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Any Room for the Poor?
Forced Evictions in Johannesburg, South Africa
Draft for discussion



Centre on Housing Rights and Evictions

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1. INTRODUCTION

This report is the product of a three-month fact-finding mission conducted by the Centre on Housing Rights and Evictions (COHRE). COHRE is an international NGO which focuses on the right to adequate housing, and has a Secretariat in Switzerland and programme offices in Brazil, Ghana, South Africa, Thailand, the US and Australia. COHRE has official consultative status with the Economic and Social Council of the United Nations (UN), the Organisation of American States (OAS), the African Union (AU) and the Council of Europe (CoE).

In the course of 2003, COHRE became concerned at a spate of press reports of evictions in and around the city of Johannesburg. COHRE had previously been monitoring deteriorating housing rights conditions, coupled with widespread forced evictions in a number of key African cities (including Lagos, Nairobi, Luanda, Dakar, Cairo and Accra). The addition of Johannesburg - regarded by many as potentially the model African city - to this growing list, would be a major setback in attempts to turn the tide of housing rights violations and forced evictions in Africa. For this reason it was important to obtain an objective assessment of the situation in Johannesburg. COHRE therefore held discussions with a number of community and human rights groups concerned with housing policy and eviction practices in Johannesburg, and also with contacts in the relevant government departments, and was prompted to initiate an investigation to establish the facts of the situation.

COHRE then put together a fact-finding team of African and international experts, with experience in international and South African law, slum-upgrading, evictions, community development, urban planning and housing and land rights.¹ The objective of their mission was to:

- investigate recent and planned forced evictions in Johannesburg;
- assess these against international and national legal standards and best practice;
- comment on the implementation of housing policy in the Johannesburg metropolitan area;
- make recommendations where appropriate.

This is the draft report of COHRE's Johannesburg fact-finding mission, released for discussion purposes. In the report, housing provision and evictions practices are evaluated in light of the South African government's obligations under international and national law, as well as the

¹ The project was coordinated by Jean du Plessis. Primary authors: Jean du Plessis and Stuart Wilson. Specialist policy research: Marie Huchzermeyer, Stuart Wilson. Specialist legal research: Theunis Roux. Key informant interviews: Michael Kihato, Jean du Plessis, Theunis Roux, Steve Topham. Field research heads: Stuart Wilson, Jackie Dugard. Fieldwork team leaders: Shereza Sibanda, Vumile Mhluthwa. Fieldworkers: Letsema Mokoena, Sibongile Magadlela, Thulane Magome, Jonathan Lephoto, Lungile Mahlangu, Lebohang Mashiloane, Maxwell Nqeno, Siphwe Segodi. Project support: IOD-SA, CALS. Photographs: Lebohang Mashiloane, Jurgen Schadeberg, Guy Tillim, Jean du Plessis.

developmental challenges facing the City of Johannesburg. The report also provides a snapshot of the lives of people in Johannesburg's inner city buildings and informal settlements.

Chapter 1 provides a problem statement and describes the methodology by which information was gathered in preparing the report. Chapter 2 gives an overview of Johannesburg's history and demography, and overviews recent transformation and delivery programmes. Chapter 3 sets out the legal and policy frameworks in respect of housing provision and urban land tenure. Chapter 4 discusses evictions in the inner city and considers the housing options available to poor people there, while Chapter 5 turns to consider the same issues in Johannesburg's informal settlements. Chapter 6 sets out the report's conclusions and a set of practical recommendations.

Wonder's Problem

'If they evict us, we'll sleep on the streets for a while, until we find somewhere else to go. I can't leave the city. If I do, my family will starve.'

Wandile Zungu, resident of Joel Street, Berea, 6 June 2004²

Wandile Zungu, or Wonder, as he likes to be called, earns around R200 per month collecting waste paper from office buildings in central Johannesburg and selling it to recycling companies. He also sometimes sells sweets on the pavement. Half of his income goes to rent, which he has to pay for a shack in the inner city suburb of Berea. It is a struggle to support his wife, two-year old son and new-born baby son/daughter.

Now the City of Johannesburg wants to evict Wonder and his 88 neighbours on the grounds that they constitute a health hazard. Being evicted is nothing new for Wonder - since his arrival in Johannesburg in 1998 he has been forced to move a number of times. The last time was just six months before he was interviewed by the COHRE team, when he and his family were evicted out of their previous home. Each time it becomes more difficult, as his family grows and as the demand for this type of accommodation increases.

Wonder is one of about 7.5 million people who lack access to adequate housing and secure tenure in South Africa. They are South Africa's poorest. Most live in cities. In Johannesburg, they live either in one of its 190 urban shack settlements, in one of around 235 so-called 'bad buildings' in the inner city, or in backyards, on pavements, under highway bridges. Tenure is precarious and conditions are squalid. But poor people choose to live in these places because they are located close to formal job opportunities or points of entry into the informal economy.

In the inner city, capital flight in the late 1980s and early 1990s resulted in a general deterioration of the residential housing stock. Buildings became dilapidated and overcrowded. Many were simply abandoned by their owners. Most poor people in the inner city now live in these abandoned buildings, in shacks on adjacent land, or in poorly maintained private residential blocks. Wonder lives in a shack to the rear of an abandoned single-story residential building in the inner city. He lives there without the permission of the landowner, who, according to the other residents, absconded during June 2003. If Wonder is evicted from this home by the City of Johannesburg, what will his options be?

² Not his real name. Note: He was interviewed several times between 8 May and 27 November 2004.

Housing subsidies

One option for Wonder would be to apply for a state housing subsidy to meet his housing needs. In terms of sheer numbers, the state's overall achievement of delivering housing has been impressive. This has been done via capital subsidies made available to low-income households. The maximum subsidy available is R28,279, and is equal to the cost of a 'minimum standard house'. The exact form of these houses varies according to provincial standards. The house usually has around 30 square metres of floor space on a 250 square metre stand. Water must be provided, at least through a yard pipe. In practice low cost housing settlements in Johannesburg are often also plumbed in to the sewerage system and connected to the electricity grid, at the point of construction.

Subsidies are provided in various amounts, according to the level of household income. National Housing Subsidy Scheme (NHSS) assistance works on a sliding scale. People who earn less than R3,500 per month, but more than R2,500 are entitled to a subsidy of R8,600; those who earn less than R2,500, but more than R1,500, qualify for a subsidy of R15,700; those who earn less than R1,500 qualify for a subsidy of R25,800. Beneficiary savings or credit must make up the difference between the subsidy amount and the cost of the minimum standard house. The full subsidy amount of R28,279 is payable to any qualifying beneficiary who earns less than R800 per month and is aged or disabled.³ Apart from the income requirements, beneficiaries must be:

- married, co-habiting, or have at least one proven financial dependent;
- lawful residents of South Africa;
- 21 or older.

This scheme has been used to finance the construction of over 1.5 million households across South Africa between 1994 and 2003.⁴ Between 1994 and 2001, the South African government provided subsidies for the building of 1,334,200 new houses. In addition, 370,000 title deeds had been transferred to tenants of council houses in the former black townships, giving these tenants ownership of their houses for the first time.

These are high delivery rates by any standards. Nonetheless, given the huge backlogs in infrastructure provision inherited from apartheid, and the unprecedented influx of people to the Johannesburg area, Wonder would wait a long time before he received a state-subsidised house. The City of Johannesburg's housing subsidy waiting list is currently 250,000 – 300,000 families.

In addition to the long wait, there is a further, even bigger problem. A subsidised house would obviously be a welcome benefit for Wonder and his family. For the first time they would have their own home, with all the securities and health and other benefits this entails. Yet their new house is likely to be located in the wrong place, forcing Wonder to choose between a house and a livelihood. Low cost housing settlements are generally located on the urban periphery, often far from main arterial transport routes and access to schools and clinics; and far from the survival

³ Lindiwe Sisulu, Minister of Housing, Tabling the Budget Vote for the Department of Housing for to 2004/2005 Financial year, National Assembly, 10 June 2004.

www.housing.gov.za/content/media_desk/speeches/2004/100604.htm.

⁴ David Gardener, *Getting South Africans Under Shelter: an Overview of the South African Housing Sector*, Housing Finance Resource Programme (2003), 21.

opportunities which have drawn Wonder and so many others like him to Johannesburg inner city in the first place.⁵

Informal settlement accommodation

A second possibility would be for Wonder to erect a shack in one of Johannesburg's estimated 190 informal settlements. Taking this option would offer a number of benefits for someone with limited resources, including low or even zero rental, and minimal (if any) service charges. As a result, despite municipal attempts to curb such unplanned settlements, and despite the delivery of formal housing, the number of non-backyard shacks in Johannesburg has increased dramatically. Between 1996 and 2001, the number of shacks in Johannesburg increased by 36,451. Today, the total is an estimated 209,381.⁶

However, from Wonder's perspective, living in an informal settlement also has many risks and disadvantages. In the first place, he would face a high risk of eviction from municipally controlled 'rapid response teams', which seek to manage the growth of informal settlements in the Johannesburg metropolitan area. No alternative accommodation is provided to those evicted by municipal rapid response teams. In addition, as in the case of opting for a housing subsidy, he is likely to end up miles from the inner city pavements and office dustbins from which he makes a living. Indeed, just the daily transport from an outlying settlement to the inner city could cost him more than half of what he currently earns in a day.

Inner-city accommodation

Then there is a third option, of trying to find alternative accommodation in the inner city, close to his economic opportunities. As Wonder has learnt, this strategy is fraught with its own set of dangers and difficulties. With the limited money at his disposal, there is no guarantee Wonder will find an alternative place. And even if he does, it is likely to be crowded, temporary, inadequate, and illegal.

The national Department of Housing's subsidy programme does not cater specifically to the needs of the inner-city poor. There is an Institutional Subsidy Programme (which is currently under review) that is aimed at low-cost housing projects, including inner city 'co-operative housing' and 'social housing' providers. This subsidy can be used to fund physical upgrades to existing housing stock in low-cost housing projects, yet it may not be used to defray rent or service charges for low-cost housing beneficiaries.

The result of this exclusion is that cooperative and social housing in the inner city is mainly targeted at people earning between R1,250 and R3,500 per month, well above the level of Wonder's income. And even at these income levels, cooperative or social housing programmes are barely viable.⁷

⁵ See T Zack and S Charlton, Better Off, But...: Beneficiaries' perceptions of the government's housing subsidy scheme, Housing Finance Resource Programme (2003). Latest number of shacks extracted from Database of Informal Settlements and Housing Projects ('the Database'), obtained from the Housing Department of the City of Johannesburg, 5 August 2004.

⁶ In South Africa as a whole there are an estimated five million people living in informal settlements, comprising over 1,3 million households. (Statistics released in October 2003, quoted in The Witness 7 August 2004)

⁷ Independent research suggests that the financial viability of social and co-operative housing schemes in the inner city requires household earnings of more than of R3,500 per month, i.e. above the entry level of qualification

Indeed, most low-cost housing projects in the inner city manage to survive only because of heavy subsidisation and external support. There are upwards of 400 NGO-run 'transitional housing' units, situated at four sites in the inner city. These provide single room family units with shared cooking facilities and ablutions at a rate which might just be affordable for people like Wonder. Yet even if he was able to afford a place in one of these transitional housing projects, there is not much chance that one be available when he needs it. With a total of approximately 20,500 households earning less than R3,200 living in the inner city of Johannesburg, he is likely to wait a very long time even for such a temporary solution.

Clearly Wonder, like so many others, is locked into very difficult circumstances. He needs to live near the urban centre to sustain his meagre livelihood and his access to social services, such as a clinic for his children. Yet powerful forces are trying to push him away. He can afford neither secure tenure nor adequate housing. There is no prospect of immediate relief from the state. Private sector housing providers are too expensive. NGO-run social housing is beyond his financial reach. NGO-run transitional housing demand far outstrips supply. And he faces eviction from his home, and yet another livelihood crisis, for the second time in six months.

Questions

The example of Wonder raises a number of crucial, interlinked questions, questions which arose repeatedly in the course of this investigation, and which, in many ways, lie at the heart of the delivery and developmental challenges currently faced by the City of Johannesburg. These questions can be summed up as follows:

What is the response of the City of Johannesburg to the plight of the poor of Johannesburg, who eke out a living in the informal sector on its streets and in its suburbs, and who so often end up living illegally? Is there any room for such people to live and work in the inner city?

If there is no room for the poor in the inner city, where are they expected to go? Should they opt for one of the many informal settlements located within greater Johannesburg? How are they expected to survive in such settlements? For how long will they be allowed to stay in such settlements before being evicted again?

Or, should they rather wait for a formal house to be delivered to them via the government housing subsidy? If yes, how long can they be reasonably expected to wait? Where should they live while they are waiting? And how are they expected to make a living in their new low-income houses, if these are located away from the only survival opportunities they know?

Methodology

A team of 15 COHRE Researchers and three photographers gathered information for this report. First, a review was undertaken of the available literature on urban housing policy and forced evictions in South Africa, concentrating on the Johannesburg metropolitan area. The literature includes:

for a housing subsidy. See Syn-Consult et al, 'Research report for the development of a medium density housing programme for the national Department of Education' (October 2003), p. 12.

- Academic articles and research reports on urban tenure, planning and housing policy;
- International human rights instruments and South African domestic legislation relating to land tenure, housing delivery and development facilitation;
- Pleadings and judgements in a number of eviction proceedings in the South African courts;
- Media reports of forced evictions in the Johannesburg area;
- Data from Census 2001.

Second, 31 key informant interviews were conducted.⁸ The informants fall into roughly the following categories:

- National, provincial and municipal government officials concerned with urban regeneration, housing provision and tenure security;
- NGOs concerned with housing and evictions in Johannesburg's inner-city and informal settlements;
- Lawyers acting for the City in eviction cases, or for people the City wishes to evict;
- Academic researchers in the fields of urban planning and housing policy.

Third, researchers conducted interviews and focus groups in 2 informal settlements, 9 inner city communities, one evicted inner city community and one forcibly relocated informal settlement.⁹ These research sites were selected because people living there fell into one of the following categories:

- They had been evicted or forcibly relocated (in 2 cases);
- They had successfully resisted an eviction application moved by the City of Johannesburg (in 3 cases);
- At the time of writing this report, they were living under threat of eviction and/or forced relocation (in 6 cases).

Two of the communities visited fell outside of these categories. One was an informal settlement in the early stages of being upgraded; the other was an inner-city building where the managing agent was under investigation for fraud. In all, 310 people in these communities were interviewed or participated in focus groups in the course of researching this report. Detailed survey data are available for six of the sites visited - one informal settlement and 5 inner city buildings.

Detailed notes were made of all key informant interviews. Most focus groups in communities were recorded in respondents' first languages, translated into English and transcribed. Two hundred and ninety one respondents filled out a biographical data questionnaire, information from which was added to a database, to build a respondent profile.

Throughout this report information on evictions, relocations and housing developments initiated in the Johannesburg metropolitan area is evaluated in light of the City of Johannesburg's obligations under Section 26 of the Constitution of the Republic of South Africa; and under the jurisprudence developed on the basis of Section 26. The information is also looked at through the lenses of international law (including Article 11 (1) and General Comments 4 and 7 of the

⁸ For a list of key informant interviews see Annex A

⁹ For a list of community interviews and focus groups see Annex B

International Covenant on Social, Economic and Cultural Rights); and international good practice (citing similar examples from other countries).

This report

Forced evictions and housing delivery in South Africa, and in Johannesburg in particular, are obviously contentious issues. In the course of compiling this report, the City was often portrayed by respondents as indifferent to the needs of poor people living in the inner-city, and ineffectual in ensuring true participation in its informal settlement development plans. Others were at pains to demonstrate the City's concern for the poor, to give examples of its successful pro-poor initiatives and to point to the significant financial and capacity constraints under which it operates.

If nothing else, this report aims for a synthesis of perspectives which engages with housing and eviction practices in Johannesburg in light of the needs and rights of people like Wonder. It is hoped that the report will stimulate fresh and constructive discussion between the relevant role players, in a way that promotes the right to adequate housing and protection from forced eviction in the City of Johannesburg. Its conclusions and recommendations are offered as a first step in this direction.

In order to commence a process of dialogue and discussion, an earlier draft of this report was distributed to Johannesburg City managers, other government departments and support institutions, with an invitation for responses and dialogue on the issues raised in the report. A number of positive responses were received, including an encouraging comment from Neil Fraser, the author of the internet column CitiChat, and until recently the Executive Director of the Central Johannesburg Partnership, who said that the report 'offers an excellent and accurate overview of the situation in the city'. The Johannesburg Inner City Office also sent a response, questioning a number of facts and assertions in the report (see Chapter 4).

The present version of the report is available both in hard copy and in electronic format (www.cohre.org). It will be presented by COHRE at various workshops of interested parties, including directly affected groups, with the aim of generating ideas and alternative strategies.

2. CONTEXT

A Short History of Housing and Tenure in Johannesburg

Inequality in the provision of land, housing and basic services is a recurring theme in Johannesburg's history. The city's present-day settlement patterns, land tenure arrangements and housing conditions have been fundamentally determined by racial segregation, progressively implemented over the first 100 years of its history.

As a result of a combination of demographic and political pressures, racial segregation in Johannesburg began to unravel during the last ten years of apartheid. Nonetheless, the newly constituted Greater Johannesburg Transitional Metropolitan Council, which came into being in 1995, took over a city constructed for the convenience of a small minority of whites, living in well-serviced, centrally-located suburbs. Black Johannesburgers, who supplied the majority of the labour force on which white prosperity was built, lived in overcrowded dormitory townships on the urban periphery, in informal settlements, the growth of which accelerated toward the end of the 1980s and the early 1990s, or in a 'greyed' inner city dominated by slum landlords.

The new city administration faced a multitude of challenges. In the first ten years of democracy, the Johannesburg municipality went through a series of administrative transformations and financial crises. Its identity and organisation were finally settled in 2001, when the Greater Johannesburg Metropolitan Council came into being, organised around a central administration headed by an executive Mayor, which co-ordinated the work of 11 administrative regions, and a number of quasi-autonomous service agencies.

Despite the institutional and fiscal uncertainty which characterised city governance in the early post-apartheid period in Johannesburg, the municipality did deliver significant numbers of new houses, launch a number of major urban renewal initiatives and pioneer a ground-breaking land release and low cost housing settlement programme, in line with its integrated development plan.¹⁰

However, inflexibilities in national housing subsidy programmes and severe fiscal austerity combined to relegate low-income housing settlements away from major urban centres because of the availability of cheap land in these more peripheral locations. Obstructionist tactics from owners of property adjacent to proposed low-cost housing settlements have also delayed and even scuttled a number of key developments. As a result, the apartheid spatial legacy remains substantially intact in Johannesburg.

¹⁰ While exact numbers for the city are not known, the province of Gauteng delivered 389,365 new houses (completed or under construction) between April 1994 and end March 2004.

Progressive Segregation: 1886 - 1948

Johannesburg convulsed into existence over the thirty years following 1886, when large gold deposits were discovered along a 60 km reef stretching from Krugersdorp in the west to Springs in the east. By 1914, Johannesburg had swelled from a miners' camp of 3,000 diggers to a city of some 250,000 people. From its inception until the First World War, the city's economic fortunes waxed and waned, along with those of the international gold mining industry.¹¹

Spatial segregation by race and class took hold almost immediately after it became apparent that the city was going to provide a stable source of gold. Even before the largest deposits of the precious metal were discovered, the Kruger Republic's Gold Law of 1885 banned black ownership and occupation of land reserved for mining. Early attempts to expel Africans and Indians to the urban periphery in 1904 issued in the first African settlements at Klipspruit, some 35 km from the city centre, in the heart of present-day Soweto.¹² In the city proper, the few legal residences that became available for blacks at this time consisted of mine labour compounds and servants' quarters in the back yards of white suburban houses. Nonetheless, many Africans seeking to avoid both the oppression of the labour compounds, the isolation of suburban outhouses, or the long walks to work from Klipspruit to the city, found ways to live illegally in 'white' Johannesburg.

After 1918, the partial diversification of Johannesburg's economy away from gold mining, and the urbanisation of migrant workers' families, resulted in a sharp increase in the numbers of African people in Johannesburg. This increase was not matched by any significant scaling-up of housing provision. Wealthier Africans could purchase a plot in the freehold townships of Alexandra and Sophiatown. These areas provided a permanent base nearer to the city than Klipspruit. Many poorer Africans, though, lived in backyard dwellings in these freehold areas, and in other townships. This practice gave rise to severe overcrowding which was not to abate until racial settlement laws were relaxed in the 1980s.

The Natives (Urban Areas) Act of 1923 further reduced the number of legal tenure options for African people outside the townships, by making urban tenure more or less conditional on urban employment. Yet the Act was ineffective in segregating the inner city. African residents developed creative ways of beating the system. For example, it was not difficult for an African to claim to be working on a property he illegally occupied in the midst of the dense residential and light industrial areas of the city centre.¹³ Although amendments to the Natives Act passed in the 1920s and 1930s were intended to eliminate this and other methods of circumventing segregation, African occupation of inner city slums persisted.

Along with the ineffectiveness of the Natives Act, a major concern to the inter-war local authority was the extent of racial mixing between 'poor whites', Africans, coloureds and Indians living in the slum areas at the centre of the city. (By 1931 some 1,200 white families were registered as inhabitants of declared slum properties in Johannesburg.) In an effort to pull poor whites out of the racial melting pot of the inner city slums, to circumvent the difficulty involved in applying the Natives Act (which did not apply to coloureds and Indians) and to make way for the construction of an increasing number of sky scrapers, the council used the Slum Act of 1934

¹¹ Charles van Onselen, *New Babylon, New Nineveh: Everyday Life on the Witwatersrand 1886-1914*, (2nd ed.) Jonathan Ball (2001), 1-13.

¹² Ibid.

