



c/o: Michael Clark, Researcher
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10 January 2020

By email: hspolicy.research@capetown.gov.za

To whom it may concern,

RE: NDIFUNA UKWAZI COMMENT ON THE CITY OF CAPE TOWN'S DRAFT HOUSING ALLOCATION POLICY

1. Ndifuna Ukwazi is a non-profit activist organisation and law centre that combines research, organising and litigation in campaigns to advance urban land justice in Cape Town. Our primary mission is to expand and protect access to affordable housing towards building a more just and equal city.
2. In November 2019, the City of Cape Town ("the City") published its Draft Allocation Policy: Housing Opportunities 2019 ("the draft policy") and invited interested parties to comment on the draft policy. As part of the public consultation process, the City invited various civil society organisations to attend an information session on 29 November 2019, which Ndifuna Ukwazi attended and participated in. Ndifuna Ukwazi has read and considered the draft policy and makes this submission to the City in accordance with the invitation to submit written comments.
3. We were unable to submit written comments by the advertised deadline, however, we contacted Ms Gail Eddy who confirmed that we could submit comments on or before 10 January 2020.
4. Please see attached our submission on the Draft Allocation Policy: Housing Opportunities 2019.

Yours faithfully,
Ndifuna Ukwazi
(Per: Michael Clark, Researcher)

[Sent electronically]

Ndifuna Ukwazi is a not-for-profit trust (IT 540 - 2001)(NPO 094 - 737).

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NDIFUNA UKWAZI'S SUBMISSION ON THE CITY OF CAPE TOWN'S DRAFT ALLOCATION POLICY: HOUSING OPPORTUNITIES 2019

INTRODUCTION

1. As mentioned in our cover letter, Ndifuna Ukwazi is a non-profit activist organisation and law centre that campaigns to advance urban land justice in Cape Town through research, organising and litigation. Our primary mission is to expand, promote and protect access to affordable housing towards building a more just and equal city.
2. Over the last five years Ndifuna Ukwazi has been involved in legal, research and organising work around evictions, relocations, rental housing, the allocation of state-subsidised houses, and the promotion of social, transitional and inclusionary housing. We have published several resource guides, research reports and pamphlets on these issues. Ndifuna Ukwazi has also been involved in a series of important court cases dealing with land occupations, evictions, the provision of alternative accommodation, and the state's constitutional and legislative obligation to combat spatial apartheid and promote spatial, economic and racial justice and equality through expanding access to affordable housing.
3. It is from this perspective that Ndifuna Ukwazi has considered the City of Cape Town's Draft Allocation Policy: Housing Opportunities 2019 ("the draft policy"),¹ and makes the following submissions.
4. Our submission is structured as follows:
 - 5.1 We make some general comments on housing databases, fault-lines associated with the housing allocation process and the need for greater transparency throughout the housing delivery system.
 - 5.2 We then turn to specific concerns with the draft policy that we believe should be addressed. These include:
 - concerns about the inclusion of "anti-social behaviour" as a conditional behavioral control and eligibility criteria;
 - concerns about "target areas";
 - concerns about the lack of beneficiary involvement in the allocation process;
 - concerns about the prioritisation of persons 30 years or older in terms of the Western Cape Department of Human Settlements Circular C2 of 2019;

¹ City of Cape Town, *Draft Allocation Policy: Housing Opportunities 2019* (2019).

- concerns about the complete omission of the secondary income group in the discussion of the selection criteria for social housing;
- and the lack of clarity about various role players and policies, guidelines or terms of reference that do not form part of the draft policy.

