

Submission on the Draft White Paper for Human Settlements

20 February 2024

To: The Director-General, National Department of Human Settlements
Per: Mypolicy@dhs.gov.za

1. Introduction

Isandla Institute welcomes the opportunity to submit comments on the Draft White Paper for Human Settlements (18 December 2023). As an organisation that has worked in the urban sector for the past 25 years, we conduct research and policy advocacy on matters of urban development, including citizen voice and deliberative engagement, informal settlement upgrading, urban governance and local level planning systems. We have further developed expertise on the backyard housing sector (through our flagship project Backyard Matters, conducted in partnership with the Development Action Group), in area-based violence prevention as an integral component of neighbourhood development and, more recently, in approaching informal settlement upgrading through the lens of the just urban transition.

The work undertaken by Isandla Institute has a strong evidentiary base and draws on different sources of knowledge, practice and experience – from academic research to practitioners’ expertise to community knowledge. A key characteristic of Isandla Institute is its ability to act as a convenor and facilitator of dialogue, both within civil society and between civil society and government, the private sector and academia. Through these processes, knowledge is co-created and opportunities for improved policy and practice are identified.

Specific examples with relevance to human settlements policy include the following:

- In 2016 Isandla Institute led a consortium that was appointed to develop the Western Cape Informal Settlement Support Programme (ISSP)¹, which has since guided the provincial approach to informal settlement upgrading;
- In the lengthy review process which preceded the current Draft White Paper, Isandla Institute facilitated two collaborative civil society submissions:
 - [Informal Settlement Upgrading Matters: A submission into the new human settlements policy.](#)²

¹ A key informant and guiding frame for the ISSP is the Western Cape Informal Settlement Strategic Framework (ISSF) 2016 “From precarious settlements to dignified communities”, developed by Isandla Institute, Palmer Development Group and Habitat International for the Western Cape Government. Available at: https://www.westerncape.gov.za/assets/departments/human-settlements/docs/issp/western_cape_issp_strategic_framework_2016.pdf

² Cape Town NGO Collaborative. 2019. Informal Settlement Upgrading Matters: A submission into the new human settlements policy. Available at: <https://www.isandla.org.za/en/news/item/180-informal-settlement-upgrading-matters-asubmission-into-the-new-human-settlements-policy>.

- Backyard Housing: An essential part of the solution to South Africa's Housing Crisis. A submission into the proposed new Human Settlements Policy and Human Settlements Bill.³

We are aware that the NDHS has taken note of these submissions and has indicated willingness to engage with the propositions and recommendations made as part of the policy review process. Our submission on the Draft White Paper will therefore not restate those earlier submissions, although we do suggest that there are specific insights and recommendations to be drawn from them.

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

Our submission covers 6 sections (including this introduction). In section 2, we identify a number of substantive gaps that we believe should inform the policy direction embedded in the White Paper. Section 3 posits that a more coherent and explicit framing around human settlements is needed to avoid the risk of a narrower housing lens. Section 4 touches on the (changing) role of the state and other stakeholders. Section 5 focuses on housing insecurity and human settlements development in relation to backyard housing and informal settlements. Section 6 includes concluding comments and highlights some of our key policy recommendations.

2. High-level assessment of the Draft White Paper

We welcome the energy that the NDHS has invested in expediting the policy review process to bring this draft to fruition. The policy review process has been long in the making, which has left the human settlements sector without the guidance needed to respond effectively to new realities and stubborn problems.

A white paper that offers strategic direction for progressive policy, legislation and innovative programming at all spheres of government whilst leveraging non-state actors in achieving policy objectives is a vital tool to drive the major (and sometimes disruptive) changes required to the status quo, which must include changes to institutional systems to achieve this. Conversely, a white paper that is unfocused or lacks specificity in achieving core goals fails to provide guidance to the sector and can even be used to block change. Experience has demonstrated that the review of white papers happens infrequently. The tenets of this White Paper will guide legislation, programme design, funding and, fundamentally, human settlement outcomes, for the next 15 to 20 years. It cannot afford to remain at a level of abstraction if it is meant to effect real change.

Unfortunately, in our assessment, the current Draft White Paper lacks the clarity of purpose and identification of pathways for change to provide the guidance that is so desperately needed. While in many respects it acknowledges the challenges besetting the sector, there seems to be a level of dissonance between acknowledging the need for fundamental change, articulating what must be

³ Isandla Institute. 2022. Backyard Housing: An essential part of the solution to South Africa's housing crisis- A submission into the proposed new Human Settlements Policy and Human Settlements Bill. Available at: https://isandla.org.za/en/resources/item/download/276_b9cea3762cb7e49ed8ae2da0a92b0c4e

done and the urgency required to do so. As a result, the Draft White Paper represents a missed strategic opportunity.