¹³ Susan Parnell and Gordon Pirie, 'Johannesburg' in Anthony Lemon (ed.) *Homes Apart: South Africa's Divided Cities*, David Philip (1991), 131.

to effect a series of clearances on health and safety grounds. These evictions affected all races, but alternative housing was only provided to white slum dwellers. Sophiatown, Prospect Township and the Malay Location became dumping grounds for blacks evicted from the city centre. Overcrowding and a chronic lack of basic services in these areas intensified. What little state housing provision there was for Africans at this time was located in Orlando, some 30 km outside the city centre.

The temporary lifting of influx controls during the Second World War, negated what little progress the authorities had made in racially segregating Johannesburg before 1939. Housing in all of the townships was severely overcrowded as the increased demand for labour driven by South Africa's participation in the war drew more and more Africans to Johannesburg. As a result, Africans, coloureds and Indians returned once again to the inner-city slums, while the city's first significant informal settlements sprung up on land to the south west of Johannesburg, adjacent to the existing non-freehold townships of Pimville and Orlando.

By 1946, the housing backlog for Africans had grown to some 42,000 units. Yet only 2 per cent of building material available for public housing construction was assigned to Africans.¹⁴ The Johannesburg municipality would eventually build what became the modern day Soweto suburb of Dube, and extend Orlando and Jabavu. But the strategy of restricting new housing developments for Africans to the out-of-town settlements to the south west of the city, meant that the basic spatial outline of racial segregation in Johannesburg was already in place before the National Party came to power in 1948.

Grand Apartheid: 1948 - 1983

Grand Apartheid¹⁵ gave greater formality to pre-existing racial inequality in housing provision and tenure security in Johannesburg. It was premised on the belief that Africans were essentially a rural, 'tribal' people, with no permanent place in urban 'white' South Africa. Of course, the Natives Act and other pre-1948 measures had already implied as much, but never as clearly or with such brutal consistency. Across urban South Africa, Apartheid replaced the Natives Act's rather *ad hoc* racial zoning with the more systematic and thorough delineation of white, Indian, Coloured and African 'group areas', in terms of the Group Areas Act (no. 41 of 1950).

The National Party's 'homelands' policy was simply the application of the Group Areas Act on a grander scale. The government staked out four quasi-independent 'homelands' and seven 'self-governing territories', scattered in a crescent, stretching from South Africa's northern borders and along its eastern and southern seaboard. Whereas urban group areas were largely racially defined, these 'Bantustans' as they came to be known, aimed to separate Africans along lines of exaggerated ethnic difference. The Bantustans gave the apartheid state somewhere to which it could 'repatriate' Africans who were surplus to the labour needs of the 'white' cities and farming areas and as a result fell foul of its tightened influx controls.

Under the Bantu Homelands Citizenship Act (no. 26 of 1970), all African South Africans were declared to be citizens of one of the Bantustans. The idea was that when a Bantustan achieved full independence, all its 'citizens', would be deprived of South African citizenship rights altogether. All Africans with rights of permanent residence in 'white' South Africa would retain

¹⁴ Ibid.

¹⁵ As opposed to the segregation of public facilities, the banning of inter racial sexual relationships and the labyrinthine system of racial classification, commonly referred to as 'petty apartheid'.

them, but any Africans born in white South Africa after their Bantustan became independent would not have residence rights, and would have to hold a valid residence permit to live outside their Bantustan.¹⁶

All this served to reinforce the officially temporary nature of African residence in or near white urban areas, including Johannesburg. As a result, tens of thousands of urban African Johannesburgers were removed to rural Bantustans. New state housing developments for Africans after 1948 were based on long leasehold or rental tenure, not ownership. In Johannesburg, with the exception of Alexandra, freehold townships were cleared and often rezoned as white group areas. Townships were planned with no commercial or industrial base and were controlled by separate administrative units within local authorities. Townships were laid out with winding roads, dead ends and few entrances or through-routes, in order to restrict movement and facilitate policing and control. This constituted a further brake on economic development in these areas.

Throughout this time, housing supply in the townships failed to keep pace with demand. During the 1960s and 1970s, the bulk of the resources the state made available for African housing was directed toward new developments in the Bantustans. The result was an escalation of overcrowding in African townships and a further proliferation of backyard shacks. Apart from being the only affordable housing option for many urban Africans, backyard shacks allowed 'illegal' Africans to squat in the shadow of 'legal' African householders. Life was hard and precarious. Not only were living conditions harsh. If caught, 'illegal' residents were prosecuted, fined and expelled to a Bantustan.

The inner city of Johannesburg was effectively segregated and zoned for white residential and commercial activity. Even domestic workers were evicted from their quarters atop the high-rise residential blocks of Hillbrow, Berea and Joubert Park, and moved into single sex hostels in the townships.

Coloured and Indian South Africans also suffered greatly under the policy of urban spatial Apartheid. In Johannesburg, the predominantly coloured and Indian inner city suburb of Feitas was cleared and transformed into the white suburb of Pageview. Coloureds were sent to Eldorado Park and Ennerdale townships; Indians to Lenasia. These locations were even more distant from the inner city than much of Soweto.

By the end of the 1970s, while some Africans still managed to live illegally in white urban areas, and thousands more lived illegally in townships outside the Bantustans, the racial scheme of spatial Apartheid had reached its most advanced state. Such black people who had managed to cling on the urban life, were effectively expelled to the urban periphery. The basic spatial legacy of Apartheid, with which South Africa's democratic government would begin to grapple some 14 years later, had been determined.

Apartheid Swamped: 1983 - 1990

In the early 1980s, amid mounting internal opposition, external criticism and economic crisis, the National Party Prime Minister P W Botha ushered in a series of political reforms. While designed to maintain dominance, these were the first step to the dismantling of Grand Apartheid. The

¹⁶ Laurine Plaztky and Cheryl Walker, The Surplus People: Forced Removals in South Africa, Ravan Press (1985), 18.

Botha reforms included the introduction of elected Black Local Authorities in the African townships and the sale of houses rented from the state. This tacit recognition of a permanent African presence in urban South Africa was accompanied throughout 1980s and early 1990s by the progressive erosion of influx controls.

Botha's reforms had the effect of transforming local government into an arena of intense anti-apartheid struggle. From their very inception, the impoverished Black Local Authorities came under sustained attack from the anti-apartheid movement. Already undermined by the fact that they had to provide municipal services by raising money from a largely indigent population with no commercial or industrial tax base, the authorities were, from 1986, hit by ever more effective rent and service payment boycotts. By the late 1980s, upwards of 80 per cent of all of Soweto's formal rent paying households had joined the boycott. In response, the municipal authorities drastically reduced the level and quality of services provided to township residents.

The collapse of influx controls in 1986 paved the way for the growth of informal settlements and the 'greying' of inner city Johannesburg. The influx of black residents increased steadily from 1986, resulting in the establishment and rapid growth of many informal settlements, and a rapid increase of the inner city population. By the early 1990s, inner city Johannesburg had become one of the most racially integrated areas in South Africa. Landlords of inner city residential blocks responded to the high demand for accommodation by new black tenants, and the flight of many white occupants, by hiking rents and cutting expenditure on maintenance and repairs.¹⁷ This was partly a consequence of uncertainty about the long-term prospects of the inner city as a viable property investment zone. But just as important was the fact that the new inner city tenants, their presence not yet formally recognised in law, could not complain about the level of rents and the standard of maintenance in their new homes, for fear of eviction and removal to the townships, or further afield.

Over-investment in commercial property in decentralised locations by financial institutions starved of international opportunities by anti-apartheid sanctions assisted white commercial and residential flight from the inner city.¹⁸ Taking their cue from this deterioration in investor confidence in the inner city and seeing their property values fall, many residential and commercial property owners simply abandoned their buildings to an increasing number of squatters unable to afford to rent inner city accommodation on the formal, private rental market. Wracked by a series of institutional reforms and financial and political crises throughout the 1980s and 1990s, the municipality did not accord particularly high priority to the enforcement of building standards and regulations and municipal health and safety by-laws. Hence the advent and multiplication of Johannesburg's so-called 'bad buildings'.

New migrants to urban South Africa formed the backbone of rapidly growing informal settlements. They were joined by a large number of former occupants of township backyard shacks, opting for plots in new informal settlements in similar location, which often provided less cramped accommodation, and lower or even zero rental.

By the end of the 1980s, local government, like the rest of the South African polity, was in deep crisis. In the townships, fiscal crisis and political insurgency rendered services near impossible to deliver, while informal settlements were multiplying. Johannesburg was the site of acute housing,

¹⁷ The National Party government all but repealed the Rent Control Act (no. 80 of 1976) in 1979.

¹⁸ See Soraya Goga, 'Property Investors and Decentralisation: A Case of False Competition?' in Richard Tomlinson, Robert Beauregard, Lindsay Bremner and Xolela Mangcu (eds), Emerging Johannesburg: Perspectives on the Postapartheid City, Routledge (2003), 71 - 84.

infrastructure and service backlogs, a complete breakdown in local governance in the townships, and deepening inner city decay.

Transformation and Delivery: 1990 - 2004

Institutional Change

Over the last 14 years, local government in Johannesburg has gone through a series of institutional transformations and financial crises. In 1990, the 13 racially demarcated local authorities serving the metropolitan area had ‘vastly different resource bases, different service levels and different opportunities’.¹⁹ By 2001 these local authorities had been consolidated into one dominant municipal structure with a single revenue base.

The ‘pre-interim’ and ‘interim’ phases of local government transformation, delineated in the Local Government Transition Act (no. 209 of 1993), witnessed intense struggles between entrenched local interests over the form and functionality of local government in Johannesburg. Between 1990 and 2001 the municipality went through cycles of ‘centralisation, decentralisation and centralisation again’, as various political parties, civic associations and rate-payers’ groups struggled to mould local government in Johannesburg in line with their political interests.²⁰

In the end, these issues were resolved not by a local accommodation, but by intensive national government intervention. In 1997, a major financial crisis precipitated by an anticipated budget deficit of some R2 billion at the end of that financial year,²¹ resulted in the imposition of central government supervision of Johannesburg’s financial management, and the beginning of the end of the institutional malaise which had characterised city government for so long. Management was centralised into the hands of a regionally representative ‘Committee of 10’, later expanded to a Committee of 15 and subsequently renamed the ‘Transformation *Legkotla*’. Its task was to provide a new strategic direction for the municipality. The long-term result was *Igoli 2002*, which essentially heralded the centralisation and corporatisation of city government and the cementing of its role as a facilitator of market-led local economic development.

Urban Fragmentation

Parallel to these developments was the advent of Integrated Development Planning. In light of the institutional malaise at municipal level, which was not confined to Johannesburg, the Department of Provincial and Local Government introduced a requirement, in terms of the Development Facilitation Act (no. 67 of 1995), for all municipalities to formulate Land Development Objectives (LDOs); and in terms of the Municipal Systems Act (no. 32 of 2000), to produce Integrated Development Plans (IDPs). The IDPs were intended to ‘enable local government to deal with scarcity through aligning their budgets with their service delivery

¹⁹ Jo Beall, Owen Crankshaw and Susan Parnell, Uniting a Divided City: Governance and Social Exclusion in Johannesburg, Earthscan (2003), 74

²⁰ Richard Tomlinson, ‘Ten Years in the Making: A history of the Evolution of Metropolitan Government in Johannesburg’, Urban Forum 10(1) 1999, 1; Jo Beall, Owen Crankshaw and Susan Parnell, Uniting a Divided City: Governance and Social Exclusion in Johannesburg, Earthscan, (2003), 65-86.

²¹ Richard Tomlinson, Robert Beauregard, Lindsay Bremner and Xolela Mangcu ‘The Postapartheid Struggle for an Integrated Johannesburg’ in Richard Tomlinson, Robert Beauregard, Lindsay Bremner and Xolela Mangcu (eds), Emerging Johannesburg: Perspectives on the Postapartheid City Routledge (2003), 10.

programmes' and to chart the way for more public/private partnerships.²² The hope was that IDPs would result in sustainable new housing settlements, close to job opportunities, social services and economic development nodes.²³

With a few exceptions, this has not been the result. New housing developments have largely taken place on the outer edges of existing townships, far away from jobs, facilities and services. This has marginalised new settlements and contributed to the further fragmentation of the urban fabric of Johannesburg. State-subsidised houses have been received with gratitude by most beneficiaries. But living in an RDP settlement often means dislocation from job opportunities and social services. The greater transport costs of accessing these amenities have increased the net financial burdens placed on state subsidised householders who may have previously occupied better-located sites in slums or informal settlements.²⁴

To an extent, this phenomenon can be traced to inflexibilities in the national housing subsidy programme. The amount of the individual subsidy that can be spent on land is limited, given the costs of construction and supplying service infrastructure. This has a real impact on the affordability of centrally located housing settlements. In addition, low cost housing and service developments in relatively close proximity to existing formal neighbourhoods were often delayed by many thousands of planning objections, lodged mostly by interest groups in established suburbs nearby.²⁵ An example of this has been Cosmo City, an innovative, high quality, socially differentiated low cost housing project, which was bogged down in planning objections for five years. The last set of objections against the Cosmo City project was only resolved in early 2004.

Informal Settlement Policy

The informal settlements, which sprung up in the last ten years of apartheid, have continued to grow and multiply. In 1990 there were 20 informal settlements in Gauteng; today there are at least 300, at least 190 of which are located in the Johannesburg metropolitan area. Historically, municipal attitudes to informal settlement dwellers have been hostile, especially to informal settlements which appeared or grew rapidly after 1994.²⁶ At best, they are seen as obstacles to state-driven housing delivery and urban renewal. At worst, they have been caricatured as massive criminal enterprises populated by a combination of criminal gangs, illegal immigrants and land invaders intent on jumping the housing queue.²⁷

Until 2004, housing policy at all levels gave little attention to informal settlement upgrading, outside a few special projects initiated under the aegis of the Presidency. In Johannesburg, the

²² Ibid. 10-11.

²³ Richard Tomlinson, Robert Beauregard, Lindsay Bremner and Xolela Mangcu 'The Postapartheid Struggle for an Integrated Johannesburg' in Richard Tomlinson, Robert Beauregard, Lindsay Bremner and Xolela Mangcu (eds), *Emerging Johannesburg: Perspectives on the Postapartheid City*, Routledge (2003), 10-11.

²⁴ Tanya Zack and Sarah Charlton, 'Better Off, But... ': Beneficiaries' Perceptions of the Government's Housing Subsidy Scheme, Occasional Paper No. 12, Housing Finance Resource Programme, June 2003; Stuart Wilson, *Relocation and Access to Schools in Sol Plaatje: Research Report*, Centre for Applied Legal Studies (2003).

²⁵ Lindsay J Bremner, 'Post-apartheid Urban Geography: A case study of Greater Johannesburg's RLDP', *Development Southern Africa*, 17(1) 2000. (RLDP refers to the Rapid Land Development Programme, a municipal scheme to develop planned, serviced sites to which a large number of informal settlement dwellers would be relocated as a prelude to full scale housing delivery.)

²⁶ Carien Englebrect, *People and Places: An overview of Urban Renewal*, South African Cities Network (undated), 30.

²⁷ Jo Beall, Owen Crankshaw and Susan Parnell, *Uniting a Divided City: Governance and Social Exclusion in Johannesburg*, Earthscan (2003), 109.

emphasis lay with relocating informal settlement dwellers away from land perceived to be hazardous or unsuitable for development to large housing settlements. Even where *in situ* upgrades have taken place, as in Diepsloot to the far north of the metropolitan area, they have been upgrades of informal settlements themselves created by relocations.

There is little doubt that informal settlements are often situated on hazardous land unsuitable for development and that relocation is one possible solution. Nonetheless, as is the case with many housing settlements, the suitability of the relocation sites is often questionable. Attention is seldom paid to the need to help informal settlement dwellers to sustain their meagre livelihoods, which often depend on being close to urban centres. In addition, the necessity of relocations is sometimes far from clear. Communities themselves frequently and vigorously contest informal settlement relocations, which, as a result, have turned into forced evictions. The resultant breakdown in trust between local government and informal settlement communities has negative consequences for future development on the relocation site.

The undesirability of relocations is gradually being conceded at a national level. The newly appointed Minister of Housing, Lindiwe Sisulu has affirmed the National Department of Housing's commitment to *in situ* upgrades.²⁸

Inner City Regeneration

The administrative and political uncertainty of the local government transition period also took its toll on the inner city. As Beall et. al. point out, the inner city has long been 'read as a space that was systematically slipping beyond the control of both national and local government'.²⁹ Slum landlordism in the inner city's residential areas, often involving illegal conversion of commercial property for residential purposes, was allowed to continue unabated throughout the 1990s. In recent years, the municipality's failure to enforce health and safety by-laws and to stem the rising tide of crime, along with the state's more general incapacity to regulate the rental housing market, accelerated the area's perceived economic decline.

Since 1999, however, a number of policies and programmes have been developed under the broad umbrella of the 'Inner City Regeneration Strategy' (ICRS).³⁰ The task of urban renewal has been pursued with unprecedented energy by the municipality, with heavy emphasis on attracting commercial investment back into the inner city.

In the terms used by the municipality, the ICRS has five 'pillars'. First is the pursuit of 'intensive urban management', which entails strict credit control in the provision of municipal services and vigorous enforcement of municipal by-laws and building regulations. Second is the upgrading and maintenance of city infrastructure, especially buildings, roads and commercial precincts. Third is the provision of economic incentives to the manufacturing and service sectors. Fourth is the effort to combat what the municipality has termed 'sinkholes', which are defined as areas of accelerated or chronic urban decay, poor infrastructure, 'bad buildings' and high crime. Fifth is the encouragement of 'ripple-pond' investments, usually large capital-intensive infrastructure projects that are supposed to improve the inner city physical environment and to attract

²⁸ National Department of Housing, Breaking New Ground to House All, Media Briefing Released on 25 May 2004; see also 'Government Shift on Shack Dwellers', Mail and Guardian, 16 July 2004.

²⁹ Jo Beall, Owen Crankshaw and Susan Parnell, Uniting a Divided City: Governance and Social Exclusion in Johannesburg Earthscan (2003), 109

³⁰ Yakoob Makda, 'From slum to (financial) sustainability: Johannesburg's Better Buildings Programme', Development Update 5 (1) 2004, 180.

commercial investment and some middle class residential resettlement. These include blue-chip apartment developments, the Mandela Bridge construction and the Constitution Hill Project, the centrepiece of which is the new Constitutional Court building.³¹

In reality, the first three ‘pillars’ of the ICRS are just the methods used to sustain the goals articulated in the fourth and fifth pillars. It is in the ‘ripple pond’ and ‘sinkhole’ paradigm that the municipality tends to locate the 60 or so individual initiatives designed to bring about urban renewal. Two of these initiatives – the municipal ‘Strike Team’³² charged with the enforcement of by-laws and the Better Buildings Programme, a social housing initiative driven by the Johannesburg Property Company – will be discussed in detail in Chapter 5 of this report.

The ICRS has achieved some level of success. Commercial occupancy rates are said to be on the increase after a long decline.³³ The Mandela Bridge, Newtown Cultural Precinct and Constitution Hill projects have re-excited a degree of interest in the inner city as a cultural and entertainment hub. Residential property values around the ‘ripple ponds’ are on the increase.

At the same time, the ICRS’s regeneration strategy has been heavily criticised from some quarters, including community-based organisations in the inner city. The major criticism has been that the ICRS places too much emphasis and energy on cleaning out inner city slums or ‘sinkholes’ to attract urban investment, and not enough on the question of how the broad mass of inner city residents, and specifically the poorer segments of the population, might benefit from large urban renewal initiatives.³⁴ In contrast to the zeal with which it is enforcing health and safety bylaws, the city of Johannesburg appears unable to provide affordable housing alternatives at any adequate scale for those it evicts in the process. Indeed, the most tangible effect of the regeneration strategy upon the poor of the inner city seems, at this stage, to be a widespread fear of impending eviction.

Conclusion

Despite a concerted effort at all levels of government, the spatial legacy of apartheid remains largely intact in Johannesburg. New housing settlements have almost always been situated on the urban periphery and have done little to address beneficiaries’ broader socio-economic needs. In the inner city, municipal efforts to attract commercial investment back into the area show some limited signs success after a long period of neglect. There appears, however, to be little in the way of low-cost housing provision that would provide real alternatives for urban slum dwellers.

³¹ Ibid. 180-181.

³² Bongani Majola, ‘Strike Team’ Targets Inner City Ills’, 25 November 2002, www.joburg.org.za/nov_2002/nov25_inner.stm.

³³ Neil Fraser ‘Eight Years of Classy Inner City Renewal – and it Shows’, 17 May 2004. www.joburg.org.za/citichat/2004/may17_citichat.stm. Also see: Trafalgar Property and Financial Services, *The Trafalgar Inner City Report, 2004*, Johannesburg 2004.

³⁴ Jo Beall, Owen Crankshaw and Susan Parnell, *Uniting a Divided City: Governance and Social Exclusion in Johannesburg*, 110; Inner City Forum, ‘Johannesburg’s Better Buildings Programme: A Response’, *Development Update* 5 (1) 2004, 187 – 193.

3. LAWS, POLICIES AND HOUSING RIGHTS IN SOUTH AFRICA

The right of access to adequate housing, and to protection from forced or arbitrary evictions, is well entrenched in international and South African domestic law. It is, in fact, possible to trace many of the protections built into broad international instruments, through domestic constitutional entitlements, to statute law and the jurisprudence of the higher South African courts. Housing rights and protection from evictions are also widely (although, some would argue, not adequately) acknowledged at a South African national and provincial policy level.

The International Right to Adequate Housing and Protection from Forced Evictions

This chapter is an analysis of the laws and policies affecting housing and evictions in South Africa. It takes as its point of departure the human rights perspective enshrined in Article 25 of the Universal Declaration of Human Rights of 1948 ('the Declaration'); and Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights of 1966 ('the Covenant').³⁵ Article 25 of the Declaration states that:

'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care, a necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'

In a partial recapitulation of this clause, Article 11 (1) of the Covenant affirms:

'The State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realisation of this right recognising to this effect the essential importance of international co-operation based on free consent.'