5.3 Thereafter we provide some concluding comments.

GENERAL COMMENTS ON THE HOUSING DEMAND DATABASES, HOUSING ALLOCATION AND TRANSPARENCY

5. Some general comments pertaining to the housing demand databases, housing allocation process and the discourse of the “waiting list system” warrant mentioning in the context of the draft policy’s emphasis on transparency.²
6. Twenty-five years after the end of apartheid, housing delivery and allocation remains one of the most fiercely contested and inflammatory issues in South Africa. While the South African state has established a comprehensive state-subsidised housing programme that seeks to redress the legacy of apartheid by granting eligible beneficiaries a variety of state-subsidised housing options and has made significant gains in housing delivery, a number of systemic challenges still plague the housing delivery and allocation processes.³
7. One key challenge is the discourse of the housing “waiting list system” which conceives of the allocation of state-subsidised housing as a “queue” in which potential beneficiaries wait patiently until their name comes up in terms of a rational process of “first come first served” basis.⁴ Anything that does not fall within this course of action is decried as “queue jumping”.⁵ While the language of the “waiting list” has been abandoned and this notion has been replaced by the proliferation of various overlapping housing “databases”, the assumption of a housing waiting list still continues to exist.⁶
8. The housing allocation process is perceived to be very corrupt. While there is evidence of real corruption that has been exposed, the perception of corruption is also exacerbated by the

² Transparency is listed as one of the principles underpinning the draft policy. See clause 1.3.1 of the draft policy.

³ See, generally, K Tissington, N Munshi, G Mirugi-Mukundi and E Durojaye, *‘Jumping the Queue’, Waiting Lists and Other Myths: Perceptions and Practice Around Housing Demand and Allocation in South Africa*, Community Law Centre (CLC) and Socio-Economic Rights Institute (SERI) Research Report (2013); Jackie Dugard with Michael Clark, Kate Tissington and Stuart Wilson, “The Right to Housing in South Africa” in Foundation for Human Rights (FHR), *Socio-Economic Rights – Progressive Realisation?* (2017).

⁴ Tissington et al, *‘Jumping the Queue’*, p. 7.

⁵ Tissington et al, *‘Jumping the Queue’*, p. 7; K G Young, “Rights and Queues: On Distributive Context in the Modern State”, *Columbia Journal of Transnational Law* (2016), pp. 93 and 97-98.

⁶ Tissington et al, *‘Jumping the Queue’*, pp. 7-9; Young, “Rights and Queues”, *Columbia Journal of Transnational Law*, pp. 93 and 97-98.

“clumsiness, opacity, confusion and capriciousness that exists within the housing programme”.⁷ In the context of housing allocation, perceptions of corruption and fraud have been fostered by the lack of transparency about the allocation process, the significant length of time that many potential beneficiaries have to wait (often years and, in some cases, decades), and the fact that the housing demand databases have never been made public.⁸ As Royston and Elgin state:

“People don’t believe in the waiting list as an allocation system in practice – views are widely held that they are corrupt and that people can pay and jump to the front of the queue.”⁹

These perceptions have undeniably resulted in distrust, resentment and anger among potential beneficiaries and have often given way to protest action.¹⁰

9. In this context, it is essential that the City take seriously how it can promote transparency in the housing delivery and, particularly, the housing allocation process by identifying areas where it can promote transparency and give potential beneficiaries greater access to information.
10. In spite of listing transparency as one of the underlying values of the draft policy,¹¹ the policy does not seriously address this issue. The draft policy states that transparency will be achieved by making the policy “reasonably accessible”. However, this is not enough. Information about the housing allocation process is not widely available, accessible and understandable to the general public.¹² This is a massive concern that needs to be urgently addressed. We strongly recommend that the City develop a consumer education campaign to make information about the housing allocation process accessible to potential beneficiaries and make clear how beneficiaries are selected. The amendment of the allocation policy offers the perfect opportunity for such a campaign.
11. Ndifuna Ukwazi is also concerned that the City has not made its housing database or waiting list accessible to the public and been unable to provide information to potential beneficiaries about their position on the database. If the City is serious about infusing transparency into the housing allocation process, this is the first and most essential step. A genuine commitment to transparency would necessitate accessible information about the housing databases, potential beneficiaries’ position on

⁷ M Rubin, “Perceived Corruption in the South African Housing Allocation and Delivery Programme: What it May Mean for Accessing the State”, *Journal of Asian and African Studies* (2011), p. 488. On perceptions of corruption in housing delivery and allocation, see; L Royston and R Elgin, “Allocation Thought Piece for Managed Land Settlement”, Urban Land Mark Policy Brief (2011); Tissington et al, ‘*Jumping the Queue*’, p. 8; and Corruption Watch, “First Annual Report: Turn up the Volume” (2013) (in which Corruption Watch points out that a large number of queries or requests for assistance relate to concerns about the “manipulation of RDP housing allocation lists” and “allocation of houses to those loyal to councilors or bribe payers”).