On a practical note, the structure of this draft has not been easy to navigate - making it difficult to gain a coherent understanding of the overarching vision, proposed outcomes and pathways for change. The White Paper would benefit from visual elements, such as graphs, tables, diagrams or graphics to make information more accessible. For example, a graphic depiction of the theory of change would be useful.⁴

5. Substantive issues: Some critical gaps

Our first set of broad comments deal with the evidence-base underpinning the draft White Paper, followed by some observations about strategic gaps – most notably, ‘enabled’ self-build housing construction and climate change.

2.5.1 The scale of the human settlement/housing crisis

What appears to be missing from the White Paper is a fundamental acknowledgement of the *scale* of the human settlement crisis which South Africa currently faces. Inasmuch as the history and contributing factors have been sketched as part of the situational analysis, the White Paper fails to capture the converging crisis of compounded housing backlogs, a decline in state delivery of top structure⁵ as well as a decline in the delivery of serviced sites,⁶ essentially creating a vacuum in human settlement delivery. This is coupled with increasing levels of housing insecurity, increased land occupations, unsafe conditions in under-serviced informal settlements, unsafe inner-city building occupations, and increased exposure/vulnerability to climate-change related events, such as flooding and fires. The scale of the human settlement crisis and the potential for human catastrophe, including social unrest emanating from frustrated, housing-insecure communities, is under-emphasised.

On this note, we caution against using Census 2022 data at face value, given the enumeration challenges experienced during the census, the massive undercount of 32% and the perceived data bias towards certain socio-economic groups. In particular, the living (and housing) conditions of poor and low income households are likely to be under-represented. The impressive improvement in access to basic services and formal housing reflected in the Census should therefore be corroborated with the department’s own data, provincial government and municipal data and other reliable data sets. Using unreliable data to inform policy, programming and resource allocation will result in interventions that do not (adequately) respond to the realities on the ground.

2.5.2 Institutional realities, possibilities and constraints

The draft White Paper repeats many of the progressive principles and ideals that underpin urban/human settlements/housing policy and programmes in South Africa. However, in the absence of a hard-nosed assessment of institutional realities to determine why many of these ideals and objectives have not been realised, and under what conditions they can be achieved, the document

⁴ Examples of compelling government White Papers can be found here:

<https://views.paperflite.com/collections/5b9c88b6c9e77c0001bd1eba>.

⁵ In the Annual Performance Plan for 2022-2023, the NDHS acknowledges that housing unit delivery saw a decline from 77 626 units in 2018/2019 to 25 073 units by the third quarter of 2022/2023 (See: National Department of Human Settlements.2022. Annual Performance Plan for 2022-2023: 19). Available at: <https://www.dhs.gov.za/sites/default/files/u16/APPROVED%20APP%2022.pdf>

⁶ The same period saw a decline in the delivery of stands/serviced sites, from 48 055 to 16 565. Ibid: 19.

doesn't offer sufficient guidance on pathways for change. In particular, the capabilities of the state to advance, coordinate and implement approaches that bring about the defined human settlements outcomes need to be clarified, assessed and augmented. The White Paper needs to balance an ambitious agenda for change with a pragmatic understanding of how this agenda can be best realised, given institutional realities.

2.5.3 The political economy of patronage and greed

Apart from the historical contributors to housing backlogs, the White Paper has not engaged with the political economy that has a direct bearing on the pace of human settlement delivery. There are examples of existing and emerging factors which must be addressed. Key examples relate to political instability and the leveraging of the 'promise of a house' as a political bargaining tool by politicians, despite the high probability that it will not materialise for the many who are currently registered on housing waiting lists. Entrenched patterns of political patronage and its impact on the capability of the state to deliver must also be addressed. Apart from corruption within the state, the rise of the construction mafia and its ability to derail human settlement programming must be combatted as both a human settlement and crime prevention priority before it is further institutionally entrenched.⁷

2.5.4 A radical rethink (and robust theory of change) on human settlements

Given the level of crisis experienced within the human settlement landscape and the lengthy policy review process, the Draft White Paper is timid in its approach. There is no radical re-think of how to change the status quo. It appears as if the framing or scaffolding of existing housing/human settlement programming is maintained, with some proposed amendments. This, combined with the weak socio-economic, political and institutional analysis, culminates in a theory of change that lacks both ambition and clarity.

