housing?
13. Do you know anything about the N2 Gateway Housing case? *If they know a lot about the case, ask how the case came about. What was the interviewee's role in the case?*

14. Do you know anyone who has had to move out of Joe Slovo?
 - a. *If yes... Where did they have to move to?*
15. *If Delft comes up... Would you want to move to Delft? Why or why not?*
16. Do you want to move into a flat?
17. Can you afford to buy a flat?
18. Can you foresee any problems with moving into a public housing flat? *Ask about their ability to pay for rent/utilities.*
19. How did you learn about the housing development/N2 Gateway Project?
20. Do you know the latest news on the case?
21. What do you think will happen now in Joe Slovo?
22. What would be the most helpful thing for you...to improve your current situation?
Will housing solve the challenges to face?
23. Do you want to stay in Joe Slovo?

Glossary

¹ **Joe Slovo:** The informal settlement, or shantytown, located 12 km outside of Cape Town. It is the home to approximately 3,000 households, and lies next to the township, Langa. In 2007, 20,000 inhabitants were to be evicted, which brought about the court case, Joe Slovo vs. Thubelisha Homes.

² **Delft:** The new township settlement located 20km from Cape Town. After the 2005 fire in Joe Slovo, homeless families moved to this area. This is also the location of the temporary housing units that Joe Slovo residents were supposed to be evicted to.

³ **Joe Slovo Task Team:** The group of individuals who represented the Joe Slovo community in the court case. The team started as a group of 14 men in 2007, and has since grown to include numerous other members of Joe Slovo.

⁴ **N2 Gateway Housing Project:** *Referred throughout the paper as N2, N2 Gateway, N2 Gateway development.* The initiative, drafted by the government in 2004, focused on developing subsidized and free housing to the impoverished communities around Cape Town, specifically Joe Slovo.

⁵ **Apartheid:** The National Party regime in South Africa lasting from 1948 to 1994. The rule was marked by a system of legal, and enforced, racial segregation. The government changed hands to the ANC (African National Congress) in 1994 through multiracial, democratic elections.

⁶ **Eastern Cape:** The eastern portion of South Africa. Many black individuals often refer to the Eastern Cape as the “homeland”. It is primarily rural land and villages.

⁷ **Thubelisha Homes:** The government-appointed developing company that took over the N2 Gateway Housing plan in 2007. The company was released from its contract in 2009 when it failed to comply with all aspects of the building contract.

⁸ **HDA:** Housing Development Agency. The company that took over construction of the N2 Gateway Housing project in 2009. The company seeks to build sustainable communities and increase transparency.