Noteworthy in these provisions is the extent to which housing rights are bundled with livelihood rights. This recognises the interconnectedness of socio-economic needs. From the perspective of housing rights for the poor, it appreciates that housing delivery must be planned so as to facilitate the development of viable communities, with access to social services and economic opportunities which are mindful of the constraints and capacities of beneficiaries of housing delivery. For example, if people targeted for housing delivery are likely to depend for their

³⁵ United Nations General Assembly, Universal Declaration of Human Rights, 10 December 1948; United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966.

livelihoods on low-skilled, low-yield jobs and livelihood strategies in urban centres, development on a peripheral site is unlikely to be appropriate.

Considerations such as these are elaborated in the General Comments on Covenant obligations, which aim to give content to the rights the Covenant enshrines. Experts appointed by the United Nations General Assembly to a special committee – The Committee on Economic, Cultural and Social Rights – develop the General Comments. General Comments 3, 4 and 7 are relevant to housing rights.³⁶ It is germane to note that South Africa has signed, but has not ratified, the Covenant. This does not preclude a detailed analysis of South Africa's efforts to give effect to the obligations the Covenant places on it, especially given the level of international praise for South Africa's progressive human rights framework, much of which is derived from international human rights treaties, including the Covenant.

General Comment 3, adopted in 1990, introduces the concept of the 'minimum core obligation' to characterise the nature of state duties under the Covenant. The thought is that, implicit in each right is a minimum set of specific benefits and protections entailed by the right that the state party to the covenant must provide to all rights-bearers.

In assessing the extent of a state's compliance with its minimum core obligations, the Comment sets a high standard of review, especially in connection with resource constraints. For example, in Paragraph 10:

'In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations'.

Even if a State party can demonstrate that its obligations are not fulfilled because of resource constraints, paragraph 12 of the Comment requires that 'vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes'.

For now, the individualised minimum core approach has been rejected by the South African courts in favour of a conception of socio-economic rights, which emphasises a more collective entitlement to a 'reasonable' policy. Exactly what this means is discussed in more detail below. Nonetheless, minimum core obligations still form the foundation of any international appraisal of South Africa's progress in realising socio-economic rights. The concept is also a resource for lawyers and other rights advocates seeking to give effect to South Africa's domestic socio-economic rights entitlements.

General Comment 4, adopted in 1991, focuses on the right to adequate housing. The comment unpacks the right to adequate housing as 'the right to live somewhere in peace and dignity'. Here the Comment affirms the right as an entitlement to something more than just bricks and mortar. Adequate housing, according to the Comment, means adequate privacy, space, security, lighting, ventilation, basic infrastructure, all at an affordable cost and within a reasonable distance from

³⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 3 on the Nature of States Parties Obligations: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights*, 1990; Committee on Economic, Social and Cultural Rights, *General Comment No. 4 on Right to Adequate Housing*, 1991; Committee on Economic, Social and Cultural Rights, *General Comment No. 7 on Right to Adequate Housing: Forced Evictions*, 1997.

job opportunities and social services. Paragraph 8 of the Comment sets out seven dimensions of ‘adequacy’ to be taken into account when assessing efforts to give effect to the right. These are:

- Legal security of tenure: From rental housing to full freehold, whichever tenure is considered most appropriate for a particular context must guarantee ‘legal protection against forced eviction, harassment and other threats. Importantly, the Comment concludes that forced evictions are *prima facie* incompatible with the requirements of the Covenant.
- Availability of services, material, facilities and infrastructure: These include ‘sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services’.
- Affordability: Housing costs should not deny a rights-bearer the resources necessary to meet other basic needs.
- Habitability: Housing must be sufficiently spacious, safe and healthy.
- Accessibility: Adequate housing must be accessible to all entitled to it. Disadvantaged groups must be assisted to access housing and land.
- Location: Adequate housing must be sited so as to allow access to job opportunities, healthcare services, schools, child-care centres and other social facilities.
- Cultural adequacy: Housing must be constructed so as to enable the expression of cultural identity.

The Committee on Economic, Cultural and Social Rights recognises that the biggest obstacle to giving effect to the right to adequate housing is often a failure to provide secure tenure for those unable to purchase land to live on, and their increased vulnerability to forced evictions. General Comment 7 on the Covenant therefore concentrates specifically on forced evictions. The Comment affirms the reverse onus the Covenant places on States to demonstrate that forced evictions, if carried out, are justifiable. It also requires that adequate compensation is provided for any loss of rights or property caused by an eviction and that humane relocation plans are put in place, and suitable alternative accommodation found, for those unable to provide for themselves after an eviction. The Comment recognises that some evictions may be justifiable, especially for non-payment of rent and/or intentional damage to rented property without just cause. It also recognises that in cases of urban renewal or large-scale developments, eviction and relocation of relatively large numbers of people may be necessary, but only *as a last resort*.

Paragraph 15 of the Comment sets out 8 requirements for an eviction to be considered procedurally just. These are:

- an opportunity for genuine consultation with those affected;
- adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- information on the proposed eviction(s) and, where applicable, on the alternative purpose for which the land or housing is to be used should be made available in a reasonable time to all affected;
- especially where groups of people are involved, government officials or representatives should be present during and eviction;
- all persons carrying out the eviction must be properly identified;
- evictions should not to place in particularly bad weather or at night, unless the affected persons consent otherwise;

- there must be provision of legal remedies;
- there should be provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Paragraph 20 of the Comment refers specifically to urban renewal or ‘beautiful city’ initiatives. It requires that these initiatives guarantee protection from eviction, or at least guarantee ‘re-housing based on mutual consent’.

South Africa: Domestic Housing Law, Policy and the Jurisprudence of the Higher Courts

Sections 26 (1) and (2) of the South African Constitution state 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. ‘

The Right to Housing in the South African Courts

Despite significant problems with housing actually delivered in South Africa, it is the state’s failure to cater for people living in desperate circumstances while they wait in the queue for low-cost housing which has been the dominant theme of housing rights litigation in South Africa. The landmark case is ‘Government of the Republic of South Africa and Others vs. Grootboom and Others’.³⁷

In September 1998, 900 people from an overcrowded informal settlement known as Wallacedene moved out and occupied an adjacent stretch of privately owned land. The landowner evicted them in May 1999, pursuant to a court order. In the course of the eviction, their shacks, and most of their possessions, were destroyed. They returned to Wallacedene to live on a sports field. The community subsequently sued the Oostenberg Municipality, the Cape Metropolitan Council, the Western Cape Provincial Government, and the national government, seeking an order to provide them with temporary shelter. Their application was largely successful in the Cape High Court, which ruled that Section 28 (1) of the Constitution (the child’s right to shelter) placed an immediate obligation on the state to house the community’s children and their parents in tents, with portable latrines and a regular supply of water. The state appealed against the judgment, chiefly on the grounds that the South African Constitution had wrongly been interpreted as providing people in the Grootboom community with immediate relief.

In its judgment on appeal, handed down in October 2000, the Constitutional Court again ruled in favour of the applicants, but for different reasons. Focussing on the right to housing in Section 26 (1) and (2) of the Constitution, rather than children’s right to shelter in Section 28(1), the Constitutional Court held that the state was not under a specific duty to assist the Grootboom applicants in particular. The real question was whether or not the state’s housing policy and practice, in its totality, was reasonable. Answering this question, the Court held that the state’s policy was not reasonable insofar as it did not cater for people living in situations of crisis or who were otherwise in desperate need – people in the same position as the applicants.

³⁷ 2001 (1) SA 46 (CC).

The relief granted by the Court was, however, less far-reaching than that granted by the Cape High Court, amounting only to a declaration that the state's housing policy was defective in the manner set out, and requiring the state to devise and implement measures aimed at providing relief to people in desperate need. Earlier, in September 2000, the Court had granted an interlocutory order enforcing a voluntary commitment by the Oostenberg Municipality to provide the Grootboom applicants with basic services and building materials. Had this other order not been made, the applicants would have derived little direct benefit from the *Grootboom* case.

The caution shown by the Court in the wording of its order may be contrasted with the sixty-two page written judgment, which is far more forthcoming about what the state is required to do in order to comply with its obligations under the right to housing. The state's programmes and policies, the Court held, must:

- be comprehensive, coherent and effective;
- be reasonable within the social, economic and historical context of widespread deprivation, and within the availability of the state's resources;
- give special attention to the needs of the most vulnerable;
- be aimed at lowering administrative, operational and financial barriers over time;
- allocate responsibilities and tasks clearly to all three spheres of government;
- be implemented reasonably, adequately resourced and free of bureaucratic inefficiency or onerous regulations.³⁸

A subsequent case, decided in 2003 by the Cape High Court, elaborated on the state's obligations under the right to housing. In *City of Cape Town vs Neville Rudolf and Others*, the City of Cape Town sought to evict a group of 50 squatters and their families who had moved out of unaffordable backyard shack rental accommodation and taken up residence in a municipal park. The municipality immediately moved to evict Rudolf and his co-squatters, without offering to provide any alternative accommodation, claiming that their occupation of the park was nothing more than a 'typical case of illegal land grabbing'³⁹. With the assistance of the Legal Resources Centre in Cape Town, the squatters defended the municipality's application to evict, and brought a counter-application impugning the constitutionality of the City of Cape Town's housing policy insofar as it failed to provide them with a place where they may legally live.

In argument, Rudolf's advocate claimed that the squatters formed a class of people in desperate need, living in a situation of crisis. The municipality's failure to make provision for them, beyond its formal low-cost housing delivery programme, amounted to a breach of its constitutional duty, as set out in *Grootboom*, to make emergency provision for people with nowhere to live. The Court was also told that Rudolf and many of the other squatters had been on the municipality's formal housing subsidy waiting list for many years, and had been given little or no relief as a result.

The Court dismissed the municipality's eviction application on the grounds that the squatters were entitled to protection from eviction under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act'). At the same time, the Court upheld the squatters' counter-application, accepting that no provision had been made in the

³⁸ Sandy Liebenberg, 'The courts and socio-economic rights: carving out a role', *ESR Review* 3 (1), Community Law Centre, University of the Western Cape, (2002); 'South Africa's Evolving Jurisprudence on Socio-Economic Rights', *Law, Democracy and Development*, 6 (2002)

³⁹ 2003 (11) BCLR 1236 (C).

municipal housing policy for people in the crisis situation the squatters found themselves. In particular, the Court held that Cape Town's housing policy was constitutionally defective in the following ways:

- it failed to make short-term provision for people in a crisis situation or in otherwise desperate need;
- it gave inadequate priority to the resources and needs of people who had nowhere where they could lawfully live.
- in determining the allocation of housing, it gave too much weight to how long an applicant had been on the municipal housing subsidy waiting list, and not enough to the extent of an applicant's need.

Although Cape High Court judgements are not binding precedent outside that court's area of jurisdiction, the constitutional defects in the City of Cape Town's housing policy noted in the *Rudolf* case will, along with the *Grootboom* principles, help inform this report's assessment of the extent to which the right to adequate housing is being respected, protected and promoted in Johannesburg.

National Housing Law and Policy

The main legislative and policy instruments meant to give effect to the state's obligations under Sections 26 (1) and (2) of the Constitution are the Housing Act 107 of 1997 and the National Housing Code (promulgated in 2000, under Section 4 of the Housing Act). Parts 2, 3 and 4 of the Housing Act set out the roles and responsibilities of the three tiers of government. The Act requires national government to formulate housing policy and monitor implementation through the promulgation of the National Housing Code and the establishment and maintenance of a national housing data bank and information system. Provincial government, through Provincial Housing Development Boards⁴⁰ set up in terms of Section 8 of the Housing Act, allocates housing subsidies to municipalities. It also facilitates the transfer of ownership of council housing to occupiers. Under Section 9 of the Housing Act, policy implementation, settlement planning and the initiation of housing developments are left to municipalities.

There are many policies and programmes designed at all levels of government intended to give effect to the right to housing. They cannot all be set out in detail here. However, at the core of housing delivery has been the provision of subsidy assistance to low-income households in order to allow them to access at least a minimum standard of accommodation. This system is currently under revision, following the release of a new 'Comprehensive Plan for the Development of Sustainable Human Settlements' called 'Breaking New Ground', in September 2004, for implementation in the new financial year starting 1 April 2005.⁴¹ In this section we concentrate on four aspects of the current housing subsidy system that have shaped post-apartheid housing to date: The National Housing Subsidy Scheme, the People's Housing Process, the Institutional Housing Subsidy and the Emergency Housing Subsidy. We also review the tenets of the Breaking New Ground new housing plan below.

⁴⁰ Later replaced by Provincial Housing Advisory Councils.

⁴¹ South African Department of Housing, "*Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements*", Pretoria, 2 September 2004 (approval date).

David Gardener, *Getting South Africans Under Shelter: an Overview of the South African Housing Sector*, Housing Finance Resource Programme (2003), 21.

National Housing Policy up to 1 April 2005

By far the biggest subsidy programme has been the National Housing Subsidy Scheme (NHSS).⁴² This makes capital subsidies available to low-income households. The maximum subsidy currently available is R28,279 and is calculated on to the cost of a 'minimum standard house'. The exact form of these houses varies according to provincial standards. The house usually has around 30 square metres of floor space on a 250 square metre stand. Water must be provided, at least through a yard pipe. In practice, low-cost housing developments in Johannesburg are often plumbed in to the sewerage system and connected to the electricity grid, at the point of construction.

Subsidies have been provided in various amounts, according to the level of household income. NHSS assistance has worked on a sliding scale. People earning less than R3,500 per month, but more than R2,500, have been entitled to R8,600; those earning less than R2,500, but more than R1,500, for a subsidy of R15,700; those earning less than R1,500 for a subsidy of R25,800. As of 2002, a compulsory beneficiary contribution (savings or credit) was introduced to make up the difference between the subsidy amount and the cost of the minimum standard house. The beneficiary contribution did not apply to beneficiaries earning less than R800 per month, or the aged or disabled. The full subsidy amount of R28,279 was allocated in these cases.⁴³ Apart from the income requirements, beneficiaries must be:

- married, co-habiting, or have at least one proven financial dependant;
- lawful residents of South Africa;
- 21 or older.

This scheme was used to finance the construction of over 1.5 million households across South Africa between 1994 and 2003.⁴⁴

NHSS assistance has usually been provided through project-linked subsidies for large-scale housing settlements. As we noted in Chapter 2, the quality and location of these settlements has often been very poor. There has also been little co-ordination between government departments to ensure that, once a housing settlement is established, public transport routes, schools, clinics and police stations would be sited to service it.

Other well-known problems with the housing subsidy programme include widespread local corruption in the allocation of low-cost housing units and subsidies, and in the allocation of construction contracts. The quantity of housing delivered has also been at the expense of the quality. According to Gardener:

'Defects are common, and have worsened as increased minimum standards, and the erosion of the subsidy due to inflation have squeezed [private] developers' [profit] margins'.⁴⁵

⁴² See Chapters 3 and 4 of the National Housing Code

⁴³ Lindiwe Sisulu, Minister of Housing, Tabling the Budget Vote for the Department of Housing for to 2004/2005 Financial year, National Assembly, 10 June 2004.
www.housing.gov.za/content/media_desk/speeches/2004/100604.htm, last visited 4 August 2004.

⁴⁴ David Gardener, *Getting South Africans Under Shelter: an Overview of the South African Housing Sector*, Housing Finance Resource Programme (2003), 21.

⁴⁵ *Ibid.*, p.20.

In response, the national Department has introduced a five-year warranty on all low-cost housing units, paid for by a once-off compulsory beneficiary contribution. The Johannesburg municipality has also recently suspended five senior housing officials on corruption charges.⁴⁶

Another difficulty with the NHSS is the savings requirement, which makes receipt of even a full housing subsidy conditional on a mandatory beneficiary contribution of at least R2,479. Only aged or disabled beneficiaries with an income of less than R800 per month are exempted from this requirement. In practice, though, the savings requirement has often been difficult to meet even for households earning significantly more than this. For example, as David Gardener notes, given that the average household with an income of R1,500 or less spends around 5 per cent of its income on housing, it could take up to three years to meet the NHSS savings requirement. It was therefore predicted that the savings requirement was likely to slow down the rate of housing delivery. Provincial departments of housing are likely to allocate much of the subsidy 'budget' to households that do not have to meet the savings requirement.⁴⁷

The People's Housing Process (PHP) potentially ameliorates some of the more pernicious effects of the savings requirement. The PHP is intended to assist communities to supervise and drive the housing delivery process at a community level. Support organisations are established (often through NGOs active in the housing sector, such as the Homeless People's Federation) to assist communities in planning and implementing the construction of their own housing settlements. This 'sweat equity' can be offset against the NHSS savings requirement, meaning that poor households need not wait years to access housing finance. By 2003, PHP projects had been allocated 184 728 housing subsidies. Institutional capacity has remained a problem, however, as there are few support organisations with the expertise or financial resources necessary to initiate and drive PHP processes. This is despite the existence of state grants to aid support organisations.

Another significant facet of state housing policy is the Institutional Housing Subsidy (IHS).⁴⁸ The IHS caters for housing organisations (which can be private, governmental or non-governmental entities) providing accommodation to qualifying beneficiaries, in a form other than immediate ownership. The IHS can be used to finance rental, rent-to-buy, co-operative and share block schemes, which are collectively known as social housing projects. The IHS amounts to a flat subsidy of R25,529 for every beneficiary earning less than R3,500 per month. The subsidy is paid directly to the housing organisation on condition that the beneficiary does not take ownership of the housing unit for at least four years after he or she takes up occupation. If the beneficiary does not ultimately take ownership of the unit and vacates it, he or she is eligible for another subsidy elsewhere.

The IHS is often used to deliver medium or high-density housing, which requires more intensive management than individually owned houses in a low-cost housing settlement. This form of subsidy is meant to help the housing organisation to which it is paid to develop housing stock (often blocks of flats). The housing organisations themselves do not normally develop the stock. Rather, a social housing institution contracts a builder to develop the building using a loan from the National Housing Finance Corporation and the pooled housing subsidies. Ownership of the building is then transferred to the housing organisation, and individual beneficiaries either rent, rent-to-buy (purchase in instalments), or take a share in the housing co-operative or share block

⁴⁶ Ndaba Dlamini, 'City Suspends Five Housing Officials', http://www.joburg.org.za/2004/june/june9_suspend.stm, 9 June 2004, last visited 3 August 2004.

⁴⁷ Ibid., p. 21.

⁴⁸ See Chapter 6 of the National Housing Code.

company that owns the building. The IHS has been used, with varying degrees of success, to provide low-cost housing in the inner city of Johannesburg.⁴⁹

The latest addition to the stable of housing programmes at the national level is the Emergency Housing Programme.⁵⁰ At least part a response to the *Grootboom* declaration that state housing policy was failing to cater for people living in crisis situations, this programme was published in April 2004. The main objective is to provide temporary but secure access to land and basic municipal services to people who have been left without a home through no fault of their own. This usually means evicted persons, or victims of fire, flood or other natural disasters. The programme specifically mentions people who have been removed from unsafe buildings or who are living in conditions which pose an imminent threat to life or health. Assistance is provided through grants to municipalities, administered, like all other subsidies, through provincial housing departments. This policy is so new that it is impossible to judge how, if at all, it has influenced municipal housing practice.

Changes to housing programmes as of April 2005

The 'Breaking New Ground' document of the Department of Housing recognises many of the shortcomings of the existing housing subsidy programmes mentioned above, by introducing new instruments, due to come into effect on 1 April 2005, that will make housing intervention more flexible and responsive to demand.⁵¹ In particular, the 'Comprehensive Plan' (new housing plan) contained in this document acknowledges that current inhabitants of areas undergoing urban renewal or inner city regeneration 'are often excluded as a result of the construction of dwelling units that they cannot afford'. The new housing plan tries to address this by encouraging the development of social housing, while also increasing affordability or 'effective demand' through new housing finance initiatives. The new housing plan also intends to promote social inclusion and integration of poorer communities by providing for social and economic infrastructure, rather than merely housing.

The plan also introduces an important new funding instrument for the upgrading of informal settlements, and their integration into the broader urban fabric. The first two years (2005 and 2006) will be devoted to piloting this new approach through a pilot project in each of the provinces. The new funding instrument for informal settlement upgrading will not be dispersed through standardised household-linked capital subsidies, but rather through area-based subsidies according to the actual cost of upgrading an entire settlement community. No beneficiary qualification criteria or beneficiary contribution (e.g. saving) apply to this subsidy. However, illegal immigrants, if detected in the informal settlement, are to be referred to the Department of Home Affairs.

The term 'eradication of informal settlements' used in the new housing plan raises concerns regarding the measures municipalities may resort to in order to 'eradicate' existing informal settlements and stamp out any attempts at new informal settlement formation. However, the plan's intention is clarified as a 'shift' from 'conflict and neglect' to 'integration and cooperation, leading to the stabilisation and integration of these areas into the broader urban fabric'.⁵²

⁴⁹ Social housing initiatives operating in the Johannesburg inner city are discussed in Chapter 4.

⁵⁰ Known formally as the National Housing Programme for Housing Assistance in Emergency Housing Circumstances (see chapter 12 of the National Housing Code).

⁵¹ South African Department of Housing, "*Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements*", Pretoria, 2 September 2004 (approval date).

⁵² *Ibid.*, p.17.