A fundamental thrust in recent human settlement practice and orientation is the shift in policy focus from the state as the primary provider of housing in the form of top-structure delivery to that of the state fulfilling an enabling or supportive role in assisting the private sector and households to realise housing needs. This is based on the premise that top-structure provision by the state at the scale and pace required is simply not sustainable and therefore needs to be rationalised as per defined eligibility criteria. The Draft White Paper acknowledges this point and seems to affirm this position, yet it doesn't follow through on the implications of it. In particular, there is no clear proposal for a support programme to enable self-build housing construction at scale. As our previous work has shown, without both financial and technical assistance, people will continue to build what they can afford, replicating the status quo of unsafe and undignified living conditions. The proposed Transactional Support Centres (p.63) may well form part of such a programmatic approach, although the scope and remit would need to be augmented to offer a broader range of housing and human settlements services to communities. The institutionalisation of Housing Support Centres coupled to a public funding mechanism to enable self-build by poor households are key dimensions of such a support programme.

Furthermore, while the Draft White Paper seeks to differentiate between different housing needs and correlate these to different housing interventions/opportunities (such as tenure security, access to

⁷ See: Irish-Qhobosheane, J. 2022. 'Extortion or Transformation? The construction mafia in South Africa'. A report by the Global Initiative Against Transnational Organized Crime. Available at: <https://globalinitiative.net/wp-content/uploads/2022/06/GITOC-Extortion-or-Transformation-The-construction-mafia-in-South-Africa.pdf>.

services, a serviced site), by equating these interventions to ‘adequate housing’ (as per the definition and explanation on p.5) there is an inherent risk of a reductionist approach in the context of competing needs and scarce resources. For example, focussed action related to fulfilling one aspect of adequate housing (e.g. access to basic services or serviced site) should not mean that other facets, which require a different kind of state support or intervention, should not be progressively/incrementally pursued. As such, it is important to specify a minimum standard or package and how it will be funded and delivered over time.

2.5.5 Climate change and the just transition as a central pivot for change

The Draft White Paper recognises that ‘[c]limate change has become one of the most critical developmental risks to South Africa with potential devastating economic, social, and ecological dimensions’. It commits to developing a ‘Human Settlements Response Strategy’ and adopting several mechanisms to mitigate the dangers posed by climate change. However, the document fails to recognise that the sector has a vital role to play in marrying the objectives of resilience, climate mitigation, decarbonisation, justice and job creation whilst improving human settlement and housing outcomes.⁸ Taking note of the [Just Transition Framework for South Africa](#), and in particular the [Just Urban Transition Framework](#), would enable the White Paper to strategically position human settlements at the centre of the just (urban) transition, which is about so much more than climate adaptation and mitigation.

3. The housing – human settlements conundrum

The Draft White Paper acknowledges that the sector has struggled to come to terms with the implications of the shift in remit from housing to human settlements. The document seems to suggest that the new policy will assist in clarifying what human settlements entail, what outcomes are to be pursued, what the relevant roles and responsibilities of different stakeholders (including different spheres and sectors of government) are and what the relationship is between housing and human settlements. It notes that:

‘A fundamental shift from housing to human settlements is premised on changing the entire methodology and measurements for the delivery of housing in human settlements and this is interpreted as considering a number of variables and options such as serviced stands, higher density developments, and making efficient use of infill sites.’ (p.17)

