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To: The National Department of Human Settlements

By email: vuyisani.moss@dhs.gov.za / hayley.mckuur@dhs.gov.za / Mypolicy@dhs.gov.za

To Whom It May Concern,

RE: NDIFUNA UKWAZI'S COMMENT ON THE DRAFT WHITE PAPER FOR HUMAN SETTLEMENTS

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 and build an integrated and inclusive city.
2. Over the last seven years, Ndifuna Ukwazi has been involved in legal, research and organising work around evictions, relocations, rental housing, the allocation of state-subsidised housing, the management of public land in a manner that prioritises socio-economic needs and the promotion of social, transitional and inclusionary housing. We have published several resource guides and research reports 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 land and affordable housing.
3. This comment is made pursuant to the invitation for comments as dated 18 December 2023. Ndifuna Ukwazi has read and considered the draft White Paper for Human Settlements and hereby makes this submission.

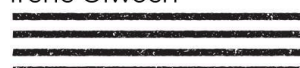
Yours faithfully,

Ndifuna Ukwazi

(Per: Nick Budlender, Researcher)

Ndifuna Ukwazi is
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NDIFUNA UKWAZI COMMENT

Comment on the draft White Paper for Human Settlements

Introduction

1. Ndifuna Ukwazi appreciates the opportunity to comment on the recently published draft White Paper for Human Settlements. The organisation's focus areas and experience mean that we are well-placed to provide considered input.
2. The new White Paper (and subsequent Human Settlements Amendment Bill) will set the policy direction for housing in South Africa for a long time to come, and it is therefore absolutely imperative that adequate time and effort is put into producing the best version possible.
3. This submission largely follows the same structure as the White Paper itself in order to make it easier to navigate and engage with. The submission starts with general comments on the draft White Paper and the process that has been followed, and then moves sequentially through selected sections in the same order that they appear in the draft.

General comments

4. At the outset, it is necessary to express our appreciation that a draft White Paper has been produced and that we might finally be moving closer to the policy certainty that the housing and human settlements sector so desperately needs. We would also like to express our appreciation that the comment period was extended, as this will no doubt improve both the number and quality of comments that are received.
5. We also appreciate the recognition that the current model of housing delivery is struggling tremendously and that a change in approach is necessary, especially given the significant fiscal and administrative challenges facing our country.
6. Similarly, we appreciate that great emphasis is placed on the importance of location and on dismantling the legacy of spatial apartheid.
7. However, and as will be demonstrated throughout this comment with specific examples, the draft White Paper suffers from a lack of detail and from a lack of engagement with

the practical aspects and implications of different proposed interventions. In the absence of such detail and a careful consideration of the potential opportunities, constraints and implications of the proposed interventions, there is a real risk that we might end up in an even worse situation in terms of both policy and practice than before the introduction of a new White Paper. It is absolutely imperative that adequate time is taken by the Department to consider and incorporate the comments that are received.

8. Perhaps the clearest example of the draft White Paper's failure to deal with practical considerations is provided by the lack of engagement with questions of location, segregation and access when discussing the proposed shift towards a greater reliance on site and service models. Site and service models by their very nature can only really be implemented on greenfield sites. Much like with RDP and BNG housing, this means that site and service schemes and their reliance on the availability of greenfield sites - most of which are located far away from economic centres and quality services - will entrench rather than reverse the segregation, dislocation and spatial exclusion which are dominant features of all South African cities. There is no explanation of or engagement with the spatial and geographical aspects of site and service, which in our view is perhaps the most important shortcoming of the draft White Paper.
9. The White Paper suffers from a lack of detail in general. Various interventions, such as support for small-scale developers and incremental housing are mentioned, but are not elaborated on or engaged with in depth. For years we have heard that South Africa will move away from the provision of top structures to the provision of serviced sites and a strong focus on enabling incremental housing, but this is not strongly reflected in the White Paper and very few practical details are provided. We have had some form of site and service and self-build since before the dawn of democracy but it has yielded limited results in terms of both numbers and positive impact. If we are going to rely on these forms of housing provision, and if they are going to be successful, it seems straightforward that change will be necessary in terms of funding, regulation and institutional development. It will not be possible to implement successful changes without detailed practical proposals which are unfortunately missing from the current version.
10. Another example is provided by the lack of detail in terms of backyard housing and small-scale developers. Both sub sectors are briefly mentioned, but there is no examination of or emphasis on their current and future importance, nor how they will be supported to produce decent homes.

