



**Urban LandMark**

**An Investigation Into an Apparent Increase in Evictions  
From Private Rental Housing**

**REPORT and POSITION PAPER**

**June 2010**

## BACKGROUND

In early 2009 the Social Housing Foundation (SHF) and Urban Landmark noted anecdotal evidence suggesting that in the second half of 2008 eviction, and attempted eviction, of tenants from private rental housing on the basis of non-payment/under-payment of rent, increased significantly. At the time it appeared that many evictions were being undertaken illegally on the part of the landlord or manager.

Recent amendments to the Rental Housing Act (1999) make it an offence to evict a tenant, or cut off essential services, without a court order. An understanding of the obligations and rights of both landlord and tenant in the eviction process is lacking and a need for more public education, among other interventions, is required.

These concerns motivated a study conducted by the SHF and Urban LandMark in 2009. The two organisations developed a comprehensive brief and commissioned a consortium of researchers and legal experts under the auspices of Lawyers for Human Rights (LHR) to carry out an investigation into the apparent increases in eviction from private rental housing. The researchers were to then write a report which analysed the issues, recommended action and established the basis for further investigation.

Specifically, the researchers were asked to investigate:

- if there has been an increase in evictions/attempted evictions on the basis of non-payment of rent in the second half of 2008, and the extent to which illegal eviction is occurring;
- the range of factors that are influencing eviction including an analysis of subsequent use of the stock from which the tenants were evicted (i.e. the extent to which “gentrification” is occurring);
- to the extent possible, what housing alternatives evicted households are managing to access;
- What other investigations or monitoring mechanisms need to be undertaken or established.

In the light of the findings the researchers were asked to define and examine:

- Possible changes to the Emergency Housing Programme and other key housing programmes;
- What issues the National Department of Social Development (NDSD) and other key government departments need to address.

The study was followed by a workshop of stakeholders held in mid-2009. Key themes that the research and workshop identified, with a view to informing policy, included the roles of the Rental Housing Tribunals, municipalities and the National Department of Social Development, exploitative rentals and retaliatory evictions.

A summary of the action-orientated outcomes of this workshop and the consultative process is attached as Annexure 3 at the end of this report.

The study aims to provide government with the necessary information to take appropriate legislative, administrative, policy and service delivery measures to ensure that the rights and responsibilities of both landlord and tenant are successfully fulfilled and that when evictions are carried out, they are done so legally and with regard to the tenant's constitutional rights.

In addition to this eviction study, the SHF and Urban LandMark commissioned Lawyers for Human Rights consortium to develop an Eviction Process Mapping Guide. This guide targets both landlord and tenant groups. It is available on the websites of both organisations: [www.shf.org.za](http://www.shf.org.za) and [www.urbanlandmark.org.za](http://www.urbanlandmark.org.za)

Johannesburg

June 2010

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## 1. SUMMARY OF KEY FINDINGS

This study found conflicting evidence concerning whether there has been an increase in evictions, other than in the higher income (more than R7,500) bracket. We found that there are **more lease cancellations than evictions**, with people leaving voluntarily, as well as illegal evictions in the form of **‘constructive evictions’** (lock-outs and services cut-offs) that are being used by landlords to get non-paying tenants out of properties, rather than following legal process. This was corroborated by the Chairperson of the Gauteng Rental Housing Tribunal, who stated that cutting electricity and lockouts were a common occurrence and these forms of ‘constructive eviction’ worked most of the time to get non-paying tenants out of properties, however illegal it is.

There is a **need for better sets of data** and information to be gathered concerning the extent and manner of evictions in South Africa as current statistical sources are entirely inadequate. This would involve the keeping of records by High and Magistrate’s Courts, Sheriffs, Rental Housing Tribunals (these would most often be cases that may lead to evictions later on, or are ‘constructive evictions’), Provincial National Departments of Housing or other agencies such as the National Credit Regulator, on number of evictions and eviction trends in the country.

**High service costs, particularly electricity**, are becoming a real problem for landlords and tenants, particularly in the City of Johannesburg. The City is trying to address the need to target the circumstances of individuals (including tenants), rather than just property owners, in its innovative Expanded Social Package initiative that could be replicated elsewhere. This package is still in relatively early stages of implementation and monitoring & evaluation will be crucial in this regard.

The **use of the indigent policy for targeting subsidies** on services has its problems, however, which include: deciding whether to define beneficiaries in terms of households, account holders or citizens; defining what constitutes a household; defining who qualifies as indigent; targeting methods; accessing non-account holders; administrative burdens on the municipality; verifying application details; lack of funds to implement the FBS programme; and finally, assessing the real impact the FBS programme is having on the quality of life of the beneficiaries.

We also found that the implications of the **lapsing rent control protections** on poor and vulnerable tenants had not been investigated thoroughly, and there are calls for rent control, in some form/s, to be reintroduced.

There is a **lack of capacity in Rental Housing Tribunals** to deal with issues raised by landlords and tenants. For example, the Rental Housing Tribunal is inoperative in the Free State and struggles in

other some provinces. While the Western Cape Tribunal functions relatively well it has challenges in managing statistics and is overloaded with cases. Another identified in the research process was the inability of the Tribunal to adequately enforce rulings and its lack of appropriate guidance around identifying exploitative rentals and setting fair rentals.

It is **very difficult to quantify the costs of an eviction** for *bona fide* evictees, to find where people have moved to when evicted, and to assess the socio-economic implications thereof.

**Illegal evictions** are widespread fuelled by the fact that landlords find going the eviction route costly and slow. The research found that there were many allegations that fraud pollutes the legal system with court officials taking bribes to issue fake eviction orders and Sheriffs carrying out illegal evictions with the help of bribed police officers. The legal system and police services in this respect need to be tightened up and this form of corruption tackled as a priority.

The possibility of **Rent subsidies** for persons evicted from private rental housing may be a potentially problematic intervention. As a senior municipal official noted, one policy dilemma is that there would be serious issues of equity involved, as there are thousands of people living in informal settlements who might be in similar situations, if not more vulnerable, and who are 'left out' under this policy.

The potential role of the **National Department of Social Development** in assisting evicted persons is a complex one. At least one stakeholder noted that this kind of intervention often involves taking children to dubious places of safety, and amounts to a rather formulaic idea of children rights and remedies. The possible intersection of the Department's Social Distress of Relief (SROD) grant and the need to provide temporary accommodation in the event of an eviction that leads to homelessness needs to be investigated further in the context of an Emergency Housing Programme that does not adequately cater for those affected by eviction from private rental accommodation.

The need for people to be employed as paralegals to negotiate in buildings, and social workers to be active in the landlord/tenant environment, was raised. The Chairperson of the Gauteng Rental Housing Tribunal raised the fact that municipalities have abdicated this kind of responsibility where they could be playing a critical role, and it appears the City of Johannesburg is attempting to pursue this avenue with its proposed 'Social Care Assessment' intervention.

Another issue that needs to be investigated and addressed further is the impact on tenants of the repossession of properties, and the procedures followed when this situation arises.

## 2. INTRODUCTION

The success of the private rental market is premised on the assumption that rental payments will be made by the tenants in order for the landlord to repay their costs of providing the accommodation and make a profit. Thus, if there has indeed been an increase in eviction, the questions as to whether this is due to default in rental payments is a very important one. If reasons for default are not properly understood it is impossible to address them and the resultant problem of evictions.

The purpose of the study, therefore, is to identify whether there had been an increase in evictions in the period specified (latter half of 2008), the extent of illegal evictions, factors influencing evictions, subsequent use of stock, and housing alternatives accessed by evictees. The researchers thus investigated, to the extent possible, whether there has been an increase in evictions or attempted evictions on the basis of non-payment of rent in the second half of 2008, as well as the extent to which illegal evictions are occurring. Further, the range of factors that influence evictions was investigated and an analysis undertaken of the subsequent use of the stock from which the tenants were evicted (i.e. the extent to which “gentrification” is occurring). Further, it was investigated, to the extent possible, what housing alternatives evicted households are managing to access; the costs of eviction and whether emergency shelters set up under the Emergency Housing Programme are being accessed.

In terms of the structure of the paper, we first outline our methodology and then provide an extensive legislative and policy framework, which outlines key pieces of legislation, policies and cases which are needed in order to understand the context of the findings. These include the Constitution of the Republic of South Africa, the Rental Housing Act No 50 of 1999 and the Rental Housing Amendment Act No 43 of 2007, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998, and Part 3 of the National Housing Code: Chapter 12, National Housing Programme for Housing Assistance in Emergency Housing Circumstances.

We then provide background to rental housing in South Africa including an analysis the size of the private rental sector, demand for rental accommodation, price of rental accommodation and payment of rental. Next, we present the findings of the questions highlighted above, and also provide a comprehensive mapping of the eviction process, which captures all relevant information on rights and obligations of parties involved therein (this document is published separately).

Based on the findings of the investigation, possible changes to the Emergency Housing Programme are recommended. Issues to be addressed in this regard by the National Department of Social Development (NDSD) and other key government departments are identified, as are other



investigations or monitoring mechanisms that need to be undertaken or established. Finally, key recommendations are provided together with an extensive bibliography and a list of key informants who contributed to the study.

### **3. METHODOLOGY**

#### **Literature Review**

In order to gather background research and inform recommendations, the first phase of this project comprised a literature review covering relevant national, African and international literature on private (and social) housing and evictions. This included available research on the rental housing market that has been conducted by Urban Landmark, FinMark Trust and the Social Housing Foundation (SHF) amongst others. In order to establish a comprehensive overview of all sources of information, a data capture specialist assisted in carrying out a search of available databases, reference material, internet and media reports, etc.

#### **Data gathering**

Unfortunately, courts do not disaggregate types of cases or keep records of evictions from private rental housing, so we could not obtain the relevant information from the High or Magistrates Courts. However, data on evictions and trends were sourced through the networks of Lawyers for Human Rights (LHR), the Centre for Applied Legal Studies (CALS) and the Legal Resources Centre (LRC). In Johannesburg we also met with the City's attorney dealing with eviction cases, the Chairperson of the Gauteng Rental Housing Tribunal and the Sheriff for Johannesburg East. In Cape Town we met with the Chairperson of the Western Cape Rental Housing Tribunal as well as an attorney with the LRC working extensively on eviction cases. We also contacted the Tenant Profile Network (TPN) for national data on evictions and information regarding key trends in the sector.

In order to obtain information, statistics and trends about evictions in private rental housing we also contacted a range of key individual and institutional players such as tenants; landlords; real estate agents; lawyers; legal services providers; trade associations; community and tenant rights organisations; local, provincial and national government officials; academics; non-governmental organisations (NGOs), and rental housing developers and managers, to determine the extent of the problem and proposed solutions. A detailed list of key informants and complete bibliography can be found at the end of this paper.

## Focus Groups

To provide qualitative, in-depth understanding of the lives and circumstances of tenants living in private rental accommodation, as well as to inform and confirm our own findings and recommendations, two focus groups were conducted with tenants in Johannesburg and Pretoria respectively.

The first focus group was held at the Centre for Applied Legal Studies (CALs) in Johannesburg, facilitated by the Inner City Resource Centre (ICRC), with fourteen tenants from various rental housing buildings in the inner city suburbs of Yeoville, Berea and Hillbrow in Johannesburg attending. The buildings are managed by various property management agencies. Some of the key issues that emerged from this focus group are summarised below under 'factors influencing eviction.' The second focus group was held in Sunnyside, Pretoria with nine tenants (and one owner) from a sectional title building. The members of this group were chosen because the tenants had contacted attorneys with concerns about high utility costs.

## 4. LEGISLATIVE AND POLICY FRAMEWORK

There are a number of Acts of Parliament pertaining to rental housing and evictions in South Africa, as well as a number of recent landmark cases (in Johannesburg particularly) which are changing precedent regarding evictions. In order to fully analyse the questions posed in this study, it is important to understand the legislative context in which private rental housing functions. Particularly important here are amendments and proposed amendments to legislation that have shifted, or will potentially shift, the nature of this provision and impact on evictions. During the course of this research, the following Acts were reviewed (in addition to the Emergency Housing Programme):

- 4.1 Constitution of the Republic of South Africa No 108 of 1996
- 4.2 Rental Housing Act No 50 of 1999 and Rental Housing Amendment Act No 43 of 2007
- 4.3 Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998
- 4.4 Part 3 of the National Housing Code: Chapter 12, National Housing Programme for Housing Assistance in Emergency Housing Circumstances

Further, recent jurisprudence around evictions in Johannesburg's inner city is outlined and discussed, which include the recent *Olivia Road* and *Blue Moonlight* cases.

#### **4.1. Constitution of the Republic of South Africa**

Section 26 of the Constitution deals with housing and evictions and states that:

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

#### **4.2. Rental Housing Act No 50 of 1999 and Rental Housing Amendment Act No 43 of 2007**

The Rental Housing Act regulates the relationship between landlords and tenants in the private rental sector, and indeed in all types of rental housing. Section 2(1)(a) of the Rental Housing Act stipulates that it is the government's responsibility to (i) "promote a stable and growing market that progressively meets the latent demand for affordable rental housing among persons historically disadvantaged by unfair discrimination and poor persons, by the introduction of incentives, mechanisms and other measures that improve conditions in the rental housing market" and (b) "facilitate the provision of rental housing in partnership with the private sector".

Some of the most important features of the Act include the establishment of Rental Housing Tribunals, the publishing of Unfair Practices Regulations and the repeal of the Rent Control Act of 1976. These three key aspects of the Act will be discussed in detail further in this report, and this section provides merely background. In 2007, an Amendment to the Act was passed, which made a number of important changes, perhaps most pertinent to this study being the criminalisation of 'constructive evictions.' This is defined as cutting off services without a court order. Also important to the Act is that tenants have the right not to have their possessions seized unless by a Tribunal ruling or an order of court. Landlords have, amongst other rights, the right to prompt and regular payment of a rental or any charges that may be payable as part of a lease and can recover unpaid rental or other amounts due after obtaining a ruling by the Tribunal or an order of court. They have the right to terminate the lease on grounds that do not constitute unfair practice but are specified in the lease. A landlord must give a tenant at least two months written notice of an intention to increase rental.

From interviews with tenants and other stakeholders, it is clear that the Act is largely under-enforced. While the Tribunals makes many rulings tenants stated that they found it very difficult to get the rulings against exploitative rentals, service cut-offs and lockouts enforced.

### ***Rental Housing Tribunals***

The Housing Act allows MECs to establish a Rental Housing Tribunal in each province, which is set up to mediate complaints from a tenant or landlord, or groups of tenants and landlords concerning unfair practices and to make rulings on the basis of the Act. Section 1 of the Act describes an unfair practice as “any act or omission by a landlord or tenant in contravention of this Act; or a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or landlord.” Where the Tribunal finds that an unfair practice exists, it may rule that any person must comply with a provision of the Act and can make any other ruling that is just and fair to terminate any unfair practice including a ruling to discontinue overcrowding; unacceptable living conditions; exploitative rentals; or lack of maintenance.

In the case of rentals, the ruling by the Tribunal “may include a determination regarding the amount of rental payable by the tenant, but such determination must be made in a manner that is just and equitable to both tenant and landlord and takes cognisance of (a) prevailing economic conditions of supply and demand; (b) the need for a realistic return on investment for investors in rental housing; and (c) incentives, mechanisms, norms and standards and other measures introduced by the Minister in terms of the policy framework on rental housing referred to in section 2(3).

A ruling by the Tribunal is deemed to be an order of a magistrate’s court in terms of the Magistrate’s Court Act No 32 of 1944 and must be enforced in terms of this Act. The 2007 Amendment now allows for the Tribunal to issue spoliation and attachment orders grant interdicts as per section 13(12)(c).<sup>1</sup> The Amendment, however, also importantly added a new subsection to the Act that states that “the Tribunal does not have the jurisdiction to hear applications for eviction orders.” Property owners and landlords were eager for the Tribunal to be given such powers, however tenants organisations and public interest groups contested this move on several grounds including the fact that the Tribunals would need to be reconstituted, adequate training would be required,

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<sup>1</sup> A **spoliation order** is a reactive response to restore a position to what it was e.g. if a landlord cuts off water to a property for alleged non-payment, the tenant can apply for a spoliation order to restore water until the case is investigated properly. An **interdict** is a pro-active action to prevent something from happening e.g. a landlord applies for an interdict to prevent his tenant from selling his possessions which the landlord wants to attach to cover outstanding rent. Both of these are interim measures as they are granted with a time limit. An **attachment order** is a legal application lodged to seize and sell possessions to cover outstanding rent or costs for damages.

and that the Constitution would have to be amended as the Tribunal could not be considered a court in terms of Section 26 of the Constitution.<sup>2</sup> These issues will be discussed further below.

Section 16 of the Act states that any person who fails to comply with certain sections of the Act; fails, without sufficient cause, to attend at Tribunal hearing or to remain in attendance until excused by the Tribunal; fails to produce necessary documents as required by the Tribunal or produces false documents; makes a statement that is false or misleading before the Tribunal; or contravenes any regulation – will be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding two years or to both. In 2007, an additional offence was added to this list and section 16(hA) states that any person who “unlawfully locks out a tenant or shuts off the utilities to the rental housing property” is also guilty of an offence.

It appears that most Tribunals are struggling with a lack of capacity and an overload of cases. According to tenants interviewed in this study, as well as the Chairperson of the Gauteng Rental Housing Tribunal, there are a number of factors which limit the effectiveness of the Tribunals. These include landlords or property owners not attending mediation sessions and the Tribunal accepting this or having no power/will to force them to attend, as well as Tribunals not having the teeth to enforce rulings satisfactorily, particularly those relating to rent increases or high service charges.

### ***Procedural and Unfair Practice Regulations***

In terms of making regulations regarding the Rental Housing Tribunals, the responsibility has become a national competence and has shifted (as per the 2007 Amendment Act) to the Minister. Whereby previously the Act stated that the provincial MEC “may”, it now states in section 15(1) that the Minister “must, after consultation with the standing or portfolio committee on housing and every MEC, by notice in the *Gazette*, make regulations” relating to the Rental Housing Tribunals as well as relating to unfair practices. Thus, the aim is to standardise regulations nationally, regarding Rental Housing Tribunals and unfair practices in rental housing provision. In May 2008, draft Procedural and Unfair Practice Regulations in terms of the Rental Housing Act of 1999 were published for comment. Regulations relating to unfair practices may, amongst other things, relate to evictions and the changing of locks; deposits; demolitions and conversions; intimidation; tenants committees; municipal services; overcrowding and health matters; tenant activities; maintenance

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<sup>2</sup> See, for example, Mohamed, S. I., “Rental Housing Tribunals and Evictions: Will the Tribunals have jurisdiction regarding evictions?”, *LexisNexis Property Law Digest*, 11, 4, pp. 7-8 (December 2007). This area of law is ambiguous, however, and at least one court had, before the 2007 amendment, determined that the Tribunal could indeed be considered a court for the purposes of eviction.

etc.<sup>3</sup> Importantly, section 8 of the Unfair Practices Regulations which deals with evictions and the changing of locks, states that a tenant evicted from a dwelling has subject to common law a claim for damages against the landlord, and that the landlord or tenant may only change locks or doors if necessary as a result of wear and tear or another reasonable cause and when notice and duplicate keys are provided. As of mid-2010 neither sets of regulations had been published.

In terms of municipal services, landlords may not interrupt supply of water, electricity or other services that they have undertaken to provide without a court order, unless in an emergency or after reasonable notice to the tenant to do maintenance, repairs or renovations. However, the services must be resumed as soon as reasonably possible after such interruption. A landlord must also ensure that the tenant is not exposed to the risk of interruption or loss of service provider when such a payment is due, if the tenant has made payment to the landlord in respect of the amounts due for such services. A landlord must, in a multi-tenanted building, not recover collectively from the tenants for services provided in excess of the amounts totally charged by the utility service provider and the landlord; or must without requesting payment of any fee be obliged to provide the tenant with copies of the account of the service provider and copies of accounts rendered to the tenants with regard to such services. The Regulations include other obligations on landlords and tenants.