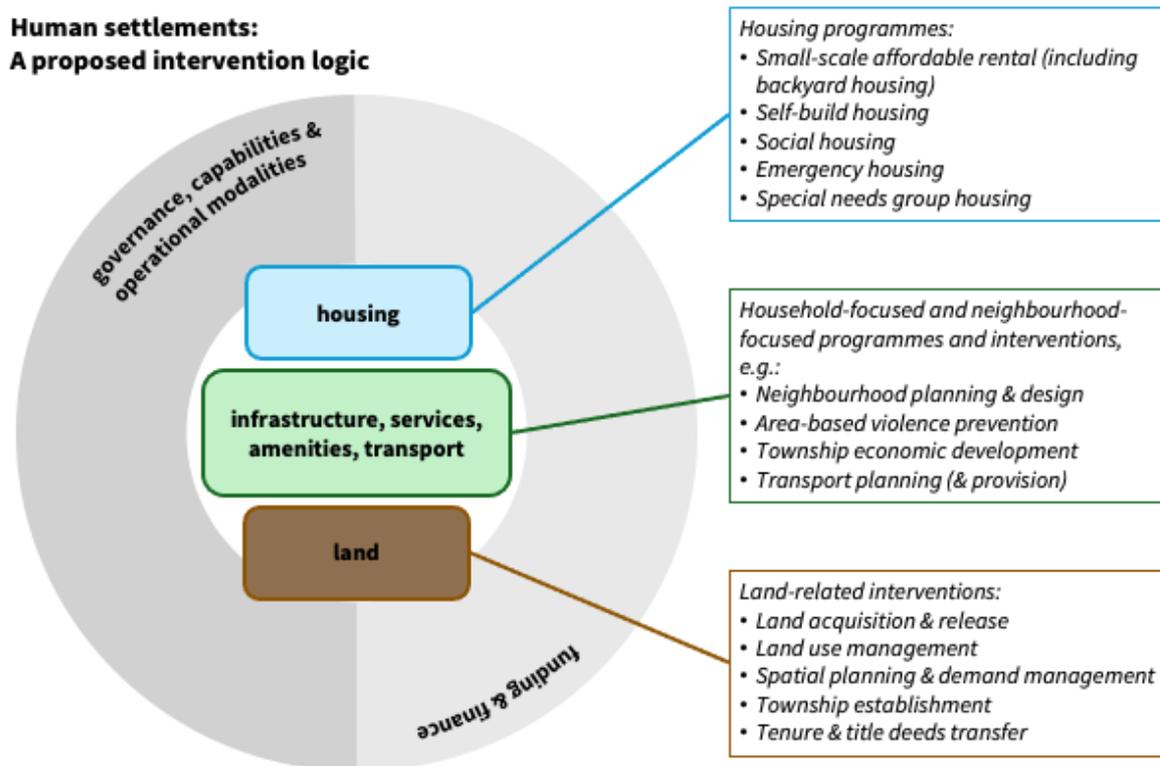
We therefore expected the document to include a human settlement typology, including urban/suburban/rural settlements and, critically, ‘neighbourhood’ typologies (e.g. wealthy suburbs, middle-class suburbs, established townships, greenfields settlements, informal settlements, peri-urban settlements) and to correlate this typology to socio-demographic, environmental, land, housing and services realities or needs.⁹ Such a framework could be the beginnings of an intervention logic to guide a more coherent approach to human settlements and housing rights.

⁸ In 2023 Isandla Institute facilitated dialogues and community conversations focused on what a just urban transition could mean for informal settlements and informal settlement upgrading. A synthesis of these conversations and further research is captured in the 2024 publication “Making sense of a ‘just urban transition’ for informal settlement upgrading”, available at https://isandla.org.za/en/projects/just-transition/item/download/377_82f3f2d59156e4fb8e0083817e61cf5a.

⁹ It is telling that the only human settlement typology explicitly recognised in the Housing Code, with a dedicated programme and funding, is informal settlements. We are not necessarily advocating for human

As it stands, the Draft White Paper, inadvertently perhaps, continues to perpetuate the perception that human settlements are primarily about housing, rather than positioning housing as a constituent part of human settlements. Of course, we understand that a narrower focus on housing and housing programmes has historical origins and avoids certain institutional, transversal and intergovernmental complexities. Nonetheless, it seems to us that this does little to solve current complexities in advancing a progressive and coherent human settlements agenda, one where dignified and liveable neighbourhoods add up to inclusive, vibrant towns and cities.

The diagram below offers a way of thinking about housing as a constituent part of human settlements. It is not intended to be comprehensive, but rather be suggestive of what the various component parts are (as identified on p.29 and p.39 in the Draft White Paper) and how these correspond to particular interventions. One could augment this model by identifying the specific role and responsibilities of the state and other stakeholders, to further help clarify where government ought to play a more enabling role and where it is an implementing agent, as elaborated on below.



As the diagram makes clear, a broader human settlements focus (as opposed to a housing delivery focus) recognises the multifaceted rights associated with access to adequate housing, which may fall outside of the mandate of the NDHS thus requiring intersectoral and intergovernmental collaboration and coordination. If transversal cooperation is to be achieved within the human settlement space, it requires clear role delineation and coordination.

settlement programming and funding to be strictly organised according to settlement typology, but rather that settlement typologies are correlated to housing, services and other needs/realities.

4. Human settlements as a ‘whole of society’ imperative: A re-envisioned role for the state

In the context of a human settlements approach, the role of the state is multi-faceted, depending on the specific issue or intervention. In terms of housing, its role shifts from that of the provider of housing products to fulfilling (primarily) a facilitative and enabling role. The exception applies in the instance of vulnerable or marginalised groups who cannot realise their own housing rights. The enabler role of the state as opposed to a direct provider is a departure from the historical ‘top-down’ programmatic approach.