11. The draft White Paper is also not clear when it comes to defining what counts as a housing opportunity. In contrast to what is stated in the draft White Paper, providing land, materials or access to finance alone would certainly not meet the government's Constitutional obligation to progressively realise the right to adequate housing. Rather, a range of support will be required to ensure that self-built homes pass Constitutional muster. Providing someone with an empty plot in a settlement with communal services but no associated support is not sufficient, should not be considered as a housing opportunity, and should not preclude people from further assistance.
12. Finally, and in contrast to the findings of the High Level Panel on Land Reform and research published by the Department itself, there is no emphasis on proactive planning for informality. Instead, all of the proposed measures related to informal housing are reactive in nature and do not speak to the government's roles and obligations in terms of forward planning.

Comments on Part 1

13. Part 1 sets the overall context of the White Paper and frames the interventions and priorities that will be pursued.
14. It is encouraging to see an emphasis on housing quality. Housing quality assurance will be crucial to the success of any site and service programme and in the shift to self-build housing more generally, and we are therefore pleased that housing quality is reflected as a policy pillar.
15. In terms of proposed amendments to Section 10A and 10B, we do not support the proposal to scrap resale restrictions entirely, especially in the context of declining housing budgets. Sale prices for BNG homes are often lower than the total cost to the government of building them, representing a serious loss on government investment at a time when our housing policy is increasingly shaped more by the fiscal resources available than by what an ideal approach would be. If the resale restriction is scrapped entirely in order for people to be able to quickly sell their homes for capital, then it would make more sense to just give potential beneficiaries a lump sum equivalent to the average sale price. To be clear, we do not support this idea, but it is a useful means of pointing out the logical inconsistency of scrapping resale restrictions altogether. Scrapping resale restrictions entirely will also almost certainly lead to downward raiding. Rather, it makes more sense to reduce the resale restriction period and introduce exceptions in relation to credit-linked subsidies.

16. Instead of scrapping the resale restriction, what would have a far greater positive impact on the bankability, tradability and leverage potential of housing assets would be to sort out the massive title deed backlog which sits at more than 1 million homes. It is disappointing that aggressive, practical steps for addressing the title deed backlog are not included in the White Paper, as this would have a major impact on the South African housing landscape.
17. Both the preface and later sections of the draft White Paper reference the recent Census figure that only 8% of households live in informal housing. Given that the Census undercount was much higher than in any previous Census year, these figures should not be treated uncritically. Not only does the undercount mean that there is generally a need to treat the Census figures with caution until the more fine grained data has been released and analysed, but the undercount is very likely to have disproportionality affected informal settlements because of the difficulties associated with accurately enumerating these areas in general. We urge the Department not to make policy prescriptions and funding decisions on the basis of these figures until they have been proven to be robust and reliable.
18. Finally, Part 1 ends with an emphasis on direct property ownership as 'a cornerstone not only to promote prestige, security and comfort, but to *alleviate poverty and create household wealth*' [emphasis added]. While we agree that there is certainly a role for property ownership, the claim that property ownership through the housing programme creates household wealth needs to be interrogated and properly substantiated. Recent research from Oxford University echoes findings from local studies that houses in former Black and Coloured areas have generally seen little to no property price appreciation since the end of apartheid. Instead, it is the location of homes, and not whether or not they simply exist, which has the largest impact on property price growth and wealth generation. Again, this emphasises just how important issues of location are the development and functioning of sustainable human settlements.