⁸ Tissington et al, ‘*Jumping the Queue*’, p. 60.

⁹ Royston and Elgin, “Allocation Thought Piece for Managed Land Settlement”, p. 11. See also Tissington et al, ‘*Jumping the Queue*’, pp. 72-77; Young “Rights and Queues”, *Columbia Journal of Transnational Law*, pp. 93-94.

¹⁰ Tissington et al, ‘*Jumping the Queue*’, pp. 72-77.

¹¹ See clause 1.3.1 of the draft policy.

¹² Tissington et al, ‘*Jumping the Queue*’, p. 67.

these databases and ensure that potential beneficiaries are able to understand and effectively navigate the housing allocation process.¹³

12. There is also little clarity about how the various housing databases interact with one another. For example, even the draft policy mentions that the City’s Housing Demand Database is “linked” to the National Housing Demand Database and the Western Cape Demand Database,¹⁴ but the exact interaction between these potentially contradictory databases are not clearly explained. While Ndifuna Ukwazi welcomes the assertion that the City’s database is “linked” to these other databases, we would strongly encourage the City to elaborate on the existing interaction between the different housing databases, especially if the City’s database is the *only* access point through which beneficiaries within the City’s municipal jurisdiction are able to access housing opportunities.¹⁵

CONCERNS WITH THE DRAFT POLICY

“Anti-social behaviour” as conditional behavioural control and eligibility criteria

13. Ndifuna Ukwazi is deeply concerned about the inclusion of “anti-social behaviour” as a conditional behavioural control and eligibility criteria for City-owned rental housing,¹⁶ CRU housing¹⁷ and BGN housing.¹⁸ Our concerns in this respect are wide-ranging.
14. Our first worry is that the definition of “anti-social behaviour” is vague and overly broad. This has the effect of granting public officials wide discretionary powers without the restraint of clear guidelines in terms of which to exercise this discretion and taints all provisions that make reference to “anti-social behaviour”. One of the chief principles of the rule of law is that the exercise of public power must be authorised by clear and unambiguous enabling legislation or policy.¹⁹ Ambiguity may render provisions subject to potential abuse or misinterpretation.²⁰ This is particularly the case where the

¹³ While there are currently no instances of this form of transparency in relation to the South African housing demand databases, there are useful examples of other cities embracing principles of radical transparency that might be useful. One of the most prominent examples of transparency by a City government is the Detroit’s Neighborhood Improvement Tracker, an interactive map of Detroit that provides up-to-date information on the City’s Demolitions Program, a programme that uses federal and state funds to demolish commercial and residential properties that are unused, unlivable or hazardous in the wake of Detroit’s financial crisis. For more on the Neighborhood Improvement Tracker, see the Neighborhood Improvement Tracker website: <https://detroitmi.gov/webapp/detroit-neighborhood-improvement-tracker>. See also 99% Invisible, “Episode 369: Wait Wait ... Tell Me!”, 99% Invisible Podcast (9 March 2019): <https://99percentinvisible.org/episode/wait-wait-tell-me/>.

¹⁴ See clause 1.4.7 of the draft policy.

¹⁵ See clause 1.4.7 of the draft policy.

¹⁶ See clause 3.4.4.1 of the draft policy.

¹⁷ See clause 3.3.4.7 of the draft policy.

¹⁸ See clause 2.3.3 of the draft policy.

¹⁹ See *R v Shapiro* 1935 NPD 155; *S v Meer* 1981 (1) SA 739 (N); C Hoexter, *Administrative Law in South Africa*, 2 ed (2012), pp. 332-333.