The ‘enabler role’ does not, however, mean state withdrawal. There is a need for more honest acknowledgement of market failures and why the private sector isn’t more involved in providing viable housing opportunities and what government can do to incentivise/enable this. Significantly, there is insufficient acknowledgement of the agency of (prospective) landlords/ homeowners/ tenants to contribute to both housing stock and local economic development. While the Draft White Paper acknowledges the role of private households and small local enterprises (at p.70), it is in passing and fails to articulate how they can be supported and enabled. As mentioned previously, the White Paper should take a clear and coherent position on self-build and the enabling conditions required, such as housing support services and appropriate public funding.

Drawing in and enabling a greater variety of sectors and stakeholders to contribute to human settlement outcomes requires, amongst others, robust coordination and administration capabilities. These functions need to be well-resourced, but do not necessarily have to be executed by government. For example, the proposed Housing Savings Fund or a financing mechanism to enable self-build can be administered by a private sector entity or by multiple private and/or civic entities in a more localised manner.

The Draft White Paper acknowledges that the NDHS has not historically ‘learnt from outcomes of community research’ and further concedes that there is a ‘lack of social cohesion’ because of ‘limited community and civil society engagement’ (p.16-17). Reference is made to participatory planning, but this is tangential. The social compact that is meant to underpin informal settlement upgrading needs to be given greater prominence as a means to enable *deliberative engagement* between communities, municipalities and other relevant stakeholders.¹⁰ But community engagement should not be restricted to informal settlement upgrading. While in other human settlement contexts community engagement may be more focused in scope and duration, it still needs to be articulated as one of the defining features of human settlements planning and development. As such, greater emphasis should be placed on deliberative approaches and methodologies in human settlements programming and development and the implications for government capabilities. This also includes a more prominent role for affected communities and households in monitoring and evaluation of human settlements programming and provisioning.

Lastly, while the role of civil society organisations (CSOs) and the value of partnerships is acknowledged in the Draft White Paper, without institutionalisation in human settlement programming it is seen as an ‘add-on’ without any real potential to substantively shape decision-making processes. We argue that there must be a clearer commitment to collaboration and

¹⁰ Isandla Institute recently developed [A just urban transition for and with informal settlements: The art of deliberative engagement](#), which includes a deliberative engagement tool to inform the social compact in informal settlement upgrading, taking into account the imperatives and opportunities of a just urban transition.

partnerships with CSOs, including a review of institutional barriers that hinder such approaches (e.g. restrictive provisions in the Municipal Finance Management Act). Furthermore, the National Department of Human Settlements has repeatedly committed itself to establishing a national platform for CSO engagement, yet to date this has not been established. This commitment should be reiterated in the White Paper, with a clear indication of purpose, functioning and timeframes for establishment.

5. Housing insecurity, informal housing and human settlement development

This section is concerned with two key manifestations of housing insecurity and un(der)developed neighbourhoods, namely backyard housing and informal settlements. While we identify specific policy issues in relation to each of these manifestations, we note that the White Paper should acknowledge the continuum of housing insecurity experienced by poor and low-income households (which also includes homelessness), the upward/downward movements along this continuum (e.g. from backyard tenant to informal settlement resident following loss of employment), and the importance of providing a coherent overarching framework to guide programmes and interventions.

5.1 The backyard housing sector: A vital contributor to housing provision and local economic development¹¹

The Draft White Paper notes that the informal backyard rental housing subsector comprises approximately 560 000 or 13 percent of the total rental housing market (p.51).¹² Despite this contribution and the increasing recognition of backyard rental in the past five years as a particular sub-market of affordable private rental, there is ‘currently no explicit framework or policy in place’ relating to the backyard housing sector.¹³ As a result, municipalities have been left with little guidance on how to respond to this phenomenon.

To some extent, the literal invisibility of backyard tenants mean that they are undercounted and overlooked in public service provision, including basic services and infrastructure provision. In addition, the categorisation of the landlord and tenant relationship as a private law relationship, thus perceived to be beyond the purview of the state, contributes to this reality. This ignores the fact that a substantial portion of both tenants and landlords in the backyard housing sector are indigent, economically vulnerable and in need of state assistance. Furthermore, the distinction between tenants living on public versus private land has been used to justify excluding the progressive roll-out of services to tenants on private land. However, a legal opinion obtained by Isandla Institute found that there is no legal impediment to do so and in fact a strong Constitutional obligation on municipalities to provide (and enable / facilitate the provision of) basic services to all.¹⁴ Lastly, the

¹¹ Since 2019, Isandla Institute has partnered with the Development Action Group (DAG) in the Backyard Matters project, which has culminated in a variety of research outputs on backyard housing, essential services and infrastructure provision in townships, housing typologies, the role of micro developers and self-build more broadly, including enabling self-build through housing support services and through public finance schemes. These outputs are available on our websites.