Comments on Part 2: Policy Options

Spatial planning and demand management

19. We strongly welcome the emphasis in this section on the importance of location and addressing apartheid's spatial legacy. This focus on location reflects the findings of an extensive amount of local and international research on South African cities which

emphasises the importance of housing location to efficiency, productivity, sustainability, wealth creation and justice. Similarly, it is also great to see the acknowledgement that spatial transformation and spatial justice are not simply about building homes, but also about the provision of social, public, economic and environmental facilities.

20. However, and as explained in the introduction, we are concerned about how a stated emphasis on disrupting our dysfunctional spatial patterns will match up with the shift towards site and service, which is likely to take place on peripheral land in even worse locations than existing RDP and BNG houses, thus entrenching sprawl, segregation and spatial dysfunction. This critique speaks to a core shortcoming of the draft White Paper, which is a failure to properly and practically grapple with the implications and trade-offs inherent in the proposed policy shift. It is therefore important that the Department elaborates in the draft White Paper on the relationship between site and service and spatial issues - as well as how it plans to navigate this relationship.

Land for housing and human settlements

21. It is encouraging to see an acknowledgement that land is central to any current and future housing delivery. For too long limited attention has been given to accessing and releasing land, and these crucial issues need to be properly understood and addressed.
22. We also welcome this section's emphasis on tenure security. We strongly support elevating the legal status of Permission to Occupy certificates in an effort to meaningfully enhance tenure security. Similarly, we appreciate the emphasis on granting tenure security to people where they already live, and view this as perhaps the simplest means of improving housing conditions and housing market functionality more broadly.
23. Tenure security is fundamental to the successful development of incremental housing. As mandated by SPLUMA, the government must develop incremental planning arrangements, and these should play a vital role in granting forms of tenure security (either interim or long-term) that move beyond the focus on title deeds. While title deeds of course have many benefits, they have often proven to be too inflexible and onerous in incremental upgrading processes.
24. We support expropriating from the state especially but also from private landowners who do not maintain their land or put it to productive use. However, there should be stronger emphasis on the fact that the state is the biggest landowner in urban areas and that more must be done to release public land for housing. It would have been helpful to see some engagement with the reasons that the state has so far only managed to release

such a small fraction of the land it owns and why land release is such a slow process. If the land release process needs to be reformed or streamlined, then this must be acknowledged up front in the White Paper. Forthcoming research from the Development Action Group and Human Sciences Research Council on the land release process in four metropolitan municipalities may well provide guidance in this regard.

Informal settlement upgrading

25. Overall, the section on informal settlement upgrading is relatively strong, especially in its emphasis on land tenure, participation, integrated planning, in situ upgrading and an understanding of infrastructure that moves beyond just water and sanitation. In our view, this emphasis should be retained.
26. However, we wish to express our confusion and disappointment that illegal immigration is positioned as one of the most important issues in informal settlements. This does not reflect the findings of any research or evidence produced about informal settlement upgrading in South Africa. The state needs to base its policies on evidence, not on what is politically expedient, and we therefore feel this is a strange and inappropriate addition to the draft White Paper.
27. Further, while the section on informal settlement upgrading briefly mentions a shift to site and service, very few details are provided. The section, like the draft White Paper in general, could do with more details about actual interventions and approaches, what role the government will play and what forms of support will be provided.
28. We would also like to once again emphasise that policy should not be made or enacted on the basis of the current Census figures on informal housing until these figures have been independently vetted and analysed in light of the significant undercount and the challenges experienced during the enumeration process.
29. The section could be considerably improved by greater engagement with the current challenges with informal settlement upgrading and how the Department plans to overcome or address them. For example, pursuing title deeds in incremental upgrading processes has often proven to be too onerous and inflexible, leading to considerable delays. The government is mandated by SPLUMA to develop incremental planning arrangements, and these should play a vital role in granting forms of tenure security (either interim or long-term) that move beyond the focus on title deeds. While title deeds of course have many benefits, they have often proven to be too inflexible and onerous in incremental upgrading processes. The White Paper would benefit from more

engagement with the practical elements of incremental housing development in the context of informal settlement upgrading.