### ***Rent Control***

In 2000, the Rental Housing Act repealed the Rent Control Act of 1976, but provided for a three-year transitional period during which existing tenants of controlled premises - who previously fell under the Rent Control Act - would still be protected by the Rent Control Act.<sup>4</sup> During this three-year period, landlords could only raise rentals by 10 percent per year on rent controlled premises. Further, during this period, it is stated in section 19(2) of the Act that the Minister must monitor and assess the impact on poor and vulnerable tenants if they are allowed to be evicted or caused to vacate the premises of previously controlled premises, and if the rent of such premises are allowed to increase more than 10 percent per year. The Minister must as per section 19(2)(b) “take such action as he or she deems necessary to alleviate hardship that may be suffered by such tenants.” To assist the Minister, she/he may define age, income or any other form or degree of vulnerability and

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<sup>3</sup> Sayed Iqbal Mohamed, “Important to act within the law”, *Daily News* (20 May 2008)

<sup>4</sup> While rent control in white areas had been increasingly phased out from 1978 to the late 1980s, and only the appointment of the tricameral parliament had halted the process of decontrolling properties, many Coloured and Muslim people still had rent protection in areas like Salt River, Observatory, Bo Kaap, Maitland and Kensington in Cape Town, until 2003 when rent control was abolished.

introduce a “special national housing programme to cater for the needs of affected tenants” that comply with these criteria.

By 2003, however, it emerged that national government had not undertaken this exercise and that the implications of the lapsing rent control protections on poor and vulnerable tenants had not been investigated thoroughly. In the Western Cape, which had the largest number of rent-controlled buildings in South Africa, research conducted in August 2002 by the University of the Western Cape Legal Aid Clinic established that there was no real statistical data on the number of rent controlled premises or the number of occupants potentially affected by the changing legislation, and further, little thought had been given to the compilation of a provincial submission to the national government regarding this.<sup>5</sup>

In August 2003, the rent control provisions lapsed, largely due to the erroneous belief that they protected White interests only. In fact, the number of poor, elderly and ‘previously disadvantaged’ tenants living in these buildings, particularly in the Western Cape, was extremely high. For example, in 2003, tenants of one particular building in the Bo Kaap, Leeuwen Mansions, faced notices that their rent was being increased to R3000 a month and if they could not pay they would be evicted. Previously, they had been paying R400 to R800 a month in the rent-controlled building.<sup>6</sup> At the time, the Chairperson of the Western Cape Rental Housing Tribunal confirmed that there was confusion over whether rent control would be retained or not, particularly as the Minister had not yet accessed the impact on the poor, old and vulnerable groups. The response was that these protections did not apply to a considerable number of people, and only those living in the major cities of Cape Town, Durban and Johannesburg.<sup>7</sup> The establishment of Rental Housing Tribunals was touted as the solution, as it was a cheap method of resolving disputes between landlords and tenants, particularly where rents were too high.<sup>8</sup>

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<sup>5</sup> From a September 2003 LLM assignment paper by Seehaam Samaai, who at the time was a clinician at the Legal Aid Clinic and practicing attorney in the Back-Up Services Unit: Socio-Economic Rights Focal Project, and is now a Senior Lecturer and Director of the Legal Aid Clinic at the University of the Western Cape

<sup>6</sup> *Ibid.*, p. 6.

<sup>7</sup> *Ibid.*, p. 7.

<sup>8</sup> Maureen Marud, “Rent Bombshell to Hit the Poor”, *Cape Argus* (22 July 2003).

### **4.3. Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 ('PIE Act')**

#### ***Application to tenants in private rental accommodation***

The PIE Act is the successor statute to the Prevention of Illegal Squatting Act No 52 of 1951 and its many amendments, and is intended to provide procedural safeguards to vulnerable groups unlawfully occupying land, and who may not have anywhere else to live. The PIE Act applies to everyone who occupies land without “the express or tacit consent of the owner or the person in charge” and this includes people who occupied land lawfully at some point in the past but who no longer have the consent of the owner to occupy the land in question, as well as to people who took occupation of land unlawfully in the first place.

In the 2002 case *Ndlovu vs. Ncgobo; Bekker and Another vs. Jika*, a consolidated decision was taken by the Supreme Court of Appeal (SCA) that the term 'unlawful occupiers', as defined in section 1 of the PIE Act, refers to persons who unlawfully took possession of land *as well as* persons who once had lawful possession but whose possession subsequently became unlawful. This latter category includes persons who are essentially 'holding-over' and could include those who have defaulted on lease agreements, like ex-tenants or ex-mortgagors.

The SCA furthermore asserted that in the case of 'affluent tenants', the PIE Act is fundamentally rooted in the Bill of Rights and while the legislature had intended to protect a vulnerable class of people, at times “remedial legislation can confer benefits to persons for whom they were not primarily intended”. The Court held that PIE does not expropriate landowners of the property, but merely regulates the exercise of their rights.<sup>9</sup> Thus, PIE is applicable to cases of holding over, and therefore extends both procedural and substantive protection to ex-tenants as well as ex-mortgagors, and is relevant to tenants occupying private rental accommodation 'unlawfully'.

#### ***Provisions of the PIE Act***<sup>10</sup>

The PIE Act essentially renders illegal the eviction of an unlawful occupier, unless the eviction complies with a number of procedural requirements. These include requirements that the owner, not less than 14 days before a court hearing of the eviction proceedings, serve 'written and effective notice' of the eviction proceedings on the unlawful occupier and the local municipality. The notice

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<sup>9</sup> *Ndlovu vs. Ncgobo; Bekker and Another vs. Jika* 2003 (1) SA 113 (SCA)

<sup>10</sup> From Centre on Housing Rights and Evictions (COHRE), “Any Room for the Poor? Forced Evictions in Johannesburg, South Africa” (8 March 2005), pp. 35-36.



must set out the grounds on which the eviction is being sought, the date and time at which the eviction proceedings will be heard and inform the unlawful occupier of his right to appear before the court, defend the case, or apply for legal aid.<sup>11</sup>

The Act requires that a court must consider the rights and needs of certain vulnerable groups of unlawful occupiers, including the elderly, children, women-headed households and the disabled. If the unlawful occupier(s) have been in occupation of the property for longer than six months, the Act requires that the court must consider whether land is available, or can reasonably be made available, by the owner or the local municipality to which the unlawful occupier(s) can be relocated. If the court is satisfied that all the relevant circumstances have been considered, and that the unlawful occupier has raised no valid defence against the eviction, then it may grant an eviction order. The order must determine a 'just and equitable' date on which the unlawful occupier must vacate the land in question, and the date on which the eviction order may be carried out if the unlawful occupier(s) does not vacate the land.<sup>12</sup> The Act also provides for the court to appoint the local Sheriff to oversee the eviction, if it deems such oversight necessary.

### ***Reactions to the above and proposed amendments to the PIE Act***

Following the broad extension application of the PIE Act following the *Ndlovu* case in 2002, there was an outcry from property owners, landlords, and property management agents over the difficulties lessors of immovable property would face in obtaining eviction orders against defaulting lessees. Indeed, "predictions of doom and gloom for the rental housing market" abounded and property owners were horrified at the thought of having to allow unlawful occupiers to remain in properties after cancelling the lease.<sup>13</sup> The difference between the common law understanding of granting an eviction order (whereby you simply need to establish ownership of the property and that the person in occupation has no right to remain in possession thereof), and PIE Act interpretation of granting an eviction (where the court needs to determine whether the eviction is "just and equitable" and take into account special circumstances), was rejected by those involved in property rental and management. However, common law principles still apply to affluent tenants, as the only relevant circumstances would be that the landlord is the owner, that the lease has come to an end

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<sup>11</sup> See Sections 4(3), 4(4) and 4(5) of the PIE Act.

<sup>12</sup> See Sections 6, 7 and 8 of the PIE Act.

<sup>13</sup> As explained in "The Estate Agency Affairs Board's Comments On The Recent Judgment Handed Down By The Bloemfontein Supreme Court Of Appeals In The Matter Of *Ndlovu And Others V Bekker And Others*" (2002). [http://www.eaab.org.za/page.php?p\\_id=37](http://www.eaab.org.za/page.php?p_id=37)

and that the lessee is holding over.<sup>14</sup> According to the Estate Agents Affairs' Board at the time of the case:

*There is no need to panic. More particularly, there is no need for investors in rental housing to rush into putting their properties on the market. The rental housing market is certainly not on the brink of collapse. Lessors in the middle to upper end of the market will hardly be affected by the judgment, except in exceptional cases. The biggest impact will be felt at the lower end. Tenants who cannot pay the rental because they lost their jobs and have nowhere to go may now, on equitable grounds, be given some relief before an eviction order is granted. But even here the relief will be merely temporary. No Court can permanently deprive an owner of the possession of his or her property. Those hardest hit will be prospective tenants with low incomes and a low credit rating. For them, finding rental accommodation may prove to be extremely difficult.*<sup>15</sup>

In December 2006, the National Department of Housing published the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006 ('PIE Bill'), along with a memorandum stating that it was not the intention that the Act that it "should apply to tenants and mortgagors who default in terms of their prior agreements with landlords and financial institutions, respectively". This was lauded by the South African Property Owners Association (SAPOA); however, was criticised by academics like Professor Marie Huchzermeyer from Wits University,<sup>16</sup> groups such as the Legal Resources Centre (LRC)<sup>17</sup> and the Centre for Applied Legal Studies (CALs). The latter stated that section 3 of the PIE Bill 'will create undesirable and constitutionally unjustifiable inequalities between groups of occupiers who are equally in need of the PIE Act's protection. It will increase the likelihood and frequency of evictions which lead to homelessness.'<sup>18</sup> Furthermore, CALs stated that "the PIE Bill as it stands allows municipalities to escape responsibility for dealing with the very real housing crises which can be caused by evictions."<sup>19</sup>

Proposed amendments to the Act include the criminalisation the facilitation of hijacking of property rentals (i.e. acting the role of an illegal "broker"). There is nothing in the Bill, however, which specifically outlaws the practice of an external person or consortium "taking over" a building and collecting "rent" from residents by fraud or threat. For that matter, there is nothing in the Bill to prevent an otherwise legitimate resident or group of residents of a building from doing the same. Other proposed amendments include the extension of the current 14 day eviction notice period to

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<sup>14</sup> Ibid., p. 3.

<sup>15</sup> Ibid., pp. 3-4.

<sup>16</sup> Marie Huchzermeyer, "Comment on General Notice 1851 of 2006 - Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006" (16 February 2007).

<sup>17</sup> LRC, "Comment on General Notice 1851 of 2006: Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006" (February 2007).

<sup>18</sup> CALs, "Comment on General Notice 1851 of 2006: Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006" (20 February 2007), p. 4.

<sup>19</sup> Ibid., p. 9.

30 days period, as well as the rectification of the SCA court judgment seven years ago that included tenants in the protection of illegal occupiers by the PIE Act.”<sup>20</sup> However, although landlords will no longer have to abide by the PIE Act when trying to evict non-paying tenants, they will still have to obtain a court order in terms of the proposed amendment. Another proposed amendment is the criminalisation of those who charge rent or get money from tenants or sectional title owners for land or buildings without the consent of landlords or bodies corporate. They face up to two years in prison and the seizure of their assets in terms of the PIE Bill. This is meant to force the police to act against hijackers, who have previously decried this to be a civil, not a criminal, matter.

In August 2008, the Parliamentary Portfolio Committee on Housing recommended that the PIE Amendment Bill be rejected, and it was sent back to the Department of Housing. This was done because the Committee was not satisfied that two issues had been adequately addressed after public hearings were held, and the Bill reintroduced in March 2008. These issues were namely, the position of farm workers in relation to evictions and the alignment of the provisions of the Bill with the Extension of Security of Tenure Act (‘ESTA’) and the Labour Tenants Act.<sup>21</sup> The Department of Housing is apparently in consultation with the Department of Land Affairs, which is in the process of reviewing legislation dealing with evictions and security of tenure.

Therefore, non-paying tenants are still able to resist eviction unless the landlord goes to court and obtains an eviction order in terms of the PIE Act.<sup>22</sup>

#### **4.4. Part 3 of the National Housing Code: Chapter 12, National Housing Programme for Housing Assistance in Emergency Housing Circumstances**

Established in 2004, at least in part a response to the *Grootboom* declaration which found that that state housing policy was failing to cater for people living in crisis situations, Chapter 12 of the National Housing Programmes, the National Housing Programme for Housing Assistance in Emergency Housing Circumstances, looks at the role of municipalities and provincial departments of housing, and the assistance given by the National Department of Housing, to enable them to respond to emergencies by means of provision of land, municipal services infrastructure and shelter. The Fund, however, may not be used for housing projects in terms of project-linked subsidies or otherwise.

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<sup>20</sup> “New act may 'criminalise' landlords”, *Property 24* (10 June 2008).

<sup>21</sup> See the Report from the Committee regarding the PIE Bill at <http://www.pmg.org.za/report/20080806-discussion-formal-decision-be-taken-and-report-be-tabled-prevention-i>

<sup>22</sup> Linda Ensor, “Parliament Dumps Land Occupation Bill” *Business Day* (7 August 2008).

The main objective of the Emergency Housing Programme is to provide temporary but secure access to land and basic municipal services to people who have been left without a home through circumstances beyond their control. This usually means victims of fire, flood or other natural disasters, but also includes as per section 2.3.1(a), situations where persons owing to situations beyond their control, “are evicted or threatened with imminent eviction from land or from unsafe buildings, or situations where pro-active steps ought to have been taken to forestall such consequences” or are living in (h) “conditions that pose immediate threats to life, health and safety and require emergency assistance.”<sup>23</sup> Assistance is provided through grants to municipalities, administered, like all other subsidies, through provincial housing departments, and in the case of evictions, include “assistance with relocation to temporary settlement area. To be relocated again once permanent housing becomes available.”<sup>24</sup>

Under the Programme, in these circumstances the relief will be in the form of relocation to either a permanent or temporary location with assistance on a temporary basis. It is up to the municipality to decide whether assistance is required under the Programme. They then have discretion to determine the approach to project implementation depending on the circumstances of the emergency housing need. The difference with the rest of the Programmes under the National Housing Code is that the normal standard qualification criteria do not apply, so that assistance can be provided for people and households that:

- Earn more than R 3500 per month;
- Are non-lawful residents;
- Have previously received housing assistance;
- People who are not first time home owners (i.e., renters);
- Do not have dependents; or
- Minor-headed households.

A recent amendment to the Emergency Housing Programme now means that if the MEC approves, the cost of consumption of the following basic municipal services for a maximum of three years (in cases where the municipality presents proof of its inability to provide the services from its own resources, and the services are actually provided by the municipality) can be funded by the Programme:

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<sup>23</sup> Section 2.3.1 of the National Housing Programme for Housing Assistance in Emergency Housing Circumstances (2007),

<sup>24</sup> Ibid., section 2.4.1(3.1).

- Water consumption;
- Sanitation services provision;
- Refuse removal; and
- Street lighting where applicable.<sup>25</sup>

Current strategic interventions being made by municipalities to deal with emergencies under this policy, as well as other interventions to deal with the effects of evictions are set out in section 6.7 below, however they have for the most part been quite minimal and administered on an ad hoc basis.

#### **4.5. Recent jurisprudence around evictions in Johannesburg’s inner city**

Since 2004, there has been a concerted effort by public interest litigation organisations, most notably the Legal Resources Centre (LRC), Wits Law Clinic and Centre for Applied Legal Studies (CALs) to change the jurisprudence around state and private-lead evictions of poor and vulnerable tenants in the inner city of Johannesburg. Indeed, previously much of the City of Johannesburg’s reasons for (its own) state-led evictions were governed by health and safety risks for those living in ‘bad buildings.’ However, as a result of litigation, the City was obliged to change its approach to evicting poor occupiers, and through ‘meaningful engagement’ must now ascertain the vulnerability of the occupiers and whether an eviction will lead to homelessness, and if so, what alternative accommodation options are available.

##### ***Olivia Road***

In 2005, a particular case was to provide the catalyst for change in the inner city - the *Rand Properties* case,<sup>26</sup> which involved over 300 occupiers of two dilapidated buildings in Berea and Hillbrow. Without going into too much detail regarding the specificities of the High Court and Supreme Court of Appeal judgments,<sup>27</sup> the resultant of this initial case was a landmark judgment handed down by the Constitutional Court on 19 February 2008, in a case now known as *Olivia Road*, which dismissed the SCA’s decision to grant an eviction as the City of Johannesburg had failed to

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<sup>25</sup> Ibid., section 2.5.3.

<sup>26</sup> *City of Johannesburg v. Rand Properties, Residents of ERF 381, Berea Township & Ors* (Rand Properties)

<sup>27</sup> *City of Johannesburg v. Rand Properties (Pty) Ltd 2007 SCA 25 (RSA)*

make an effort to engage with the occupiers at any time before proceedings for their eviction were brought.<sup>28</sup> After lengthy negotiations, the City provided two refurbished buildings for the occupiers who relocated there in August 2008.

However, this judgement did not place a firm requirement on municipalities to necessarily provide alternative housing for each in each and every eviction in the future. In this respect, the judgement stated: “It may in some circumstances be reasonable to make permanent housing available and, in others, to provide no housing at all. The possibilities between these extremes are almost endless.” What municipalities are obliged to do is to “must make reasonable efforts to engage” with occupiers and “it is only if these reasonable efforts fail that a municipality may proceed”. In assessing whether to grant an eviction order, “it is the duty of the court to take into account whether, before an order of eviction that would lead to homelessness is granted at the instance of a municipality, there has been meaningful engagement or, at least, that the municipality has made reasonable efforts towards meaningful engagement.”<sup>29</sup>

The authors of this report contend that the Olivia Road judgment leaves little doubt that the municipality would find it difficult to justify an eviction which would lead to homelessness. The City of Johannesburg would contend that their obligation is to “meaningfully engage” in these situations and that there may be some instances in which the court would not necessarily oblige the city to provide temporary accommodation.

### ***Blue Moonlight***

In September 2008, the Johannesburg High Court re-enforced the duty of the City of Johannesburg to say what it will do to provide housing for inner city poor facing eviction, in a judgment handed down in *Blue Moonlight*.<sup>30</sup> This judgment requires the City of Johannesburg to say what it will do to provide 88 desperately poor residents with temporary accommodation if they are evicted from their homes by a private property developer, and re-enforces what was said by the Constitutional Court in the *Olivia Road* judgment on the duty of the City to ‘meaningfully engage’ with those facing eviction in order to ascertain their vulnerability and whether they might be rendered homeless after the

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<sup>28</sup> *Occupiers of 51 Olivia Road and 197 Main Street, Johannesburg v the City of Johannesburg and others* 2008 (3) SA 208 (CC) (Olivia Road)

<sup>29</sup> CALS media statement, “Constitutional Court overturns Supreme Court of Appeal decision to grant an eviction order in circumstances where the City of Johannesburg failed to meaningfully engage with the occupiers” (19 February 2008).

<sup>30</sup> *Blue Moon Light Properties 39 (PTY) Limited v The Occupiers of Saratoga Avenue and The City of Johannesburg* (Blue Moonlight Properties)

eviction. The judge ordered the City to report to the court what steps it has taken, and will take in future, to provide emergency shelter or other housing for the Blue Moonlight residents.<sup>31</sup>

In February 2010 the long awaited order was handed down in Blue Moonlight, which stated that the occupiers be evicted and are required to vacate the property by no later than 31 March 2010, and imposes a duty on the City of Johannesburg to provide them with temporary accommodation or, alternatively, to pay each occupier or household head an amount of R850 per month for them to rent elsewhere. The order declared the City's housing policy unconstitutional "to the extent that it discriminates from considering suitable accommodation relief (including temporary accommodation) for persons within its jurisdiction who are subject to eviction by a private owner ( an eviction which is not at an instance of the State organ)". This contentious order has been labelled impractical and has been met with confusion and concern from both sides. CALS has expressed concern over the option to give the residents money to find their own accommodation, when it is well known that there is a scarcity of cheap or affordable accommodation in the inner city and this remedy fails to address the occupiers' problems as well as the broader low-income housing question in the inner city.<sup>32</sup> The Minister of Human Settlements has expressed alarm at the order, stating it could throw housing policy into chaos, even referring to the case in his recent Budget Vote Speech and appealing to the Minister of Justice and Constitutional Development to assist in finding resolution.<sup>33</sup> At the time of writing the Blue Moonlight order is pending, following an appeal process.