¹² It is unclear what the source is of this data, as the Draft White Paper does not reflect sources. If it is indeed drawn from Census 2022, then our earlier note about being circumspect about the data stands.

¹³ Department of Human Settlements ‘Consolidated Norms and Standards for Rental Housing’ in GN 2194 GG 47883 of January 2023: 71. The *Norms and Standards* were promulgated in terms of the Rental Housing Act, 50 of 1999 as amended by the Rental Housing Amendment Act, 35 of 2014.

¹⁴ Isandla Institute. 2021. ‘The obligations and powers of municipal governments to provide basic services for backyard dwellers on private land’. Legal Opinion by Advocate Budlender, G SC. Available at: https://isandla.org.za/en/resources/item/download/244_4e9c0176c8666ba24fd88d2386d4f7f0.

notion that backyard housing is a temporary option until those registered on the housing waiting list will be able to access a public house also holds back a more enabling and proactive approach to the sector.

By failing to recognise and support the backyard housing sector, municipalities often have to deal with a number of costly 'downstream' impacts. This can include having to remedy the direct consequences of underservicing of core municipal services in the form of health and environmental hazards as a result of inadequate refuse removal and water and sanitation provision,¹⁵ to responding to conditions of increasing tenure insecurity which can result in homelessness and/or land occupations, which municipalities must then respond to. Failing to engage with backyard residents and landlords may also result in lost revenue streams. Backyard residents and tenants are often willing to pay for basic services and/or improved services. By failing to engage the sector, municipalities lose out on basic service revenue.

The Draft White Paper recognises the existence of the diverse and multifaceted backyard housing sector, and its contribution to meeting housing need. It also notes that the location of backyard dwellings often coincides with conditions of informality and poor service provisioning. However, these occasional references do not constitute a clear and coherent policy articulation on backyard housing.

A clear and progressive policy position would encompass the following:

- Clear recognition of the contribution this sector makes to affordable housing provision, based on relevant data pertaining to its size, growth trends and functioning;
- Recognition of the important economic contribution this sector makes to landlord households, with specific relevance for women-headed households;
- Appreciation that this sector does not operate exclusively on the basis of a financial logic, but is also mediated by social relations and cultural values;
- Clear affirmation of local government responsibilities and obligations with respect to basic service provision (including free basic services) to backyard tenants who are indigent, economically vulnerable and in need of state assistance, whether they reside on public or private land;
- Confirmation of the norms and standards for backyard housing as well as the notion of incrementalism, as articulated in the Consolidated Norms and Standards for Rental Housing¹⁶ (hereafter *Norms and Standards*);
- Expressed support for community-driven affordable housing solutions through a supportive self-build housing programme, which includes the establishment of housing support centres and appropriate financial support for poor and low-income households (the shape and form of such support is likely to require further exploration);
- Recognition of the role and potential of small-scale contractors and developers to provide affordable housing and the need to create an enabling environment in this regard;

¹⁵ See: Isandla Institute. 2023. Of skips and scapegoats: Managing waste for the growing backyard housing sector. Available at: https://isandla.org.za/en/resources/item/download/354_1aff6de4289638ef0c3ad04c0c4a3277, and Isandla Institute. 2022. Extending water and sanitation services to backyard tenants: Towards an evidence-based infrastructure strategy. Available at: https://isandla.org.za/en/resources/item/download/303_be7a41b8ad83dc87c4b0feef90c5f4d.

¹⁶ Department of Human Settlements 'Consolidated Norms and Standards for Rental Housing' in GN 2194 GG 47883 of January 2023.

- Appreciation of the economic potential of a local human settlements and housing value chain and a clear policy statement on how this will be enabled and harnessed.

Municipalities have a range of tools and instruments at their disposal to inform a progressive and enabling approach to backyard housing. One of these is the *Norms and Standards*, which essentially begins to define a ‘minimum package’ of housing-related services and support (as per para 2.5.4 above) for backyard housing, which can be advanced incrementally. Through appropriate planning and land use management tools, municipalities can adopt an enabling approach to encourage appropriate densification and facilitate safe and dignified backyard accommodation. For example, more enabling residential zoning in areas with a high degree of backyard housing can be less restrictive regarding land uses and development parameters to enable regularisation of existing structures, incremental housing construction and livelihood opportunities.

The White Paper should create legal certainty for municipalities regarding their obligations and responsibilities and offer clear programmatic guidance on how to enable, support and guide the backyard housing sector (in all its variety). It should further specify that municipalities must include a contextual analysis of, and strategic response to, backyard housing in their human settlements plans and across municipal service provision planning functions. Furthermore, the White Paper should note that municipalities need to improve data collection related to the backyard housing sector, including data on size, location, trends, housing typology, landlord-tenant profiles, service access / needs, etc.