The new plan also restructures the existing subsidy mechanisms. Most importantly, the three subsidy bands are collapsed into one, applying to all households earning up to R3,500 per month. Through this, the plan intends to increase the effective demand for housing, thus making it more attractive for the private sector to resume the development of fully subsidised housing projects. The current beneficiary contribution, while acknowledged in the new Plan to cause delays, will be continued. However, the plan makes a commitment to discuss this issue with stakeholders and to have it reviewed. Given the collapsed subsidy bands and the continued requirement for a beneficiary contribution, the question arises as to whether there will be sufficient efforts to target the very poorest, who to date have been the main beneficiaries of the national subsidy programme. The plan commits to adjusting the subsidy amount to inflation, but as yet does not commit to adjusting the subsidy qualification band to inflation. This maintains the existing unfairness that develops over time, particularly from subsidy application to actual subsidy allocation – inflation pushes households, whose income has not grown in real terms, out of the subsidy band merely through passage of time.

For households earning between R3,500 and R7,000 per month, which over the past ten years have had difficulties accessing mortgage funding, the new housing plan provides for a subsidised deposit that is to overcome the affordability barrier for mortgage funding. The plan also intends to develop new lending products to support secondary transactions in the property market. The current eight year restriction on the sale of subsidised housing will be reduced to five years.

Municipalities are given a central role in the implementation of the new housing plan, which therefore contains an elaborate capacity building component for municipal authorities. Accreditation of municipalities will be subject to the establishment of well capacitated housing units and cross-sectoral committees to ensure holistic, integrated development, the completion of inventories of municipally owned land for the development of well located low income housing, and willingness to address corruption. All 284 municipalities are to be accredited over the next ten years.

Three Problems with State Housing Policy, Implementation, and the Right to Adequate Housing

1. Location

The South African government's housing subsidy initiatives have been successful in delivering dwellings at scale for poor people. Nonetheless, if the marginal location of many housing settlements significantly limits the livelihood opportunities and access to social services of housing subsidy beneficiaries, this may be seen as a failure to fulfil state obligations under the Covenant, read with paragraph 8 of General Comment 4. It is difficult to see how a peripherally located low cost housing settlement far away from schools, clinics and job opportunities can hope to satisfy the Covenant's requirement that housing should be adequately serviced and well-located. As we noted in Chapter 2, state housing policy has not been implemented in such a way as to help beneficiaries meet these broader socio-economic needs. This is largely because the developmental logic, which was supposed to make LDOs and IDPs tools of more compact urban settlement patterns, has been supplanted at a municipal level by cost considerations.

This has resulted in numerous marginalised settlements, where in the view of the intended beneficiaries survival would be just too difficult. In some cases communities have even refused outright to take occupation of the houses offered them. For example, in the low-cost housing

development of 'France' in Imbali outside Pietermaritzburg, more than 100 houses built at the cost of over R2 million have been vacant since their completion in 2002. The intended beneficiaries have refused to take occupation or transfer on the grounds that the houses are too far away from Pietermaritzburg and from their present informal settlement close to the city. In the words of one community member:

'We want to stay here because we don't pay for transport to the city. It is better for us to stay in our mud houses rather than be forced to relocate to a place that we don't like.'⁵³

The Ward Councillor of the area commented:

'The situation is beyond our control. People are rejecting the houses even though they applied for them. We have contacted people in the informal settlement and requested that they take occupation of the houses but they have refused.'⁵⁴

In Johannesburg, most of the major new housing settlements are concentrated to the south and west of the city, distant from most of the major economic growth areas. Examples of particularly poorly located low-cost housing settlements include Diepsloot⁵⁵ and serviced sites such as Vlakfontein⁵⁶. The latter is so poorly located that there has been significant resistance to relocation there, even from relatively poorly serviced, but better located, informal settlements.⁵⁷ Even the better located housing development areas, such as the Braamfischerville⁵⁸ and the Durban Roodepoort Deep⁵⁹ developments lack social amenities and are at the outer edges of established townships.

The new Housing Plan acknowledges this problem and contains several mechanisms to address firstly the problems of isolation/lack of integration encountered in the existing poorly located housing estates that were developed over the past ten years; and secondly the location of new housing developments. The new housing plan contains a dedicated business plan for 'Spatial Restructuring the Sustainable Human Settlements', which is not yet in the public domain. However, the 'Breaking New Ground' document in circulation commits to collaboration with the national Department of Local and Provincial Development. The plan intends specifically to ensure the integration of 'previously excluded groups into the city and the benefits it offers'. It seeks to introduce policy mechanisms to promote densification of urban areas. The plan proposes that new residential developments are to be authorised only on the condition that they provide 20 per cent low income units. Initially these can be located on alternative land, but increasingly the requirement will be that these be spatially integrated into higher income developments. New taxation measures are also envisaged to promote densification and discourage sprawl. Well-located public land is to be released to municipalities for low income housing development. A strategy will be developed for the acquisition of well located privately owned land.

⁵³ 'Millions lost as housing rejected', in *The Witness Echo*, 25 Nov. 2004.

⁵⁴ *Ibid.*

⁵⁵ Diepsloot is located around 20 km north-north west of the Johannesburg Central Business District, and is a conglomerate of informal settlements, low-cost formal subsidised housing, and serviced shack settlements.

⁵⁶ Vlakfontein is located approximately 30 km to the south-south west of the Johannesburg Central Business District. It is 8 km South East of Thembelihle's current site.

⁵⁷ Largely from Thembelihle, most of whose residents successfully resisted a court application to evict and relocate them to and Vlakfontein. The Thembelihle community is considered in more detail in Chapter 5.

⁵⁸ Braamfischerville is located on the north-western edge of Soweto, adjacent to Dobsonville, a notoriously poverty-stricken suburb of the township. Braamfischerville is approximately 20 km away from central Johannesburg.

⁵⁹ Efforts to relocate informal settlements to Durban Roodepoort Deep, which is equidistant from Dobsonville in the south and Roodepoort centre in the north, have also met with fierce, if ultimately unsuccessful, resistance. The case of Mandelaville, which was evicted from Diepkloof, Soweto and relocated to the Sol Plaatje Project in Durban Roodepoort Deep, is considered in Chapter 5.

Given these promising new prospects contained in the new housing plan, communities currently facing eviction and relocation to poorly located dormitory housing developments are in a difficult position. Their levels of awareness of the new housing approach are still low – the new housing plan contains a mobilisation and communication strategy, but this is not as yet developed. Over the coming months, municipalities will be tempted to continue with business as usual, in the interest of completing projects that have already been budgeted for and approved. Communities should be encouraged to make strong demands to resist such relocation and benefit instead from the various opportunities presented by an improved housing plan in the near future.

2. People in ‘Desperate Need’

New policy initiatives meant to cater for the ‘Grootboom class’ of people in crisis or living in otherwise desperate circumstances, have yet to take hold of municipal housing agendas, so an assessment of their effectiveness is, perhaps, premature. However, as Chapter 4 and 5 of this report will show, the class identified by the Constitutional Court almost four years ago, as the Emergency Housing Policy has defined it, is probably too narrow to cover the full range of people living in housing need, and for whom the housing subsidy scheme is not an adequate or immediate enough solution.

The Emergency Housing Policy is meant to release funding to deal with imminent crises, caused by natural disaster, mass eviction, or relocation for health reasons. But there are an untold number of people in South Africa who are not quite ‘in crisis’, but whose lives and livelihood strategies are precarious, insecure and essentially ‘survivalist’. This class and the people in it are the very epitome of informality. Unable to secure a formal job, they eke out a precarious living as best they can. Described more fully in Chapters 4 and 5 of this report, many live in informal settlements and inner city slums in unhealthy and intolerable conditions, and with extremely insecure tenure. They do not need another place to live, since their current dwelling has, in all probability, been chosen for its ability to assist them to sustain a livelihood strategy.

Nor do they want a low cost house somewhere on the urban periphery, as they may have deep-level connections with rural areas in which most of their families live. In any case, the poor location of such a house is likely to provide them with few opportunities to make a living. They migrate between rural and urban areas often, and require a basic standard of safety and tenure security where they currently live. Low cost rental housing may be an option for people in this class, as may be an informal settlement upgrading strategy, but neither of these options have, until recently, been given enough attention at a national level.

The informal settlement upgrading instrument in the new housing plan intends to cater for those households not assisted through the Emergency Housing Policy, and whose ‘emergency’ consists of the fact that they are poor and unable to adequately house themselves or gain access to land. It does not apply subsidy qualification criteria to these households. Various tenure forms, including a form of rental, will apply to informal settlement upgrading. However, this programme will be introduced gradually, meaning that the main informal settlement intervention over the coming two years will continue as described in the paragraphs above.

3. Inner City Renewal and the Urban Poor

The state has yet to develop national institutional capacity or policy guidance to cater for the needs of those inhabiting inner-city slums.⁶⁰ Inner city slums are currently dealt with in the ‘urban renewal’ paradigm. Urban renewal often means the eradication of slums, which are seen to be both structural cause and result of urban decay. Urban management takes place at the municipal level, and is often focussed on beautification and attracting private investment. In Johannesburg, building control mechanisms and municipal by-laws provide the legal framework within which inner city slums are dealt with. Inner city slums are characterised as socio-economic ‘sinkholes’ which require ‘cleaning up’, usually by means of a forced eviction. As we point out in the next Chapter, the acute socio-economic needs of people in occupation of inner city slums are not adequately addressed by this paradigm.

To the extent that poor people are catered for in urban renewal at all, it is through social housing initiatives, discussed more fully in the next Chapter. But these initiatives do little for the poorest of the inner city poor since, in Johannesburg at least, they require beneficiaries to have a stable and recurrent source of income of at least R3,500 per month, and usually more.⁶¹ This is especially problematic, since the IHS, which is a major source of funding for social housing initiatives, is only available to people who earn less than R3,500 per month.

South Africa: Domestic Evictions Law

Section 26 (3) of the Constitution states that:

‘(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.’

The South African government has enacted a number of laws to enhance tenure security and to operationalise the requirement that a court must consider ‘all the relevant circumstances’ before granting an eviction order. These include:

- The Extension of Security of Tenure Act (no. 62 of 1997);
- The Interim Protection of Informal Land Rights Act (no. 31 of 1996); and
- The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (no. 19 of 1998) – known as the PIE Act.

Of these post-Apartheid statutes, this section considers only the latter, since it is in terms of the PIE Act that informal settlers or squatters are usually evicted. This section also considers the National Building Regulations and Building Standards Act (‘the Building Standards Act’) (no. 103 of 1977), which is often used to effect evictions, on grounds of occupier’s health and safety, although it provides no list of ‘relevant’ circumstances which a court is required to consider before granting an eviction order.

⁶⁰ These gaps in policy are noted throughout the literature, but see especially Expanding Socio-economic Rights and Access to Housing, prepared by the Urban Sector Network for the National Department of Housing (29 October 2003), 60.

⁶¹ Syn-Consult et al, Research report for the development of a medium density housing programme for the national Department of Housing (October 2003), 12.

The PIE Act

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 9no. 19 of 1998) (PIE) is the successor statute to the Prevention of Illegal Squatting Act (no. 52 of 1951) and its many amendments. The Prevention of Illegal Squatting Act was a mechanism to enable municipalities and other organs of the apartheid state to clear land illegally occupied by homeless people, who were usually black and poor. The Act therefore operated in an extremely anti-poor and discriminatory manner. By contrast, the PIE Act 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’ (Section 1). 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,⁶² as well as to people who took occupation of land unlawfully in the first place. 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 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.⁶³

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.⁶⁴ The Act also provides for the court to appoint the local sheriff to oversee the eviction, if it deems such oversight necessary.

⁶² Or ‘holders over’ in sense discussed in *Ndlovu vs. Ncgobo; Bekker and Another vs. Jika*, 2003 (1) SA 113 (SCA).

⁶³ See Sections 4(3), 4(4) and 4(5) of the PIE Act.

⁶⁴ See Sections 6, 7 and 8 of the PIE Act.

Section 5 of the Act also allows for urgent eviction proceedings if:

- there is a real and imminent danger of substantial injury or damage to persons or property if the unlawful occupiers are not evicted from the land immediately; and
- the likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order is granted; and
- there is no other effective remedy available to the problem the owner seeks to cure by evicting and unlawful occupier.

Section 6 of the PIE Act empowers any organ of state to institute proceedings to evict an unlawful occupier, and a court may grant an eviction order, where either:

- its consent is required for the erection of a structure on the land in question, and an unlawful occupier has erected a structure without obtaining the appropriate consent; or
- it is in the public interest to do so. The Act defines public interest explicitly to include the interests of health and safety of those occupying land and/or the general public.

In the case of an eviction application made by an organ of state, before granting an eviction order, a court must consider:

- the circumstances under which the unlawful occupier occupied the land and erected the building or structure in question;
- the period the unlawful occupier and his or her family have resided on the land in question; and
- the availability to the unlawful occupier of suitable alternative accommodation or land.

Section 6 is a carefully crafted balance between the need to allow municipalities to manage land and building stock, and to ensure the maintenance of a basic level of health and safety in their jurisdiction, and the need to protect South Africa's large number of shack dwellers and informal settlers from repeated or arbitrary eviction without the provision of alternative accommodation or land. Indeed, where municipalities and other organs of state have brought applications under the PIE Act to evict significant numbers of informal settlers, they have usually been required to show that they have a rational plan to re-accommodate the settlers in question. Where the organ of state has been able to show this, eviction applications have generally been successful.⁶⁵ Where the organ of state has been unable to show evidence of a rational plan to re-accommodate large numbers of unlawful occupiers, eviction orders have generally been refused.⁶⁶

⁶⁵ This is so both for evictions effected under Section 6, and where the organ of state in question is evicting as an owner, under Section 4 of the Act. See especially *PE Municipality vs People's Dialogue on Land and Shelter and Others*, 2000 (2) SA 1074, where an eviction order was granted to the Port Elizabeth Municipality subject to the identification of suitable alternative land. See also *The City of Johannesburg vs. The Unlawful Occupiers of the Mandelaville Informal Settlement, Witwatersrand Local Division*, Case No. 25450/01 (unreported), where an eviction order was granted solely on the basis of the availability of suitable alternative accommodation.

⁶⁶ See *Transnet t/a Spoornet vs Informal Settlers of Good Hope and Others*, (2001) 4 All SA 516 (W), where an application for eviction of various informal settlers was postponed indefinitely, pending the institution of an enquiry as to the needs and rights of the settlers in question and the prospect of relocation to 'a safer and healthier site'. See also *The City of Cape Town vs. Neville Rudolf and others* 2003 (11) BCLR 1236 (C).

In light of the recent *Modderklip* judgement of the Supreme Court of Appeal,⁶⁷ even where there are large numbers of people in unlawful occupation of private land, it now seems as if eviction orders may be harder to obtain and execute in the absence of suitable alternative accommodation. The *Modderklip* case involved the eviction of a large number of informal settlers from a section of land on the privately-owned Modderklip farm outside Johannesburg. In May 2000 around 400 people had resettled on the farm, having been evicted from the adjacent Chris Hanu informal settlement by the Ekurhuleni Municipality. By October 2000 the settlement had grown to some 4000 shacks, accommodating 18000 people. The settlement became known as 'Gabarone'. Modderklip's owner, having attempted, in vain, to engage the municipality on the matter for several months, applied for and was granted an eviction order under the PIE Act. However, given the scale and expense of the task of clearing Gabarone, the local Sheriff demanded that the owner fund the eviction to the tune of R1.8 million. This exceeded the value of the land occupied by Gabarone, and, in any case, the Modderklip owner could not afford to pay it. The order therefore remained unexecuted.

Throughout this time, the Modderklip owner laid charges of trespassing against the occupiers of Gabarone. Some were prosecuted, found guilty, warned, and discharged, after which they promptly returned to their home on Modderklip. The head of the local prison soon after requested the local police force and the Modderklip owner not to proceed with criminal charges, because the prison would not have been able to accommodate even a small fraction of those liable for prosecution, if they were sentenced to imprisonment.

With no other recourse, the Modderklip owner launched a case through which it sought and was granted an order declaring that the state had a constitutional obligation to cure what was effectively an arbitrary deprivation of property it was primarily responsible for. The government appealed to the Supreme Court, which held that, given that the occupiers of Gabarone were so indigent as to be unable to provide themselves with other accommodation, and that there was no obvious and immediate alternative available to them through government policies and programmes, the occupants of Gabarone were entitled to stay where they were until the government had worked out a scheme for re-accommodating them. However, the court held that the state's failure to provide Gabarone's occupiers with accommodation had led to the deprivation of the Modderklip owner's right to property, and that the state (in this instance the Department of Land Affairs) was required to compensate the owner financially for such deprivation.

The amount of money to be handed over is still to be calculated, and the Supreme Court's judgment has been appealed to the Constitutional Court. Nonetheless, the *Modderklip* case speaks directly to the practical, humanitarian and legal constraints on evictions, without alternative accommodation, of large numbers of poor people in South Africa. Although the alternative accommodation provided may not always be as good, or as well located, this aspect of the development of the PIE jurisprudence is to be applauded for the level of protection it provides to poor people who have nowhere they may lawfully live.

The Building Standards Act

Given the strong protections afforded unlawful occupiers under the PIE Act, especially as they relate to the duty to provide alternative accommodation, municipalities have often sought to

⁶⁷ See *Modder East Squatters and Greater Benoni City Council vs. Modderklip Boerdery (Pty) Ltd; President of the Republic of South Africa and others vs. Modderklip Boerdery (Pty) Ltd*, Supreme Court of Appeal, Case nos. 187/03 and 213/03 (unreported).

circumvent PIE where possible. In Johannesburg, the instrument of choice for doing so, often in the inner city, is the Building Standards Act. The Act sets out the various duties of municipalities and other organs of state to regulate the standard of building stock in their jurisdiction. Section 12 of the Act, however, empowers a municipality to order owners of unsafe or dilapidated buildings, or buildings in a state of disrepair, or buildings showing signs of being in a state of disrepair, to restore the buildings in question to an acceptable standard within a specified period. Section 12 (4) (b) of the Act further authorises a municipality to order the occupiers to vacate any building that it considers unsafe or unhealthy.

In Johannesburg, Section 12 of the Building Standards Act, often cited with municipal fire and Accommodation Establishment by-laws and the Health Act (no. 63 of 1977),⁶⁸ is regularly used to clear inner-city slums or other buildings which, while not slums, are run down and home to large numbers of poor people. No alternative accommodation is provided, and neither the Building Standards Act, the Health Act, nor the fire and Accommodation Establishment by-laws, require a court to consider the life circumstances of anyone against whom eviction proceedings have been instituted under the Act.

It may well be that residents of unsafe buildings own the units they live in, or occupy the building with the consent of the owner, and may therefore not be entitled to the procedural protections provided by the PIE Act.⁶⁹

However, as we show in Chapter 4, the social and economic dynamics of buildings likely to attract an eviction application under Section 12 of the Building Standards Act are such that they are often home to a large number of unlawful occupiers, who should be entitled to the full protection of the PIE Act. In addition, we show that even lawful occupiers of unsafe buildings are often unlikely to be able to re-accommodate themselves in the event of an eviction. It would therefore be perverse to deny them the procedural protections of the PIE Act, since the existence of these protections is in itself motivated the likely indigence of unlawful occupiers.

Conclusion

South African housing law and policy is largely compliant with the ICESCR and the South African Constitution. Where there are policy and programmatic gaps that inhibit compliance with Covenant requirements, the South African government has taken steps to address the situation. Significant gaps exist in provision for people who qualify for a subsidised house and are waiting in the queue for one. Huge problems occur while they wait. For instance, their basic housing and tenure rights remain vulnerable for as long as they are waiting, which could take many years. The state's emergency housing policy and its promised informal settlement upgrading programme could go some way to ensure a level of provision for these people. The development of these policies, while overtly an attempt to satisfy the South African Constitutional Court, may also be seen as consistent with the requirement of paragraph 12 of General Comment 4, that 'vulnerable members of society ... be protected by the adoption of relatively low cost programmes'.

⁶⁸ Section 20 of the Health Act places a general duty on municipalities to 'prevent the occurrence' of 'any nuisance, unhygienic condition, offensive condition, or any other condition which could or will be dangerous to the health or any person.'

⁶⁹ It should be noted that the procedural requirements relating to the notice of proceedings and service of court papers set out in PIE are often followed by the municipality in Building Standards Act evictions.

Such compliance is to be applauded, but has yet to impact on implementation, which will be the true test. In addition, it does not hold out much hope of relief for inner city slum dwellers, except to the extent that they might benefit from emergency housing provision upon eviction from 'unsafe' buildings. Such emergency housing provision, is, however, likely to take them to the urban periphery, and will not, therefore, assist them to maintain their fragile livelihoods.

The Constitution and the PIE Act, and the jurisprudence developed under them, are generally friendly to the urban poor, and do provide protection against eviction, especially where there are a large number of people under threat and the evicting authority is an organ of state. Evictions at the instance of an organ of state under the PIE Act are seldom granted without the provision of alternative accommodation. The procedures set out in the PIE Act are broadly compliant with General Comment 7 on the Covenant. Where the PIE Act leaves room for interpretations which could depart from the requirements of General Comment 7, there is little evidence to suggest that South African judges have made decisions contrary to the spirit of the Covenant.

Once again, the test lies in implementation. The only serious departures from Covenant requirements seem to occur when the South African state circumvents or does not adequately follow PIE Act procedures. In the next chapter we focus on the urban renewal strategy of the Johannesburg municipality, and the reasons for, and results of, the municipality's efforts to circumvent the PIE Act in the inner city.

4. HOUSING RIGHTS AND EVICTIONS: THE INNER CITY OF JOHANNESBURG

For the past decade or more, the inner city of Johannesburg has been getting a very bad press. It is impossible to understand the nature and trajectory of the municipality's Inner City Regeneration Strategy, and the role that evictions play in it, without acknowledging the persistently negative image projected of the Johannesburg inner city. The central business district and the high-rise suburbs of Hillbrow, Berea and Joubert Park, are routinely portrayed as places of widespread lawlessness. Drug dealing rackets, street gangs, organised prostitution and large illegal immigrant populations are grist for the mill of modern evocations of the Johannesburg inner city. So is anti-social behaviour such as public drunkenness and dangerous driving.⁷⁰

Countering negative perceptions of the inner city, along with the 'crime and grime' that is said to cause them, is a major motive force behind much inner city regeneration. Halting the progression of urban decay and restoring Johannesburg to its rightful place as an 'African World Class City', is the vision underpinning much of the municipal strategy. Johannesburg, the 'Gateway to Africa' as described in the quotation below, has to regain the respect it deserves, and with it investment and visits by tourists.