## 5. BACKGROUND TO RENTAL HOUSING IN SOUTH AFRICA

### The size of the private rental sector

According to a Social Housing Foundation (SHF) report, published in July 2008, approximately one-fifth (20 percent) of households in South Africa (between 2.3 and 2.5 million households) rent the accommodation in which they live. More than half (55 percent) of these households have a monthly income of less than R3,500 and a further 22 percent earn between R3,500 and R7,500.<sup>34</sup> Approximately eighty percent of renters live in what can be termed 'formal housing', while twenty percent of renters live in informal rented accommodation and about 43 percent of renter

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<sup>31</sup> CALS media summary, "Johannesburg High Court re-enforces the duty of the City of Johannesburg to provide housing for inner city poor" (12 September 2008).

<sup>32</sup> CALS media alert, "City of Johannesburg's housing policy declared unconstitutional but order does not provide clarity on the fate of poor people facing eviction" (5 February 2008).

<sup>33</sup> "Sexwale: Ruling could cause chaos", News24 (10 March 2010)

<sup>34</sup> Social Housing Foundation (SHF), *Supply and Demand of Rental Accommodation in South Africa* (July 2008), p. 2.

households live in what can be characterised as ‘slum conditions’.<sup>35</sup> The report indicates that these statistics “point to significant need for affordable, better quality accommodation” and that anecdotal evidence suggests significant unmet demand for affordable accommodation in key urban areas.<sup>36</sup> Our research corroborates the report’s findings that social housing in urban areas is typically over-subscribed and that the demand for more affordable rental accommodation, particularly in the inner city of Johannesburg, is insatiable.

**Table 1: Rented accommodation by dwelling type**

TYPE OF ACCOMMODATION	FORMAL HOUSING						INFORMAL HOUSING			Total
	House	Flat	Hostel	Backyard room	Town house/ semi	Room on shared property	Backyard shack	Shack not in backyard	Traditional dwelling/ hut	
Number of households ('000)	943	374	188	178	115	72	282	139	52	2,343
%	40	16	8	8	5	3	12	6	2	100

Source: SHF, 2008 (derived from Census 2001, AMPS 2007 and Community Survey 2007).

Within these national statistics, there are provincial variations, with Gauteng having by far the largest number of renting households, somewhere between 723,629 and 1,134,137, which represents between 26 and 35 percent of households. Gauteng is followed by the other two provinces with major cities, KwaZulu-Natal and the Western Cape, with the former having larger absolute numbers of households renting (between 400,000 and 550,000) and the latter having a higher proportion of renters (between 23 and 26 percent in Western Cape vs. 18 to 21 percent in KwaZulu-Natal).<sup>37</sup>

<sup>35</sup> Ibid., p. 11. The definition of a slum household is based on the United Nations Millennium Development Goals Indicators, and states that it is a group of individuals living under the same roof lacking access to improved water; access to sanitation; sufficient living area; durability of housing; and/or security of tenure.

<sup>36</sup> Ibid.

<sup>37</sup> The size of the rental sector in South Africa compares with that of other countries, such as Kenya, where for the country as a whole the percentage of households renting is 28.5%, but in Nairobi itself, where there is large scale landlordism, this rises to 84.7% of households renting their accommodation. Over 70% of these households rent from private companies or individuals. The highest African figure for the percentage of households renting is 82% in Kisumu, (Kenya), followed by 63% in Cairo (Egypt). In Asia and Latin American cities, the percentages are significantly lower, with Bangkok at 41% with the highest percentage for Asia, and Quito at 46% being the highest percentage in Latin America. From Huchzermeyer, M., “Tenement City: The emergence of multi storey districts through large scale private landlordism in Nairobi”, *International Journal of Urban and Regional Research*, 31, 4, pp. 714-732 (December 2007).



**Table 2: Number of households renting their primary dwellings**

	GP	KZN	WC	NW	EC	FS	MP	LP	NC
<b>CS 2007</b>	839,399 26%	397,939 18%	314,632 23%	204,294 22%	181,481 11%	146,635 18%	124,818 13%	104,687 9%	42,364 16%
<b>GHS 2007</b>	1,134,137 35%	542,525 21%	348,759 26%	197,455 21%	260,973 15%	138,962 16%	121,828 14%	102,332 8%	57,484 20%
<b>IES 2005/6</b>	723,629 35%	419,288 19%	296,538 23%	209,605 23%	188,108 11%	158,698 18%	129,316 15%	111,750 9%	58,491 20%

Source: SHF, 2009.

According to a report published Development Action Group (DAG) on medium-density housing, the rental housing sector has the potential to contribute significantly towards meeting critical housing needs, urban renewal, restructuring the apartheid city and poverty alleviation, particularly for people who work in well located areas. However DAG feels that the government’s current choice of social housing as the rental instrument does not meet the housing needs of most of the urban poor. While some Social Housing Institutions (SHIs) such as Madulamoho in Johannesburg, and Yeast City Housing in Tshwane provide affordable housing to low-income people in inner cities, very few people with incomes less than R1500 are able to access rental produced as managed by SHIs. This makes the role of the private sector in the provision of rental housing (especially Small-scale Rental Housing)<sup>38</sup> even more important, as it is the only choice of low-income rental accommodation for poor households

### **Demand for rental accommodation**

According to the SHF Supply & Demand report, one of the most striking findings of their research is the significant shortage of rental accommodation, particularly in urban areas. Statistics on rented accommodation in urban areas not only reflect demand, but also available stock. From studying price increases in certain areas, however, an indication of demand can be made and according to the Trafalgar Index, prices have risen fastest in East London, followed by Johannesburg and Cape Town.<sup>39</sup> Demand for rental accommodation at a monthly rental of less than R2,500 is extremely high, and all new social housing projects in urban centres are “over-subscribed often by a factor of ten or more”.<sup>40</sup> According to the Chairperson of the Gauteng Rental Tribunal, “there is a massive, massive demand for housing” and the government is nowhere near to meeting this demand, particularly in Johannesburg.

<sup>38</sup> See SHF (2009), *Small-scale Private Rental: A Strategy for Increasing Housing Supply*

<sup>39</sup> SHF (200), *Supply and Demand of Rental Accommodation in South Africa*, p. 14.

<sup>40</sup> *Ibid.*

According to a Housing Finance Resource Programme (HFRP) assessment of rental housing in South Africa, demand for housing is not only a function of income, but also the availability of infrastructure, ease of access to places of work, and an array of other factors.<sup>41</sup> Viruly stated in 2004 that there was a total demand for rental units of 1,8 million nationally, but only about 12 percent of the total rental units in South Africa were in the form of flats in a block of flats, providing for the income group R3,200 to R6,400. This is perhaps indicative of the limited supply of affordable rental flats for this income group.<sup>42</sup>

At the upper end of the rental market, owing to massive increases in the cost of purchasing residential property, the demand for rental accommodation which has been low since 2003, has begun to grow, especially in certain suburbs of Cape Town and Durban. Investors who bought property with a view to letting it during the housing boom, had to accept lower rentals, resulting in a decline in the average bond repayment to rental ratio and the resultant rental yield that could be earned by investors.<sup>43</sup> According to the Cape Metro region rentals director of Pam Golding Properties, interest rate hikes until 2007 had an adverse effect on house and apartment sales at the lower-end of the property market and forced people into the rental market. An investor who was able to repay a full mortgage instalment from rental income at the beginning of 2004, would only have been able to repay 88 percent of the instalment on a new purchase at the end of 2005 and, based on these assumptions, only about 67 percent in the second quarter of 2006. Current growth in demand for rental accommodation is likely to reduce this discrepancy.

According to *Communicare*, an SHI operating in Cape Town, the demand for affordable rental accommodation is very high. Due to the economic situation people are unable to raise bonds, so want to rent, particularly in the middle and higher income brackets (R5,000 to R25,000 per month).

The Housing Plan contained in the Johannesburg Inner City Regeneration Charter (ICRC) recognises that residential development is not keeping pace with demand at all levels of the housing ladder, particularly at the level of 'affordable' accommodation.<sup>44</sup> This is manifested in the large number of 'bad buildings' still operating in the inner city, which provide a market for slumlords offering low quality, low-cost accommodation, overcrowding through the sub-letting of units and leading to an unstable environment that discourages investment by private landlords. When new, often

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<sup>41</sup> Housing Finance Resource Programme (HFRP), "An Assessment of Rental Housing in South Africa", Occasional Paper No 5 (April 2002)

<sup>42</sup> In Anzabeth Tonkin, "Sustainable medium-density housing: A resource book", *Development Action Group (DAG)* (2008).

<sup>43</sup> "How bad is the rental housing market?", *Intellectual Property Magazine*, 2008

<sup>44</sup> City of Johannesburg, "Inner City Regeneration Charter" (July 2007), Section 6: Residential Development.

*supposedly* 'affordable', accommodation is built it is priced beyond the reach of many residents, or downward raiding occurs, leaving them no choice but to overcrowd existing buildings which are well-located if not in extremely poor condition, often lacking water, electricity and adequate sanitation.

To rectify this situation the City of Johannesburg aims to provide 50,000 (ideally 75,000) new residential units by 2015, of which 20 percent will be for the low-income bracket. The city envisages the creation of a mixed income community on the basis of inclusionary housing, so that the inner city does not become a 'dormitory for the poor', or wholly gentrified. They also plan to provide emergency accommodation to cater for people in crisis, or who have been removed/evicted from unsafe buildings, as well as shelters for people with special needs. To date they have provided 1,257 units of emergency accommodation.

The Trust for Urban Housing Finance (TUHF), who operate in inner cities providing short- and medium-term loans to property entrepreneurs looking to purchase or improve residential rental buildings, reiterated that the demand for rental accommodation is huge, and that there are few vacancies in the market. Ithemba Property Trust, a significant provider of accommodation in the low-rental bracket, stated that they did have some vacancies mainly due to the additional cost of services; however, they also have very strict access criteria that might deter potentially willing applicants.

### **Price of rental accommodation**

The amount of rent paid for accommodation differs considerably across income groups and dwelling types, as well as across provinces and urban areas in response to demand. According to the 2005/6 Income and Expenditure Survey (IES), median rental for a formal house or townhouse was in the R500 to R1,000 range in Gauteng and Western Cape, and in the R200 to R500 range in the other six provinces. The highest proportion (37 percent) paying rental of over R2,000 per month is in Gauteng, ahead of the 29 percent in the Western Cape.

A similar pattern exists for flats and apartments, the median rental being R1,000 to R1,500 in all provinces except Free State and Limpopo, where it is between R500 and R1,000, and Northern Cape, where it is R200 to R500. Formal backyard dwellings, rooms or flats have a median rental of less than R200 except in Gauteng, where it is between R200 to R500. In respect of informal dwellings,

median rental is generally less than R200 per month. The exception is for informal backyard shacks in Limpopo, Northern Cape and Western Cape, where median rental is in the R200 to R500 range.

**Table 3: Median rent paid by dwelling type and province**

	GP	KZN	WC	NW	EC	FS	MP	LP	NC
<b>House or townhouse</b>	R500- R1000	R200- R500	R500- R1000	**R500- R1000	R200- R500	R200- R500	R200- R500	R200- R500	R200- R500
<b>Flat or apartment</b>	R1000- R1500	R1000- R1500	R1000- R1500	**R1000- R1500	R1000- R1500	R500- R1000	R1000- R1500	R500- R1000	R200- R500
<b>Backyard room/flat /dwelling</b>	R200- R500	<R200	<R200	<R200	<R200	<R200	<R200	<R200	<R200
<b>Workers' hostel</b>	<R200	<R200	R500- R1000	**R500- R1000	<R200	R500- R1000	<R200	<R200	<R200
<b>Informal backyard shack</b>	<R200	<R200	R200- R500	<R200	<R200	<R200	<R200	R200- R500	R200- R500
<b>Informal dwelling in settlement</b>	<R200	<R200	<R200	<R200	<R200	<R200	<R200	<R200	<R200

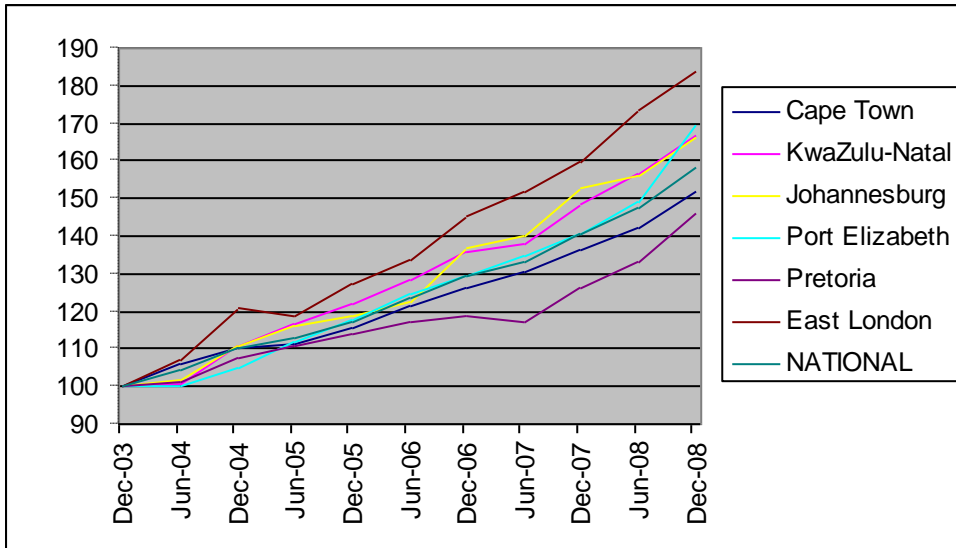
Source: SHF, 2009. \*\*Note: Some of the data for Western Cape & North West are reported as identical; it is likely that rentals in North West are lower than listed above.

In line with the boom in property sales over the five years from December 2003 to December 2008, the average price of rental accommodation increased by 58,4 percent, translating into a mean annual increase of 9,6 percent. Across the six major metropolitan areas this has ranged from 7,9 percent in Pretoria to 12,9 percent in East London. Whereas the increase in Cape Town (8,7 percent) was lower than the mean, in Johannesburg (10,7 percent), KwaZulu-Natal (10,8 percent) and Port Elizabeth (11,2 percent), it was above the mean.<sup>45</sup> The growth specifically in flat rentals in Johannesburg, Pretoria and Cape Town has been steady at about 9 percent per year for the past three years. Growth has been higher in Durban at 12 percent, and in Port Elizabeth at 11 percent.<sup>46</sup>

In the inner city of Johannesburg, TUHF stated that rentals were mainly in the range of R1,500 to R3,000 per month, and that the cheapest rental, in order to enable cost-recovery by the landlord, is R650 per unit per month, for a room in a housing development where the capital cost of provision was funded by government i.e. BG Alexander.

<sup>45</sup> *Trafalgar Rental Index* (December 2008)

<sup>46</sup> From Rode & Associates, *Rode's Report* (10 December 2008). [www.rode.co.za/news/article.php?ID=2239](http://www.rode.co.za/news/article.php?ID=2239)



**Figure 1: Rental Index, 2003-2008**

Source: Extrapolated from Trafalgar Rental Index, December 2008.

However, the *Rental Payment Monitor* reports that there was a five percent decline in average monthly rental during 2008 to R4,300, following a 2 percent decline in 2007, and a surplus of property for rent at rates in the upper brackets.<sup>47</sup>

In terms of affordability, data on rent paid together with household income gives some indication, and typically rental amounts between one quarter to one third of household income is thought by private landlords and social housing institutions to be affordable. Data from the IES indicates that the reality is that very poor households pay a much higher percentage of their income on rental than the average household, who allocates a far smaller proportion to their rental.<sup>48</sup>

The obvious result of this high demand for affordable accommodation combined with an acute lack of supply at the low-income level, is that subletting arrangements and overcrowding within rental units is extremely high. Landlords are charging ‘overcrowding penalties’ on top of rent, which can sometimes be over R300 per month per extra person in a unit.<sup>49</sup>

<sup>47</sup> TPN, *Rental Payment Monitor* (Quarter 4 2008)

<sup>48</sup> SHF, *Supply and Demand of Rental Accommodation in South Africa*, p. 19.

<sup>49</sup> First tenants focus group held in Johannesburg

## Payment of rental

According to the Tenant Profile Network (TPN), an indicator of the economic downturn is that the proportion of tenants who pay their rent on time has declined during the last four quarters, from 70 percent in quarter 1 of 2008 to 54 percent in quarter 4. In quarter 4, 21 percent did not pay their rent on time, 13 percent paid only part of the rent and 12 percent did not pay at all. In quarter 4 of 2008, the proportion that paid late was higher in the higher rental brackets. Amongst tenants in the R3,000 to R7,000 bracket, 61 percent paid in full and on time. This proportion was only 46 percent amongst renters in the R7,000 to R12,000 bracket, and only 37 percent in the R12,000+ category.<sup>50</sup>

Non-payment was approximately 12 percent across all brackets; however it ranged geographically from 8 percent in the Western Cape, to 10 percent in Gauteng and the Eastern Cape, and 18 percent in KwaZulu-Natal. The latest figures from quarter 1 of 2009 show that the number of residential property tenants not paying their rent has, however, increased to 19 percent from the previous quarter.<sup>51</sup> They show that the overall payment trend remains in a state of decline despite the percentage of tenants making full rental payments on time improving to 57 percent from 54 percent.

There was also an improvement with the percentage of tenants paying late falling to 14 percent from 21 percent and those making only a part payment falling to 10 percent from 13 percent. TPN suggested this could result from the heightened awareness of tenants of their credit profile and the implications of maintaining a positive credit record.

Despite there being a general increase in the number of tenants paying on time the overall picture remains negative due to a sharp increase in the number of non-paying tenants. As in the previous quarter, the province most affected by rental non-payment is KwaZulu-Natal at 21 percent, but levels of non-payment in Gauteng rose to 20 percent. In the Western Cape and Eastern Cape, rentals paid on time and in full increased from 61 to 65 percent respectively. TPN stated there was also a trend towards an increasing number of tenants reneging on their contractual obligations by not paying the final month's rent and demanding the deposit be used instead: "in most instances the tenant will have secured his (sic) next rented home with a deposit, which would actually have been the last month's rent for the outgoing property. This demonstrates a lack of savings, showing many tenants do not have the financial means to cover the last month's rent in addition to a new deposit in the same period."

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<sup>50</sup> TPN, *Rental Payment Monitor*, Quarter 4 2008

<sup>51</sup> TPN, *Rental Payment Monitor*, Quarter 1 2009

TNP further stated that payment trends show that rentals in the R3 000 to R7 000 a month price bracket were most likely to be paid on time. It said 62 percent of tenants in this category paid on time in the first quarter and it had the lowest percentage of tenants who did not pay - at 16 percent compared with 24 percent for the less than R3 000 price bracket, 26 percent for the R7 000 to R12 000 bracket and 37 percent for the R12 000+ bracket. This latter rental bracket had the lowest percentage of tenants paying on time at 42 percent, followed by the R3 000 and less bracket at 49 percent and the R7 000 to R12 000 bracket at 56 percent.

These trends reflect a general decline in creditworthiness amongst South Africa's 17,53 million credit-active consumers. In the last quarter of 2008 the number of people with an impaired credit record increased from 6,11 million in June 2007 to 7,1 million in September 2008 (i.e. from 36,4 percent of 16,7 million to 40,5 percent of 17,53 million).<sup>52</sup> According to the National Credit Regulator the number of consumers with a good credit record declined to 58.4 percent, which is a decrease of 3.9 percent year on year. The number of consumers applying for debt counselling also increased to over 65,000 individuals.<sup>53</sup>

A phenomenon currently being experienced in the United Kingdom, which could become a reality in South Africa, is that private sector tenants are at risk of being evicted because their landlords default on their mortgage payments and their properties are repossessed. Until recently there has been no protection to such tenants, and very little notice extended to them. This issue will be discussed further in section 6.9 under 'broader discussions'.<sup>54</sup>

## 6. PRESENTATION OF KEY FINDINGS

In the context of the above information on rental housing supply and demand in South Africa, it becomes clear that there is a dearth of affordable low-income rental housing at present in many urban areas in South Africa, particularly Johannesburg. In order to gain insight into the situation on the ground regarding the extent of actual, attempted and illegal evictions, as well as what solutions can be found to mitigate this crisis, we posed following questions in interviews and discussions held with key role players in the sector.