5.2 The approach to informal settlements

As a permanent feature of the human settlement landscape, there must be a better understanding of the drivers of informal settlement formation and a need to develop appropriate (proactive) approaches and interventions. Ultimately, the White Paper needs to reflect a sense of urgency and concentrated effort to address both the living conditions in informal settlements and the driving forces that contribute to the formation and longevity of informal settlements.

The Draft White Paper reaffirms current policy on informal settlements, but it doesn’t engage the fact that implementation of upgrading programmes has been lacking, and in fact has seen a decline. Without an institutional analysis to explain why this is so, the Draft White Paper is not offering a way out of the ‘stuckness’ that characterises informal settlement upgrading. One of the key issues is the institutional marginalisation of informal settlement upgrading, with government (across the three spheres) dedicating relatively limited capacity and resources towards informal settlement upgrading. We argue that unless this issue is addressed and the requisite capabilities, capacities and resources are identified, the status quo will remain, without prospects of future improvement.

Similarly, while the notion of a social compact for informal settlement upgrading is supported, insufficient clarity is provided on what it means in practice. We would argue that at the heart of a social compact is the art of deliberative engagement, a structured two-way engagement (between municipality and informal settlement community, although other stakeholders can be brought on board) focused on deliberating options, pathways and sequencing of development. Recasting community engagement as deliberative talks not only about purpose and terms of engagement, but also suggests that municipalities should have the requisite capabilities to listen, mediate between different interests and to be accountable.

There is widespread acceptance that the involvement of non-state actors in various aspects of informal settlement upgrading is both important and adds significant value. However, the Draft

White Paper omits to clearly articulate how partnerships with non-state actors will be enabled, resourced and institutionalised.

As highlighted earlier, the White Paper should include a clear and nuanced policy position on self-build and associated support programme (in the form of Housing Support Centres and a public finance support mechanism for those unable to access private finance or leverage own funds). This should include an appreciation of, and support for, innovative alternative or circular building technologies and materials, including a commitment to fast-track approval processes that block or delay these technologies from going to market, and a concomitant review of building regulations to allow for their increased uptake.

Furthermore, the White Paper should engage more critically and creatively with the notion of density, especially in an informal settlement context, and explore to what extent vertical densification could be enabled to address environmental risks and hazards (like fires and flooding), to minimise the need for decanting and relocation, and to enabling future housing (and livelihood) needs to be met.¹⁷

Lastly, the Draft White Paper takes the view that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (the 'PIE Act') needs to be reviewed, as it obliges government to offer 'alternative accommodation for illegal occupation of land.' The PIE Act serves various purposes, chief amongst them, to ensure that the substantive and procedural rights of occupiers, particularly vulnerable occupiers, are protected within the context of evictions. A cursory directive to 'review' the provisions of PIE is counter-intuitive to the constitutional framing of the right of access to adequate housing and the carefully crafted substantive and procedural rights which it protects. In balancing the imperative of 'dissuading unlawful occupations' at the risk of rights regression, the unsubstantiated proposition in the White Paper 'to review PIE' is, we submit, irresponsible. By failing to adopt 'long term and advanced planning to alleviate shortage of stands and mushrooming of informal settlements' the state itself contributes to the conditions which perpetuate land occupations. Any regression of rights protection requires special justification with the state bearing the duty to show a rational connection between the limitation of rights, the measures adopted in doing so and the legitimate purpose of the outcome sought. It is arguable that in this case, the rational connection does not exist, if the state both contributes to the status quo and then seeks to limit the protections afforded to those who face housing insecurity.

6. Conclusion and summary of recommendations

Our comments on the Draft White Paper are extensive and at times relate to specific statements or arguments put forward. For the purpose of this submission, we have focused on a number of gaps and key strategic issues that we believe the policy should address (better), which in turn will help to craft a more compelling Theory of Change. These include (but are not limited to):

¹⁷ The issue of vertical densification was explored in a series of engagements on the just urban transitions and informal settlements, facilitated by Isandla Institute. See Isandla Institute. 2024. Making sense of a 'just urban transition' for informal settlement upgrading. Available at: https://isandla.org.za/en/projects/just-transition/item/download/377_82f3f2d59156e4fb8e0083817e61cf5a. Drawing on the Colombian experience, a similar idea is expressed here: <https://hsrc.ac.za/news/economic-development/from-land-occupation-to-thriving-neighbourhoods-reflections-from-bogota/>