Gateway to Africa

JOHANNESBURG is where the money is. And the action. It's the most powerful commercial centre on the African continent. It is an African city that works: the phones dial, the lights switch on, you can drink the water, there are multi-lane freeways, skyscrapers, conference centres, golf courses. If you should get lost, ordinary people on the street speak English. Cell phones are everywhere. You can send e-mail from your hotel room, you can bank any foreign currency, you can watch CNN, and should you fall ill, the hospitals have world-class equipment and doctors who can be trusted with a scalpel.

City of Johannesburg, Official website⁷¹

This chapter describes the Johannesburg Inner City Regeneration Strategy, before going on to examine, in detail, the manner in which it deals with its 235 so-called 'bad buildings' and the consequences this has for the 25,000 or so people living in them.⁷² Municipal documents, such as

⁷⁰ Alan Morris, *Bleakness and Light: Inner City Transition in Hillbrow, Johannesburg*, University of the Witwatersrand Press, 1998, Chapter 1.

⁷¹ City of Johannesburg, Official Website, www.joburg.org.za/travel/travel_overview.stm.

⁷² In the absence of accurate statistics, we are stating the bottom of an estimated range of 25,000 – 67,000. (According to 2001 census figures a total of 67,000 people live in the inner city without the means to access affordable accommodation.) COHRE research in 11 'bad' buildings suggests an average population of around

the Inner City Regeneration Strategy Business Plan, paint Johannesburg's slum areas as crime-ridden 'sinkholes', characterised by 'overcrowding, illegal conversions and unmanaged informal trading' all of which result in a 'degraded public environment'. The municipal critique of 'bad' buildings goes further than the assertion that they are simply unhealthy or unsafe. The municipality views these buildings as 'sinkholes'; hives of criminality, which degrade the public environment and defeat the purpose of inner city renewal. How can Johannesburg ever become an 'African World Class City', with crime-ridden slums at its very heart?

The prescription for most of these buildings is that they be 'closed down' – a euphemism for evicting the building's occupants and sealing it off – as part of an intensive programme of by-law enforcement, often described by the municipality itself as a series of 'blitz operations'.⁷³ Some of these 'bad' buildings are then sold off for commercial development, while others are upgraded for the purposes of well-managed, low cost housing, under the Better Buildings Programme. Unfortunately, as we shall see, accommodation in the resulting 'better buildings' often comes at rentals that are well beyond the means of the evicted occupants, and usually long after the original occupiers of the building have been evicted.

Research conducted in the course of the COHRE fact-finding mission suggests that a rather more complex reality persists in 'bad buildings' than municipal documents and officials admit to. To be sure, the inner city of Johannesburg is home to a large number of poorly maintained buildings, many of which do not satisfy the requirements of municipal by-laws. Many people live in unhealthy conditions, in buildings that are structurally unsafe, with inadequate sanitation and other facilities, and/or with inadequate fire prevention regimes. These conditions are obviously unacceptable, and at times do pose a danger to life and health, so much so that some of the buildings have had to be condemned and demolished.

However, COHRE's investigation found that the municipal caricature of 'bad buildings' as crime-ridden 'sinkholes', belies the fact that these buildings are often populated by large numbers of ordinary people engaged in low-paid formal sector jobs, and informal livelihood strategies, which are anything but criminal. The fact that people live under such poor conditions is a reflection of their desperation for housing in the inner city, not a reflection of their propensity to commit crime. There is quite simply nothing better on offer to them within their affordability range. While unmanaged buildings are, often, magnets for criminality, this does not occur in all cases. Moreover, when criminality does occur, the ordinary occupants do their best to avoid and if possible to resist the activities of the criminals.

98 people per building. But populations vary greatly, according to a number of factors which could not be properly accounted for in the time allotted to the COHRE mission. These are factors such as building size, location, physical conditions, whether or not the building was under imminent threat of clearance. Populations varied from 12 (in a one storey residential house in Berea) to 178 in a 16 floor block in the same area. Although not statistically reliable, these data are indicative. If anything, the numbers are likely to be too low, since, in many of the larger buildings we visited, there was a significant rate of refusal to participate in our research exercises. In six of the buildings we visited, residents were asked to estimate the number of people in living in the building. A further five buildings (one 16 floor residential block and four two floor houses with shacks constructed behind them) were subjected to a more thorough socio-economic profiling exercise. In these five buildings, the vast majority of the occupiers provided detailed information to COHRE researchers.

⁷³ Inner City Regeneration Strategy Business Plan, Financial Years 2004 –2007, draft obtained from the City of Johannesburg, April 2004, 7.



Photo: Jurgen Schadeberg

This inner city Johannesburg resident interviewed by COHRE sells sweets, fruit and snacks on the streets, earning R200 per month (June 2004). He shares this room with his wife and their two small children.

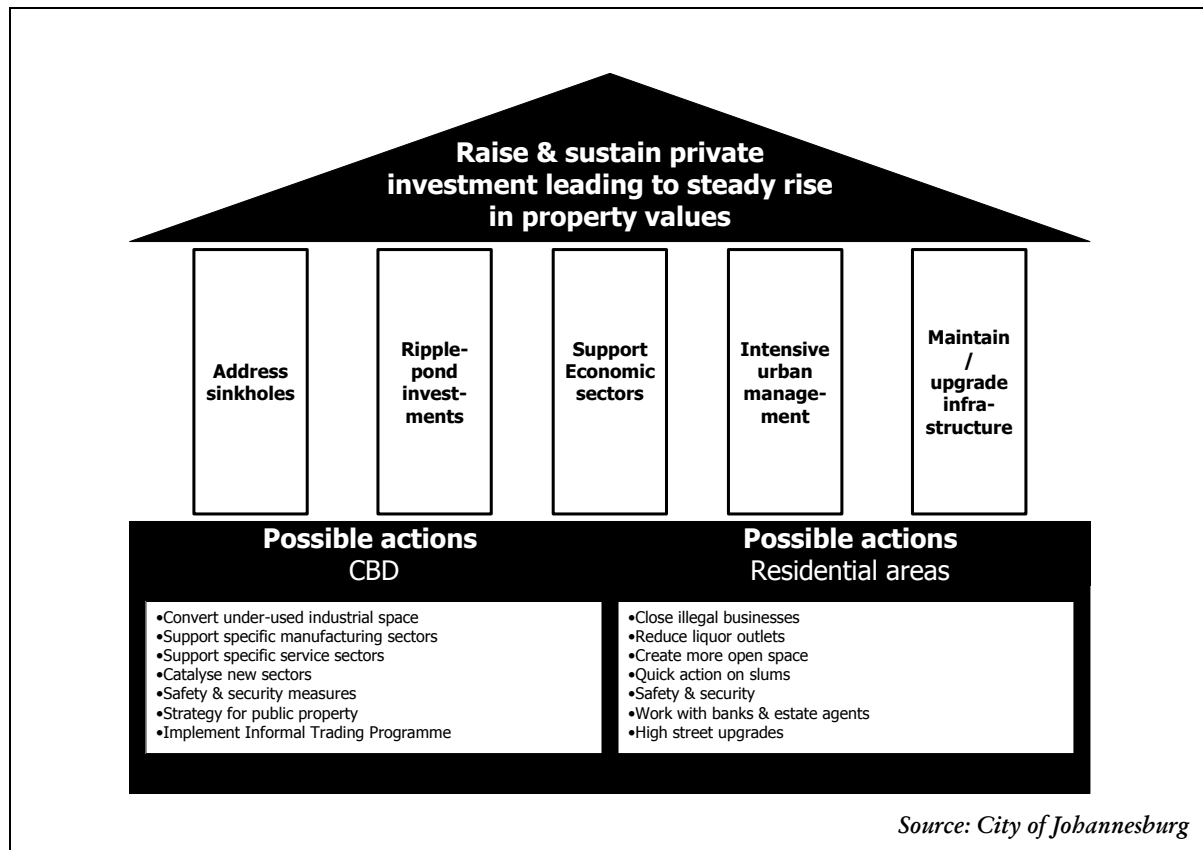
The municipality's policy of 'closing down' 'bad' buildings is obviously successful in precluding the possibility of any criminal activity being carried out inside them and in curing any breach of municipal by-laws. However, not only is this approach of questionable legality; it also offers no lasting solution to the problem of the housing crisis of the inner city poor. With no readily available, well-managed, affordable alternative accommodation, we found that many occupiers of 'bad buildings' become homeless, rendering them even more vulnerable than they were while living in the 'bad building'; or they simply move into another slum.

The Inner City Regeneration Strategy

The Inner City Regeneration Strategy is the municipality's comprehensive remedy for the inner city's problems. It is a direct extension of the Johannesburg 2030 strategy, announced at the beginning of 2002, and consists of 62 discrete programmes organised under five strategic imperatives (or 'pillars', as the municipality refers to them). These imperatives are:

- Pillar 1: The need to address 'sinkholes' (10 programmes, of which 6 are currently operational);
- Pillar 2: The need to undertake 'intensive urban management' (15 programmes, of which 8 are currently operational);
- Pillar 3: The maintenance and upgrading of infrastructure (2 programmes, of which 1 is currently operational);
- Pillar 4: The promotion of 'ripple pond investments' (21 programmes, of which 16 are currently operational);
- Pillar 5: Supporting certain economic sectors (14 programmes, of which 5 are currently operational).

Programmes and projects that are not yet operational are planned for implementation between 2004 and 2007. The total estimated cost of the ICRS is R2.8 billion over the next 3 years.⁷⁴



There is little doubt – whether in the minds of residents, visitors or outsiders – that the Johannesburg Inner City is in urgent need of development. Many aspects of the ICRS do strive to achieve this. Pillars 3 (infrastructure) and 4 (‘ripple pond’ investments) consist largely of capital-intensive projects aimed at improving roads, traffic lights, drainage and utilities infrastructure; and the construction or restoration of sites of public, historic or cultural interest. Two projects in particular – the construction of buildings and associated infrastructure for the Constitutional Court and the development of the Newtown Cultural Precinct – have been well received, both nationally and internationally. On the assumption that these and other similar development projects will not result in the displacement of the poor or homeless, at least not without the provision of genuine alternatives, they are to indeed to be welcomed.

Pillar 5 (supporting certain economic sectors), too, appears to hold out the prospect of broad-based economic development, including the development of infrastructure to deliver healthcare services to the residents of Hillbrow, the promise of an integrated transport plan, and the advent of a commercial ‘fashion district’ to provide a market place for clothing and related goods.

Much of Pillar 2 (intensive urban management), also, appears timely. It is chiefly concerned with ensuring the habitability and adequate control of buildings and public open space, as well as ensuring that residential structures remain safe and habitable. There is nothing wrong, in itself,

⁷⁴ Inner City Regeneration Strategy Business Plan, Financial Years 2004 –2007 (draft), City of Johannesburg (April 2004), 13 – 29.

with by-law enforcement and adequate building control, especially when this comes after a long period of neglect. Indeed, many of the complaints concerning run-down buildings have come from residents themselves⁷⁵, and require urgent and sustained attention. In addition, the ICRS Business Plan's proposals to regularise informal traders in the inner city may, if implemented in a properly consultative manner, have the potential to boost incomes from the informal livelihood strategies that many of the inner city poor rely on.

When the time comes for an assessment of the success of the Johannesburg Inner City Regeneration Strategy, one of the key indicators will have to be the impact that it had on the lives of the urban poor. With respect to Pillar 1 (addressing of 'sinkholes'), there are reasons for concern that the effect of the measures on the poor of the Johannesburg Inner City will be dire. There are multiple references in the ICRS to 'clean ups', 'building closures' and 'blitz operations'. These are to be executed by the Inner City Task Team, a group of health, safety and fire prevention professionals employed by the Region 8 office of the municipality, or by the central municipality itself.

However, while the almost military urgency of these activities is made very clear, there is little sense conveyed in official documents of exactly what they actually add up to for the people currently living in those buildings. Programme 3 of Pillar 1 of the ICRS seeks to secure the 'control of buildings and illegal businesses' through 'clean ups, building closures and legal action etc.'⁷⁶ In reality, as COHRE researchers found, these 'clean ups' often include the eviction of large numbers of people from inner city buildings, with little thought as to where they will go, or how they could sustainably be re-accommodated. Nowhere is this troubling aspect of tackling the problem of 'sinkholes' fully acknowledged or dealt with in municipal policy documents or other publications.

In interviews with municipal officials and other role players in the ICRS, the sense of urgency with which the problem of 'bad buildings' had to be addressed was palpable. Although concern for residents' health and safety – in terms of which evictions from bad buildings are usually justified – was expressed, the overriding theme was one of the buildings as magnets for criminality, populated chiefly by illegal immigrants who have no legitimate business in the city, or indeed in the country.

According to one official:

'Many of the buildings due for eviction are inhabited by illegal immigrants. The poor conditions in these buildings are to their advantage, in that they enable illegal activities.'⁷⁷

The same official claimed that 'bad buildings' create 'ungovernable climates' which give criminals better control of certain areas.⁷⁸ 'Bad' buildings are seen as both a cause and an effect of inner city decline. They are identified as buildings:

1. Where owners owe large amounts in service and rate payments; and/or

⁷⁵ Interview with City of Johannesburg Region 8 official, 6 April, 2004.

⁷⁶ Inner City Regeneration Strategy Business Plan, Financial Years 2004–2007, draft obtained from the City of Johannesburg (April 2004), 13.

⁷⁷ Interview with City of Johannesburg Region 8 official, 6 April 2004. Note the elision here between illegal immigrants and criminal activity.

⁷⁸ Ibid.

2. Where owners have abandoned the building; and/or
3. Which are derelict, overcrowded, or in a ‘dilapidated or deplorable’ state; and/or
4. Which are ‘invaded’ by squatters; and/or
5. Which are used for criminal activity.⁷⁹

Their closure is, as the ICRS confirms, perhaps *the* priority in the municipality’s efforts to kick-start urban renewal.

The rest of this chapter is devoted, first, to describing the ‘bad’ buildings COHRE researchers investigated in the course of the fact-finding mission; second, to setting out the process by which such buildings are identified and cleared – the practice lying behind the language of ‘sinkholes’ and ‘blitz operations’; and third, to considering the housing alternatives available to people evicted from these buildings.

‘Bad’ Buildings and their Occupiers

The concepts and analysis of ‘bad buildings’ and ‘sinkholes’ and ‘ripple-ponds’, as used in media presentations of the ICRS, is compelling. How could anyone possibly argue against the idea of turning Johannesburg around, virtually from the brink of collapse, to once again play its rightful role in the economy of greater Johannesburg, Gauteng and indeed the whole of South Africa? And how better to do this than via a comprehensive strategy of eliminating the root causes of decay: the ‘bad buildings’ and all that goes with them? In this vision, dealing with ‘bad buildings’ was no longer simply a technical matter of fixing ‘derelict’ or ‘unsafe’ buildings; buildings that were ‘posing a health and safety risk’ and that had in some cases also become ‘havens of criminal activity’ in which ‘criminal syndicates operate brazenly’.⁸⁰ The task of clearing these buildings had become much more than that, a vital step in turning areas from ‘sinkholes’ into ‘ripple-ponds’, linking up one ‘ripple-pond’ with another, spreading an upward spiral of confidence and meeting the overall goal of ‘raising and sustaining private investment leading to a steady rise in property values’.⁸¹

This strident language is evidently meant to drum up enthusiasm for a very difficult and unenviable set of tasks, and to promote integration and synergy amongst the different government and private sector role players. However, in adopting this type of language there is a very real danger that, in the process, the inner city poor have become invisible. They become, at best irrelevant in the grander scheme of things, where larger economic forces (rise in confidence, property prices, investment, employment) will eventually take care of them. Or they become, at worst, deliberately excluded, criminalised by default on the grounds that they are illegal occupants and/or associated with criminal activities, a problem needing to be ‘cleared’.

In this context it is vitally important to reflect on a few questions: Are ‘bad’ buildings really the crime-ridden ‘sinkholes’ the municipality characterises them to be? How unsafe are they? What about the people who live there? Who are they? Where do they come from? What do they do? How did they come to live under such harsh conditions? What problems do they face? What is their vision of the future?

⁷⁹ Yakoob Makda, ‘From slum to (financial) sustainability: Johannesburg’s Better Buildings Programme’ in *Development Update*, 5 (1), Interfund (2004), 187.

⁸⁰ ‘Jo’burg moves in on derelict buildings’, City of Johannesburg Official website, 2 April 2002 (www.joburg.org.za/april2002/bad_buildings.stm.)

⁸¹ Neil Fraser, ‘Sinkholes and Ripple Ponds’, City of Johannesburg Official website, 10 March 2003, (www.joburg.org.za/citichat/2003/mar10_citichat.stm.)

It was with these questions in mind that COHRE researchers conducted a series of interviews, focus groups and surveys across 10 buildings and one evicted community in the inner city of Johannesburg between May and August 2004. Nine of these communities were either under threat of eviction, or had successfully resisted eviction from a 'bad' building at the time of writing. One of the communities we investigated had been evicted from a 'bad' building. All of the evictions were either attempted or threatened under the Building Standards Act, using evidence gathered by the Inner City Task Team.

The communities were:

- Nos. 60-68 Joel Street, Berea, four properties under threat of eviction at the time of writing;
- San Jose, on Olivia Road Berea, under threat of eviction at the time of writing;
- Park Court, Bekker Street, Yeoville, under threat of eviction at the time of writing;
- The former residents of Kingsfold Mansions, Bezuidenhout Street, Yeoville evicted in terms of the Building Standards Act during July 2003;
- Junel House (called Ginwell' by its occupants), in Nugget Street, Johannesburg Central Business District (CBD), which successfully resisted eviction in late 2002;
- Milton Court, Pritchard Street, Johannesburg CBD, which successfully resisted eviction in late 2002.

In some cases, access to these communities was difficult. People living under threat of eviction are naturally suspicious of researchers' motives, and the quality of information forthcoming from each community varied. Winning the trust of the people was therefore a key step in the research process. Methods also had to be devised to promote and check the accuracy of information provided. In some cases, residents were in urgent need of basic help. For example, in 60-68 Joel Street and in San Jose, COHRE researchers assisted residents to secure legal representation through the Wits Law Clinic, enabling them to defend their rights in court⁸².

The level of trust this established between researchers and community greatly assisted efforts to gather information on these properties, and the information gathered from these communities was comprehensive. COHRE researchers collected the detailed life histories of 89 occupants across all Joel Street properties. In San Jose, 178 people were researched as part of a socio-economic profiling exercise. In Park Court and Junel House, responses were more lukewarm. Nonetheless in Park Court, a four-storey building consisting of 13 flats, 15 residents completed biographical surveys, and participated in a focus group. In Junel House, a three storey building with 45 flats, 10 people participated in a focus group. In Milton Court, a three storey building with 17 flats, 47 people completed biographical questionnaires and 60 people participated in a focus group.⁸³ Twenty-three residents of Kingsfold Mansions participated in a focus group and completed biographical questionnaires.

'Bad' Buildings, 'Good' Residents? Building Histories, Physical Conditions and the Social Backgrounds of their Occupiers

How do 'bad' buildings turn 'bad'? And how 'bad' are they exactly? Across and within the buildings we visited there was wide variation in tenure arrangements, physical conditions and

⁸² The Wits Law Clinic is a non-profit public interest law firm, based at the University of the Witwatersrand.

⁸³ This is not an ideal size for a focus group, but what started as an 11 person focus group in the building soon turned into a larger meeting at which everybody wanted to have their comments recorded.

residents' socio-economic position. Some were simply run down and were occupied by the working poor, who generally had regular (if very low) incomes. Grounds for their eviction on health grounds was difficult to discern. Others resembled dense informal settlements and were occupied by people living in abject poverty. Only a small minority of residents at this end of the 'bad' building spectrum had formal work and few earned more than R1,000 per month. All the buildings we visited were in arrears with service and rates payments. Building management regimes had, without exception, broken down, although very few of the residents interviewed really understood why.

This section starts with a general characterisation of the physical and socio-economic circumstances we encountered in the course of our visits to 'bad' buildings in the Johannesburg inner city. We then present two detailed case studies of 'bad' buildings. Each case presents the history and socio-economic profile of a particular 'bad' building in the inner city of Johannesburg. The two cases were selected to represent opposite ends of the 'bad' building spectrum. They also highlight two key tendencies in the 'bad' buildings we studied. First, the Park Court case study highlights the tendency of residents to organise themselves once building management substantially degrades. This has led to a system of 'dual authority' in many of the buildings we visited. This duality is between an absentee, or otherwise disinterested management agent, or landlord, in which formal legal authority is invested, and the residents committees or other informal co-operative arrangements, which accumulate support and legitimacy within buildings for their ability to solve everyday problems. The Joel Street case study reveals that people choose to live in 'bad' buildings for predominantly economic reasons. Living in inner city slums, is not primarily a lifestyle choice or an attempt to evade the law. It is one of few options open to very poor people.

'Bad' Buildings: A General Commentary

Two fundamental socio-structural conditions were encountered in each building visited. First, there was no operable or effective landlord or building management authority in place. Where any effort to regulate the basic functions of each building existed, this was usually the result of an *ad hoc* arrangement made by a group of residents. The buildings were in substantial arrears with service and rate payments.