30. Finally, and perhaps most worryingly, this section includes no reference to proactive planning for informal settlements. Instead, all of the suggested measures focus on how to react to informal settlements when they are already there. It is not controversial to state that very many South Africans cannot access housing through either the state or the private sector. As a combined result of the lack of available affordable housing (of many forms) and the deep, structural factors driving urbanisation, there are increasing numbers of people living in cities without homes to live in. Put another way, urbanisation and weak housing access are the driving forces behind land occupations. The best way to deal with occupations is to get ahead of the curve through programmes such as Managed Land Settlement. Crucially, Managed Land Settlement will need to be designed in a pragmatic, realistic way which acknowledges and accepts that people may initially need to build informal homes which they can consolidate over time. People that occupy land rarely have money and resources to build formal homes and comply with formal planning processes, and this must be borne in mind when designing and implementing Managed Land Settlement programmes. Similarly, successful Managed Land Settlement will rely on flexibility and an acknowledgement that the usual processes of traditional town planning are often inappropriate in less formal contexts. By releasing land through Managed Land Settlement instead of waiting for it to be occupied before responding, the government would regain some ability to plan and control the layout and functioning of new settlements.

Affordable rental housing

31. It is good to see a welcome recognition that the affordable rental housing sector is diverse and that a one-size-fits-all approach is unlikely to yield positive results.
32. It is also encouraging that this section recognises that the demand for rental housing in urban areas has grown considerably and will continue to do so. The rental housing sector is crucial and needs to be adequately supported.
33. Once again, this section could do with far more detail and far more engagement with practical proposals. There is a serious need for a stronger emphasis on and explanation of the support that can or will be offered to small-scale developers of rental housing who produce a significant amount of new stock. The same can be said for backyard rental housing, another crucial sub sector that produces a significant volume of homes

and yet is not offered support. We firmly believe that the Department should commit to developing a policy and enabling framework, based primarily on non-financial levers, that specifically addresses small-scale development and backyard housing. Statutory and regulatory flexibility will be key again here. While it is clearly necessary to reform the legislative and policy system for rental housing, offering practical support is equally important to ensure that rental housing is of an appropriate quality and that it meaningfully improves people's lives. Necessary forms of support for backyard housing and small-scale development include housing support centres, access to finance, access to materials, access to training and potentially even some form of subsidy assistance.

34. It is also concerning that nothing is said about the sale of municipally owned rental housing. As the draft White Paper points out, municipalities own 17% of all rental housing in South Africa. This is extremely significant. However, this housing has been allowed to fall into disrepair and is being sold off at an alarming rate, meaning that the government is losing out on an ongoing opportunity to positively influence the affordability of the entire rental housing market through the considerable influence afforded by the ability to set rents for such a significant proportion of existing rental housing stock. An individual unit of municipally owned rental housing should be able to benefit multiple families in its lifetime, not just whichever family happens to be living in it at the time that it is sold. There have of course been considerable challenges in managing municipal rental stock, but giving up on it altogether and allowing it to fall fully into private hands will have negative consequences for people in need of housing for generations to come.

Comments on Part 3: Policy enablers

Funding models and financing

35. The section on funding models and financing does not seem to represent a significant departure from how these aspects of housing development already function in practice. Nevertheless, it makes sense to spell out the current funding and financing models, as they have evolved over time and are not reflected in the current White Paper.
36. We strongly welcome this section's emphasis on infrastructure. All South African cities are experiencing significant infrastructural challenges, especially in regards to water and sanitation. It is not possible to build genuinely sustainable and decent human

settlements in the absence of adequate infrastructure. We also support the use of area-based rather than beneficiary-based infrastructure grants.