- 1. A strong evidentiary base, drawing on various (reliable) sources, which includes an institutional assessment to ascertain why intended policy outcomes have not been achieved as intended;**
- 2. A stronger conceptual framing of human settlements, with housing a constituent part, and translating this into an intervention logic and programme design;**
- 3. Linked to 2) above, a clear articulation of what constitutes a well-functioning, safe, resilient and vibrant neighbourhood as a key human settlement outcome;**
- 4. The definition of a 'minimum package' for adequate housing for different housing typologies and timeframes for its incremental realisation, to mitigate the risk of a reductionist approach to the Constitutional obligation to progressively realise the right to adequate housing;**
- 5. A clear supportive policy position on self-build as an official housing programme, which includes the institutionalisation of local Housing Support Centres and a commitment to developing a suitable public funding mechanism for those unable to leverage (sufficient) private funds;**
- 6. A strong emphasis on, and the creation of an enabling dispensation for, economic opportunities inherent in human settlement/housing value chains, with particular reference to the circular economy (e.g. community waste management systems), the role of small-scale contractors and local artisans, and households' ability to leverage their home as an income-generating asset;**
- 7. A strong position on the institutionalisation of partnerships, particularly with civil society organisations, at different levels and a commitment to address legal and other blockages in this regard;**
- 8. Deliberative engagement as a defining feature in human settlement programming and implementation, with particular reference to (but not exclusive to) the social compact in informal settlement upgrading;**
- 9. A more coherent policy position on the backyard housing sector in its variety, one that offers both legal certainty and guidance to municipalities in implementing a supportive response;**
- 10. A clear position on the possibilities and limitations of vertical densification as a potential strategy for informal settlement upgrading;**
- 11. An assessment of institutional capabilities required to drive and implement an ambitious, pro-poor human settlements agenda that effectively advances rights and realises human settlement outcomes and a stated commitment to utilise, and invest in, the required capabilities.**

We trust our submission is well-received. For your benefit, we have included a list of key resources below. We welcome any further opportunity to engage on the White Paper and subsequent human settlements programming.

Contact: Ms Mirjam van Donk, Director of Isandla Institute, mirjam@isandla.org.za, 072 399 9324.

Relevant resources¹⁸

Cape Town NGO Collaborative. 2019. Informal Settlement Upgrading Matters: A submission into the new human settlements policy. Available at: <https://www.isandla.org.za/en/news/item/180-informal-settlement-upgrading-matters-asubmission-into-the-new-human-settlements-policy>.

Isandla Institute. 2021. 'The obligations and powers of municipal governments to provide basic services for backyard dwellers on private land'. Legal Opinion by Advocate Budlender, G SC. Available at: https://isandla.org.za/en/resources/item/download/244_4e9c0176c8666ba24fd88d2386d4f7f0.

Isandla Institute. 2022. Backyard Housing: An essential part of the solution to South Africa's housing crisis- A submission into the proposed new Human Settlements Policy and Human Settlements Bill. Available at: https://isandla.org.za/en/resources/item/download/276_b9cea3762cb7e49ed8ae2da0a92b0c4e

Isandla Institute. 2022. Enabling the Right to Build through Housing Support Centres. Available at: https://isandla.org.za/en/resources/item/download/275_c42e09b7bfe6ba720dde44ee62cb5f0a.

Isandla Institute. 2022. Making urban safety matter in neighbourhood development. Practice Brief 3. Available at: https://isandla.org.za/en/resources/item/download/343_55d0408f61d7a51c2c63c3caf318a725

Isandla Institute. 2023. Institutionalising a Housing Support Centre Model to enable self-build. Available at: https://isandla.org.za/en/resources/item/download/355_e119c52d974042158f727e80a392e0d9

Isandla Institute. 2024. Making sense of a 'just urban transition' for informal settlement upgrading. Available at: https://isandla.org.za/en/projects/just-transition/item/download/377_82f3f2d59156e4fb8e0083817e61cf5a

Isandla Institute. 2024. A just urban transition for and with informal settlements: The art of deliberative engagement. Available at: https://isandla.org.za/en/projects/just-transition/item/download/375_2d2818c5dd50e8fa04682e07aca03a02

Isandla Institute and Centre for Affordable Housing Finance in Africa (CAHF). 2023. Investigating the value and feasibility of using public finance for self-build housing processes in South Africa. Available at: https://www.isandla.org.za/en/resources/item/download/356_d65b74460e084a719e1ab1c50ce9f1cd

¹⁸ This list includes recent publications of Isandla Institute, which speak directly into the (new) human settlements policy and dispensation. Other useful publications can be found on our website: www.isandla.org.za.