In short, the 'bad' buildings we visited had become 'bad' because of a breakdown in social relations between occupiers, owners and/or building management agencies. Stories of the degradation of a building were depressingly similar across all the buildings we visited. Residents seldom knew to whom they should pay rent, what their rent and service arrears were, or who owned the building or unit they lived in. In some buildings, particular units had changed hands informally several times, having simply been abandoned by their owners several years ago.

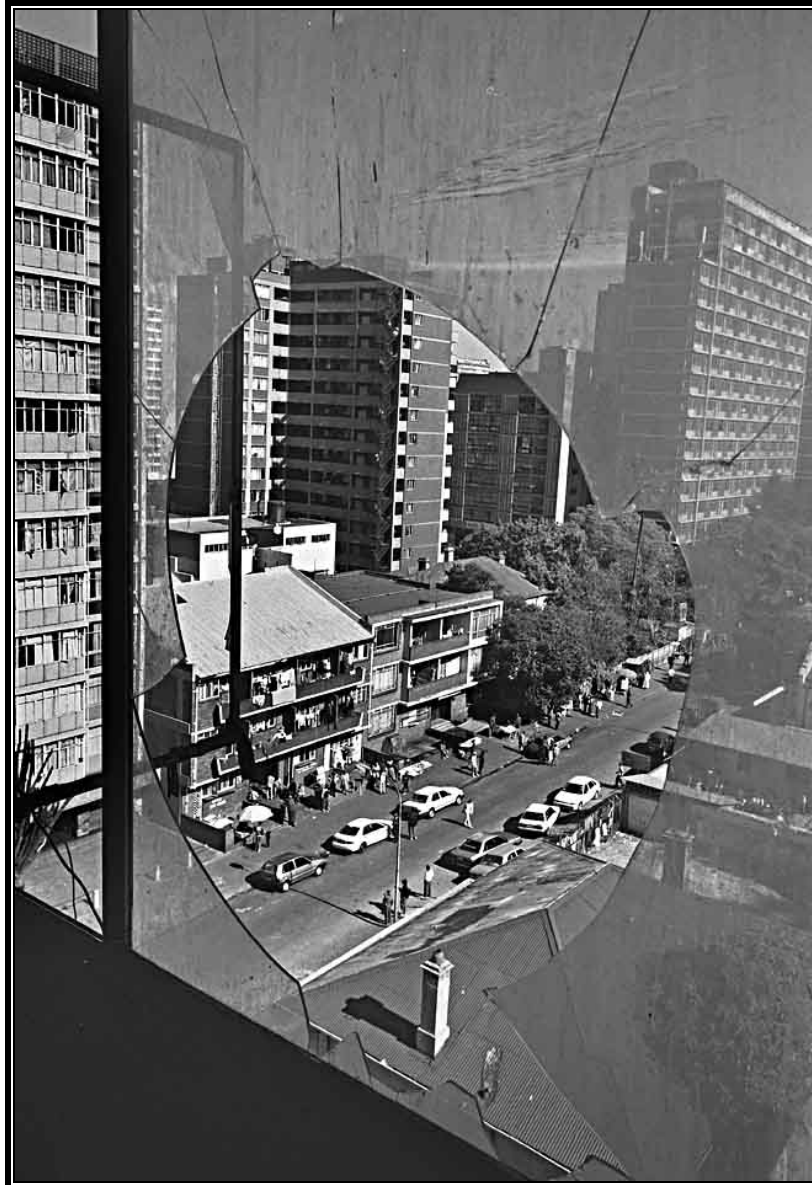


Photo: Jurgen Schadeberg

View from San Jose, Berea (July 2004). According to a letter to COHRE from the Johannesburg Inner City Office, 'conditions in buildings such as the San Jose have reached appalling levels'

In San Jose, for example, a 16-storey building in which COHRE Researchers investigated the circumstances of 178 of the estimated 322 occupiers of the building, only around three of the 129 units were verifiably owner-occupied. A large archive of documents kept by the Chairman of San Jose's residents' committee suggested that in the past, different portions of the units in the building had been managed by various agencies under the supervision of a Body Corporate. The Body Corporate was dissolved in 1994, after it ran up substantial water, electricity and service debts. San Jose's units were originally owned by exclusively white occupiers, who left the building as more and more Africans moved into Berea in the late 1980s and early 1990s. Interviews with San Jose's residents suggest that informal rental arrangements developed between new (largely African) tenants and white owners. Cash rents were paid to owners, who then passed money on to managing agents. The agents then paid rates and service levies and maintained the building.

At some point during the early 1990s, however, this arrangement broke down, and the managing agency stopped receiving sufficient remittances from owners to pay rates and services. Long-term residents of the building say that they paid their rents in full and on time, and could provide considerable documentary evidence to support this claim. They say that the absentee owners simply stopped passing on payments to managing agencies in the building.⁸⁴

Arrears began to accumulate and today amount to approximately R2.5 million. The last managing agency finally withdrew from the building during 1997. An informal residents committee made some (modestly successful) efforts to rejuvenate the building between 1999 and 2002, making minor repairs and channelling some service payments through to the municipality. An inspection of the building's accounts suggests that residents paid for about two thirds of their recurrent consumption over this period. However, always an informal and largely improvised exercise, the residents' committee collapsed under the weight of internal divisions, municipal concern at its informality, and its inability to make substantial inroads into the building's massive arrears.

Many of San Jose's residents are unsure who owns the flats they live in. Some say they were simply 'given' their flats by their former employers, with whom they have had no contact for several years. Others say they simply walked in off the street, found an abandoned flat and 'fixed it up'. Still, others report having been allowed to occupy flats 'owned' by their relatives or other parties. However, the names they provided to COHRE researchers seldom matched up with the registered owners of the units they lived in.

A pattern of events, induced by a gradual collapse of authority, was repeated in almost all of the 'bad' building narratives we came across. First, the informal alienation of the building from its original owners (sometimes with their consent), followed by the accumulation of arrears, followed by the formal withdrawal of the managing agency, followed, finally, by a spirited and well-meant, but ultimately unsuccessful attempt at occupier management.

The second socio-structural condition common to all the 'bad' buildings we visited was the socio-economic profile of their occupiers. The vast majority (97 per cent) of respondents in each building said they earned less than R3,000 per month. Major breadwinners in each unit either filled entry-level formal jobs in the inner city area, or engaged in informal survivalist livelihood strategies, with varying degrees of success, which depended on access to the inner city's economic networks. Forty-five percent of our respondents were formally employed in the immediate vicinity of the inner city, and stated that the reduced transport costs they incurred by being so centrally located was the major reason why they chose to live in the inner city. Twenty-one percent were unemployed. Less than 1 per cent of respondents were pensioners, and the rest (about a third) described some or other form of informal livelihood strategy or casual manual labour.⁸⁵

⁸⁴ COHRE Researchers obtained a detailed record of the San Jose's accounts over the last three years. This conclusion was drawn on the basis of an examination of these accounts. Copies are available for inspection by interested parties at the Documentation Centre of the Centre for Applied Legal Studies, where the COHRE Johannesburg mission archive is held.

⁸⁵ Percentages are indicative only. They are not representative, in any formal statistical sense, of the entire population of Johannesburg's 'bad' buildings.

In focus group discussions it became clear that the inner city was perceived to be an easier place to find work, and a much easier place to survive without formal work, than the townships, informal settlements, or rural areas. While our respondents were well aware that the inner city streets were not paved with gold, they definitely believed that there was, at least, more bread available than elsewhere.

Case 1: Park Court

In its High Court application to clear Park Court in terms of its powers under the Building Standards Act, the municipality referred to evidence of subsidence, raw sewerage coursing through the public areas of the building, inadequate fire safety precautions and piles of rubbish blocking fire escapes. In our first visit to Park Court, during May 2004, we found no evidence of rubbish blocking fire escapes. There was a pungent smell of sewerage (which abated on subsequent visits), and there appeared to be cracks in some of the rendering work on the walls. There was no other visible indication of subsidence.

The municipality acknowledged in its application that it had no evidence that Park Court was in danger of subsiding, claiming rather that it ‘appeared’ to be vulnerable to subsidence. Before the municipality lodged its application to evict the residents of Park Court, the residents had asked for an engineer or an architect to be employed by the municipality to investigate the threat of subsidence. The municipality refused to do so, and Park Court’s residents could not afford to do it themselves. Since all but two of them did not own their homes in the building, they felt that the owners of the individual units should have been pursued to fund the investigation. There is no evidence in the municipality’s court papers that Park Court’s owners were ever pursued to improve conditions in the building.⁸⁶

Park Court is certainly poorly maintained. When asked about building management and maintenance regimes, Park Court residents related long and involved tales of multiple attempts to engage with owners and managing agents. Many residents said that they were unsure to whom they should pay rent, or who had responsibility to make repairs or physical improvements to the building. Many reported being asked for rent by a number of different people every month, and being physically threatened if they did not pay up. Some paid rent (of around R300) to more than one person every month:

‘... that guy used to come in my flat and say we must pay R500 per month so that he does not evict us. So sometimes we give him R350 or R400, and sometimes he’ll fight with us and we’ll give him more ... [others] come with big books and say they are from Trafalgar [a well-known property management company in Johannesburg], but they don’t show us anything. They just come with big books telling us they are from Trafalgar.’⁸⁷

Apart from two owner-occupiers, no-one had any idea who owned his/her flat. Landlords appeared so absent that, when on one occasion people claiming to own units in the building did visit, they were regarded with considerable apprehension:

⁸⁶ The City of Johannesburg vs. The Occupiers of Park Court Case no. 04/17172 , Founding Affidavit.

⁸⁷ Female Resident of Park Court, COHRE Focus Group, 1 May 2004.

‘We’ve got people coming and telling the residents that these flats belong to them, which means that they (the residents), must buy the flats from them. And no, we don’t work like that’⁸⁸

Some residents said they had leases with Trafalgar, a property company, but felt that the leases themselves had little practical effect. When asked what her lease said, one resident replied:

‘I cannot remember. But when I came to the flat, everything was broken. Then I wrote a letter to tell them about that. Then they said it’s not their responsibility. I faxed the letter to them and they never responded.’⁸⁹

Frustration with the general breakdown in lines of communication and landlord/tenant relations and the municipality’s threat of eviction, at the time of our visit, led many residents of Park Court to organise themselves. A committee collected voluntary contributions from many of Park Court’s residents, to pay for the basic services and repairs. Although the residents said that the committee had improved the building, lines of responsibility within the committee as well as membership of it, were unclear:

‘We contributed money that went to certain people. That money was for a committee which was supposed to represent us at the City Council. The City Council said we are going to be evicted in ten days’ time or fix our flat if we don’t want that. So we contributed money, about R500 per month, for two months, to fix the flats. I think there is a committee, but I’m not sure. I didn’t attend all of the previous meetings’⁹⁰

Despite not regularly attending its meetings, Park Court’s residents praised the work of the committee as a welcome contrast to the perceived indifferences of those who owned the building. According to one resident:

‘We paid [the Committee] for two months, and now the lights are up and other things have been fixed. We are going to stop making all those payments [to the owners] and we are going to fix this place ourselves.’⁹¹

Although poor, Park Court’s residents are not destitute. Nor are they organised criminals. Nor are they illegal immigrants. Their contributions to focus groups and biographical questionnaires revealed a relatively strong sense of community, with all the respondents deeply embedded in associational life in Yeoville. Many proudly claimed to be members of the ANC, or of various church groups with missions in the suburb. They liked living in Yeoville because of its proximity to work, schools and crèches. Incomes ranged from R250 per month (reported by a female public telephone attendant, who was also supported by her husband, who earned around R1,000 per month as a petrol pump attendant) to R3,500 (reported by a 42 year-old sound engineer). Two non-South African citizens took part in the focus group. One was Congolese refugee, and the other was a citizen of Swaziland working for a musical production company.

⁸⁸ Male Resident of Park Court, COHRE Focus Group, 1 May 2004.

⁸⁹ Female Resident of Park Court, COHRE Focus Group, 1 May 2004.

⁹⁰ Male resident of Park Court, COHRE Focus Group 1 May 2004.

⁹¹ Ibid.

Attitudes to government agencies were indifferent. The municipality was seen as a nuisance, whose officials periodically visited Park Court, made threats, pointed out problems but suggested no workable solutions:

‘The municipality used to come here and complain about the place. They didn’t say anything about fixing it. They were just threatening to throw us out.’⁹²

Park Court’s residents also felt that the municipality had only targeted them because there was an illegal trader operating from a stall outside their building. They thought there was little they could do about this, but still paid the penalty tickets the municipality issued:

Female Resident: ‘The residents of this building are not happy about the lady selling outside our flats. Because every time when the municipality comes here, they complain about her. The worst part is that she’s not even staying here. So people have to pay for her ticket. So I don’t allow her to sell there. I don’t know about other people.’

Male Resident: ‘I didn’t even know that there were tickets issued because of that sister. I didn’t know that she wasn’t staying here. I just thought she’s someone who stays in this building trying to make a living.’⁹³

Although well located, the neighbourhood was perceived to be in decline. Residents expressed concern about this. They blamed ubiquitous ‘Nigerians’ and ineffectual policing for the decline. Like the municipality, the police were seen as a nuisance, often checking the building for illegal immigrants while ignoring the drug trade residents said was going on outside.

‘The Police are a problem. They are always asking for our ID’s. But there are some Nigerian guys who like sitting outside, *next to the police*, and I think they are selling drugs.’⁹⁴

Another resident said:

‘The Yeoville police are not doing anything good for us. You can get crack anywhere you want in Yeoville. I also know one place where you can smoke dagga publicly, freely. That’s not legal.’⁹⁵

Having threatened to evict the residents of Park Court on a number of occasions throughout late 2003 and 2004, the municipality finally lodged an urgent eviction application with the High Court on 5 August 2004. Its application sought an order under Section 12 of the Building Standards Act. No alternative accommodation was offered. Despite an undertaking in its founding affidavit to deliver lists of suitable alternative accommodation to the residents of Park Court, no lists have yet been given out. The municipality’s application was postponed indefinitely after Park Court obtained legal representation. At the time of writing, however, the residents of Park Court remain under threat of losing their homes.

⁹² Female Resident of Park Court, COHRE Focus Group, 1 May 2004.

⁹³ Park Court, COHRE Focus Group, 1 May 2004

⁹⁴ Male resident, Park Court, COHRE Focus Group, 1 May 2004 (our emphasis).

⁹⁵ Ibid.

Case 2: Joel Street

Although run down and populated by people of few means, Park Court is not a classic slum. It was the best maintained of the buildings visited by the COHRE researchers. At the other end of the spectrum, however, is Joel Street. On 30 April 2004, the municipality applied for the eviction of all 130 residents (including four pensioners and 41 children) across all four of the properties which make up 60 to 68 Joel Street. In its application, the municipality relied on Section 12 of the Building Standards Act. It cited:

- A proliferation of illegally erected shacks around each four two-storey brick houses;
- A number of illegal subdivisions using 'highly combustible material' in the brick houses themselves;
- The proliferation of illegal electricity connections;
- Inadequate fire safety precautions.

The four plots effectively constitute one large shack farm. Each property has a double storey stone house, typical of a family dwelling constructed in the early twentieth century. To the rear of each house, a number of shacks have been erected. Wandile Zungu, introduced in Chapter 1 of this report, lives in a shack to the rear of one of the buildings. Constructed out of corrugated iron, the shack is divided by a curtain into two family dwellings of around four square metres each. Here, in substantially the same conditions as all of Joel Street's shack dwellers, Wonder lives with his wife, 2 year-old boy and newborn baby girl. There is a large quantity of waste, piled around 2 metres high directly outside their shack.

Interviews with almost all the adult residents of Joel Street yielded variations on the same basic narrative. Until around January or February 2003, there was a relatively stable rent-paying tenancy arrangement between the occupiers of all four properties and a man known only to the residents as 'George'. Whether George was the owner, managing agent, or simply a managing agent's assistant was not clear. Nor was it clear whether he was legitimately collecting rent from Joel Street's occupiers. George would collect rent in cash every month, ranging from R150 to per month, including water and electricity, and would issue receipts. Not all of the residents paid rent; some had 'bought' shacks to the rear of stone properties for a single payment to their former occupiers – often in the region of R200. Questions about Rand Properties, the registered owner of all four plots, drew a blank response in the interviews.

Some time during 2003 (there is no agreement amongst the residents on exactly when), two things happened. First, George stopped collecting rent and a man known to the residents as 'Vincent', turned up in his stead. Vincent collected rent and issued receipts in the usual way. A week after this, another man, whose name was unknown, turned up and demanded rent. Most residents tendered their receipts issued by Vincent. They were told that these were invalid and that Vincent was posing as an agent of the owner. Some residents paid again, others did not. Over the following few months, these events repeated themselves. Given this confusion, more and more of the residents started to withhold rent from both men. It seems that the last person to stop paying rent did so in March 2004.

Second, in early 2003, water and electricity supplies to all four plots were terminated. It is not clear whether this was caused by 'George' absconding or by non-payment of rent. Whatever the case, Rand Properties stopped paying electricity and water bills for Joel Street at some point in late 2002 or early 2003.

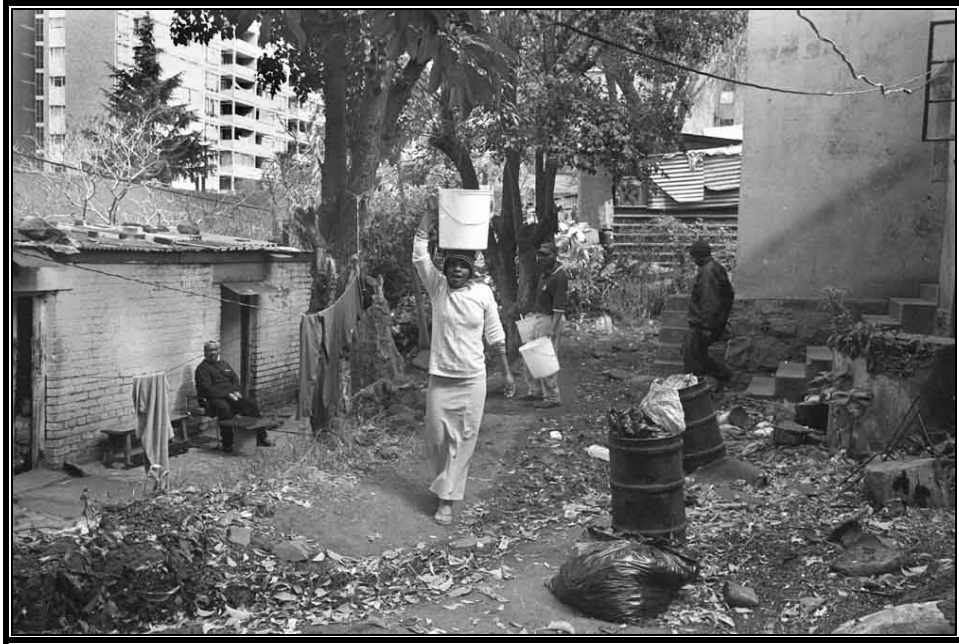


Photo: Jurgen Schadeberg

In early 2003 water and electricity supplies to Joel Street were terminated

The residents made a number of efforts to contact the landlord and/or his various representatives. At one point, one of the rent collectors appears to have re-visited the site to speak to one Vusi Ndlovu who was apparently representing the rest of the occupiers of all four plots.⁹⁶ At their meeting, Ndlovu, offered to arrange the payment of all back-rent due, less the water and electricity arrears (some R60,000) that had been run up with the Municipality. The arrears would be paid directly by the residents to the Municipality, or alternatively Ndlovu would accompany the landlord or his representative to a pay point and hand over the money himself. The person purporting to be the landlord's representative refused this offer, stating that all monies should be paid only to him. Given the apparent breakdown in trust between resident and landlord, the tenants consequently refused to clear their back rent. It is likely that these developments gradually turned what must have been an already squalid set of dwellings into the health risk the municipality now claims the four plots to be.

Joel Street and its Social Matrix

To outsiders, the Joel Street plots may appear to be a most undesirable place to live. However, an analysis of COHRE's field interviews reveals a complex web of circumstances and reasons, which explain how Joel Street's residents have come to live where they do, and why they will resist efforts to remove them. By categorising these reasons, we can divide the residents into four groups, from the largest to the smallest: young urbanites, semi-permanent migrants, long-term settlers and transients.

First, the young urbanites. These residents – like Wonder – live in fully urbanised households and have judged that the economic advantages of their location are worth enduring the poor physical conditions in which they live. They have decided that physical conditions in accommodation available to them elsewhere – say in an informal settlement – would not necessarily be any better than they are in Joel Street.

⁹⁶ Name has been changed.

One resident, Thembi Zuma⁹⁷, said that she had moved with her husband and two children from an informal settlement in Alexandra. The threat of eviction and the physical conditions in that settlement had been just as bad, she said, as they were at Joel Street. The Alexandra settlement had a large number of exposed electrical wires, which she felt posed a risk to the safety of her two children. Many sections of the informal settlement she lived in had been gutted by fire. However, what finally made her and her husband decide to move to Joel Street was its proximity to the place, just to the south of the Johannesburg Central Business District, where her husband daily sought casual work as a builder. Some days he would get work, others he would not, but, when Zuma and her husband had lived in Alexandra, he would always have to pay the costs of transporting himself there. Now, she said, her husband:

‘... can walk to work. If he doesn’t get a job on that day, at least he didn’t have to pay for transport, so we don’t lose any money’⁹⁸.

On average, Zuma’s husband earns R500 per month. Twenty return taxi fares (presumably a months-worth) between Alexandra and the Central Business District amount to R100. While her living conditions in Joel Street were no better than they were in Alexandra, the economic advantages of its location made it a much better survival option, as they leave her household with 20 per cent more income every month than it would otherwise have had. They live rent free in Joel Street, as they did in Alexandra, but would be prepared to move and pay up to R200 per month in rental for a cleaner, safer room, with better access to water and electricity. She and her husband are seeking a better place to stay, with no luck so far.