²⁰ Hoexter, *Administrative Law*, p. 332.

phrasing of the provision could lead public authorities to exceed or misconstrue the constraints of their powers.²¹

15. In the context of the definition of “anti-social behaviour”, the provision is extremely vague and uncertain. It is unclear what would constitute a “record of anti-social behaviour” – a single instance, repeated instances or repeated instances after warnings were issued? It is unclear which public official or body is responsible for compiling such a record or what would constitute adequate proof of such record – is a criminal record required or is an unsubstantiated allegation made by a neighbour sufficient? It is unclear what constitutes “harassment” – does this include ordinary neighbourly nuisance (in which case the conduct would already be regulated by nuisance law)? It is also unclear what possible types of behaviour could fall under the umbrella of this term.
16. This criteria therefore gives public officials overly-broad discretionary powers to determine whose behaviour is “unacceptable” or who is eligible to gain access to housing based on largely subjective criteria. In addition, there are no clear guidelines in the draft policy to act as a restraint on this overly broad discretionary power. The ambiguity inherent in the definition of “anti-social behaviour” therefore brings into question the legality of all of the provisions in the draft policy that make reference to “anti-social behaviour”.²²
17. The problems with these provisions are exacerbated by the fact that these provisions could be used by public officials to *de facto* prevent potential housing beneficiaries from accessing housing opportunities in an unconstitutional manner.
18. Given the lack of clarity in this provision, and the wide-ranging concerns of corruption and fraud in the housing allocation process, there is a very real risk that this criteria could be abused or, at the very least, be perceived to be abused.
19. Our second concern is that the draft policy does not set out a process in terms of which a potential beneficiary can respond to or appeal their “record of anti-social behaviour”. This too is likely to be contrary to the principle of legality and the rule of law as it may lack procedural fairness. While the provisions do, in some instances, refer to the record being expunged after a period of two years, this is not enough to remedy the problems with this provision. If a “record of anti-social behaviour” is to be used as a conditional behavioural control or an additional eligibility criteria, the draft policy must include a fair process for potential beneficiaries to make representations before these records are created, as well as enable potential beneficiaries to challenge and appeal their records.

²¹ Hoexter, *Administrative Law*, pp. 258-259.

²² See Hoexter, *Administrative Law*, pp. 325-326, who states that vague and uncertain conditions may be unlawful or unconstitutional. Hoexter states that vague and uncertain legislative provisions may be in conflict with section 6(2)(i) of the Promotion of Administrative Justice Act 3 of 2000 or section 1(d) of the Constitution of the Republic of South Africa, 1996 (the Constitution). She also argues that the ambiguity may affect the reasonableness of legislative provisions (Hoexter, *Administrative Law*, pp. 332-333). We argue that the law applies equally to the draft policy given its impact in giving effect to the Housing Act 107 of 1997 and the National Housing Code of 2009.

20. Our third concern is that the rationale for the inclusion of “anti-social behaviour” as a conditional behavioural control and eligibility criteria does not provide sufficient justification for the inclusion. According to the City’s “Frequently Asked Questions” on the policy review, the inclusion was motivated for by the “Executive Mayor and the Mayoral Committee to ensure that the City is a responsible landlord”.²³ However, the criteria does not only apply to City-owned rental housing but also to the allocation of BNG houses, where beneficiaries would be homeowners.²⁴ The City therefore would not be a landlord in all of the instances referred to in the draft policy. This suggests that more than being a “responsible landlord”, this provision is motivated by paternalistic notions that unfairly stigmatise poor and working-class communities and seeks to use the allocation of housing as a mechanism for social control.
21. Finally, we have serious concerns about the legality and constitutionality of the inclusion of “a record of anti-social behaviour” as a criteria that affects eligibility for the purposes of housing allocation. This is a potentially unconstitutional limitation of the right of access to adequate housing contained in section 26 of the Constitution.²⁵ While a provision attempting to address anti-social behaviour in and of itself might be a useful inclusion into a social housing or rental housing house rules, any formulation of such provision must be lawful, proportionate and have regard to the factors listed in section 36 of the Constitution and how these are likely to impact on the beneficiary's right to housing. Moreover, it is inappropriate for anti-social behaviour to be used as a mechanism to bar prospective beneficiaries from obtaining access to housing opportunities. It is particularly problematic since there is no process in terms of which affected beneficiaries can challenge or appeal their records.
22. As a result, we strongly urge the City to remove all provisions relating to “anti-social behaviour” from the draft policy.

Target areas

23. The concept of target areas is central to the draft policy and the City’s housing allocation processes. The draft policy defines a target area as “a specific suburb, a portion thereof or the immediate suburb(s) surrounding the housing project as recommended and approved by the Human Settlements Directorate”²⁶ and provides that up to 80% of the total number of housing opportunities in BNG, social housing and new CRU housing projects must be allocated to qualifying persons within the identified target area.²⁷

²³ City of Cape Town, “Frequently Asked Questions - Review of the City’s Allocation Policy: Housing Opportunities (2019)” (2019), p. 3.