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<sup>52</sup> Ibid.

<sup>53</sup> As reported in the TPN, *Rental Payment Monitor* (Quarter 1 2009)

<sup>54</sup> "Repossessions 'hitting tenants', say charities", *The Guardian* (27 March 2009).

## **6.1. Was there an increase in evictions in private rental accommodation in the second half of 2008 on the basis of non-payment?**

It is well-known, and has been highlighted above, that obtaining hard evidence and statistics on evictions, and particularly private-led evictions, is extremely difficult. It is even more difficult to disaggregate numbers to ascertain which are due to non-payment. Thus, much of the answer to this question lies in anecdotal evidence provided by key players and stakeholders in the eviction process. Talking to municipalities across the country, the response was almost uniformly that they do not have statistics on private evictions, nor do they monitor the private sector, but are aware that illegal evictions are happening as people complain to their housing offices, which can only refer them to the local Rental Housing Tribunal. We were able to obtain some information regarding rental non-payment trends from the Tenants Profile Network (TPN), a credit bureau with private landlord clients nationwide, however national government agencies such as the National Credit Regulator, do not keep this information. The TPN stated that they might be able to disaggregate information and provide us with more specific information on eviction trends from their database, such as number of evictions, number of 'cancellations of lease', any increase in defaults, increase in numbers of letters of demand for payment issued, and collection rates in the six month period up to December 2008, which would assist greatly in analysing trends.

Evidence that we have obtained, however, relates only to legal evictions and does not include the many illegal evictions that continue to occur (and will be discussed further in the next section). The answer to the question posed in this section also differs across cities and towns, as well as across income and rental bands. Thus, before this question can be explored further, one important intervention that needs to occur is for better statistics and information to be gathered on the extent of evictions in South Africa. This would involve the keeping of records by High and Magistrate's Courts, Sheriffs, Rental Housing Tribunals (these would most often be cases that may lead to evictions later on, or are 'constructive evictions'), provincial departments of housing and the National Department of Housing on number of evictions and eviction trends in the country.

According to the Legal Resources Centre (LRC) in Johannesburg, they witnessed a large increase in urgent applications and spoliations in November and December 2008, which they attribute to people temporarily vacating their homes over the holiday period and landlords wanting to start the year afresh with vacant properties. Indeed, another Johannesburg lawyer working at CALS raised this as an issue, and stated that during the holiday period landlords take chances and opportunistically



illegally evict tenants in the hopes that it will go unnoticed. In Johannesburg, and particularly the inner city, there appear to be more eviction cases compared to other urban areas, and this is put down to the many high rise buildings and large-scale landlords operating in the area, as well as to the City's inner city regeneration programme, through which property developers are incentivised and encouraged to redevelop and upgrade buildings (which inevitable leads to higher rents which existing tenants can no longer afford). The Sheriff of Johannesburg East, amongst other informants, corroborated this and he stated that he had witnessed an increase in evictions from private rental accommodation on the last six months, particularly in the case of hijacked buildings in the inner city and surrounding suburbs.

In December 2008, inner city residents and members of the Johannesburg Inner-City Residents Association in Johannesburg marched on Luthuli House and handed over a memorandum of their grievances to the ANC demanding "that the ANC lobby for debt write-offs, as most debts are inherited or caused by administrators and managing agents...and must develop a comprehensive strategy to protect the elderly and vulnerable from evictions." The memorandum demanded that a task team be set up to look at evictions, and showed anger around private security companies who carry out evictions ('the Red Ants'), intimidation by police, high rentals, building hijackers, fake eviction court orders, and water and electricity cut-offs being experienced by the community. They also demanded that the ANC convene an inner-city indaba on housing-related issues before the end of January 2009.<sup>55</sup>

In Cape Town, the LRC found that evictions have actually decreased in the last ten years, though the general increase in rentals and demand in the city would suggest otherwise. They estimate that 50 percent of tenant/landlord issues get resolved without an eviction, and it is only when there is a conflict between them that the law gets involved. According to the Western Cape Anti-Eviction Campaign (AEC), which is active in resisting evictions in Cape Town, they are witnessing many evictions occurring, particularly in areas like Woodstock, due to landlords wanting to refurbish buildings for the 2010 FIFA World Cup. Tenants who have lived in a particular area for many years are served with eviction notices even though they are paying rent on time, and finding legal representation to resist evictions is a constant struggle.

The Durban-based Organisation for Civic Rights (OCR), which deals with tenant issues and evictions, stated that there had been a major increase in their workload, and that there definitely had been an increase in the last year. Likewise, the Northern Cape Rental Housing Tribunal stated that in the last

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<sup>55</sup> Wendy Nzama, "Joburg inner city residents march over evictions", *Sowetan* (19 November 2008).

six months of 2008 they witnessed a 13 percent increase in the number of eviction/attempted eviction cases. They did not put these solely down to non-payment of rent, however, and cited public disturbances, disagreements regarding maintenance and lack of proper communication between landlords and tenants as other reasons. The other factors are key to maintaining functioning the private rental sector, and it is the function of the Tribunal to deal with these promptly and effectively to ensure tenant-landlords relations are harmonious and do not sour to the point of attempted, constructive or actual eviction.

In Limpopo, it is evident that no research is conducted, or statistics kept, regarding evictions. The Rental Housing Tribunal in that province has only heard 18 cases to date. In the Free State provincial government officials, however, thought that there had been an increase in evictions in private rental accommodation in the 6 months to December 2008 on the basis of non-payment.

In terms of attempted evictions, in general, private sector landlords that we spoke to said that any increase in evictions had only been slight, and mainly in higher-income and rental levels. Rather, there had been an increase in the cancellation of leases. It would appear from the number of illegal evictions and 'constructive evictions' occurring, as stated by lawyers and officials, that going the eviction route is increasingly difficult and costly for property owners and landlords, particularly at the lower-end of the spectrum, and hence the need for other self-help remedies.

While protection against arbitrary eviction is available to all tenants, regardless of income; the reality is that the most protection is offered to low-income occupiers who stand to be rendered homeless from an eviction. Thus, in these situations, where eviction processes are expensive and tedious and have little guarantee of success, landlords and property owners will resort to other means to remove tenants/occupiers from properties.

Even though no precise records exist of the numbers of evictions, an attempt to quantify these in the Johannesburg inner city can be made on the basis of trends discussed with the TUHF. In the last six months, TUHF's perspective is that the number of evictions has decreased in the inner city of Johannesburg, owing to the cumbersome nature of implementing them.

According to TUHF, since 2000, approximately 40,000 low to moderate income housing units have been provided in Johannesburg in the Urban Development Zone, mainly by the private sector – a mix of rental and for sale, increasing the number from 80,000 to 120,000. The demand appears to be 'bottomless' even at the minimum cost-recovery rental of R650 per month per unit. Significantly, TUHF estimates that not more than 20 percent of residents of the inner city are non-South Africans, the demand being primarily from South African nationals. TUHF estimates that across the

Johannesburg urban development zone (UDZ), which stretches from Fordsburg in the west to Malvern in the east, there are between two and twelve incidents of eviction per annum, each involving 30 or more units. This would entail between 60 and 360 households. Assuming an average household size of four, the number of evictees in inner Johannesburg could be estimated at anything between 240 and 1440 households per annum. However, TUHF believes that evictions are “not a big issue”, and that credit control was strict, and working, in the inner city of Johannesburg, where rentals are in the R1,500 to R3,000 per month bracket, with no chance of mass evictions occurring from buildings in the inner city particularly before a national election.

Madulamoho Housing Association (MHA), a Social Housing Institution which manages a range of accommodation in the inner city of Johannesburg, including transitional, communal and self-contained, stated that they have not seen an increase in evictions. The organisation has, however, put in place early warning systems to prevent this by “getting closer to their tenants.” They have never been to court for an eviction, and have always found an alternative way of helping their tenants out of their debt situation. MHA is providing the cheapest rental accommodation in the inner city, so people are not leaving because they are aware there is nowhere else for them to go. If people have difficulty in paying their rent then they can move down the ‘accommodation ladder’ into alternative accommodation that they are able to provide. When they open a new scheme they advertise it internally first, so they can see who wants to move up the ladder, and this then frees up their cheaper accommodation for other people.

## **6.2. The extent of illegal eviction**

In South Africa, an eviction can only be legal with a court order. This is stipulated in section 26(3) of the Bill of Rights in the Constitution, which states that “no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”

However, illegal evictions, or what can be termed ‘constructive evictions,’ appear to be commonplace in South Africa and take various forms which include cancelling leases without giving valid reasons/adequate notice; changing locks (lockouts), barring access to windows/doors to prevent entry by tenants; removing tenants’ belongings to the street; cutting off water, electricity and other services; obtaining fraudulent court orders; bribing police officials/Sheriffs/private security companies to evict people unlawfully etc.

Most sources indicated that there has been an increase in illegal evictions recently, and according to the OCR and the LRC there has been an increase in illegal evictions, particularly in December 2008. A City of Cape Town housing official stated that while they keep no records of statistics regarding private evictions, they are certainly happening as they receive many people complaining to their Housing Estate Office and can only refer them to the Rental Housing Tribunal. In Johannesburg, City officials stated that illegal eviction of tenants living in 'informal' rental accommodation is increasing as a result of urban regeneration initiatives in the inner city, which has become an attractive investment destination with owners wanting to gain control of buildings previously left abandoned. Often, buildings are hijacked by those who collect rental from tenants and 'take over' buildings in the absence of an owner, or because of poor maintenance of the building. The Sheriff of Johannesburg East stated that "many, many illegal evictions are occurring", particularly those involving fraudulent court papers and corrupt police involvement in evictions.

Adrian Friedman, an advocate at the LRC in Johannesburg, stated that most owners do not want to go the eviction route after they have cancelled leases and people remain in properties. Out of frustration they will try their luck in removing people in an illegal manner, and according to Greg Vermaak, another lawyer working extensively in eviction cases in Johannesburg, 95 percent of the time their attempts to get people out by "getting their heavies in" will be successful. This is often the case because tenants are unaware of their rights and are in a 'weak' position, particularly if they are poor and vulnerable. This was corroborated by the Chairperson of the Gauteng Rental Housing Tribunal, who stated that cutting electricity and lockouts were a common occurrence and these forms of 'constructive eviction' worked most of the time to get non-paying tenants out of properties.

Another strategy used in the United Kingdom to undermine tenants could simply be described as 'lying'. Letting agents are known to advertise a long-term contract, knowing full well that the landlord has no such intentions.<sup>56</sup> The law can be supportive of landlord short-termism. For example, the first step in giving notice to quit is being used to undermine security. Some landlords start the process of ending the tenancy on the very day renters move in, encouraging (or compelling) them to sign an acknowledgment that a notice to quit has been served. Many younger or inexperienced renters fail to grasp the implications of what they have signed.

According to the CALS and the Inner City Resource Centre (ICRC), there has been an increase in self-help remedies, especially by landlords resorting to illegal disconnection of water and electricity supply, forced evictions and illegal lockouts. The prolonged period to evict an unruly tenant and the sheer magnitude of the legal costs associated with legal proceedings can be a compelling reason for

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<sup>56</sup> Penny Anderson, "The unsettling effect of landlords' short-termism", *The Guardian*, (8 April 2009).

a landlord to take the law into his own hands. According to the former Commissioner at the KwaZulu-Natal Rental Housing Tribunal, lock-outs or utility cut-offs are a problem, and the ever-trusted method of landlords getting people out without going through the legal channels, or having to get a court order for an eviction, is increasing.<sup>57</sup> Owners are deterred by recent cases before the Johannesburg High Court that require the City to be brought in to say what it can do to provide temporary alternative accommodation for those facing eviction and potential homelessness.

Many people spoke of an increase in the breaking or cancellation of leases. TPN stated that there has been an increase in lease cancellations rather than moves for eviction, as the eviction process is simply too expensive. Also, the TPN stated that letters of demand for payment on behalf of clients has increased by 100 percent.

There is a difference between cancelling and terminating a lease, the former meaning some breach of the contract on the part of the tenant or owner, and the latter referring to a legitimate right to end a lease as per the contract. Although sometimes it is the case that tenants leave voluntarily because of inability to afford rentals and service charges, it is also often the case that people simply have nowhere else to go and cannot afford the rental. According to POMA, many tenants are leaving by simply giving notice, as they can no longer afford the accommodation, however if a lease is terminated because of non-payment and a tenant still does not move, then the landlord will still take them to court to gain an eviction order for their removal. There is a lack of understanding on both sides around the difference between cancelling or terminating a lease, and the requirements around each.

In Johannesburg, a number of cases where tenants who complained about lack of maintenance and repairs, or who constituted some form of committee, were targeted and had their leases cancelled.<sup>58</sup> These type of evictions can be termed 'retaliatory evictions', and appear to be common as the issue arose during the focus group held at CALS.

In the Free State, illegal evictions are quite common given that tenants do not have recourse to the law due to reasons of affordability, as well as the fact that the Rental Housing Tribunal is inoperative in the Free State. In Limpopo, the newly established Tribunal is overwhelmed and lacks the capacity to take on the large number of cases. According to the Chairperson of the Western Cape Rental

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<sup>57</sup> Eviction must follow legal process [IOL, 29 July 2008] Sayed Iqbal Mohamed  
[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=594&art\\_id=vn20080729112804847C971998](http://www.iol.co.za/index.php?set_id=1&click_id=594&art_id=vn20080729112804847C971998)

<sup>58</sup> CALS mentioned that it has an eviction case called *Bankoch Investments v Rachel Malepo*, whereby tenants are challenging their eviction by a private owner as they say he cancelled their lease as a result of their formation of a tenant's association in response to his failure to maintain the property.

Housing Tribunal, they too lack capacity to deal with their number of cases, to publicise their service and particularly, to maintain a comprehensive database.

### **6.3. Factors influencing evictions**

There a range of factors that influence evictions from private rental accommodation. According to the OCR, factors influencing eviction in KwaZulu-Natal include conversion to sectional titles schemes for student accommodation or for commercial use; replacing tenants who complain about state of disrepair with new tenants; exorbitant rental increases; victimisation; or simply no reason at all. These findings were corroborated by a number of sources, and again, many of the differing factors leading to evictions depend on the income band of renters, location of rental housing stock and geographical area within South Africa.

In the Northern Cape, socio-economic conditions such as unemployment, retrenchments, increase in general rental fees and increases in rates and municipal services, were cited as some contributing factors. According to Chairperson of the Gauteng Rental Housing Tribunal, the destabilising factor in the rental market is undoubtedly the cost of services, particularly as many buildings in the inner city of Johannesburg are on the three-phase system and therefore pay more for services than one-phase properties in suburban areas. This system is fundamentally inequitable, as poorer members of society are paying far more for services than richer members who can actually afford to pay.

According to the provincial government in the Free State, other than eviction on the basis of non-payment there have been evictions on the basis of a varied issues, such as the landlord not appreciating the tenant complaining about lack of maintenance, or unreasonable rental hikes; or because of the landlord deciding that he no longer wants to lease out the rental premises but wants to sell instead. According to Grace Blouw, Manager of Existing Settlements in the Housing Directorate of the City of Cape Town, people get evicted either because they cannot afford to pay the escalating rental, the landlord receives a better offer and evicts the current tenants, or landlords and tenants do not get along.

Other factors contributing to evictions as a result of tenant default on payment were identified in an NHFC report which examined the reasons to the causes of defaults in the social housing sector of South Africa. The report found that the main reasons for irregular or non-payment of rental to social housing institutions was because tenants were unable to meet their financial obligations due to lack

of affordability, retrenchments, and the economic downturn. Rental amounts were also perceived to be too high, and the quality of the housing provided did not meet people's expectations.<sup>59</sup>

During the tenant focus group held in Johannesburg, one of the key points was the lack of education and knowledge around tenants' rights, and the following issues were raised repeatedly, which point to influencing factors (and some recommendations):

- When tenants form committees or mobilise around issues i.e. lack of maintenance of the property, they are targeted and have their leases summarily 'cancelled';
- Rentals are very high, increased by between 10 and 20 percent (per annum) and are unaffordable, requests for rent control to be re-introduced;
- Service charges for water and electricity often more than half the rental amount, and are often estimated at inflated rates thus making conservation/affordability difficult;
- Severe overcrowding in rental units in order to afford rental and service charges as well as to cover high deposits charged by landlords i.e. 8 people in a bachelor flat paying R300 extra per person per month 'overcrowding penalty';
- No relationship between tenant and owner of unit - only 3 people out of the 14 knew who the owner of their flat was, and were certain that the managing agent was legitimately representing the owner (tenants in Pretoria raised this point too, stating that owners are more accommodating than rental agents);
- Problems with managing agents e.g. no contact with them, out to make a profit, involved in illegal connections of services or non-payment of services to City entities, not accountable or registered with the Estate Agents Affairs Board (tenants in Pretoria also raised this issue, stating that rental agents do not hesitate to lock their doors if they are a day late with rent or have a shortfall of R50, and they are forced to pay R500 to reopen their doors);

Thus, during our research we came across a number of factors influencing eviction, the most important two we discuss in further detail below include the high cost of service charges and the issue of rent increases,

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<sup>59</sup> National Housing Finance Corporation (NHFC), "Understanding the reasons to the causes of defaults in the social housing sector of South Africa" (2003)

Also explored are four other trends we came across in the course of our research – use of credit checks on tenants, high deposits, outsourced property management companies and non-payment of services by tenants. These speak more to issues of prohibitive access to decent rental accommodation for tenants and are a result of private landlords exerting pressure to ensure they will not in future need to be evicted for non-payment, and that their properties turn a profit.

### **High cost of service charges**

In some areas, such as Johannesburg, the cost of service charges is making some accommodation unaffordable to tenants. Service costs now make up a large extra cost additional the rental amount – an extra R650 per unit on average. In Cape Town, according to the LRC, rentals in the inner city have also not increased as much as service costs. According to Growthpoint Properties, while building costs have peaked and are coming off, occupancy costs including rates and electricity are on the rise and not all are recoverable from occupants.<sup>60</sup> Madulamoho Housing Association (MHA) stated that utility charges are making it very difficult for their tenants to afford their accommodation, which is the cheapest formal rental in Johannesburg. They stated that they are losing R30,000 per month since the new tariff for utilities came in six months ago, as they are absorbing some of the price increases, without passing this on to tenants, for now.

According to Property Owners' and Managers Association (POMA) and the Johannesburg Inner City Business Coalition (JICBC), the City of Johannesburg has acted unfairly towards its poorest residents, as new tariffs and valuation roll have brought a host of problems for landlords and tenants. Blocks of flats, which are not sectional title properties and do not have individual meters are now being billed collectively, resulting in them being charged at the most expensive punitive tariffs. Property owners are thus forced to pass these higher costs on to their tenants, and POMA and the JICBC claim that this has resulted in increases of up to 54 percent. They further claim that they are losing many tenants because of these huge increases.<sup>61</sup> Brian Miller, Director of Ithemba Properties, and Chairperson of the Property Owners and Managers Association (POMA) has stated that tenants were finding the high cost of services unaffordable, leading them to either default on their rental, or to leave his company's buildings. Also, there is a problem with electricity tariffs being on three-phase meters, rather than being assessed as individual units, as rising block tariffs are charged for the property as a whole, rather than as individual units, and this means the building as a whole is charged more. If a landlord wants to install individual meters, then that costs are approximately R3,500 per meter, which is often unaffordable for owners.

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<sup>60</sup> "Growthpoint boosts income", *Business Day* (19 February 2009).

<sup>61</sup> "City of Joburg pulled 'con job' on residents, *The Star* (15 January 2009).



While the seemingly altruistic attitudes of private landlords towards their poor tenants may appear admirable, according to Graeme Götz of the Central Strategy Unit in the Office of the Executive Mayor (City of Johannesburg), some property owners, including members of POMA, are still billing tenants at the higher rate despite interim agreements with the City regarding reductions in utility costs. This is cause for concern and possibly points to larger issues around the viability of a services subsidy system (like Johannesburg's Expanded Social Package) that relies on owners and landlords to pass on reduced costs to poor tenants. Subsidised service costs intended for poor and low-income individuals and households must reach *them*, and any interference on the part of the City, its entities or private landlords is a major problem for national social development and poverty alleviation goals.