Variations on these cost-benefit analyses of living in the inner city were typical of Joel Street’s ‘young urbanite’ households, 70 per cent of which had incomes of less than R1,000 per month. They had relocated to Joel Street relatively recently – say within the past five years. By and large, these households are young, relatively mobile and ready to move if and when a better option presents itself.

The second group, about a third of Joel Street’s occupants, are semi-permanent migrant workers. These are predominantly men, who live alone or in all-male kinship groups, in shacks to the rear of all four of the properties. They have strong roots in rural areas, where they usually maintain large families. They have come to Johannesburg to seek work. Many have found it, and derive much more income from it than they would from any work available to them ‘back home’. They live a survivalist life in the inner city, getting by on the bare minimum, and remitting the rest to their families in rural areas.

Sabela Ngcobo,⁹⁹ for example, is 36 years old. He lives in a shack to the rear of one of the Joel Street properties. Born in Msinga in KwaZulu-Natal, he left school having completed Standard 5 (or Grade 7 – the end of primary school). He then became a farm worker until he married and his wife had a child. He felt that the money he earned in Msinga (some R100 per month at the time) was not enough to support his family. He was also keen to escape the oppressive working conditions on the farm:

‘... the whites, you are nothing to them.’¹⁰⁰

⁹⁷ Name has been changed.

⁹⁸ COHRE Interview Joel Street, 23 May 2004.

⁹⁹ Not his real name.

¹⁰⁰ COHRE interview, Joel Street, 24 July 2004.

In 1989, Ngcobo left Msinga to look for work in Johannesburg. He was lucky, as he immediately found a job serving fast food. He can't remember exactly how much he was paid, but he does remember that it was more money than he had ever had before. After 6 years serving fast food, Ngcobo took a job selling jewellery on commission. The company he works for is based in Parktown. He still does this job, and currently earns an average of R2,000 per month. Ever since he first moved to Johannesburg, Ngcobo has supported his sister, mother, wife and three children in Msinga and regularly remits at least half his salary to them. Between 1989 and 2001, Ngcobo has lived in, and been evicted from, ten different inner city locations. On each occasion he was evicted because he was unable to afford the rent and at the same time support his family in Msinga. Then his fortunes changed. In 2001 his cousin offered to 'sell' his shack to the rear of one of the Joel Street properties to Ngcobo for R450. Ngcobo bought the shack and has lived there ever since. He still owes his cousin R50.

For Ngcobo, the imperatives that govern his economic life are simple: live in Johannesburg for as little money as possible, and remit as much as possible to his family home in Msinga. All other options are closed to him. He cannot move his family to Johannesburg, because they would have nowhere affordable to live. He cannot return to Msinga, because he would lose a lucrative job in Johannesburg. To live anywhere else in Johannesburg, other than within walking distance of work, would reduce in transport costs what he could send home to his family. Indeed, he has a house and a base in Msinga, and does not want to move away permanently. Sitting in his fastidiously organised shack in Berea, he confides to a COHRE researcher that he does not like the crime and pollution of Johannesburg life, and such friends as he has in Johannesburg are from his rural locality and are in the same position as him. He is palpably terrified of being evicted again.

Although now legally allowed to live wherever they wish, migrants at Joel Street are corralled into their social circumstances in much the same way as migrant labourers were under apartheid. Trapped between rural poverty and a poor education, a low-wage job in Johannesburg is by far their best option. For accommodation, the slums of Johannesburg is the best they can do. The closer this is to their work, the better their chances of survival.

The third group – the long-term permanent settlers – had lived in the brick buildings on the property for considerable periods of time, often upwards of ten years. Although they could seldom afford to live anywhere else, they did not move onto the site for purely economic reasons. About ten in all, they were moved into rooms or outhouses by arrangement between a former employer and a former landlord over ten years ago. They are in their 50s and 60s, live alone, and have a sense of propriety over the plot they live on. One such resident, Jane Nkadimeng¹⁰¹, aged 49, moved into Joel Street in 1994, from her domestic servants' quarters in Yeoville, after the property was sold and the incoming owners evicted her:

‘...at the time, I worked as a cleaner in an office in Time Square. The owner of the office building, Mannie, arranged for me to live here. In 1995, Mannie moved to Israel and I lost my job, but I have lived here ever since.’¹⁰²

Nkadimeng has no family in Johannesburg, and works three days a week washing and ironing clothes in houses in Yeoville, Berea and Bellevue. She earns R230 per month, R100 of which she remits to her 19-year-old child who lives with her sister in Rustenburg. She has never been

¹⁰¹ Not her real name.

¹⁰² COHRE Interview Joel Street, 27 June 2004.

married. She is as comfortable as she feels she can expect to be in her stone cottage, and has not the first idea where else she could live. Unlike the migrants, she does not have particularly strong links with rural areas – she was born in Soweto – and, unlike the young urbanites, she is not consciously searching for a better option. Although not positively happy with her circumstances, she is embedded in Joel Street life, and her age gives her some security and respect amongst the other residents.

The fourth group – the transients – is the smallest. It comprises young, single people, who have moved out of overcrowded or oppressive living conditions at their home, or have just moved into the inner city from outside Johannesburg. They are seeking temporary accommodation while they establish social and economic networks necessary to sustain them. While many are free of commitments, and have reasonably high expectations of life, a significant minority are single mothers whose partners left them, or threw them out of a co-habitation arrangement, when they fell pregnant. One household in Joel Street is made up entirely of a group of four sisters, three of which have young or newborn children who were rejected by their fathers before their birth. The fourth sister has a newborn child for which, she says, the father is taking responsibility, at least ‘for now’.¹⁰³ Over the three months the COHRE team was doing research in Joel Street, many of the ‘transients’ moved in, were interviewed, and had moved out by the next time we had returned to the site. From what we were able to establish, they had either found a job which paid them well enough to live elsewhere, or they had moved in with friends or partners.

Criminality

COHRE researchers came across some evidence of criminal activity in the ‘bad’ buildings we visited. There is no denying that, where building management regimes collapse, residents of ‘bad’ buildings lose their capacity to protect themselves from the generally high levels of crime in the inner city. However, what our research in ‘bad’ buildings revealed, was that most residents of these buildings are far more likely to be the victims of crime than they are to be its perpetrators. This is a distinction that municipal officials and property management companies failed to make when they spoke of ‘bad’ buildings in their interviews with COHRE researchers. There was simply an unexplained brute assertion, that ‘bad’ buildings were ‘no-go’ areas populated by ‘criminal elements’. In a conversation with a COHRE researcher, one property management agent dismissed the occupants of one of the buildings we visited as ‘illegal immigrants’ or otherwise embedded in ‘criminal’ networks.¹⁰⁴

Yet the COHRE research simply did not bear this out. Far from being the ‘no-go’ areas one municipal official claimed they were,¹⁰⁵ COHRE researchers had little difficulty moving through these buildings, once we had made contact with a resident. We found nothing to suggest that large numbers of residents were engaged in any form of organised crime. In some buildings, we found evidence that unoccupied units were being used to deal or use ‘soft’ drugs, such as cannabis. We were led to these rooms by residents themselves, who were keen to disassociate themselves from what went on there. None of the buildings we visited had adequate security, making them all vulnerable to theft. There was also a high sense of insecurity in the focus groups, who felt that unsecured buildings were regarded as fair game to people desperately looking for shelter:

¹⁰³ COHRE Interview Joel Street 22 August 2004.

¹⁰⁴ Telephone interview with property management agent, 20 August 2004.

¹⁰⁵ Interview with City of Johannesburg Region 8 official, 6 April, 2004.

‘I once experienced a situation where a man just broke into my house and told me to move because he wants to sleep. He left when I got up and told him to leave.’¹⁰⁶

Many residents felt that attempts to contact the police in response to a crime were ultimately futile. This was partly because of the perceived ineptitude of the South African Police Service, but also because of bad experiences many residents had had with the Johannesburg Metropolitan Police Service, who were routinely accused of harassing those of our respondents who made a living from informal trading.

‘I lost most of the things that I was selling at the social grants stations. They took them without giving me receipts. I never found those policemen again’¹⁰⁷

Although there was praise for specific police stations and individual police officers, law enforcement agencies were generally seen as inept or corrupt. In response to this, residents of almost all the ‘bad’ buildings we visited spoke of instituting informal committees meant to take control of security in a building. Violence and theft are generally perceived to be high and are responded to, in some contexts, with vigilantism. One punishment residents spoke of was being forced to clean communal spaces in a building if one was caught stealing.

Finally, it must be noted our research did not equip us to comment on whether ‘bad’ buildings were being used by organised gangs as bases of operation. Nor are we able to say whether or not other buildings, not visited by our teams, are used in this way. However, if any of the buildings COHRE researchers visited are being used as bases by criminals, our conclusion is that this is with little or no collaboration from the majority of residents. In any event, the research clearly shows that it is totally inappropriate to regard all ‘bad’ buildings as havens of criminal activity, or to brand the residents of buildings where criminals do operate, as accomplices by default.

The necessity of slumming

In the Johannesburg inner city, most people do not live in bad buildings out of choice, but from necessity. Their decision to make their home in slum-like conditions is fundamentally determined by powerful social and economic forces. They are prepared to pay rent (and many do pay it) to live in these conditions, because of the locational advantages of an inner city home, and the non-availability of other options. Some ‘bad’ buildings, such as Joel Street, have been slums for many years, controlled by unscrupulous landlords seeking to make money from the desperate circumstances many poor people live in. Others, such as Park Court, have recently become run down because of a collapse in central authority and building management mechanisms, caused by disinterested landlords, and an inability, or unwillingness, to pay on the part of some residents. Whatever the root cause, the lack of a strong managerial response to problems which arose in what were originally ‘good’ buildings, led to a cycle of decline which ultimately resulted in a municipal eviction application.

¹⁰⁶ Female Resident, COHRE Focus Group, Milton Court, 6 May 2004.

¹⁰⁷ Ibid.

‘Addressing the Sinkholes’

Having accounted for the decline and social composition of the ‘bad’ buildings we visited, we turn now to a description and analysis of the manner in which ‘bad’ buildings are identified and cleared. The inner city regional office of the municipality identifies ‘bad’ buildings through two main mechanisms. The first is a ‘block-by-block’ survey of buildings undertaken by the Inner City Task Team, which is co-ordinated by the Region 8 Director’s Office. Buildings are also investigated in response to complaints received by the municipality. According to the municipality, ‘bad’ buildings:

‘...create conditions which are dangerous, especially in the high rise, high density urban environment in which we operate. The effects are:

- Collapse of infrastructure;
- High Crime/Crime Syndicates/Buildings used as crime springboards/prostitution/ drugs;
- Disinvestment in areas where such conditions exist;
- Non-payment of services and rates to the Council;
- Dangerous conditions for the occupiers and the surrounding environment;
- Breakdowns in service provision;
- Difficulty in attracting new investment;
- Public perception of City and Council (sic);
- Job losses;
- Health hazards – urban environment (sic);
- No go areas;
- Future planning for services - schools, [clinics], community institutions, parks etc cannot be implemented¹⁰⁸.

It is not clear if or how the municipality established the truth of some of these claims - whether they are just a list of prejudices about ‘bad’ buildings, or whether they are based on solid research and police intelligence.

The Practice of Inner City Evictions

When a ‘bad’ building is identified, it is inspected by an ‘inter-disciplinary task team’, comprising an environmental health officer, a building control officer and an officer of the municipal fire department. The municipality may then issue any number of notices to the owner or person in charge of the building. These initial notices seldom make their way to the occupiers of the buildings in question, until they appear annexed to an eviction application. Typical notices include warnings to provide fire fighting equipment or to make structural improvements in the interests of preventing the fire, or the spread of fire; and notices under the General Sanitation By-Laws, the Health Act and/or the Accommodation Establishment By-Laws, to improve any structural condition of the building which may be seen as causing a threat to health or safety.

If, after a second visit (usually around three months later) the task team is not satisfied that conditions in the building have sufficiently improved, the legal office of the municipality issues a further notice under Section 12 (4) (b) of the Building Standards Act, declaring a building unfit for occupation and ordering all its residents to vacate the building within one week of the date of the notice. This second notice does not explain exactly how the building in question poses a

¹⁰⁸ City of Johannesburg Metro Council Enforcement Process, document obtained from the Region 8 Office of the City of Johannesburg (June 2004).

health hazard, or a threat to health and safety. This, in itself, is problematic, since this was usually the first time that most of respondents in the COHRE research heard that action may be taken to evict them. Residents must usually visit the municipality's headquarters to find out exactly what repairs or improvements to a property the municipality requires. The notice provides no indication of where else the residents of a building should go to live. The arbitrary blanket application of a week-long period to leave the building does not take account of the specific circumstances of particularly vulnerable residents of a building (especially the old, the disabled, children or single mothers). No hearing is convened. Residents are not given an opportunity to make representations to the municipality in response to the issuing of the notice.

Nonetheless, both the first and the second set of notices, if they do reach the occupiers of a building in time, do succeed in encouraging some degree of compliance. For example, the former residents of Kingsfold Mansions were keen to point out that they did try to respond to municipal concerns, once they became aware of them:

Male Respondent: '...we tried. We cleaned. Every Saturday and Sunday. We had a group of men cleaning during the weekend. Women cleaned the stairs and corridors, we were cleaning outside. They told us to clean the flat.'

Female Respondent: 'most of the things we did, it was with our own money. Each floor contributed money for that. Buying refuse plastic bins from the municipality, polish to clean the floors. Doing everything by ourselves.'¹⁰⁹

It seems, however, that these efforts were too little too late in the eyes of the municipality: the residents of Kingsfold Mansions were evicted during July 2003.

Although failure to comply with a Section 12 (4) (b) notice is, technically, a criminal offence, we found no evidence that the municipality had pressed charges against those who failed to comply with one. This is chiefly because, in view of Section 26 (3) of the Constitution, the notices, in themselves, have no legal effect. It is unconstitutional to evict someone from their home without an order of court.

Hence the next step in the process is that soon (sometimes just a day) after a notice under the Building Standards Act was issued, the municipality lodges an application with the High Court for an interdict, ordering the occupiers of the building to vacate it and not to re-occupy it until given the municipality's written permission. Although framed as a temporary measure, the practical effect of the interdict, once granted, is the same as a permanent eviction. COHRE researchers were unable to find record of any case in which, having obtained such an interdict, the municipality granted the residents of a building permission to re-occupy it.

It also appears that the municipality seldom makes the effort to properly investigate the circumstances of the people occupying a building it seeks to clear. Typically, municipal eviction papers simply imply that the occupiers of the buildings are dangerous. For example, in its application to evict the residents of Park Court, the municipality states that:

'In order not to provoke confrontation within the building, the task team did not attempt to ascertain the names of the Respondents ...'¹¹⁰

¹⁰⁹ COHRE Focus Group, The former residents of Kingsfold Mansions, 25 July 2004.

¹¹⁰ The City of Johannesburg vs. the Occupiers of Park Court, Case No. 04/17172, Founding Affidavit, Paragraph 22.

In its application to clear San Jose, the municipality avers that:

‘The Applicant [the municipality] has been aware of problems within the building for some time. The South African Police Services and neighbours frequently complain about the conditions inside the building and the impact thereof on surrounding buildings.’¹¹¹

The principal problem with these allegations is not that they are baseless (we have no way of knowing either way), it is rather that they are vague, unsubstantiated, and invite the inference that residents of such buildings are violent, criminally inclined, or otherwise dangerous. Why, for example, is it the case that speaking to residents of Park Court would automatically provoke confrontation? Is it because the municipality had already decided before its first inspection that the residents of Park Court should be evicted? Or is it because it had already decided that they were too dangerous to risk an attempt at conversation? In our extensive enquiries at Park Court, during which the residents had no guarantee that COHRE researchers’ motives were any more benevolent than those of the municipality, we received a wealth of information from residents who appeared anything but dangerous, violent or criminal.

In San Jose, the allegation that the South African Police Service ‘frequently complains’ about the building invites the inference that all its residents are engaged in criminal or some other nuisance activity. The vagueness of this allegation is problematic. It fails to distinguish between residents of ‘bad’ buildings who may be causing a nuisance or engaged in criminal activity, and those who are not.



Photo: Jurgen Schadeberg

Residents of San Jose discuss the threat of eviction during an interview (July 2004). One of the residents, Ms Thembela Plaatje, has lived in the building since 1987. She has two children aged 3 and 8.

¹¹¹ The City of Johannesburg vs. CN Louw and Others, Case No. 04/13835, Founding Affidavit, Paragraph 104.

Eviction applications under the Building Standards Act are often unopposed, since the occupiers of a building struggle to obtain adequate legal representation. This is especially the case where, as is often the case, the municipality seeks an urgent interdict. Where an urgent application is unopposed, it takes as little as 12 days from the filing of an application to the granting of the interdict. In Kingsfold Mansions, our respondents were unaware of the date and time their eviction was to be carried out. According to one resident 'it just happened one day'.¹¹²

Where residents do secure legal representation and the municipality's application is answered, the municipality often takes no further action, and the action is postponed indefinitely. This was the case in 197 Main Street, in the Johannesburg CBD. There, the municipality sought to evict a group of homeless men occupying an abandoned workshop. The men secured representation from the public interest department of Webber Wentzel Bowens, a leading South African law firm. The municipality's application was lodged and answered almost a year ago, but the municipality took no further action.

While this report was being researched, from May to September 2004, the municipality moved applications or executed orders in the inner city under the Building Standards Act in at least five cases. Two of these evictions were carried out, involving an unknown but significant number of people. One was in Doornfontein, to the east of the city centre. The other was from a series of industrial units in Jeppestown, being used for residential purposes, to the south east of the city centre. The number of people evicted is presently unknown.



Photo: Guy Tillim

'Red Ants' from Wozani Security Company armed with sticks, crowbars and shields, prepare to implement another Johannesburg eviction - Auret Street, July 2004

¹¹² COHRE Focus Group, The former residents of Kingsfold Mansions, 25 July 2004.

In the other three cases eviction applications were served, defended and postponed, affecting an estimated 460 men, women and children. These were in San Jose, Joel Street and Park Court. The Wits Law Clinic defended San Jose and Joel Street. The Legal Resources Centre defended Park Court. At the time of writing, all three applications had been postponed indefinitely.

These are the more fortunate exceptions. In cases where applications are unopposed as a result of the absence of legal representation, evictions are swiftly and efficiently implemented. Such evictions follow more or less the same pattern. The date and time of evictions under the Building Standards Act are not usually set by a court,¹¹³ but left to the municipality to decide. In Kingsfold Mansions, the eviction took place at 4 pm in the afternoon in late July – the middle of the South African winter – and continued until well after dark. Residents and their possessions were simply ejected from the building and placed on the pavement outside the building. The building was then sealed and security guards posted to ensure that the building was not re-occupied. Many residents of Kingsfold Mansions said they slept with their possessions on the pavement that night. This did not prevent many of their goods being stolen. Almost all of Kingsfold Mansion's residents we interviewed reported at least two nights of homelessness after the eviction. At the time of writing the majority of the residents said they were living in houses a little over two kilometres away, which they say are in no better condition than Kingsfold Mansions.¹¹⁴

Suitable Alternative Accommodation?

Municipal officials were at pains to point out that they had little to do with evictions, once the case of a 'bad' building had been handed over to the municipality's attorneys. They did say, though, that they ensured that lists of suitable alternative accommodation were given to the residents of 'bad' buildings when the High Court applications are served on them. These lists are adequate, according to one municipal official. They ensure that evictees 'almost never come back'.¹¹⁵

However, COHRE researchers have ascertained that these lists were in fact not served on the residents of Park Court and San Jose. But even in cases where the lists were served, they would be of little help in the event of an eviction. For example, the list served on Joel Street contained a collection of names and numbers of property letting agents and one social housing agent in the inner city. The list itself gives no indication of actual availability of accommodation. It also does not include the temporary transitional facilities that exist in the city, presumably because there are only 400 units, which are hopelessly oversubscribed. COHRE researchers telephoned all the institutions that were on the list to investigate the availability of accommodation, and found that only around 15 bachelor flats were available, all at rates well beyond the income of most of Joel Street's residents. The cheapest *available* accommodation was a bachelor flat in Hillbrow, at a cost of R834 per month excluding water and electricity costs. Even if the richest of Joel Street's residents (who earns R2,000 per month, from which he supports two children) was prepared to spend around 50 per cent of his income on accommodation, water and electricity, it is unlikely that he would be able to afford the two-months' deposit private letting agents require. And even if he could afford the deposit, it is unlikely that he would be preferred over someone who could prove a higher income. Most letting agents on the list said that, as a general rule, they do not let properties to people who cannot prove a regular income of *three times* the rental rate. This means

¹¹³ The orders granted usually give residents a week to leave the building, after which the municipality may execute the order at its own convenience.

¹¹⁴ COHRE Focus Group, The former residents of Kingsfold Mansions, 25 July 2004.

¹¹⁵ Interview with City of Johannesburg Region 8 official, 6 April 2004.

that, to afford the cheapest accommodation available at the time we contacted the agents on the municipality's list, an evictee would have to have a demonstrable income of between R2,502 and R3,600 per month.

There were other, cheaper forms of accommodation on the list. The Johannesburg Housing Company's cheapest unit (a single room with communal ablutions and cooking facilities) would have cost R600 per month including water and electricity. That is, had it been available. In fact, there was no accommodation of this sort available at the time of the COHRE enquiries.¹¹⁶ Furthermore, even this, cheaper, accommodation is beyond the means of Joel Street's residents, only three of whom earn R1,800 or more per month.

COPE, a social housing institution, could provide housing of the same sort for R400 per month excluding water and electricity costs. Unfortunately COPE had a waiting list 700 names long at the time. In addition, COPE required most tenancy applicants to qualify for the Institutional Housing Subsidy, and did not provide accommodation in an emergency. COPE usually requires six months to process a tenancy application and place a tenant.¹¹⁷ Again, however, only six residents of Joel Street earn the amounts required to benefit from this scheme.