37. Further, we support the idea of differentiating grant disbursements on a wider basis than just population size and settlement density. There are a range of other important factors that impact on the viability of housing projects, ranging from varied geotechnical conditions to differences in socio-economic and demographic profiles. By moving beyond just population size and density, public expenditure can be more appropriately and efficiently targeted in a way that adequately accounts for contextual differences.
38. It is concerning that there is no mention of funding for land identification and development. Land identification and development, and the lack of money directed at these activities, has long been a barrier to successful, timeous projects.
39. We also note the desire to grant increased powers to the National Department of Human Settlements (NDHS) with regards to taking over failing projects led by other spheres of government. On one level it makes complete sense to try and find as many mechanisms as possible to rescue failing housing projects under the control of other government spheres. However, it remains to be seen whether the NDHS would realistically manage these projects any better. Further, there need to be clear criteria and processes for when the NDHS can take control over a project to avoid political imperatives from influencing what should ultimately be an administrative decision.
40. We welcome the continued use of housing subsidies, as they remain absolutely necessary in the context of our country's weak economic growth and high levels of poverty and unemployment.
41. An issue which is not addressed in the draft Housing White Paper, nor in other strategic documents of the NDHS, is that of income threshold setting, beneficiary target setting and the underlying rationale for who the government chooses to assist. The income-related qualifying criteria for BNG housing, for instance, have not changed in several decades. Because of the effects of inflation, the BNG programme now targets a very different group of people from who it did when the income thresholds were originally set. For example, R3,500 (the current upper threshold for BNG housing) in 2004 would now be worth roughly R10,062. In our view, explaining and justifying exactly which groups of people are targeted for assistance and why should be a crucial element of any solid housing policy document. In the absence of such an explanation, it appears that insufficient thought has been given to the important questions of beneficiary targeting and the setting of income thresholds.

42. An additional concern, and one that is relevant to several parts of the draft White Paper, is that the funding and financing models described in this section do not speak to the stated shift towards a site and service model. Several Ministers of Human Settlements have stated for many years now that South Africa will move away from the provision of top structures to a stronger reliance on site and service and self build. A shift to site and service would represent a major departure from previous housing delivery mechanisms, and would therefore necessitate major changes both to funding models and institutional arrangements if it is going to yield success. Perhaps the clearest argument for the need to change funding models and institutional arrangements is the extremely limited delivery of homes through both the PHP and EPHP and the serious challenges these programmes have faced. However, these crucial changes to funding models and institutional arrangements are at best vaguely referenced, and at worst omitted entirely, which naturally raises significant concerns about whether or not the mooted shift will actually happen and whether it has any prospects of yielding homes that transform our cities and improve people's lives.

Market support and facilitation

43. The primary proposal contained in this section is to establish Transactional Support Centres. Ndifuna Ukwazi strongly supports this proposal, as it offers a novel and meaningful way of addressing the significant value that is lost because of the dysfunction of our land administration and homeownership systems.

44. Ndifuna Ukwazi also supports the provision of other services, such as training and technical support for those who wish to build new homes or extend their current homes. It is clear that South Africa is headed towards a greater emphasis on self-build housing, but the success of such a shift will depend heavily on considerable support so that the homes and neighbourhoods that are built are ultimately safe, dignified, sustainable and transformative. In the absence of considerable support, it is likely that a reliance on self-build housing will lead to poor outcomes at the scale of both individual homes and wider neighbourhoods.

45. It is extremely important to properly fund and capacitate Transactional Support Centres in order for them to yield transformative impacts, and it would therefore make sense to spell out the proposed funding and institutional arrangements in the draft White Paper.

Contributing to the economy

46. This section includes proposals focused on reducing material and construction costs, fostering innovation and facilitating inclusive financing options. It also proposes support for bulk-buying of materials and the encouragement of local sourcing. Finally, there is also reference to providing easier access to financing for materials. All of the above are welcomed and strongly supported, but it would be very helpful if more details could be provided, especially in relation to providing easier access to financing which is currently described in vague terms.
47. Ndifuna Ukwazi also strongly welcomes any effort to improve the uptake of IBTs. IBTs offer an opportunity to both reduce the cost and increase the pace of housing provision. IBTs can and should be used more widely in South Africa.