²⁴ See clause 2.3.3 of the draft policy.

²⁵ See section 26(1) and (2) of the Constitution.

²⁶ See the definition of “target area” on p. 7 of the draft policy.

²⁷ See clauses 2.3.2 and 3.3.3 of the draft Policy. See also clause 2.5.2 of the draft policy, which provides that “certain geographical areas or income groups” may be prioritised when allocating social housing to qualifying beneficiaries.

24. Ndifuna Ukwazi takes issue with the lack of specificity in the definition of “target areas” in the draft policy. In particular, we are concerned by the uncertainty inherent in the phrase “immediate suburb(s) surrounding the housing project”. The main concern relates to how this phrase will be interpreted by housing officials.
25. The recent arguments in a matter in the Western Cape High Court – *Adonisi and Others v Minister for Transport and Public Works: Western Cape and Others* – clearly illustrate that government officials might interpret seemingly clear language in a restrictive manner. In the case, Reclaim the City and Ndifuna Ukwazi challenged the decision by the Western Cape Provincial Government to sell the well-located Tafelberg property (in Sea Point) to a private buyer, the Phyllis Jowell Jewish Day School, in the face of the worst housing affordability crisis in the country. The Western Cape Provincial Government (the Province) argued that the neighbourhood of Sea Point did not fall into a restructuring zone for the purposes of the Social Housing Act 16 of 2008 (these are geographic areas identified by local government, and designated by national government, as areas where social housing should be promoted). Cape Town has various restructuring zones, including a zone entitled “CBD and surrounds (Salt River, Woodstock, Observatory)”. The Province asserted that Sea Point could not be construed as a suburb surrounding the CBD despite Sea Point being located less than 5km from the CBD. The City disagreed with the Province’s assertions, and argued that the Sea Point does fall within the “CBD and surrounds” restructuring zone. Moreover, the Province also affirmed its intention to develop social housing on the Helen Bowden site, which is located in Green Point – the suburb right next to Sea Point – indicating that it believed that Green Point did fall into the restructuring zone.
26. To avoid similar confusion, Ndifuna Ukwazi strongly recommends that the definition of “target areas” in the draft policy be reformulated to clearly explain what each of the constituent parts of the definition mean in the context of the allocation policy (this includes the word “suburbs”, “portion thereof” and “surrounding”).
27. We also urge the City to consider an alternative formulation of the definition that might offers more flexibility when determining the target area. An alternative formulation might define a target area as including any suburb or part of the suburb falling within a certain radius of the housing project, or including the suburbs that are physically bordering the suburb in which the housing project is located (whichever includes more housing beneficiaries). Such a formulation would offer the City much needed clarity and also offer a measure of flexibility.²⁸
28. We are also concerned that the allocation policy does not offer qualifying beneficiaries any scope for personal choice in terms of the location of the housing project that they get selected for.²⁹ Where

²⁸ Although the draft policy provides for the possibility of a target area being adjusted, this is restricted to instances where insufficient qualifying beneficiaries have been identified in the target area (based on their length of time of the City’s housing database).

²⁹ This is not a novel issue. According to the Centre for Social Science Research (CSSR), South Africa’s housing policy

people live is important. Recent research by the Socio-Economic Rights Institute (SERI) has shown that there is a direct relationship between where people live in South African cities and the likelihood that they will find employment opportunities.³⁰ SERI shows clearly that far flung townships and informal settlements – where the vast majority of state-subsidised housing projects are located - constitute poverty traps for those living there.³¹ The location of a person’s home also has a direct bearing on a person’s ability to access centralised resources and amenities – schools, transport, education and healthcare – that enable people to take control of their own development. The failure to grant housing beneficiaries some agency in relation to the location of the housing project that they will benefit from therefore has far-reaching implications for upward mobility and economic, racial and spatial equality.

29. While Ndifuna Ukwazi acknowledges that the inclusion of target areas indicates that the City has attempted to address issues of spatial inequality, the measures in the draft policy are, at best, inadequate and, at worst, capable of exacerbating spatial inequalities. For example, people who have not been able to access well-located formerly white areas are unlikely to gain access to these areas through the housing allocation system envisaged by the City.
30. We therefore strongly recommend that the City consider including mechanisms into the housing allocation system that would give potential beneficiaries more agency to determine the location of the housing projects they will benefit from.

