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The Grootboom case and the constitutional right to housing: the politics of planning in post-*apartheid* South Africa¹

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Introduction

Miss Irene Grootboom was one of a group of 390 adults and 510 children living in appalling circumstances in Wallacedene, an informal housing settlement in Cape Town. In September 1998, they illegally occupied land near the settlement which had been earmarked for low-cost housing. They were forcibly evicted, their shacks bulldozed and burnt and their possessions destroyed. They could not return to their original settlement as their former homes had been occupied by others. In desperation they settled in Wallacedene sports field and in an adjacent community hall. The Legal Resources Centre, an NGO based in Cape Town, together with other legal activists decided to use their case to test the enforceability of their constitutional right to housing. The Grootboom case, as it was widely known, has been described as a landmark case in the struggle for citizenship rights in post-*apartheid* South Africa.

This chapter uses the Grootboom case to argue that the inauguration of formal democracy in 1994 in South Africa has not led to basic constitutional rights being translated into the *de facto* daily lived experience of ordinary people. It examines some of the factors which help to explain this failure, drawing attention in particular to the extent to which racist attitudes and practices continue to structure the planning process, making it extremely difficult to implement the Integrated Development Planning approach adopted by the state as its primary vehicle for delivering services at local level. Integrated Development Planning is intended as a single, inclusive and strategic plan for the development of a municipality. It links, integrates and co-ordinates plans, taking into account proposals for the development of a

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municipality and aligning the resources and capacity of the municipality with the implementation of plans.

The structure of the chapter is as follows. The next section briefly reviews the history of housing in the relevant community to demonstrate the deeply entrenched inequalities that characterize the South African context. The third section elaborates on the conditions which prevailed in Wallacedene housing community, which capture in microcosm the experiences of poor blacks in post-*apartheid* South Africa. The fourth section reports on the considerations which underpinned the Constitutional Court's judgement on the Grootboom case and draws out its significance for the struggle for citizenship rights. The fifth section reports the voices of the various stakeholders, both those responsible for implementing the court's judgement and those who were likely to be affected by it. The chapter concludes by noting the challenge faced by the state if it is to deliver on its commitment to provide basic services as basic rights.

The historical constitution of housing inequalities

The Grootboom case has to be understood in the context of the historically-constituted settlement patterns of Cape Town at large. In the latter half of the nineteenth century Cape Town was inhabited by people from diverse backgrounds (Le Grange and Robins, 1995, pp. 6–8), but this cultural diversity was systematically erased in subsequent years through policies of relocation and segregation. When the colonial government began the purposive settlement of the Cape Flats area between 1877 and 1910, there was initially no provision for separate 'native' settlements in Cape Town. The Reserve Locations Acts No 40 of 1902 and No 8 of 1906 signalled the first attempts by the state to create segregated African areas. These acts made it compulsory for all Africans in the municipality to live in Ndabeni, unless they were registered voters or had received permission to reside outside of the locations. The establishment of Ndabeni in 1901 was significant because it brought into Cape Town the enforced residential segregation of so-called 'Africans', a rudimentary pass system, and residence in a controlled location which offered no possibility of freehold title. However, although segregation was a legal requirement in Cape Town in 1902, it proved unenforceable: as employment opportunities grew, the city attracted more and more people.

The 1923 Native (Urban Areas) Act No 21 of 1923 was a response to this massive demographic flow. It was intended to freeze the permanent population, with additional labour requirements to be met by migrant

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labour. But it failed to curb the numbers of Africans seeking employment in Cape Town (Le Grange and Robins 1995, pp. 6–8). A nationwide drought lasting from 1930 to 1935 forced even more people, both black and white, into the cities. By 1927 there were 10,000 Africans officially living in Cape Town, and many more living there unofficially. As the city expanded, black people were forced further away from the city to create residential space and buffer zones for whites. Separate settlements to house Africans began to be set up: Langa in 1927, followed by Bokmakiere, Bridgetown and Kewtown.

Apartheid townships developed between 1945 and 1965. Nyanga ('the moon') was established in 1946 as one of the earliest townships for the growing African population. With the implementation of the Group Areas Act of 1950, large numbers of African families were forcibly removed from other areas and resettled in the expanded Nyanga West township, later named Guguletu. Guguletu was one of the first townships where neighbourhood town planning principles were employed (Le Grange and Robins 1995, pp. 6–12).

However, the unresolved housing shortage meant that shack settlements – informal shelters made of unconventional building materials such as plastic, scrap wood and corrugated iron sheets – sprang up both within the city limits and outside them. Many Africans preferred to live in these informal settlements because they could avoid the high rents and state regulation associated with formal townships. The shortage of accommodation meant the authorities could not stop the spread of shacks. Instead, with the 1950s began three decades of influx control – pass raids, shack clearances and the 'repatriation' of Africans to the rural 'homelands' of the Transkei and the Ciskei. From 1957 onwards, Africans were not permitted work in one area and live in another without a special permit. This led to the transfer of thousands of people between the different townships over the following 15 years. Many were moved from Nyanga to Guguletu.

The introduction of policies to favour the coloured population in 1955 exacerbated the housing problem for blacks. It led to a freeze on state provision of housing for Africans; priority was given instead to large state housing initiatives for coloured families. Manenberg, originally known as Heideveld Extension 1, was planned by the Cape Town City Council in 1963 primarily as a resettlement area for persons 'disqualified' from areas defined as 'white' by the Group Areas Act. In 1972 construction began of rental apartment blocks and houses in Hanover Park, a name chosen to reassure residents, many of whom had been displaced from District Six, by reminding them of their previous main street (Fast 1995, p. 12).