Climate change, climate resilience and innovate systems

48. We strongly support the acknowledgement of the clear link between climate change and human settlements, as well as the recognition of South Africa's particularly high levels of vulnerability. We think it is important that these issues are reflected in the White Paper.
49. The section on climate change otherwise contains limited detail, but we will await the release of Human Settlements Climate Change Response Strategy and engage with it once it has been made public. It is however worth stating up front that it is disappointing that the draft White Paper does not position human settlements as a key part of the just urban transition - this is a significant missed opportunity.

Capacity development

50. We welcome the recognition in this section that capacity is a major constraint to progress, both in terms of the government's capacity and the capacity of households and homebuilders. However, the proposed means of increasing capacity are largely stated vaguely and do not depart from existing capacity development initiatives which have predominantly been ineffective. More specific information about where exactly capacity is lacking and how these gaps will be targeted is necessary.
51. We also note with extreme concern a throwaway line which implies that capacity will be improved by making it easier to evict people without providing alternative accommodation. It is of course acknowledged that land occupations can make it difficult for the state to control land and implement projects. However, it is genuinely difficult to

understand how making it easier to evict people into homelessness will in any way contribute to the creation of sustainable human settlements. Where will people go once they are evicted? What new challenges will be created? Our housing system excludes the majority of people in South Africa - only a minority of citizens can afford to buy the cheapest formal home on the market. At the same time, government housing delivery is now a fraction of what it was in the mid-2000s and has collapsed spectacularly in recent years. As long as neither the state nor market can provide an adequate amount of affordable housing, land occupations will continue to proliferate because everyone needs a home. It is worth bearing in mind that the vast majority of South Africa's informal settlements, home to millions of people, started at one point or another as land occupations in reaction to the failure of market and state housing provision. Many of these settlements have existed for decades, and amending the PIE Act would affect these communities just as much as it would recent occupiers. It is difficult to think of any single intervention that would have a worse overall effect on tenure security than removing the protections of the PIE Act, again exposing an internal contradiction in the draft White Paper which simultaneously argues that people need enhanced tenure security but that it should also be easier to evict them. We firmly reject this proposal as short-termist, counter intuitive, wholly unsustainable and almost certainly unconstitutional.

Comments on Part 4: Governance

Monitoring and reporting systems

52. Ndifuna Ukwazi strongly supports a reform of the current monitoring and reporting systems which pose challenges both for the state and for citizens. In particular, we strongly support reforms to performance management that move beyond narrow numerical indicators to a more holistic approach focusing not only on how much housing is being built, but whether it impacts the lives of residents positively. A useful metric to include in future analyses of housing delivery is where the housing is built and how well it is linked with upper quintile schools, quality hospitals, public transport networks and job opportunities.
53. Similarly, we strongly support better collection and publication of housing delivery statistics. The lack of publicly available, accurate and up to date data on housing delivery prevents both the state and civil society from practising any real level of accountability when it comes to human settlements. A publicly available platform that tracks housing

delivery is long overdue and would bring us in line with the best practices of regional and international partners.

Institutional arrangements and instruments

54. This section largely explains how human settlements institutions already function. On one level this makes sense, as the present institutional arrangements came about after the advent of the current White Paper and are therefore worth spelling out. However, we are deeply concerned that the significant institutional development and capacitation that will be required for a successful shift to site and service and self-build housing is not referenced at all. We have had some form of site and service for 30 years, but the current institutional and funding arrangements are not appropriate, as is evidenced by the meagre delivery statistics and the severe challenges encountered. If the shift to site and service and self-build is to be successful, it will rely in large part on creating and sustaining durable institutions that are specifically set up to assist in the process. Again, this reinforces our key concern with the draft White Paper, which is that insufficient attention has been given to the details and practical considerations of undertaking a major policy shift.

Conclusion

55. Thank you for taking the time to read and consider our submission. We believe that there are crucial improvements that can be made to the draft White Paper, and we hope that we have spelt out our concerns and suggestions with enough clarity. If you have any questions or comments then please do not hesitate to get in touch.