Beneficiary involvement in the allocation process

31. The draft policy offers minimal opportunities for beneficiary involvement in the allocation process. In fact, the only mechanism through which beneficiaries seem to be able to participate in the allocation process is through Project Engagement Committees (“PECs”).
32. As a result, Ndifuna Ukwazi raises some concerns in relation to how PECs are constituted and the diminished role of PECs in the draft policy.
33. The draft policy does not clearly state how PECs should be constituted. While clause 2.1.2.1 of the draft policy provides that a PEC will be constituted in terms of the Terms of Reference for the specific housing project, it does not clearly state who will make up the PEC.³² This is worrying as the PEC is

“does not leave scope for personal choice in terms of the location of housing project. One key reason for this is that housing implementation is totally supply driven and potential beneficiaries can always decide to not take up a housing place and wait for the project but the queueing system does not always leave scope for this.” (Centre for Social Science Research (CSSR), “The Social Consequences of Establishing ‘Mixed’ Neighbourhoods: Does the Mechanism for Selecting Beneficiaries for Low-Income Housing Projects Affect the Quality of the Ensuring ‘Community’ and the Likelihood of Violent Conflict?”, CSSR Research Report (2010), p. 27.

³⁰ See, generally, Socio-Economic Rights Institute of South Africa (SERI), *Edged Out: Spatial Mismatch and Spatial Justice in South Africa’s Main Urban Centres* (2016).

³¹ See, generally, SERI, *Edged Out*.

³² See clause 2.1.2.1 of the draft policy.

one of the key mechanisms through which beneficiaries and ward councillors are able to voice their preferences for the project and exercise accountability. According to the City's "Frequently Asked Questions" on the draft policy, Project Steering Committees ("PSCs") – the predecessors to PECs – comprised of City officials, relevant ward councillors and *representatives of the beneficiaries*.³³

34. It is strongly recommended that a clear composition of PECs should be added to the draft policy and that this composition should include beneficiaries or their representatives.
35. Ndfuna Ukwazi also takes issue with the diminished role of PECs in terms of the new draft policy. According to the City's "Frequently Asked Questions" on the draft policy, PSCs were formerly responsible for recommending the target area and beneficiary percentage split.³⁴ This means that ward councillors and beneficiaries were directly involved in the allocation process. However, in the draft policy, the Human Settlement Implementation Department in the City is responsible for recommending the target area and beneficiary percentage split, while PSCs are only given an opportunity to comment on the target area and beneficiary percentage split.³⁵
36. While there may be practical reasons for these amendments,³⁶ Ndfuna Ukwazi is apprehensive of the significantly diminished role for beneficiaries in the allocation process. Ndfuna Ukwazi would therefore encourage the City to include more mechanisms through which beneficiaries can be involved in the allocation process.

Prioritisation of beneficiaries that are 30 years or older (Western Cape Department of Human Settlements Circular C2 of 2019)

37. One of the main proposed amendments to the draft policy is to give effect to the Western Cape Department of Human Settlements Circular C2 of 2019, which provides that beneficiaries that are 30 years and older who are selected of housing opportunities and qualify for housing subsidies will be prioritised during the housing allocation process.³⁷
38. This *de facto* exclusion of eligible beneficiaries younger than 30 years of age is likely to have a severely negative impact not only on the beneficiaries involved but also on racial, income, spatial and gender inequalities.³⁸ This is exacerbated when one considers youth unemployment statistics. These statistics show that, when discouraged work seekers are included, over half of young people

³³ City of Cape Town, "Frequently Asked Questions", p. 4.

³⁴ City of Cape Town, "Frequently Asked Questions", p. 4.

³⁵ See clauses 2.1.2 and 2.1.4 of the draft policy.

³⁶ See City of Cape Town, "Frequently Asked Questions", p. 4, where some of the motivations for these changes are specified.

³⁷ See clause 2.2.2.2 of the draft policy.