According to TUHF, average service costs in the inner city are approximately R 500 to R800 per month per rental unit *on top of* the rent in some parts of the City of Johannesburg, with the cost of electricity being approximately R370 per month (supplied by either City Power or Eskom), refuse collection (Pikitup) at R80 to R100, and sewerage at approximately R 170. According the Inner City Programme Manager, these charges are likely to increase even more in the current year, especially for Pikitup services.

According to a recent report by Sagitta Financial Consulting, which modelled the affordability of accommodation for tenants in the inner city of Johannesburg, from the lowest income band (R667 to R2000 per unit per month) up to an average middle market tier income band of R8333 per month (equating to rentals of R 2500 per month), concessions on rates and basic services would affect the cost of services paid by the tenants.<sup>62</sup> This, obviously, is on the assumption that the concession is passed on to tenants. The report stated that reductions in service costs would make accommodation more affordable, and thus sustainable. It is also found that average monthly costs to tenants could be reduced from R 518 as follows:

- by R 17 under a permanent rates rebate;
- by R 49 if they were directly eligible for the first 6kl of water being free;
- by R 501.60 if all received permanent free basic service; and
- by 100 percent, to nil, if they were eligible for a rates rebate and free basic services permanently.

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<sup>62</sup> Sagitta Financial Consulting, "Modelling exercise: Affordable inner city residential accommodation for the poor: Financial Model Report" for Urban Landmark (August 2008), as yet unpublished.

The report recommended that the City provide permanent rates rebates and free basic services to projects that benefit the poor. The City of Johannesburg's Expanded Social Package initiative (discussed further below) goes some way towards addressing these issues, by extending the definition of indigent to include tenants, however there are still questions around those who just fall outside of the City's poverty bracket and would greatly benefit from additional subsidies in order to break out of the 'poverty trap'.

According to a new study by SHF on municipal charges and the impact on affordability of social housing rentals, municipal rates and service charges have a major impact on the affordability of accommodation, and a tenants' ability to pay.<sup>63</sup> Reductions in any or all of these as input costs, or provision of government grants to cover the payments, would contribute to reducing levels of rentals or the ability of low income earners to afford. Whilst the study only looks at the impact of municipal rates, service and utility costs on social housing rentals, it explores, within the existing or feasible alternative policy and regulatory environment, the possibility of reducing these costs or providing additional grant financing to them. This would help to reduce the impact of the cost of municipal rates and utilities on social housing rental schemes, and tenants' costs. The report states that other landlords in cities could also use municipal charge reductions and appropriate streaming of indigency benefits to assist keep down rental levels and /or improving affordability.

### **Rent increases**

As has been discussed previously, the Rent Control Act gave more guidelines for rent setting, such as a formula for rent determination, and there is a view that landlords and tenants have less protection now than during apartheid. At the time of the implementation of the 1999 Rental Housing Act, COSATU warned that the elimination of rent control might lead to escalation of rents, which would *de facto* contradict the bill's objective to provide affordable rental housing. COSATU felt that the bill lacked a regulatory framework to ensure affordable rentals, and their main recommendation was that there should be a range of measures to kick-start the construction of mass rental housing, preferably by the public sector. The Rental Housing Act, 1999, which repealed the Rent Control Act of 1976, provided for a three year phasing out of protection of tenants in rent-controlled properties including a provision that rentals could not increase by more than 10 percent per annum for three years.<sup>64</sup> All rent control ended on the 1st August 2003, however certain sections relating to the rent control and limitation of eviction retained. In particular, section 28 of the Rent Control Act which

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<sup>63</sup> Social Housing Foundation, "Municipal Charges and the Impact on Affordability of Social Housing Rentals", (2009).

<sup>64</sup> For more background on this see section 4.2 above, on the repeal of the Rent Control, Act of 1976.

dealt with eviction was retained for a period of three years. During this period the Minister was required to monitor and then decide whether to retain rent control for a further period, to alternatively put other measures in place, or to allow it to lapse in its entirety. No action was taken by the Minister of Housing, and according to Sayed Iqbal Mohamed, director of the Durban-based Organisation of Civic Rights (OCR), there is a question as to whether the decision of the Minister to allow the lapsing of the protection provided for in section 20 of the Rental Housing Act, is consistent with the state's obligations under sections 7(2), 25 and 26 of the Constitution.<sup>65</sup> The fact that the Minister of Housing never produced a report on the implications of the repealed Rent Control Act on poor, elderly and vulnerable tenants, has led to a situation where landlords are free to charge high rentals and in the absence of low-income subsidised rental housing for poor households in well-located urban areas, they are forced to pay or be evicted. Several sources interviewed, including the one cited above, Steve Kahanowitz of the LRC in Cape Town, Shereza Sibanda of the Inner City Resource Centre (ICRC) in Johannesburg and focus group tenants from Johannesburg, all expressed the desire to see rent control brought back in some form, and a Rent Control Board to oversee this.

The Rental Housing Act of 1999 established Rental Housing Tribunals to mediate landlord and tenant relations. Each province is tasked with the responsibility of establishing a Rental Housing Tribunal to resolve disputes. As of March 2007 the case loads ranged from 92 to 150 per month in KwaZulu-Natal, 62 to 120 in Gauteng, less than 60 in North West, Mpumalanga, Western Cape and Northern Cape. One practical issue regarding the power of Tribunals is that decisions taken and rulings handed down are often not enforced, unless the person goes to court as well. Therefore despite the fact that the Tribunals were ascribed the on-paper power of a magistrate's court as per the 2007 Rental Housing Amendment Act, which allowed them to grant spoliation orders, interdicts and attachment orders, when it comes to exploitative rentals and high service charges the Tribunals simply do not have the teeth or enforcement powers to deal with them. A call for the re-instatement of the National Rent Tribunal Task Team was made, and perhaps this body could take on reformulating and rethinking how best to tackle these issues.

There is a need for some sort of rent control or guidance to Rental Housing Tribunals on rent setting, as it is discriminatory and counter-productive to simply take market rentals as the benchmark. At present the Tribunals only deal with unfair practices such as so-called 'exploitative rentals', however according to the Chairperson of the Gauteng Rental Housing Tribunal, they are allowed to determine rentals. Section 13(5) states that in the case of rentals, the ruling by the Tribunal "may include a determination regarding the amount of rental payable by the tenant, but such determination must

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<sup>65</sup> Seeham Saamaj, Assignment for LLM degree, University of the Western Cape (2003).

be made in a manner that is just and equitable to both tenant and landlord and takes cognisance of (a) prevailing economic conditions of supply and demand; (b) the need for a realistic return on investment for investors in rental housing; and (c) incentives, mechanisms, norms and standards and other measures introduced by the Minister in terms of the policy framework on rental housing referred to in section 2(3). At present, Tribunals have no real power or political will to challenge exploitative and inflated rentals. According to the Chairperson of the Gauteng Rental Housing Tribunal, the question is whether Johannesburg wants to follow social housing models and provide subsidised rental accommodation or whether it wants to encourage urban regeneration and incentivise landlords and property developers to provide low-income accommodation. His view is that the City Council has abdicated what could be a massive role in providing low-income affordable housing, however also that the market needs to be incentivised to provide.

In KwaZulu-Natal, the Rental Housing Tribunal has pegged their rents at a very high level, apparently the highest in the country. According to the OCR, more people are displaced because of rent increases set by the Tribunal, as there is nothing defining an 'unfair practice' in terms of rental amount charged in the Unfair Practice Regulations. In the Western Cape, the Tribunal has guidelines in place that take into account market forces and landlord returns, not the circumstances of the tenant. However, there possibly needs to be informed national policy in place regarding the manner that is just and equitable to both tenant and landlord and takes cognisance of (a) prevailing economic conditions of supply and demand; (b) the need for a realistic return on investment for investors in rental housing; and (c) incentives, mechanisms, norms and standards and other measures introduced by the Minister in terms of the policy framework on rental housing.

**Case Study: Tenants not making use of the Rental Housing Tribunal<sup>66</sup>**

A family of eleven, including children and a 96 year old grandmother, renting a house in Brixton, Johannesburg were informed by their landlord at the start of 2009 that their rent was to go up from R 3000 a month to R 4100 a month. The breadwinners in the household were the mother, who worked as a hawker in the Johannesburg CBD, and the father who worked as a security guard. They managed to pay the increase for the first month, however then asked their neighbour for advice and a loan. They were given the address and advised to go to the Gauteng Rental Housing Tribunal and the process was explained to the mother. The Tribunal's office was close to where the woman worked; however she was unable to go because she could not leave her stand during working hours for fear of losing business. The family also did not trust 'government', and feared that their landlord

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<sup>66</sup> From an anonymous interview with the family's neighbour.

would retaliate if he found out that they were challenging the rent increase. They are now planning to move out and build a shack in a nearby informal settlement because they can no longer afford the accommodation

TUHF felt that there had been substantial increases in rentals over the past five years, but that they were currently quite stable. The increases occurred as properties were redeveloped in the inner city and re-let at higher rents in a wave of gentrification, and due to the economic upturn up till the end of 2008. Ithemba Properties reported that they were now holding their rentals stable, and they did not go for an increase this year, as they felt that their market (rentals of R 2000 a month) could not afford an increase, especially with the extra high cost of service charges.

In many European countries, the private rental sector has been declining, and in describing the decline of the private rental sector, it is often suggested that a causal relationship exists between the decrease in private renting and rent control. The assumption is that the stricter the form of rent control, the greater the decrease in incentives for private developers and private renting levels. Or, conversely, that with fewer rent controls there are more opportunities for the private rental sector. At the same time, however, an unregulated rental market may result in insecurity for tenants. A recent comparative study conducted in six European countries, concluded that the balance achieved between landlords and tenants as a result of rent regulation may not be as clear-cut as it is often presented.<sup>67</sup> There is also the possibility of collusion between landlords and estate agents. To prevent this in other countries there are regulations relating to landlords, such as licensing schemes (see below).

In Kenya there is a Rent Restriction Act (Chapter 296 of 1982) that applies to rents up to K.SHS 2500 ( a low income level). There is pressure for this level to be raised to extend to the lower end of the self-contained market. Rather than rigid rent control, the Act provides for a tribunal that has discretionary powers in determining rents on a case-by-case basis. However there have been calls for it the tribunal to be decentralised to municipal level to give them jurisdiction over landlord-tenant arbitration. They then might have a chance of introducing effective rent restriction and arbitration.<sup>68</sup>

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<sup>67</sup> Marietta Haffner, Marja Elsinga and Joris Hoekstra, "Rent Regulation: The Balance between Private Landlords and Tenants in Six European Countries", *European Journal of Housing Policy*, 8, 2, 2008.

<sup>68</sup> Marie Huchzermeyer, "Slum upgrading in Nairobi within the housing and basic services market: A Housing Rights Concern", *Journal of Asian and African Studies*, 43, 19, 2008.

It is understandable that an organisation like the South African Property Owners Association (SAPOA) and property owners/landlords believe that market rentals should be permitted to move in tandem with the market and that anything different would mean placing a 'rent control' type of arrangement on the market and causing a 'chilling effect'. They believe the market mechanism should drive the South African property market and that legislated market distortions should be minimised. Madulamoho Housing Association (MHA) felt that if there were to be any subsidisation of rentals, then it should go directly by means of a coupon to the tenant, rather than to the SHI or landlord, however there is the question of when rent subsidies end and what happens to tenants after the say six months they are given. There is the need for a long-term, sustainable package of benefits to poor and low-income households to ensure they can afford decent rental accommodation and have access to adequate basic services.

## **Other trends**

The following trends also emerged from our research, which make renting difficult for tenants who do not have good credit records given the cautiousness of landlords vetting potential tenants so as not to have to embark on an eviction process down the line.

### ***Credit checks***

Landlords are tightening up on whom they rent to by increasing credit checks, and according to Gerhard Kotzé, CEO of ERA property group, landlords are now additionally cautious in their acceptance of tenants. They check the credit track record of tenants as good business practice (using the services of TPN etc), however this does also have the potential to make landlords overly selective in their tenants, possibly to their own detriment.<sup>69</sup> Indeed, also to the detriment of tenants who may not have a worthy credit track record. According to Kotzé, landlords are wary of tenants being able to resist eviction without expensive court action:

normal credit checks on tenants are of course advisable under any circumstances, but in the current climate of credit stringency, there could arguably be unnecessary blacklisting, although I am sure the credit bureaux would dispute that...Part of the answer lies in broadening the scope of the credit checks beyond the more broadly focused credit bureaux, to include specialised tenant-checking organisations with information such as past history in rented accommodation, default information from previous leases and judgments as well as cross references with other credit data

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<sup>69</sup> "Landlords advised to give tenants credit when due", *Property 24* (28 November 2008)

sources. At the end of the day gut feel about a particular potential tenant may not be misplaced either.<sup>70</sup>

This sentiment is echoed by Bill Rawson, CEO of the Rawson Property Group, who has stated that the main lessons to be learned by estate agents from the current conditions is that the initial vetting and selection process of tenants now has to be even more thorough and it will pay landlords to use those agents with experience in these matters.<sup>71</sup>

### **Deposits**

Another issue is that tenants are often expected to pay a deposit equal to two or three months' rental upfront. Previously, the deposit was often simply one month's rental and many landlords would accept deferred payment of it. Later, when the tenant decides to move on, the deposit is often not paid back until he/she has completely vacated the premises, the reason for this being, landlords claim, that they cannot properly assess damages until the premises are empty. This, in turn, means that when asked to pay a new deposit for their follow-up premises they frequently do not have the money. The net result, Rawson has stated, is that tenants are now far less mobile and far more likely to extend their leases than they were before. Diluculo Investments, the private rental arm of ABSA bank, charge rentals in the R1,650 to R3,500 bracket, are currently finding that tenants are having difficulty paying high deposits. Whereas they used to charge two months deposit, they have found people can no longer afford this, so they usually now charge a one month deposit plus the key deposit (of around R 300).<sup>72</sup>

When COSATU submitted their comments on the Rental Housing Bill in 1999, they felt that there was a need to regulate the level of deposits that can be charged to tenants to avoid the setting of excessive deposits that ultimately prohibit access. They suggested that the Minister should set ceilings, which at least impose an upper limit of three months. That would avoid unfair deposit requirements being imposed, which ultimately prohibit access to rental housing. COSATU were also concerned that not all landlords have the capacity to invest deposits as contemplated in the Act. Thus, while we have not canvassed landlords about the level (and use) of deposits required as part of this study, in the light of the comments above, we would argue that the level of deposits may be relevant in enabling tenants to access, and then sustain, their accommodation.

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<sup>70</sup> Ibid.

<sup>71</sup> "Landlords tenants must now beware", *Property 24* (30 October 2008)

<sup>72</sup> Diluculo are finding that tenants are downgrading from three to two bedroom units, and moving from other landlords' properties into their buildings in order to optimise cash flow.

### ***Outsourcing property management***

According to Malcolm Broll, Managing Director of Broll Property Management, owners need to take tighter control on core business and are increasingly taking on the traditional role of a true asset manager and not that of a senior property manager as the current economy has brought a shift in the market. For asset management to make sense and decisions to be effective, owners need the support of solid property administration and the 'back office' administration function takes on a highlighted role with increased dependence on its efficiency. According to Broll, "many property owners wish to control specific strategic aspects of their business without having to attend to the daily administrative functions of property management."<sup>73</sup> This has resulted in a new generation of outsourced property management. The need for expert management was also echoed in the NHFC report on the reasons for defaults in social housing institutions.<sup>74</sup>

### ***Non-payment of services by tenants***

The Banking Council identified non-payment of services by tenants as a problem that is potentially deterring landlords from letting out their properties. In a 2004 Constitutional Court judgment in *Mkontwana v Nelson Mandela Metropolitan Municipality*, the Court ruled that landlords are responsible for the debt of their tenants if municipal services are not paid for, which means that property owners are not able to sell their properties until the arrears owed by tenants - and which municipalities had allowed to accumulate - have been settled.<sup>75</sup> The Constitutional Court also ruled on the need for municipalities to provide owners of properties with copies of electricity and water accounts sent to tenants. Under the Municipal Systems Act, municipalities are afforded wide-ranging powers, including the right - when unpaid debt is owed on municipal charges- to refuse to issue clearance certificates needed by the Deeds Office for the registration of property transfers.

Municipalities reacted favourably, as they are now able to collect outstanding revenue from property owners. However, the reaction of landlords and property owners to the judgment was mixed, with many expressing outrage over the effect of the judgment in the context of ineffective debt collection and municipalities' failure to address the accumulation of services arrears by disconnecting properties. According to the South African Property Owners' Association (SAPOA), the net effect of the judgement would be that landlords would have to be far more strict on who they let their properties to – screening tenants more carefully and demanding higher deposits to cover

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<sup>73</sup> "Focus on core business", *Property 24* (2 October.2008)

<sup>74</sup> NHFC, "Understanding the reasons to the causes of defaults in the social housing sector of South Africa" (2003)

<sup>75</sup> *Mkontwana v Nelson Mandela Metropolitan Municipality and Another* CCT 57/03



water and electricity - and would have to control their accounts more stringently every month. SAPOA also stated that the ruling would definitely affect investment in property, especially by overseas investors, who already believed there was too much complex legislation regarding property in South Africa.<sup>76</sup>

The Department of Provincial and Local Government (DPLG) recognised that in terms of current legislation, one of the problem areas identified is that municipalities require advance payments before issuing rates clearance certificates and that this places a heavy financial burden on consumers. Thus, the Local Government Laws Amendment Act No 19 of 2008 reduced the period for the issue of a rates clearance certificate from 120 days to 60 days, and in light of the *Mkontwana* judgement, amended the Act so that municipalities are to provide owners of properties with copies of electricity and water accounts sent to tenants.

#### **6.4. Subsequent use of stock where people have been evicted and whether gentrification has occurred**

Gentrification is a phenomena well recognised in large cities around the world, whereby people of disadvantaged backgrounds who live in or near to city centres are dispossessed/evicted from their “generational” homes due to rent hikes, property speculation and property value increases. In South African cities, with regard to what happens to the stock after eviction has taken place, there appears to be some gentrification occurring, particularly in inner city areas. According to the OCR, in Durban rental stock where people have been evicted from often ends up as student accommodation, commercial use and gentrification in some instances. In the Free State however, no gentrification was reported, instead rental premises are simply released in the same state as they were before eviction.

In Johannesburg, there were mixed responses about whether or not gentrification is occurring, or indeed if gentrification has already occurred. According to the LRC, the type of cases it defends do not exhibit signs of gentrification, as eviction cases are brought without a view to long term plans for buildings or long-term goals for areas. Court papers are generally badly drafted and owners do not bring up ‘development’ as a reason, which one would expect in the case of gentrification. Generally,

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<sup>76</sup> Anna Cox, “Landlords to ask for bigger deposits”, *The Star* (8 October 2004).

it is the case that owners get fed up with current occupiers' failure to pay and want to get rid of them and get in new tenants. According to Greg Vermaak, a Johannesburg attorney, gentrification is occurring in Johannesburg, particularly in the inner city suburbs, and this as a positive process provided that the poor have somewhere to go and are accommodated by the state, not necessarily in the city centre as they have been living previously.

In the City of Johannesburg, inner city urban regeneration policies are a driving factor. There is a perception that they are incentivising people to sell their properties (often to City entities), or renovating them in order to charge higher rentals. The lure of the 2010 World Cup might also be a reason for evictions, as property owners see grander plans for their properties and want to cash in on opportunities provided through such initiatives as the urban development zone (UDZ) tax incentive scheme. The view from TUHF and the Sheriff of Johannesburg East is that in the inner city of Johannesburg there are reduced evictions precisely *because* the inner city has already been gentrified, however other informants found this statement problematic and stated that certainly there were areas in an accelerated process of gentrification in the inner city of Johannesburg. Another recurring theme is that inner city regeneration would not have the negative downside it currently has if there were not such a chronic undersupply of affordable and subsidised housing available in the City, close to social and economic opportunities.

According to Seeham Saamai, who has been actively involved in community lobbying and advocacy surrounding issues of rent increases and gentrification in Cape Town since 1999, families are being evicted in such places as Bo-Kaap, Woodstock and Salt River when landlords feel they can make money by selling their properties, or raising the rentals.<sup>77</sup> To address this she formed a community-lobbying group in 1999 called the Anti-Gentrification Forum (AGF), which engages with various sectors of society around issues. A key factor in gentrification in the Western Cape, according to Saamai, was the repeal of rent control in 2003, and as the head of the Western Cape Rental Housing Tribunal stated in 2003, the area had the most rent controlled properties and they anticipated a large number of complaints from tenants, many of them old people in their old age, whose rents of maybe R200 a month would increase to market-related amounts possibly as high as R3000 a month.<sup>78</sup> It is evident from social movements such as the Western Cape Anti-Eviction Campaign (AEC), that evictions, both legal and illegal, due to landlords wanting to refurbish buildings are commonplace. Thus, gentrification is occurring in certain areas in Cape Town, and the AEC blames evictions on the lure of the 2010 FIFA World Cup, and gentrification generally.

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<sup>77</sup> Seeham Saamai, Assignment for LLM degree, University of the Western Cape (2003).

<sup>78</sup> Ibid.

The former Minister of Housing, Lindiwe Sisulu, while campaigning in Cape town for the national elections in 2009 was met with complaints from the community who were being thrown out of rented flats because landlords sold properties to new developers for the construction of offices and other non residential businesses.<sup>79</sup> A community member told the Minister that “many people will be in the street if evictions are not halted...no eviction without low cost housing”. Sisulu then acknowledged that the legislation aimed at protecting tenants was not working for the community, and proposed the establishment of a community organisation to partner with the National Department of Housing to challenge landlords who acted unscrupulously.

## **6.5. Housing alternatives that evicted people have accessed**

Despite the fact that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 states that alternative accommodation should be provided for people evicted from their accommodation in certain circumstances, in the case of most evictions no viable alternatives are provided, and often in eviction cases there is a lack of consideration around individual circumstances, and the reality of finding affordable and available accommodation near to livelihood opportunities and social networks.<sup>80</sup>

It is difficult to assess exactly what alternative housing options people access after being evicted. A former LRC lawyer working on eviction cases in Johannesburg stated that in a recent case of his, involving three people who were evicted, one person went to live illegally in domestic quarters with their spouse, another was rendered homeless and lived in a park, and another went to find alternative rental accommodation elsewhere outside the city. However, he stated that there is very little information available other than the odd anecdotal evidence. According to an official from the Northern Cape Rental Housing Tribunal, people have various means to deal with evictions, some which include moving in with family members in back rooms and garden cottages or erecting shacks and other informal structures to live in, while some are able to find other suitable accommodation such as flats, houses and backrooms to rent in surrounding areas.

Often the result of an eviction means that households have to move into informal dwellings, often far from jobs, schools and livelihood opportunities, and where transport costs become a major

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<sup>79</sup> “Sisulu finds no love in Woodstock”. *Sunday Times*, (12 April 2009).

<sup>80</sup> COHRE, “Any Room for the Poor? Forced Evictions in Johannesburg, South Africa” (8 March 2005).

problem. Furthermore, they are often forced to move into already overcrowded accommodation with family or friends, which adds more to overcrowding and leads to social ills.

When the OCR in KwaZulu-Natal followed up with enquiries from shelters in Durban, they established that these are generally occupied by street vendors and car guards, etc and did not have an intake of evictees from formal private sector accommodation.

In a 2008 social survey conducted with over 300 residents relocated to buildings in the inner city of Johannesburg the question was asked about their awareness of government support for housing. Approximately 37 percent said they were aware of government support for housing, and 75 percent of these stated that this meant government will provide an RDP house. About 19 percent said government will build or give them a house. The conclusion drawn from this was that “there is a major perception that government support where housing is concerned involves the provision of RDP houses.” Thus, there is almost no knowledge on the part of people as to what government housing interventions are available, or what recourse they have in the event of an eviction to access alternative accommodation. Furthermore, the study concluded that “there is a clear need for safe, low-cost, permanent accommodation close or near to the city.”<sup>81</sup>

From our interactions with officials in different municipalities, it was apparent that most were of the view that their municipality had no role in private evictions, nor did they have any policy which deals with evictions. Their view was is that if people are evicted from their accommodation then they would have to go and live with relatives, or would end up becoming homeless. In City of Cape Town, there was some provision for this as people could access a structure in a temporary relocation area (TRA), also known as a transit camp in Durban. However, these temporary relocation areas are generally for shack-dwellers relocated because of housing developments, or those affected by floods and fires. These areas are not designated for those rendered homeless by eviction from private rental accommodation. Officials in provincial government in the Western Cape thought that if there was more low-cost housing developments occurring then that might relieve the problem and that the City of Cape Town should release land for this. One suggestion was that if the City sold its land, it could then use the funds generated for social development purposes, including temporary housing assistance.

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<sup>81</sup> Social Housing Foundation, “Development of a Socioeconomic Survey Tool and Implementation of a Survey at the MBV and Old Perm Buildings Phase II: prepared by Community Agency for Social Enquiry (CASE (December 2008).

## 6.6. Costs of evictions

The costs of evicting people depend on the size and scope of the eviction concerned, however are extremely high, and can take on average between three and six months depending if they are opposed or not. An eviction costs approximately R10 000 in the Magistrate's Court and upwards of R25 000 in the High Court, however it appears to be more difficult to go to the former so the High Court has become the court of choice to obtain an eviction order. For example, Diluculo Investments uses the High Court for evictions, paying between R40 000 and R60 000 for one eviction. Apart from legal costs involving in lawyers' fees etc., there is also the cost of employing a private security company like Wozani Security ('the Red Ants') to assist in large-scale evictions as well as the Sheriff's fee to oversee the eviction. In large-scale evictions there is also the need for the South African Police Services (SAPS) to be present.

Obviously, give the high legal fees and extended timelines involved in obtaining an eviction order, landlords and owners turn to other methods to get tenants out of their properties. According to the Sheriff of Johannesburg East, he has encountered situations where landlords have paid SAPS officials over R14 000 to carry out an illegal eviction. Also, corrupt Clerk of Courts and Registrars are often bribed to issue fraudulent eviction orders, and can be paid over R5000 to do this.

On the other side, it is also extremely expensive for those facing eviction to obtain legal representation and afford to fight and eviction order. There was a view from the Free State that costs do not become a consideration as tenants are basically bullied into vacating the premises and, for lack of resources, the tenants generally move out. Lawyers' fees are extremely expensive, and even if you do qualify for legal aid, it is often difficult to find adequate representation in what are often complex cases. There is anecdotal evidence that legal aid lawyers often will advise their clients to give up and are unwilling to fight eviction cases where they see the law potentially in favour of the owner/landlord. Public interest litigation organisations like the LRC and CALS are simply unable to take all the cases brought to them for lack of capacity. Organisations like the Inner City Resource Centre (ICRC) in Johannesburg, who provide para-legal assistance to tenants, are inundated with tenants facing eviction or having services cut-off by landlords. If these people are lucky enough to know their rights and find legal representation, they stand a good chance of opposing an eviction, however for most this is not the case. Unfortunately, there is no way to quantify the costs of an eviction for *bona fide* evictees.

Speaking to the Chairperson of the Gauteng Rental Housing Tribunal, as well as property owners and landlords, it is clear that there is a desire to transform the Tribunal into a 'one-stop shop' which has the jurisdiction of a court and thus is able to grant eviction orders. Landlords bemoan the time and money involved in going to court to obtain an eviction order, and are desperate for an alternative. However, according to the Chairperson it is also true that landlords are in quite a beneficial position as they are able to come to a body like the Tribunal for free to resolve what is essentially a commercial dispute, whereas other companies have to pay for this type of mediation and resolution. Those involved in tenants rights and pro-tenant litigation are extremely wary of allowing the Tribunal the power to evict, regardless of the fact that they may be given the authority as a court. According to the OCR, "unless Landlord-Tenant Courts are established with the jurisdiction of a High Court, eviction powers should not be given to Tribunals."

Evictions should be a last resort, and granting them too easily would be in direct contradiction to the Constitution, which explicitly includes section 26(3), inferring that security of tenure is a fundamental aspect of functioning societies and should be preserved at all costs.

### **6.7. Are there any emergency shelters that have been set up under the Emergency Housing Programme? If so are they being used, who is accessing them, and if not, why not.**

As part of the research we contacted several municipalities to ascertain whether they had set up any emergency shelters, whether they were being used, and by whom, and if not why not. The results we have obtained show that to date the Emergency Housing Programme, as discussed earlier in section 4.4, is hardly being used, apart from in the City of Cape Town. The emergency shelter in Johannesburg, though initially funded by the City as part of a larger housing development, is run and funded by a non-governmental organisation (NGO) and not the City.

**Responses received from the different municipalities are as follows:**

Municipality	Emergency shelter?	Use of the Emergency Housing Programme (EHP)
Ekurhuleni:	Not yet	<p>So far they have only identified land for this purpose. Still need to apply for funding. Once they have implemented a shelter under the policy then they will be able to see whether there are any gaps or not.</p> <p>They only time they have used the policy is to help remove people from an informal settlement (see above)</p>
City of Tshwane	No	<p>They have not yet developed their own policy under the EHP as a municipality, and refer to the national policy only.</p> <p>Considering setting up a facility by using shipping containers for decanting people. They admit that they have a desperate need for decanting and temporary accommodation to cover emergency situations, and currently plan to temporarily house people being 'decanted'/evicted from Schubart and Kruger Park in the shipping containers. Their intention is to locate the containers at a site in Mamelodi for use as a permanent decanting/ emergency facility.</p>
City of Johannesburg		<p>Currently they have no policy which deals with evictions and Emergency Housing Policy, and the housing department states that the Council has no role in private eviction.</p> <p>The City has a responsibility to provide transitional housing, however it is very expensive and there is never enough – they have 1500 beds and at present all facilities are full. JOSHCO, the City's municipal housing entity is rolling out 2000-3000 beds over the next 3 years to cater for decanting requirements and homeless people – not necessarily for emergencies.</p> <p>The City has allocated R5 million in the 2009/10 financial year for the homeless in general from their Inner City Fund, that will provide 2000 bedspaces on Hospital Hill, via Community Development. (This will cater for homeless people off the street living in bad conditions)*.</p> <p>Madulamoho Housing Association (MHA) operates an emergency shelter not funded by the City</p>
City of Cape Town	Yes	<p>They have designated Temporary Relocation Areas (TRAs) under the policy, such as in Delft, but these are mainly full. They seem to be using these to house people who have become homeless as a result of eviction, mainly from informal settlements where development is occurring.</p> <p>There are also temporary shelters for adults (See also Western</p>

		Cape below) According to DAG, the emergency housing arrangements are inadequate and certainly lacking in numbers
eThekwini	Yes	There is only one ordinary shelter in the Point for 100 people, but the EHP is not used. The emergency shelters that have been set up under the Emergency Housing Policy are not being used.
Free State	Yes	No emergency shelters have been set up in the Province except in cases of emergencies occasioned by natural disasters and these too are temporary shelters.

\*This is not necessarily as part of the City's Emergency Housing policy.

A list of municipalities that have accessed funds under the Emergency Housing Programme was supplied to us by national government, and is attached at Annexure 3. Only six out of the nine provinces claimed funds from the National Department of Housing for emergencies in municipalities in their areas: The Eastern Cape, KwaZulu-Natal, Mpumalanga, Northern Cape, North West, and the Western Cape. This is not surprising, as most monies appear to have been disbursed for disasters and floods, given the more extreme weather conditions in those provinces and their more rural nature. Most municipalities were in the Western Cape.

The main urban areas do not appear to be claiming for assistance under the Emergency Housing Programme:

### **The City of Johannesburg**

The City of Johannesburg's housing department states that currently they do not have a policy which deals with evictions, nor with the Emergency Housing Programme.

Madulamoho Housing Association (MHA) provides an emergency shelter in their facility at Europa House. It was the only such facility in the City and provides shelter for 72 hours only. Through their partner agency, MES, their social workers intervene and provide any support required, such as medical, food clothing blankets, care for the children etc. They then ascertain if people can be rehoused in MHA accommodation. The City provides no assistance for the cost of running the facility, nor does the Department Social Development, nationally, nor at a provincial level.



Under the City's Inner City Charter, MDA has an Inner City Housing Plan under which they have so far provided 1257 units of emergency accommodation and decant facilities, although these are not necessarily under the National Emergency Housing policy. One new intervention mentioned, was the pressing need to look at housing Zimbabwean refugees, however this was simply stated by a City official as being a matter of urgency that they also have to consider.

Also mentioned, was that if emergency or transitional shelters were established for those evicted, they would be taken up by City-led eviction processes, however if private sector property owners would be prepared to pay in order to do this, the City could hand over this responsibility to a third party like i.e. Madulamoho or other housing providers, who could use rent subsidies (of perhaps R1500 per household per month) to provide accommodation.

The City is currently "unpacking homelessness" and is apparently in the process of conceiving a "Displaced Persons Policy" that would guide the City's interventions when it evicts from City-owned properties and private landlords when they evict. In the case of the latter, the City would like to be able to charge the developer when they evict, so that a "Social Care Assessment" can be undertaken on those potentially facing eviction. The City describes this as a mechanism, with the City taking the coordinating role, that would allow the private sector to evict but with certain conditions and financial obligations. As an example of the intervention, shelters catering for people up to 72 hours could be available following an eviction during which time an assessment of people will be conducted by contracted social workers, then emergency housing for up to a month could be provided, followed by sponsored temporary accommodation for six months in the form of a rental subsidy, where people are assessed, provided with information and assistance (i.e. given access to the City's Job Pathways Programme to help find employment).

### **Western Cape**

As shown in Annexure 3, the largest number of municipalities claiming for emergency assistance under the EHP were those in the Western Cape. The province also runs shelters available for adults, but these were not necessarily set up under the Emergency Housing Programme. They cater for people who find themselves on the street and provide short-term accommodation for a nominal fee. The shelters are registered with the provincial Department of Social Development. There are two types of shelters available. First phase shelters that have dormitory rooms and bunk beds for up to 30 people, with communal ablutions, kitchen and lounge, and with private lockers. The cost is about R10 per night (at 2006/7 rates). Second phase shelters accommodate married people and can house up to

six people per room in single beds (not bunks), with a toilet and shower per room, and with private lockers. The cost of this is R18 to R25 per night (2006/2007 rates).

## **8. PROPOSED CHANGES TO THE EMERGENCY HOUSING PROGRAMME**

It is clear from the above that the Emergency Housing Programme (EHP) is not being used in a manner that could address some of the social ills associated with eviction and homelessness, as is stipulated in the Programme itself. Provincial Government administers the fund under the Emergency Housing Programme, and it appears that they understand the policy as 24-hour assistance (a tent or container combined with 'toilets in the veld'), and it is obvious that Provinces simply do not recognise the importance of temporary accommodation and will not provide funding for it as it is not viewed as an 'emergency'. A frustrated City of Johannesburg official stated how difficult it was for them to get money out of the Province, and how they then get hammered in the courts for not providing temporary accommodation, yet they are unable to bring the Province into court proceedings to justify. Provinces, under national guidance, need to have a broader view of what constitutes an emergency and the suitable remedies that it will fund, which can alleviate hardship and vulnerability.

We contacted several provinces to establish what their access was to the EHP, and how they thought that it might be extended to cater for other groups of people, such as evictees. We received a response from the Free State, and spoke to officials in the Western Cape provincial government, but did not receive responses from other provinces that we contacted, despite following up repeatedly with them.

Emergency shelters are usually available to people for only 72 hours, but can be available for up to one month; however it seems that, in general, shelters are not being used because people do not want the responsibility or burden of having to re-house people after the emergency period is up. There needs to be a proper emergency shelter policy, which needs to be revised all the way up to national level, will be able to provide people with immediate housing so that a proper social assessment can be undertaken in order to ascertain what interventions are needed for an individual or household. According a City of Johannesburg official, one problem with this intervention is that

there would be serious issues of equity, as there are thousands of people living in informal settlements who might be in similar situations, if not more vulnerable, who are 'ignored'.

According to the City of Johannesburg, there is also the need for a supported housing policy in South Africa. This would cover people with other support needs in addition to being homeless, such as women who have been subject to abuse, orphans, people with mental health problems, etc. The emergency housing policy could be extended, for example, to cover women's shelters. An amended version of the EHP in Chapter 12 of the 2007 National Housing Code has been published, which extends what provincial government can fund the cost of consumption of water, sanitation services and refuse collection for a period of three years. However, according to the City of Johannesburg Inner City Programme Manager, its recommendations are broad in respect of emergency and transitional accommodation, as it does not specify the type of accommodation that should be provided nor associated facilities to be provided. It also does not give specifics of how long a municipality should provide assistance. From the City of Johannesburg's perspective, under the proposed policy people could be temporarily relocated to shelters anywhere within the City's boundaries, without taking into account peoples' existing social and economic networks.

## **9. WHAT ROLE CAN THE NATIONAL DEPARTMENT OF SOCIAL DEVELOPMENT, OR OTHER KEY GOVERNMENT DEPARTMENTS, PLAY IN HELPING THE SITUATION.**

At present, the National Department of Social Development (NDSD) and provincial departments of social development do not appear to be involved at all in mitigating the impact on evictions from private rental accommodation, apart from providing shelters to the homeless or street children in some areas. According to City of Johannesburg official, there is a "policy black hole" around Housing and Social Development Departments' roles in providing emergency shelter and taking responsibility for the impact of evictions, which they are attempted to bridge with their 'Social Care Assessment' intervention mentioned above. According to Madulamoho Housing Association (MHA), there is a need for more intervention for displaced people, and for those affected in an emergency, and that it does not help if people cannot find work after their allotted period in an emergency or transitional facility is up. They believe Social Development and the City should fund their 'social outreach branch', MES, to help people find employment, and that there should be a clear City programme with an exit strategy, so people leave the temporary accommodation able to pay for and sustain

permanent accommodation. Their assistance is not confined to simply means-testing people, but assesses them and provides a year-long internship.

However, the ability for provincial and national departments of Social Development to take on these responsibilities with their current capacity and willingness to assist needs to be seriously questioned. City of Johannesburg officials involved in community development were open about the fact that the Gauteng Department of Social Development does not provide assistance on this issue and needs a 'wake-up call.' When posed with this question, most informants stated that Social Development should be involved, however their responses to the precise nature of their intervention were mostly ad hoc and reactive. Some respondents questioned the Department of Social Development's ability to get involved in what would be a required case-by-case analysis of people's situations and interestingly, when we posed the question about the role of Social Development to a lawyer from the LRC in Johannesburg, his reply was that there is wariness on their part in bringing in Social Development in the manner in which they presently function. An issue for him is that it is often children who are the focus of such interventions, and there is the real worry that they would be taken away and parents blamed for not providing adequate shelter. This type of intervention, which often involves taking children to dubious places of safety, amounts to a rather formulaic idea of children rights and remedies and could possibly make the situation worse. Also, xenophobia on the part of government officials is a major problem and foreign nationals are often targeted by Social Development and Home Affairs interventions, which are more of an excuse to round up illegal immigrants in the city, rather than prevent evictions and provide alternative accommodation or social relief to the poor and vulnerable. This is a problem augmented by the fact that according to tenants, it is very difficult for non-South Africans to find rental accommodation and they are often exploited by landlords.

According to a low-cost housing official at the Banking Association of South Africa, "the 'key' to our economic boom/bust and employment instability lies in the state providing a supportive framework which protects the 'vulnerable' element of our society... I am not however suggesting that the state tightens up PIE – already it has features within it which frightens off the private sector from becoming landlords, but rather that a supporting 'security blanket' is created."