³⁸ L Graham, A De Lannoy, L Patel and M Leibbrandt, *What Drives Youth Unemployment and What Interventions Help? A Systematic Overview of the Evidence and a Theory of Change: Executive Summary*, REDI 3x3 Research Report (2018), p. 2.

between the ages of 15-34 years are presently employed in South Africa.³⁹ According to the City's own community survey, a third of the population of the City of Cape Town (33.3%) are between 15 and 35 years old.⁴⁰ The statistics also show that people over the age of 30 years are more likely to be employed.⁴¹

39. In the context of a stagnant or shrinking economy, plagued by rising inequality and staggeringly high rates of unemployment among the youth, the legality and constitutionality of this Circular and its inclusion in the draft policy is brought into question.
40. The draft provisions mention Circular C2 of 2019 and make vague references to people 30 years or older being "prioritised" but do not clearly set out how this process of prioritisation will work in practice. The Circular itself refers to possible age-defined quotas being used during the beneficiary selection process,⁴² however, this is not provided for in the draft policy. In the absence of a clear mechanism to give effect to this prioritisation, there is a very real risk that eligible beneficiaries younger than 30 will fall through the cracks.
41. We therefore urge the City and the Western Cape Department of Human Settlements to reconsider the implementation of Circular C2 of 2019.

Selection criteria for social housing

42. When it comes to social housing, the draft policy is silent on the selection criteria or allocation processes in relation to the secondary income group (i.e. households with a monthly income of between R5 500 – R15 000). This is an oversight that should urgently be addressed.

Onus on beneficiaries to keep information updated

43. The draft policy emphasises at various points that the onus lies on potential beneficiaries to keep their information updated with their local Housing Information Branch.⁴³ However, placing the responsibility solely on beneficiaries is highly problematic given the South African housing programmes reverence of passivity in beneficiaries.
44. The housing delivery and allocation systems and the rhetoric of the housing demand database is based on the assumption that people should wait patiently until they have been approached about

³⁹ See Graham et al, *What Drives Youth Unemployment*, p. 2.

⁴⁰ See City of Cape Town, "2016 Community Survey: Cape Town Trends 1996-2016" (April 2017), p. 11, available: <http://resource.capetown.gov.za/documentcentre/Documents/Maps%20and%20statistics/2016%20Community%20Survey%20Cape%20Town%20Trends.pdf>.

⁴¹ See figure 1 in Graham et al, *What Drives Youth Unemployment*, p. 3.

⁴² Western Cape Department of Human Settlements, "Circular C 2 of 2019: Further Amendments to Circular C10 of 2015 and the introduction of new guidelines for the selection of beneficiaries on greenfields sites involving densification linked to UISP projects" (August 2019), p. 2.

⁴³ See, for example, clause 1.5.6 of the draft policy.

their house. This culture is deeply engrained and any attempt at a different position has been decried as “queue-jumping”. In the context where beneficiaries are encouraged to wait patiently to be allocated a housing opportunity, it is untenable to suggest that beneficiaries bear the burden to update their information. This is particularly problematic when one considers that the vast majority of qualifying beneficiaries are likely unaware of the fact that they bear the onus for updating their personal information.

45. We recommend that the City embark on a comprehensive consumer education initiative with the aim of reaching out to eligible beneficiaries, informing them of the new allocation policy and encouraging them to update their information regularly.

Ambiguity about the roles and responsibilities of various role-players

46. The draft policy attempts to set out in detail what the roles and responsibilities of the various role-players in the housing allocation process are. However, there are various omissions. Two examples are the Manager: Tenancy Management and the Tenancy Management Business Unit. The draft policy fails to explain their roles and functions or how these entities interact with the rest of the housing allocation apparatus. The City should rectify this in subsequent drafts.

CONCLUSION

47. Ndifuna Ukwazi welcomes the City’s commitment to reviewing and reworking its housing allocation policy. However, the draft policy suffers from a number of serious problems that should urgently be addressed by the City. In particular, the provisions dealing with “anti-social behaviour”, target areas, beneficiary involvement in the allocation process, and the prioritisation of eligible beneficiaries that are 30 or older require further amendment. Ndifuna Ukwazi urges the City to include the amendments proposed in this submission.

Yours faithfully,
Ndifuna Ukwazi

Per: Michael Clark, Researcher

[Sent electronically]