One municipal housing official stated that they could not afford to "go the Johannesburg route" by subsidising rentals, and that the indigent policy needed to be revised to accommodate people who rent.<sup>82</sup> Indeed, the Department of Community Development within the City of Johannesburg has

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<sup>82</sup> The City of Johannesburg currently subsidise rentals in the private sector for poor communities i.e. Europa House.

realised this policy issue and recently revised its indigent policy and is rolling out into what is now called the 'Expanded Social Package - Siyasizana', which moves from a household-based means test to an individually tied poverty index. Thus, in theory, from July 2009, subsidises on water and electricity etc. will be available to those earning less than R3 366 a month, including tenants, the homeless and informal shack dwellers, and not only to those who own property. Tenants will have to provide municipal account in order to claim subsidies. Mention has also been made of including rent subsidies after July 2009.

### ***Social Relief of Distress Award (SROD)***

A Social Relief of Distress Award is funded by the National Department of Social Development and administered by Social Development District Welfare Offices. It is a temporary grant of up to three months (this can in exceptional circumstances be extended to another three months), awarded in times of crisis or in the interim period before an applicant receives a permanent grant. The SROD grant is only available if a family's basic needs cannot be met because of a crisis of a temporary nature and if they are in dire material circumstances. However, it is unclear whether this could include eviction (one of the criteria is if you have been affected by a disaster e.g. fire, tornado or flood and the area in which you live has not yet been declared a disaster area). In order to qualify an applicant must provide proof that have applied for a grant; have had an emergency (e.g. provide a police report that your house burnt down); have tried to get maintenance; have no other support; are married, divorced, or single; have no income; or have a short-term medical disability. The SROD grant may be in the form of a food parcel or a voucher to buy food, and some provinces give this assistance in the form of cash.

The South African Social Security Agency (SASSA) is responsible for SROD for categories relevant to social grants, and provides it in cases where the person is awaiting permanent aid, in the form of a social grant; the person is found to be medically unfit for a period of less than six months; or the person has appealed suspension of a grant. The provincial Department of Social Development (DSD) is responsible for SROD for remaining categories defined in the Social Assistance Act of 2004, including "undue hardship" which needs to be assessed by social workers. Identified individuals and groups are referred to SASSA for issue of the SROD, and the allocation is jointly accessed by SASSA and provincial DSD on a 50/50 split basis, subject to review.<sup>83</sup>

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<sup>83</sup> Department of Social Development press release, "The Minister of Social Development, Dr Zola Skweyiya announces R124 million budget for households in distress" (12 May 2008)

According to Section 9(1)(b)(vii) of the “Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance” a person in need of immediate temporary assistance qualifies for social relief of distress if refusal of the application for social relief of distress may cause undue hardship as contained in the Procedure Manual for Social Relief of Distress approved by the Minister.<sup>84</sup> According to this “Procedure Manual”, one example of the type of people who might qualify in terms of “undue hardship” include: “A person evicted from a farm, rural area of rented accommodation and is unable to secure employment immediately in his or her new area of residence.”<sup>85</sup> For those evicted from their homes, it is a dire emergency as they have been deprived of a place to live, necessitating “undue hardship”. It would seem appropriate for the provincial Department of Housing to liaise with the provincial Department of Social Development, to utilise this grant to cover interim rent for those evicted from their accommodation and who need to look for alternative accommodation. Municipalities should mobilise this grant in order to ensure their responsibilities to provide emergency accommodation for those facing homelessness in the event of an eviction, and ensure that social workers are available to assess cases on an urgent basis. The recent 2009 amendment to the Regulations states that social relief of distress may be provided to a child where (a) the prevailing economic circumstances in the Republic warrants the provision of social relief of distress; or (b) failure to provide such social relief of distress would cause undue hardship to the child.<sup>86</sup> The Department’s emphasis that the grant is only for the “poorest of the poor” should take into account those poor households that are routinely evicted from private rental accommodation and face homelessness if not provided with some form of temporary accommodation and assistance, and which impact heavily on children.<sup>87</sup>

### **Social Welfare and Indigent Grants**

The indigent grant is in part financed from the national fiscus and passed on to municipalities as part of their equitable share allocation, administered by the Department of Provincial and Local Government (DPLG). In some better resourced municipalities, mainly metropolitan municipalities, it is augmented by transfers from their rates and general accounts and levels of cross-subsidisation between different tariff bands and user groups.

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<sup>84</sup> Government Notice No 31955, “Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance” (22 August 2008).

<sup>85</sup> Department of Social Development, “Procedure Manual for Social Relief of Distress” (October 2006), p. 4.

<sup>86</sup> Government Notice No 31955, “Amendment: Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance” (26 February 2009).

<sup>87</sup> “Social relief of distress not accessible to all: Skweyiya, *The Citizen* (2 February 2009).

The indigency grant as defined nationally applies to payments or reduction in all or part of basic water and sanitation; basic electricity supply; and rates. It is municipalities who are tasked with rolling out their indigent policy as per the national guidelines and targeting the poor for free basic services (FBS) and subsidies, including water, sanitation and electricity. Within these guidelines, municipalities have discretion to increase the quantum and extend the scope of their indigent policy as long as the municipality can afford to do so from its national grant and other finances. The national department overseeing this function is the Department of Provincial and Local Government (DPLG), and it has acknowledged that municipalities have experienced many difficulties in implementing indigent policies to date. These problems include: deciding whether to define beneficiaries in terms of households, account holders or citizens; defining what constitutes a household; defining who qualifies as indigent; targeting methods; accessing non-account holders; administrative burdens on the municipality; verifying application details; lack of funds to implement the FBS programme; and finally, assessing the real impact the FBS programme is having on the quality of life of the beneficiaries.<sup>88</sup>

Nationally, the norm is to provide indigency relief on rates and related services targeted at property ownership, rather than the circumstance of the individual. This is resulting in reduced benefits received more particularly by renters compared to property owners on the same income. The City of Johannesburg's 'Expanded Social Programme' is the first to include non-account holders and renters.

The City of Cape Town has an indigency scheme for rental on its municipal stock, but low income tenants in private rental receive no benefits on rates and utility charges that are charged directly to the landlord.

As discussed earlier under 'Factors influencing eviction', if a private landlord's building is classified as a single unit it only receives rebate on a single base utility tariff, and tenants do not receive their indigency entitlement as the rental element for such charges must include the full rate. Where supply is through the a social housing institution (SHI), for example, this indigency entitlement is not accessible as the supply to the SHI is not assessed per number of tenants accommodated but per the total building as a single unit and therefore only entitled to 1 base tariff charge. Where services are supplied to the individual tenants, however, they can receive any indigency entitlement either through the free basic rate tariff or any additional mechanism.

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<sup>88</sup> Tissington, K., Dettmann, M., Langford, M., Dugard, J. and Conteh, S., *Water Services Fault Lines: An Assessment of South Africa's Water and Sanitation Provision across 15 Municipalities*, CALS, NCHR and COHRE (October 2008). p. 24.

According to Jak Koseff, Director for Social Assistance in the Department of Community Development at the City of Johannesburg, the City cannot be responsible for private-lead evictions, and would be accused of allowing people to ‘jump the queue’ at the expense of more desperate people. As has been mentioned above, the Department is looking into setting up a ‘Social Care Assessment’ policy that would assist people in the event of a private or state-lead eviction and provide a ‘triage assessment’ by social workers. Thus, the City would provide a mechanism, coordinated by the state, to allow the private sector to evict if necessary, however they would have to bear the costs of this intervention which would include an *in situ* “Social Work Project Team” who would access potential evictees. Private landlords would be charged for this service, however, and the willingness on their part to be involved in such an intervention would need to be tested. This type of intervention was mentioned by the Chairperson of the Gauteng Rental Housing Tribunal, who stated that in more affluent societies people are employed as paralegals to negotiate in buildings, and social workers are active in the landlord/tenant environment, and that municipalities have abdicated this kind of responsibility where they could be playing a critical role.

#### **South African Human Rights Commission’s Report on the Public Hearing on Housing, Evictions and Repossessions – some recommendations**

In 2008, the South African Human Rights Commission (SAHRC) held public hearings on housing, evictions and repossessions. Though this mainly related to owner-occupied houses, it was acknowledged by the Sheriffs and the South African Police Services (SAPS) that illegal evictions are taking place. The hearing found that although many of the role players are following the letter of the law, more can be done to advance the right to access adequate housing. It was felt that the Department of Housing focuses on low income first-time homeowners but fails to address adequately the issue of evictions which occur as a result of people who default on their bond repayments. The same issue is not being addressed by the private sector, which has required an increasing amount of codes, guidelines and legislation to ensure that it operates ethically in the low-income home loan sector. The SAHRC report on the public hearings stated that “those facing evictions are a vulnerable group, who through a lack of awareness of their rights and obligations, the legal processes and recourse mechanisms that they may have, are often exploited by unscrupulous buyers. It was acknowledged by the Sheriffs and the SAPS that illegal evictions are taking place. As those affected are vulnerable, it appears that there is the perception that this could continue without public scrutiny. More humane measures should be considered by the relevant stakeholders.”<sup>89</sup> Recommendations to key role-players were included in the report, and those relevant to our current research endeavour are cited below:<sup>90</sup>

#### **Government**

- Local government was viewed as a key role player in dealing with the issue at community level and that they should consider including the provision of alternative accommodation for those left destitute by evictions into their IDPs;

<sup>89</sup> SAHRC, “Report on the Public Hearing on Housing, Evictions and Repossessions” (2008), p. 7.

<sup>90</sup> *Ibid.*, pp. 43-45.



- Government should consider whether the suggestion by banks that a 'loss of income cover' be developed as a part of the social security system would be a viable option to ensure that a significant asset like a home is not lost during unemployment or retrenchment.

### **Courts**

- It is recommended that the Legal Aid Board should offer legal assistance in civil cases such as evictions;

- The Rules Board for Courts of Law should consider amending the rules of service relating to evictions to ensure effective service so as to address the current dissatisfaction;

- The legislature should furnish guidelines as to what it considers relevant circumstances, as this would assist presiding officers in making such determinations (in the event of an eviction application in terms of the PIE Act, it may be useful to have clearer guidelines to courts as to what relevant circumstances should be taken into account when granting an order);

- It is recommended that in situations where defendants appear unrepresented in court, presiding officers should afford them an opportunity to address the court or, alternatively, obtain legal representation.

### **Sheriffs**

- It is recommended that when executing their mandate, the Sheriffs should at all times not only treat the affected people with dignity and respect, but also ensure that they do not unreasonably cause damage to the property concerned. This of course should also apply to private security companies when operating as agents on behalf of sheriffs, banks, municipalities and/or private persons.

- The South African Board of Sheriffs should be more accessible to the public. This would assist the public in knowing how and where to lodge complaints of misconduct against Sheriffs.

### **SAPS**

- In situations where the SAPS accompany Sheriffs to carry out an eviction order, they must ensure that they verify the authenticity of the eviction order with the court;

- In situations where the SAPS had to attend to the removal of people who are trespassing under the auspices of an eviction proceeding, they must initially verify the authenticity of the original eviction order. Should the order be verified, they should not only treat the trespassers in a dignified and respectful manner but also ensure that they do not unreasonably cause damage to the property concerned;

- In cases where misconduct by members of the SAPS is reported, the Independent Complaints Directorate should ensure effective resolution of the cases reported to it;

- It is recommended that the SAPS should remain vigilant in apprehending those conducting illegal evictions and impersonating law enforcement officials.

### **Estate Agents**

- It is recommended that the Estate Agency Affairs Board should be stricter in enforcing its disciplinary code against both registered and unregistered Estate Agents who contravene the Estate Agency Affairs Act and its code of conduct;

- It is recommended that when registered or unregistered Estate Agents are found guilty by the Estate Agency Affairs Board of contravening either the Estate Agents Affairs Act or the code of conduct, the Estate Agency Affairs Board should ensure that the names of such registered or unregistered Estate Agents are published on a regular basis in a local newspaper.

## Broader Discussions

### Municipalities and Social Development

#### *Extend indigent grants to renters/non-account holders*

Municipalities could follow the City of Johannesburg's example in its 'Expanded Social Package' and extend subsidies and free basic allocations to non-account holders and tenants, as well as property owners. Tenants can then access the equivalent of the broader social package via a coupon system whereby the building owner gets a rebate on the total monthly bill equivalent to the individual social package amount x the number of indigent lessees. If administered and advertised properly, and it will only be rolled out from July 2009, it could effectively act as a rent subsidy. The system will only work if the building owner signs up to the programme, however, but this intervention would also help to spotlight slumlords, as the tenant can approach the City to intervene if a landlord does not sign up.

The SHF report recommends that all Municipalities introduce such an 'indigent grant' payment for tenants to permit payment of their entitlement for free basic rates and utilities to the landlords (in this case social housing institutions), that would permit the landlord to reduce the actual rental charge to such tenants.<sup>91</sup>

#### *The need for rent subsidies*

Housing allowances have become increasingly important policy instruments in the advanced welfare states. Operating at the interface between housing and social security policy, they provide means-tested assistance with housing costs for low income households.<sup>92</sup> In the present era of fiscal

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<sup>91</sup> Ibid.

<sup>92</sup> Peter Kemp, *Housing Allowances in Comparative Perspective* (July 2007)

austerity, such schemes are seen by many governments as a more efficient way to help tenants than rent controls or 'bricks and mortar' supply-side subsidies to landlords.

The availability of a rental subsidy is built into the guidelines of the Community Residential Units (CRU) programme that aims to provide rental accommodation for lower income groups not viably serviced by the social or other housing programmes. CRU replaces the National Hostel Re-Development programme, and targets low-income persons and households earning below R3 500 per month, and who are not able to be accommodated in the formal private rental and social housing market. It aims to provide secure, stable rental housing tenure for low-income persons and households, and this includes qualifying indigent groups who are able to pay some form of rental and services/utilities. The determination and implementation of a rent assistance policy is, however, up to each municipality according to their own policies.

The reasoning behind the provision of a rent subsidy is that the CRU programme aims to achieve a viable sustainable public asset, using as a base measure and principle the charging of cost-recovery rentals. Given the target market that the programme will be serving, it might be necessary for the property owner to provide some form of rent relief assistance to the occupants of the housing. Given that lower income groups will be occupying the housing stock, situations will arise where some rent relief assistance may have to be provided by the property owner to the tenants. The basis of the rent relief assistance will have to be outlined in local provincial or municipal policy and the funding implications agreed by the property owner before it is offered to tenants.

The CRU programme is meant to deal with public housing stock only, but it does also aim to address dysfunctional and/or distressed buildings in cities. Many of these are not owned by the cities themselves, but are in private hands. The programme seeks to bridge the divide between social housing and lower markets – but if the rent subsidy is only available under CRU, and not under social housing, then perhaps an even bigger gap is being created.

In Sagitta's modelling exercise on affordable inner city residential accommodation for the poor,<sup>93</sup> it was found that for inner city conversion schemes using both CRU and institutional housing subsidy a rent subsidy was required to make the schemes affordable to cover operating costs where:

- There were high operating costs

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<sup>93</sup> Sagitta, "Modelling exercise" (August 2008).

- Where only 25 percent of income was spent on rent rather than 30 percent
- Where bachelor and other self contained units are provided rather than communal rooms, as cost of operating are higher

The City of Johannesburg is looking at a rental subsidy in certain circumstances as part of its Expanded Social Package. In the Western Cape provincial government is already subsidising private tenants (Redhill in Simonstown)

The OCR believes that there should be a subsidy system in the private rented sector. In the preamble to the RHA there was mention that there should be a dedicated fund from National government to subsidise tenants in the private sector.

#### ***Provision of decant facilities/alternative accommodation***

The City of Johannesburg's proposed policy is for private developers to twin with the City to provide alternative accommodation. That means that before permission is given for a developer to demolish/take over a building and evict the sitting tenants, they have to make provision for alternative accommodation. Initial discussions have taken place with developers, and apart from where it is a subject to a court case (e.g. *Blue Moonlight Properties* case), so far most are very reluctant to take this route.

Under the Johannesburg Inner City Charter there are various commitments to facilitate and process planning, development, and other applications more speedily. A part of this could include negotiating more favourable or speedy expediting of applications, for example of re-zoning, on condition that the developer provided other facilities, such as alternative accommodation and entry level entrepreneur opportunities etc. (see recommendation re. Inclusionary Housing Policy below).

TUHF have indicated that they could give support to emerging landlords who wish to take on buildings with existing occupiers and could help fund the costs of eviction as part of the loan agreement when they are giving loans to potential owners who take on buildings. Ideally this would extend to helping with (the cost of) provision of alternative accommodation by the new owner.

Under the Constitution, citizens have the right to have access to adequate housing, therefore there should be provision made for homeless people to be accommodated. In the UK this right is underlined by the Homeless Persons Act of 1977 whereby the state has a duty to provide temporary accommodation for single, homeless and vulnerable people. This is in the form of communal

accommodation, either provided by the municipality itself, or outsourced to the private sector, but funded by the state. The precedent for this in South Africa has been set under the Emergency Housing Programme where temporary shelters (or permanent) can be constructed.

### ***Implementation of the Inclusionary Housing Policy***

The government's Inclusionary Housing Policy envisages the development and maintenance of affordable accommodation within every new housing development, in a proportion of income mixes that ensures both the financial viability and operational sustainability of the development. If this were to be implemented, and backed up by enforcement measures, then there would be more accommodation made available for lower income groups. That is, if developers had to provide 20 percent affordable accommodation in any development of more than a certain number

### ***Monitoring of supply disconnection applications***

Sayed Mohamed Iqbal of the OCR suggested that one way to both monitor, and possibly prevent, illegal evictions is that when an owner instructs a municipality to disconnect the supply of water and electricity to their dwelling on the grounds that it is unoccupied, that the municipality actually verifies and investigates that this is indeed the case, so that the application is not just used as a way for the landlord to evict people illegally. This would help prevent tenants suffering at the approach of some unscrupulous landlord when they are unable to have basic services restored or find suitable affordable alternate accommodation. A municipality could therefore revise its application form to demolish or to have services disconnected, making provision for an enquiry as to the dwelling being vacant or occupied. This might be difficult for municipalities to implement due to lack of capacity, but after discussions with the Programme Manager for the Johannesburg inner City Charter, this might be something that they could pilot.

### ***Eviction of tenants from repossessed properties***

In the United Kingdom, there have been calls from housing charities for government to take action to provide greater protection to tenants in the private rented sector who are evicted because their landlords fail to meet their mortgage repayments.<sup>94</sup> A survey carried out by UK housing charity *Crisis*, found that 60 percent of its advisers had been approached by people who had lost their home in this way.<sup>95</sup> In some cases, people came home to find the locks on the property had been changed and their belongings were out in the street, and in other cases people were refused access to their things or were allowed into their home only briefly to get a few items. When a house is repossessed by a

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<sup>94</sup> "Repossessions 'hitting tenants', say charities", *The Guardian* (27 March 2009).

<sup>95</sup> *Ibid.*

mortgage lender in the UK, most tenants are not covered by the legal rights that would usually protect people in rented properties from losing their homes at short notice.

Until recently, private rental tenants enjoyed very little protection in the event of the landlord losing ownership of the property, and it is estimated that 8,000 of the 75,000 predicted repossessions could be buy to let properties.<sup>96</sup> Tenants of these properties are the "forgotten victims of the repossession crisis" and there have been calls for the law to be changed to allow courts to defer repossessions to enable tenants to find new accommodation. The UK government therefore recognised that an amendment needed to be made to the eviction process and practice to make tenants aware of repossession proceedings. This could involve getting the courts to send notices that are clearly marked "to the tenant" of a property, in addition to notices that are currently sent "to the occupier" by mortgage lenders.

In order to provide protection to tenants, from 6 April 2009 tenants in the UK have become entitled to the maximum possible notice of possession proceedings that may affect their home. This means that, rather than the two weeks previously specified under UK law, they will get nearly two months to make alternative arrangements. The British Council of Mortgage Lenders has stated that: "We are looking to see what more help we can provide for tenants, be that legislation or influencing lender behaviour. In the first instance, it is vital that landlords struggling with their payments contact their lender."

According to the Banking Association of South Africa the situation is not so severe in South Africa, as the "buy to let" market (whereby an owner buys a property for the purpose of letting it out, to make a profit) has not been very large. Where it has taken place it has been in the upper market sector, rather than in the inner city. However, this is indeed an issue that needs to be investigated and addressed further, and tenants should be notified well in advance, be allowed to remain in the property until their lease expires, notwithstanding a change in ownership, and should be afforded the same level of protection under the Rental Housing Act. A further suggestion may be that those who are living in properties facing repossession should be given first option to buy and be informed well in advance of the change in circumstances of the property.

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<sup>96</sup> Ibid.

### ***Regulation of private landlords***

In England the private rented sector is expanding and its market share has grown from 9 percent in 1990 to 12 percent in 2006 and is increasingly important for those who cannot afford to buy a home but are ineligible for social housing. For many people there, as in South Africa, private rental is becoming the tenure of choice as they take advantage of increased levels of flexibility provided by the sector in terms of mobility of labour and lower transaction costs in moving to a more appropriately sized property. There is room for the sector to grow, as highlighted in South Africa by the government's national rental housing strategy, to provide choice both within the sector and also as an alternative to owner occupation. This will allow people to be more flexible in relocating to suit changes in the economic environment.

In the UK in order to provide protection to tenants, regulations for the private rental sector have been proposed, on the basis that tenants and landlords are both potentially vulnerable consumers who must be protected. Regulations recommended, therefore, were light touch and principles based, requiring letting agents to provide certain information, rather than telling them how to operate. There should also be more proactive, and therefore effective, enforcement of tenancy deposit protection. In the UK there is a scheme called the Tenants Deposit Scheme whereby all landlords have to join and lodge any deposit received from the tenant with the scheme, as a means of protecting deposits. This is in addition to statutory regulations that landlords are required to invest the security deposit in an interest bearing account for the tenant. It is particularly relevant for individual landlords, who might not be so aware of the rules, and is extra protection to the tenant.

It was recommended that the UK Government should work with the professional and accreditation bodies to promote the use of properly regulated professionals in the letting process. These initiatives could be appropriately replicated in South Africa. Anyone acting as a letting agent should be required to belong to an approved redress scheme and obtain insurance and have client money protection. Government would have to regulate this, however, via an agency set up for the purpose, or as part of the brief of the Ombudsman There should also be a clear, single letting agent code established and maintained by a Joint Industry Property Standards Board. The Estate Agents Affairs Board in South Africa could be approached to develop this.

Letting agents play an important role in the sector and many are covered by the professional regulation schemes established by industry bodies such as The National Association Of Real Estate

Agencies (NAREA), POMA and SAPOA but many landlords and letting agents are not part of any scheme.

Some landlords also do not use any type of letting agent so the proportion of rental transactions outside the scope of any regulation will be well over half. It is essential that more action is taken to protect landlords and tenants and to encourage the use of good quality letting agents. There might however be issues of implementation of a similar scheme in South Africa, but Diluculo Investments stated that there should be national code of conduct for landlords, and that the Rental Housing Tribunal should have role to play in dealing with rogue landlords. They felt that landlords should be members of POMA and of a national association, to ensure good governance and ethics.

Any regulation would need to be put in place with the full support of the industry. In the UK the Chartered Institute of Housing has drafted a “Protocol for Possession Claims Based on Rent Arrears”, for all players to sign up to. The protocol will apply to both social and private landlords, with sanctions applied where landlords fail to comply. The protocol reflects current good practice guidance to social landlords in the collection of rent arrears. Where a landlord has complied with the protocol this should be a factor taken into account by the courts in determining whether it is reasonable to grant possession. Representative bodies of the industry could administer this, such as NAREA, SAPOA or POMA (in City of Johannesburg).

Implementation issues would depend on the level of certification or regulation proposed, (for example, the question arises whether there be sufficient inspectors at municipal level to monitor and regulate such a scheme), however such an initiative could be pioneered as part of the City of Johannesburg’s Inner City Charter commitments, or NAREA, and implemented via the Rental Housing Tribunals.

With regard to building standards, in Kenya a Building Code review process was introduced by government to review all planning and bylaws in Kenya and ensure their relevance to the development of safe and sanitary housing and urban facilities, as a way of trying to regulate landlords, but it was never implemented. In Nairobi, where there is large-scale landlordism, there are building regulations, but these are not enforced.<sup>97</sup> In the UK, all houses with multiple occupation have to be registered with the local council by their owners to ensure that the accommodation is habitable and complies with minimum health and safety standards. In South Africa there is also a

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<sup>97</sup> Huchzermeyer, “Tenement City”, pp. 714-732.



regulatory scheme covering building conditions, that would protect tenants, but due to lack of capacity in municipalities, this is not always enforced (or if it is used it is often used in a punitive manner that negatively affects tenants who face eviction as a result).

## **10. KEY RECOMMENDATIONS (also see Annexure 3)**

- A multi-stakeholder, inter- and intra-governmental rental housing indaba to be held addressing the issues raised in this report, to learn from current initiatives occurring in capacitated municipalities like City of Johannesburg and explore problems being experienced elsewhere;
- Need for better records to be kept on evictions, which would necessarily involve the Department of Justice and Constitutional Development and provincial/local courts, Sheriffs, Rental Housing Tribunals (these would most often be cases that may lead to evictions later on, or are 'constructive evictions'), Provincial Departments of Housing and the National Department of Housing, or other agencies such as the National Credit Regulator, keeping records of the number of evictions and eviction trends in the country.
- Need for the National Rent Tribunal Task Team to be reintroduced in order to oversee and regulate the functioning of the Tribunals and address key issues of on-compliance and lack of enforcement;
- Need for elements of the Rent Control Act to be reintroduced into the Rental Housing Act, following the report by the Minister that was required as per the 2003 repeal of all sections of this Act, as well as a review of the Unfair Practice Regulations;
- Rental Housing Tribunal guidelines for determining rentals and identifying exploitative rentals, need to be drawn up and clarified, and there needs to be the political will on the part of the Tribunal to challenge high rentals and service charges and enforce compliance of landlords, owners and property management companies (part of the above recommendation);
- Need for the Rental Housing Tribunals to be better marketed and advertised, in conjunction with a campaign to inform tenants about their rights and recourse regarding attempted evictions, services cut-offs, lockouts etc.;

- Need for more targeted ‘know your rights’ information to be available to tenants and landlords and distributed widely in different languages, possibly as part of the above recommendation;
- Need for social workers and paralegals at the local level to be involved in assisting those threatened with evictions and to find alternatives to eviction wherever possible. There needs to be a review and multi-stakeholder involvement in the roll-out of the City of Johannesburg’s efforts in this regard, as they are in a position to become the ‘best practice’ benchmark if implemented correctly;
- Investigating the establishment of a licensing/accreditation system for landlords, in negotiation with POMA and other stakeholders such as NAREA – in particular Rent Tribunals could have a role to play in this. A protocol for dealing with rent arrears could also be negotiated;
- Monitoring of supply disconnection applications made to municipalities to guard against illegal cut-offs of water and electricity;
- Negotiations should be held with the banking sector and other stakeholders with regard to developing a protocol for dealing with evictions of tenants in repossessed properties;
- The current review of Chapter 12 of the National Housing Code dealing with the Emergency Housing Programme should take account the findings of this report. The review should also look at the inclusion of rental subsidies;
- The Social Distress of Relief Award should include the temporary payment of rental as part of its package, in the face of poor households being evicted from private property and rendered potentially homeless. This intervention however will necessitate a rather burdensome administrative process that should be simplified and expedited to ensure households are able to remain in their accommodation or find alternative accommodation speedily. This intervention should also be linked to the Emergency Housing Programme and provincial departments should liaise around this provision in conjunction with municipalities;
- Extension of eligibility for indigency benefits to tenants and non-account holders, not just property owners, as per the City of Johannesburg’s ‘Expanded Social Package’, however this will mean that landlords and owners will have to pass reduced costs onto tenants and this will undoubtedly require some form of enforcement by the City, and a recourse mechanism

for tenants (most likely through the Rental Housing Tribunal who will require powers to rule on this effectively);

- Review of indigency policy guidelines by the Department of Provincial and Local Government (DPLG), to ensure that social goods and basic services are targeted to those who need them and whose housing circumstances may depend heavily on free basic services subsidies;

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- Grace Blouw – Manager of Existing Settlements, City of Cape Town
- Danie Burger – Sheriff of Johannesburg East
- Michelle Dickens – Managing Director, Tenant Profile Network (TPN)
- Renier Erasmus – Managing Director, Madulamoho Housing Association (MHA)/Mes Actie
- Adrian Friedman – Advocate, Constitutional Litigation Unit, Legal Resources Centre (LRC) in Johannesburg
- Graeme Götz – Special Advisor in the Office of the Mayor, City of Johannesburg
- Paul Jackson – CEO, Trust for Urban Housing Finance (TUHF) and Pressage Nyoni, Liaison Officer, TUHF
- Steve Kahanowitz – Attorney, Legal Resources Centre (LRC) in Cape Town
- Jak Koseff – Director of Social Assistance, Department of Community Development, City of Johannesburg
- Ntokozo Mabaso - Assistant Manager, Northern Cape Rental Housing Tribunal
- Brian Miller – Chairperson, Property Owners' Management Association (POMA)
- Poppy Madibane – Director of Social Housing and Rental, Department of Local Government and Housing, Free State Province
- Joel Mkunqwana – Director, Community Support and Social Housing, Communicare
- Sayed Iqbal Mohamed – Chairperson, Organisation of Civic Rights (OCR)
- Santhurie Naidoo - Inner City Programme Manager, City of Johannesburg
- Salim Patel - Chairperson, Western Cape Rental Housing Tribunal
- Yvonne Pelsler - Head, Diluculo Properties (Pty) Ltd, and Rudie Norte – Head Diluculo Property Trading, Diluculo Investments (Pty) Ltd
- Seehaam Samaai – Senior Lecturer and Director of Legal Aid Clinic, University of the Western Cape
- Shereza Sibanda – Head, Inner City Resource Centre (ICRC)
- Anzabeth Tonkin – Coordinator: Medium Density Housing, Development Action Group (DAG)
- Pierre Venter – Banking Association of South Africa
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- Stuart Wilson – Head of Litigation, Centre for Applied Legal Studies (CALS)

## Other informants

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Prof Francois Viruly – School of Construction Economics and Management, University of the Witwatersrand

Built Environment Services Group (BESG)

Planact

South African Property Owners Association (SAPOA)

National Credit Regulator

Cape Town Partnership (CTP)

Johannesburg Development Agency (JDA)

## Other organisations contacted

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**Municipalities:** Tshwane, Johannesburg, Ekurhuleni, Cape Town, Nelson Mandela Metro.

**Estate Agents:**

Trafalgar

Jawitz Properties

Pam Golding, Head Office and Pretoria branch, Gauteng

Rawson Properties

Broll Property Management

ERA South Africa Property group

Aengus Property Holdings

Just Letting

Stephen's Property Solutions

Royalnet

Marduk Real Estate

Ithemba Properties



## **Annexure 1 – Eviction statistics provided by provincial Rental Housing Tribunals**

### **Gauteng**

Complaints made to the Tribunal since inception about:

<b>Reason</b>	<b>No. of cases</b>
Attachment of property	89
Deposit	742
Evictions	2210
Lease	114
Lockout	227
Maintenance	670
Non payment of rent	307
Other	162
Other landlord	13
Rental	557
Service	697
Grand Total	5788

Unfortunately at present we can only get the statistics since inception, as they have not shown them separately by date. The majority of the eviction case complaints (84 percent) were in Johannesburg Central (Region 8).

### **Western Cape**

93 Unlawful eviction/illegal lockout cases lodged

179 Failure to pay rental/municipal services/other cases lodged

123 Failure to provide municipal services cases lodged

These statistics are presumably for the period up to December 2008, and the Western Cape is in the process of loading cases on to their system.

### **KwaZulu-Natal**

Survey of eviction notices and evictions, displacement of individuals and families in the eThekweni Municipality (Durban) region. Statistical information of evictions of tenants from the Organisation for Civic Rights (OCR) case load for the period 12 January – 12 December 2008

Total: 393 households

Month	Evicted through court order	Evicted through illegal lockouts	Voluntary vacated on notice to vacate	*Pending	**Resolved	***Unknown status	Total
January	0	1	2	1	9		13
February	4	0	4	0	11		19
March	2	0	4	0	12		18
April	0	0	22	0	9		31
May	1	2	6	1	18		28
June	2	0	10	8	0	5	25
July	3	3	3	75	17		101
August	2	1	2	1	17		23
September	0	3	4	1	5	3	16
October	0	2	2	30	8		42
November	5	2	1	10	13	7	38
December		2		37			39
Total	19	16	60	164	119	15	393

**\*Pending:** cases either before the courts or being mediated by NGOs, Rental Housing Tribunal or between tenants and landlords themselves or due to conversion to sectional titles scheme

**\*\* Resolved:** tenants are still in occupation having resolved the dispute (included in this category are tenants who were illegally locked out or had services unlawfully disconnected for refusing to pay rent increase, non-payment of rent , refusing to vacate. after being served with notice of termination or for complaining about maintenances and repairs.)

**\*\*\*- Unknown status:** unaware of the fate of 15 tenants (unable to contact tenants)

The overwhelming majority of the evictees were families, and reasons for or causes of evictions/ displacement include: conversion to sectional titles schemes, exorbitant rental increase, victimisation or no reason at all.

**Total number of households:** 393

**Total number of people affected: approximately** 1965 (based on survey of households; average of 5 people per household)

*Compiled by Pretty-Rose Gumede, Loshni Naidoo and Sayed Iqbal Mohamed, December 2008*

## Annexure 2 - City of Johannesburg's Expanded Social Package - Siyasizana

The City of Johannesburg's proposed 'Expanded Social Package' of benefits for households defined as 'indigent' is an approach that involves more 'targeted' relief provision to households assessed to be under the indigency qualification. This is different to the existing 'universal' approaches that provide free basic supply to all users and exempt all rate payers from payment of rates on a predetermined base value of properties.

The developers of the City's 'Package' argue that this approach targets more effectively the limited resources available to subsidise the indigent.

The scheme is based on a 'poverty index score' made up of 70 percent from income assessment and 30 percent poverty score based on their address of the individual. The income is assessed using computer linkage to the key national database including Social Grant and UIF. The income threshold is determined by an adaptation 'national supplementary standard' adapted to reflect the cost of living in Johannesburg.

The 30 percent location linked relies on a number of indices combined on a ward by ward basis. Individuals and linked households with a 'poverty index score' under threshold can qualify for one of three 'bands of benefit'

<b>Band 3 (High Poverty Index Score)</b>	<b>Band 2 (Mid- range poverty index Score)</b>	<b>Band 3 (Low poverty index score)</b>
Water Subsidy – 50 litres per person per day (cap of 15 kl)	Water Subsidy – 30 litres per person per day (cap of 12 kl)	Water Subsidy – 25 litres per person per day (cap of 12 kl)
Electricity – 100 kw lifeline	Electricity – 170 kw lifeline	Electricity – 50 kw lifeline
Transport Subsidy – 30%	Transport Subsidy – 20%	Transport Subsidy – 10%
Rental Subsidy – 100% declining over 1 calendar year)	Rental Subsidy – 50%	Rental Subsidy – 30% declining over 1 calendar year)
Rates Subsidy – 100%	Rates Subsidy – 70%	Rates Subsidy – 50%

At each application centre staff will be available to assist potential applicants with ID Document applications and where relevant National Social Grant Applications. Households registered on the scheme will be given priority access to City of Johannesburg job creation programmes.

While administratively more difficult to implement it does:

- Target subsidy more precisely than the 'universal' approach;
- Provides greater equality of benefit before some renters and owners.

The first part will rolled out in the financial year 2009 – 2010 and as an alternative approach should be monitored to assess applicability elsewhere. The approach to the 'rental' entitlement is still being worked out.

## **Annexure 3: Outcomes of workshop/consultation on the Investigation into Eviction from private rental housing**

The following is a summary of *action-orientated outcomes* of a multi-faceted investigation by SHF and Urban Landmark into eviction in private rental housing. The summary extrapolates from: 1) A comprehensive study and report on the matter submitted to SHF in May, 2009; 2) a workshop of stakeholders held in June, 2009; and 3) subsequent informal discussions with various stakeholders throughout July, 2009.

This document is merely a brief outcome summary of a broad research and consultative process. It is best understood by consulting the aforementioned report.

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### **The role of Rental Housing Tribunals**

1. While the Tribunals provide services for both landlords and tenants such services continue to be under-utilised, particularly by the people who need such services the most – poor tenants.
2. While rulings of tribunals concerning interdicts, spoliation and attachment orders are now equivalent to rulings of the Magistrate's Court, Tribunals have to make local arrangements themselves for enforcement, and results are uneven at best. There must be solid, consistent mechanisms to ensure enforcement of Tribunal rulings.
3. Tribunals are too caught up structurally within the bureaucracies of the provincial housing departments. This greatly limits their ability to function independently and effectively. This has a particularly detrimental effect in respect of budgets.
4. While there has been a highly significant expansion in the Tribunal's scope of authority and responsibility (pursuant to the Rental Housing Amendment Act, 2007) there has not been a commensurate increase in funding to ensure that Tribunals are sufficiently capacitated to carry out the new critical functions.

#### **Action:**

- The Tribunals must have their own dedicated budget (separate from that of the provincial departments of housing) approved as such by the provincial legislature.
- Tribunals should receive a once-off increase in their budget to ensure that they have sufficient capacity to carry out their range of judicial responsibilities pursuant to the 2007 amendments.
- Each Tribunal should have its own director or "head". This person should be directly answerable to the MEC of the provincial housing department.
- The National Department of Justice and Constitutional Development should take decisive action to ensure that Tribunal rulings in each province are (per the 2007 amendments) being acted on as if they were rulings of the Magistrate's Court. Short term measure may include issuing national directives to this effect. Longer term measures may include making the necessary amendments to the Sheriff's Act, 1986.

## Exploitative Rentals

1. The study noted that exploitative rental levels are a significant problem. Dramatically increased rents have become “constructive evictions” in many instances.
2. When leases are renewed rents are put up to such an extent that the tenant is left with no other option but to leave. Yet the workshop determined that a core contribution to this is non-compliance with the Rental Housing Act which provides that each rental agreement must have a *rent escalation clause*. This is often ignored.
3. On the question of landlords withholding a security deposit, the workshop determined that the issue was not to regulate the amount but to ensure greater access to the Tribunal by the tenant
4. The study recommended considering the re-introduction of some rent control measures to protect particular classes of tenants.

### Action:

- The issues of both exploitative rents and recovery of security deposits underline two of the most critical themes underlined by both the study and the workshop: i) the need for much greater efforts to ensure that tenants are aware of their rights AND of the services of the Tribunal, ii) ensuring that Tribunals are sufficiently capacitated to make rulings on such matters.
- The Minister of Human Settlements should examine the possibility of gazetting regulations to prevent excessive rent increases for vulnerable groups of tenants

## Role of Municipalities

There is a critical role for municipalities to provide information about the Tribunal's services and advice on landlord/tenant issues generally. This should take the form of a housing advice centre that focuses on information and referrals. Currently, Section 14 of the Rental Housing Act provides that municipalities *may* establish such an office, but few have done so.

### Action:

- The next round of amendments to the Rental Housing Act should amend Section 14 to ensure that municipalities are mandated to create a Housing Information Office.
- A unit needs to be formed at the National Department of Human Settlements to give direct assistance to municipalities to set up such units. For poorer municipalities some funding should be made available.

## Role of National Department of Social Development

Households facing eviction who have lost income to pay rent should technically be able to claim Social Relief of Distress (SRoD) to cover the rent for a period of at least 3 months. The grant is seldom, if ever, used in this way.

### Action:

- Discussions need to take place with National Department of Social Development with the aim of ensuring that SRoD may be utilised by destitute households facing eviction.

### **Emergency Housing Programme**

The workshop decided to NOT advocate for any particular changes to this programme.

### **Retaliatory Evictions**

The report documented a widespread practice of eviction/ non-lease renewal on the basis of the tenant attempting to enforce his/ her civic rights or through organising a tenant committee. Eviction on this basis is particularly egregious.

Action:

- The next round of amendments to the RHA should include a new clause that an eviction may not be granted if the landlord was at least partially motivated to take the action by the fact that the tenant attempted to assert his or her civic or civil rights at any time over the previous 12 months.
- The Human Rights Commission could investigate such cases.