Of the 13 organisations named on the list, three were not even aware that their telephone numbers were being given out to evictees, and they were keen to stress that they do not provide emergency housing and that, in any case, only people earning in excess of R3,500 per month are likely to be able to afford the flats they have on offer. One did acknowledge that it was aware that its name was being given to evictees. The rest were unwilling to say either way.¹¹⁸

The un-affordability of formal, well maintained accommodation is what drives people to live in slum conditions in the first place. It is clearly most unsatisfactory – disingenuous, even – to respond to their plight by providing a list of agencies letting housing which they cannot afford, or which is hopelessly over-subscribed. In addition, in the light of the demonstrated reluctance of the municipality to become involved in the provision of suitable alternatives to those evicted in the course of building clearances, the decision to use Apartheid-era health and building standards legislation, instead of the more appropriate PIE Act, appears suspicious. As indicated in Chapter 3 above, PIE clearly specifies a requirement to provide alternative accommodation to evictees, while the health and building standards laws make no such provision.

One is therefore led to wonder whether or not the health or safety of the occupants of any of the cases discussed above, were ever the main concern of the authorities. In reality, when asked where they would go if evicted, almost everyone in Joel Street and in San Jose said they would sleep outside, in a park, for a few nights. Some said they knew a derelict building where they could stay for a time. And they would know, as most residents of Joel Street had been evicted from elsewhere, before they moved into their current home.

The words of the municipal official that evictees 'almost never come back' to the buildings from which they have been removed, may well be true. But it is highly unlikely that the reason for this is that they have been adequately housed elsewhere.

¹¹⁶ Telephone interview with senior official of the Johannesburg Housing Company, 20 August 2004.

¹¹⁷ Telephone interview with a manager of COPE Housing, 20 August 2004.

¹¹⁸ Telephone interviews with 13 property letting agencies named as providers of 'suitable alternative accommodation' to the residents on Joel Street, 20 August, 2004.

Inner City Evictions and International Law

It is clear from the above that the bulk of Johannesburg inner city evictions constitute a violation of international law, and specifically General Comment 7 on the Covenant¹¹⁹, in a number of ways:

- The municipality never attempts to ascertain the personal circumstances of the residents of the ‘bad’ buildings it evicts. This makes it impossible for the municipality to comply with several aspects of the Covenant;
- There are no plans in place to provide suitable alternative accommodation for those unable to re-house themselves in the aftermath of an eviction, as required by the Covenant (see paragraph 13, General Comment 7);
- The Covenant requires that, even when carried out for a legitimate purpose, evictions should be a method of last resort, and that all feasible alternatives should be explored in consultation with affected people. In inner city evictions in terms of the Building Standards Act, exploration of alternatives does not take place (see paragraph 13, General Comment 7);
- The municipality provides no opportunity for genuine consultation with the people it seeks to evict. In fact, it actively avoids such consultation. (Contrary to paragraph 15 of General Comment 7);
- Evictions researched by COHRE have taken place in inclement weather, in the late afternoon and at night, and during winter. (Contrary to paragraph 15 of General Comment 7).

Housing the Inner City Poor: Opportunities and Challenges

The principle reason why inner city evictions cause so much hardship is the lack of affordable housing alternatives to people who live in ‘bad’ buildings. The municipality acknowledges that there is an unmet demand for low-income rental housing in the inner city, which the Better Buildings Programme aims to meet.¹²⁰ This section first assesses the nature and extent of the housing shortfall in the inner city. It goes on to describe the Better Buildings Programme and then to comment on its chances of filling the inner city accommodation gap.

The Unmet Demand for Housing in the Inner City

According to COHRE’s investigation, the cheapest unsubsidised rental accommodation available in the inner city costs around R850 per month, for a single room with cooking facilities and a bathroom. This rate excludes water and electricity, which, assuming a household size of four people, would push the cost of renting such a unit up just over R1,000 per month. Realistically, only a household with an income of around R3,200 per month could afford to stay in such a room.

According to Statistics South Africa, in 2001 there were 20,515 households (around 78,000 people)¹²¹ resident in Region 8¹²² with an income of less than R3,200; and who are unlikely to be able to afford accommodation on the unsubsidised market. They break down as follows:¹²³

¹¹⁹ International Covenant on Economic, Social and Cultural Rights.

¹²⁰ Interview with City of Johannesburg Region 8 official, 6 April, 2004.

¹²¹ Assuming the average household size is 3.8 people (Statistics South Africa, Census 2001).

| Monthly Household Income | No. of Households in Johannesburg Region 8 (2001) | Monthly Rental Affordability Range (R) |
|--------------------------|---|--|
| No income | 6,919 | 0 |
| R1 – R400 | 826 | 0 – 120 |
| R401 - R800 | 2,635 | 121-267 |
| R801 – R1600 | 5,040 | 268 – 534 |
| R1,601 – R 3,200 | 5,095 | 535 – 999 |

Some of these households will be catered for in ‘transitional’, ‘communal’, or other ‘social’ subsidised housing units within the inner city. The table below sets out the available subsidised housing stock in the inner city at the time of writing.

| SUBSIDISED HOUSING IN THE JOHANNESBURG INNER CITY¹²⁴ | | |
|---|--|---|
| Housing Type | Affordability | Scale |
| <i>Transitional Housing</i> (single room with communal ablutions and cooking facilities, fixed term, non-renewable 18 month lease) | R200 – R450 per month | 400 confirmed units in the inner city |
| <i>Communal Rental Housing</i> (Same as transitional housing, but open-ended lease, with more liveable floor space) | R300 – R800 per month | 150 confirmed units in the inner city. NOTE: A private housing company, known as AFHCO, has 1360 units, a small minority of which are communal housing units. These units are offered at R650 per month. To the best of COHRE’s knowledge, this is the only unsubsidised low cost housing available in the inner city of Johannesburg. |
| <i>Social Housing</i> (subsidised units, open-ended lease, which may result in leaseholder taking a form of ownership in the inner city usually with own cooking and ablution facilities) | R452 – R600 (single room with shared cooking and ablutions) R750-R1,200 (one room with own cooking and ablutions) R785 – R1,600 (one bedroom, living room, own cooking and ablutions) R830 – R1,800 (two bedrooms with own cooking and ablutions) | The Co-operative Housing Trust has 702 units in the inner city, with an estimated 500 units a year to be constructed over the next five years. The Johannesburg Housing Company has 1700 units in the inner city, around 60 per cent (1020) of which are occupied by households with incomes of less than R3500 per month. |

¹²² Region 8 is the administrative area of the Johannesburg municipality, which is co-terminus with the Johannesburg inner city.

¹²³ Table adapted from Statistics South Africa, Census 2001. The statistics used here are conservative estimates of the unmet demand for housing in the inner city of Johannesburg, since they assume that households are willing and able to spend a third of their income on rental accommodation. This assumption is untested, and requires further research. These figures do not take into account migration in and out of the inner city between 2001 and 2004. Nor do they account for population growth, which, between 1996 and 2003, was 7.8 per cent across South Africa.

¹²⁴ Table derived from information provided by Development Works during a snap survey of accommodation in the inner city performed during August 2003. COHRE wishes to acknowledge the contributions of Lauren Royston and Cecile Ambert, who compiled this information.

Even if we assume that all of these options are affordable to, and occupied by, some of the 20,515 households earning under R3,200 per month, the unmet demand for affordable rental accommodation in the inner city is at least 18,200 households. At currently known construction rates, this demand is likely to be reduced to around 14,200 households in three years' time, if populations remain static at 2001 levels, which is highly unlikely.¹²⁵

The Better Buildings Programme

Until 2003, the Better Buildings Programme was managed by the municipal Department of Housing, and was intended solely to address the backlog in social housing provision in the inner city. For a number of reasons relating to capacity and bureaucratic inertia, delivery under the Programme was minimal.¹²⁶ Since 2003, the Better Buildings Programme has been reshaped into a more commercially-driven scheme, which focuses on the identification of suitable commercial or non-profit organisations to manage upgraded buildings effectively. In line with this shift in emphasis, management of the Programme has now passed to the Johannesburg Property Company, a wholly-owned commercial subsidiary of the municipality.

Under this 'new' Better Buildings Programme, around 55 of central Johannesburg's 235 'bad' buildings will, according to the municipality, be converted and upgraded to provide 3,000 social housing units in the inner city over the three years from mid-2003.¹²⁷ A further 1,000 social housing units are to be provided as part of the Presidential Job Summit Programme, initiated during 2003. The Better Buildings Programme seeks to match private housing developers up with 'bad' buildings identified during the course of the municipality's by-law enforcement operations, and which are considered capable of rehabilitation. The municipality is usually owed in services, rates and taxes more than, or a great portion of, the value of most 'bad' buildings.

This allows the municipality to take ownership of the building through a range of rather innovative if complex legal measures. The two most common are either to sell the building in execution of the debt, or to force the liquidation of the company owning the building, and acquire it when the company's assets are sold. The idea is then to enter into an agreement with a private developer and/or housing provider, identified through a competitive process. The agreement involves the developer taking ownership of the building, upgrading it and renting the units out, possibly for low cost housing. The municipality uses its discretion to write off some or all of the debt owing on the building as an incentive to encourage the developer to upgrade the building properly, and perform its obligations under the agreement. Some buildings will be sold to commercial developers and rented at commercial market rate, others will be provided to social housing institutions to provide low-cost housing units to beneficiaries of the Institutional Housing Subsidy.

The purpose of the Better Buildings Programme is laudable. It aims to replace poorly maintained, badly managed, residential building stock occupied by poor people in extremely vulnerable circumstances, with well-managed, sustainable, secure residential units. Most of these

¹²⁵ It must be noted that none of these estimates take account of 'downward raiding', which describes the phenomenon of higher income households taking advantage of accommodation options intended for lower income households, because of unmet demand for housing in their own income brackets. The extent of 'downward raiding' in inner city low-cost housing is unknown.

¹²⁶ Better Buildings Programme, Revised Implementation Framework, document dated 17 April 2004, obtained from the City of Johannesburg during April 2004.

¹²⁷ Ibid.

units (around 75 per cent) will be social housing units.¹²⁸ Taking into account the situation of the perspective of the inner city poor, there are in our view three weaknesses in the Programme.

First, social housing, although provided at lower than market rates, is beyond the means of many of the inner city poor. The cheapest available social housing units in the Johannesburg inner city cost R452 per month,¹²⁹ requiring a theoretical income of R1,356 per month, leaving a minimum of 10,000 - 15,000 households completely uncatered for, on 2001 figures. Even worse, many social housing providers acknowledge that in practice the costs of running social housing institutions and the expense of maintaining inner city buildings are such that an income of at least R3,000 per month, is in fact required to benefit from most of the social housing options available.

Independent research has confirmed that social housing institutions, to the extent that they are financially viable at all, depend on charging rents beyond the means of their intended beneficiaries, or on subsidisation from a foreign donor.¹³⁰ With upgrades of inner city buildings costing, in some cases, as much as R80,000 per unit, and the Institutional Housing Subsidy only providing around R28,000 per beneficiary, the viability of social housing for poor people (let alone the very poor) is in doubt.¹³¹ So the real demand unmet by social housing could in fact be much higher than the 15,000 households estimated above.

While important and very welcome, social housing provided under the Better Buildings Programme can therefore be only part of an adequate response to inner city slum dwelling and homelessness. Social Housing may work for the residents of Park Court, for example. However, many poor people in the inner city – including the residents of Joel Street – need open-ended, secure access to basic shelter at rental rates of as little as R50-R100 per month. Although possibly achievable through the Emergency Housing Subsidy and/or Institutional Housing Subsidy, this provision of ultra low cost housing in the inner city is likely to require a new and ongoing subsidy mechanism, perhaps provided at a municipal level.

It also needs political will, of which the municipality has shown little, when it comes to the provision of housing for very poor people in the inner city. The extent of its involvement in what might be termed ‘ultra low-cost rental housing’ in the inner city has been to give rates rebates to some inner city transitional housing organisations and to begin to develop ‘decant facilities’ for the temporary accommodation of Presidential Job Summit Programme beneficiaries while their buildings are upgraded. If slum conditions in the inner city of Johannesburg are to be sustainably eliminated, the municipality must engineer the delivery of basic shelter (including transitional and communal housing options) at scale as a matter of urgency. This may be costly and difficult, but, without it, ‘bad’ building clearances are effectively self-defeating, since they tackle the unsightly consequences of slum dwelling, and not its root cause. Without the possibility of being sustainably re-housed, slum dwellers simply move on to insecure, unhealthy living conditions elsewhere.

Second, even if social housing was affordable to all poor people, the scale at which the Better Buildings Programme plans to deliver cannot hope to match even the most conservative

¹²⁸ Ibid.

¹²⁹ According to the Social Housing Foundation, accommodation at this rate does not meet demand and is not commercially viable (telephone interview with an officer of the Social Housing Foundation, 1 September 2004.)

¹³⁰ Syn-Consult et al Research report for the development of a medium density housing programme for the national Department of Housing (October 2003), 12.

¹³¹ Interview with a representative of the Social Housing Foundation, 7 April 2004.

estimates of the demand for low cost housing in the inner city. Assuming a demand of 20,515 households earning less than R3,200, using 2001 figures, the delivery of 4,000 social housing units over the next two to three years, will still not pull well over 15,000 poor people out of 'bad' buildings and into secure, affordable accommodation.

Third, in its implementation, the Better Buildings Programme does not give adequate attention to the needs of people currently living in 'bad' buildings earmarked for the Programme. While, in theory, the developer to whom 'bad' buildings are awarded is supposed to engage with residents of the buildings in order to ascertain their needs and arrange for their voluntary vacation of the building, this does not happen in practice. People living in these buildings seldom have anywhere else to go, and private developers have neither the capacity nor the inclination to assist residents to re-accommodate themselves. In two cases of which COHRE is aware, a municipal eviction application under the Building Standards Act has followed hard on the heels of the award of a building to a private developer under the Better Buildings Programme.

Conclusion: Any room for the poor in the Inner City?

This chapter has demonstrated that there is a large unmet demand for low cost housing in the inner city. The physical and social manifestation of this demand is the existence of urban slums, referred to as 'bad' buildings by the municipality and often housing very poor people, for whom no affordable accommodation is provided by the market or the state. 'Bad' buildings also house slightly wealthier people who can afford some low cost housing products in the inner city. However, since demand for these products far outstrips supply, their only affordable alternatives are slums, or 'bad' buildings. Not all 'bad' buildings are slums. They do not all constitute grave threats to life and health. Nor are they all hotbeds of criminal activity. Some are simply run down, in arrears with rates and service charges and have no effective property management regime in place.

There is broad agreement amongst state officials, urban policy specialists and civil society activists that this unmet demand exists. There is less agreement, however, on whether or not it should be met. Some urban policy specialists COHRE interviewed expressed a belief that low cost housing in the inner city is too expensive for its provision to be equitable. It is unfair, they say, to spend R80,000 on upgrading an inner city unit for occupation by a low-income family, while RDP housing beneficiaries are given subsidies of less than R30,000 to live in poor locations. Further, the money spent on providing a few poor inner city households with low cost housing would be better spent providing large numbers of informal settlement dwellers with secure tenure or a formal house.

These ethical arguments should be taken seriously. Ultimately, however, they are likely to be forestalled by practical reality. Whether developmentally convenient or not, poor people do live in the inner city and will carry on living there whether policy makers like it or not. Best practice in Asia and Latin America shows that the sooner this is realised, and embraced as an unavoidable part of reality in any developing country, the sooner the poor themselves can be involved in the conceptualisation and design of their living space, an approach which offers the best chance of sustainable solutions.

The poor of the inner city have to be dealt with in some way. So the real question is whether or not they ought to be accommodated in the inner city or relocated to informal settlements or RDP housing projects on the urban periphery. The latter strategy is unlikely to be effective in

pushing poor people out of the inner city for good; while large-scale evictions and relocations to the urban periphery are so reminiscent of the apartheid era as to be politically unconscionable. Moreover, under current land tenure and eviction law, such a sustained programme of removals is likely to be successfully opposed in court.

Apart from these practical considerations, there are also powerful ethical counter-arguments in favour of providing low-cost housing in the inner city. Any policy that requires poor people to move from the inner city to the urban periphery to benefit from state housing subsidies would probably involve asking them, in the short-to-medium term at least, to choose between a house and a livelihood, given the economic disadvantages of peripheral locations. This is manifestly unfair and frustrates the overall objective of housing delivery, to improve beneficiaries' quality of life. There are also serious ethical problems with very idea that poor people can be told where to live, simply because they are poor. Markets that restrict access to rich residential suburbs are one thing. A state-led programme which deliberately forecloses poor people's access to economically productive areas of the city would be quite another.

There are also pressing economic questions. Are the costs of providing land and upgrading buildings for housing development in central locations, any greater than the combined costs of constructing and providing services (transport, health, education, water, electricity) to peripheral housing developments? At least one study suggests that they might not be.¹³²

In the final analysis, the inner city poor cannot simply be evicted out of existence. Nor, despite the assertions of many private developers, and some municipal officers, are most of them criminals or illegal aliens who deserve to be evicted from their homes. This much was recognised, and raised by some speakers, at a recent *Cities in Change* conference, held in Johannesburg. In his address, Johannesburg Housing Company chairperson Murphy Morobe 'applauded the fact that investment is returning to the inner city - both in commercial and residential sectors - but criticised the city's managers for not doing enough for the poor bearing the brunt of urban renewal'. According to Morobe:

'The blind spot in this increasing formalisation of the inner city, and the increasing management of the social and financial terrain, is to threaten the presence of the poor. The eviction of people in dilapidated buildings without alternative accommodation deprives not only gangster landlords of a captive income, but also decent, honest people of the cheapest accommodation available ... This blind spot, caused by the necessary processes of development, undermines the very development in whose name it is being done.'¹³³

Neil Fraser, Executive Director of the Central Johannesburg Partnership (CJP), had expressed similar concerns a few days before, in his column, CitiChat:

'I have voiced the opinion previously that the City does not have a coherent policy in its approach to the urban poor. This concern is exacerbated when it comes to residential accommodation. I think it is time to step back and look critically at where we are and where we are going. I think it is time to develop a new model that breaks with apartheid

¹³² 'Poor Should be Housed in City Centres, MPs told' Business Report, 12 August 2003.

¹³³ Quoted in City of Johannesburg, Official website, 'Speakers urge solution for inner-city poor', 24 August 2004 (www.joburg.org.za/2004/aug/aug24_inner1.stm).

planning because I really don't think we have achieved that. In fact I see little evidence of revolutionary thinking when it comes to housing policy at any level of government. I must sadly concur with Stephen Greenberg in a recent Centre for Civil Society Research Report when he states that "In the face of a coldly rational model of planning, the horror of forced removals has not been consigned to history along with apartheid, but remains alive in post-apartheid South Africa."¹³⁴



Photo: Guy Tillim

**Aftermath of an eviction
Noverna Court, Hillbrow, May 2004**

Without a much more repressive response from the state, including the introduction of limited access, curfews and no-go areas, or a massive and unprecedented gentrification of the inner city, the poor cannot and will not be forced out. The only sustainable solution to the problem of Johannesburg's bad buildings is to begin to re-accommodate their residents, or contract someone else to accommodate them, in affordable, well-managed housing, which caters for their basic needs and gives them the security they need to meaningfully participate in Johannesburg's otherwise exciting and innovative urban renewal.

Whatever happens, official stereotyping of people who live in inner city slums as criminals must cease immediately, as must their eviction without alternative accommodation.

¹³⁴ Neil Fraser 'Decade of Change Scorecard (2) - how are we making out in the Residential Sector?', 16 August 2004 (http://www.joburg.org.za/citichat/2004/aug16_citichat.stm).

Box 1: Response of the Inner City Office (Region 8)

As indicated in the Introduction of this report, an earlier draft of this report was given to the relevant departments and offices of the City of Johannesburg for comment and discussion. The following response was received. (Note that page references are to an earlier draft). While COHRE has not regarded it necessary to change the report substantially in the light of this response, we look forward to dialogue with the City on all of the issues raised.

Please find below comments from the Inner City Office (Region 8), in response to the COHRE report.

1. The report does not adequately cover the process followed by the City in terms of by-law enforcement and institution of action in the High Court. It needs to be made clear that an application for a High Court order for the removal of occupants from an unsafe property is the last resort on the part of Council. All attempts are made to get the owner to rectify the various by-law contraventions that exist on the premises. This approach has yielded significant results. However in instances where no action is taken to sort out the serious problems in a building, the City has no option but to take legal action.
2. COHRE's report does not look sufficiently at the unsafe conditions within the buildings used as case studies. Conditions in buildings such as the San Jose have reached appalling levels. There are serious problems of overcrowding, illegal electrical connections and collapsed sewer infrastructure leading to overflowing of raw sewerage into buildings and the street.
3. COHRE state's that the Council's policy of closing down "bad buildings" is of questionable legality (Pg. 44). Later the report further cites that evictions constitute a violation of international law (Pg. 64). Section 12 of the National Building Regulations and Buildings Standards Act does not require a Court Order where conditions of extreme danger exist. The City as an almost unbreakable rule will approach the High Court of South Africa prior to conducting any kind of eviction. In so doing, those facing possible eviction have the opportunity to put their case before a neutral entity. In terms of the allegations that the City is in breach of international law, it needs to be remembered that at all times a competent Court of Law has granted an order.
4. On the issue of crime in "bad buildings," the City has never articulated that criminals live in such buildings. Numerous executions of High Court orders, special operations and complaints from residents of "bad buildings" and neighbouring buildings indicate that such buildings provide a conducive environment for crime. SAPS have uncovered illegal firearms, drugs, stolen goods and wanted criminals. The City does also acknowledge that occupants of "bad buildings" do in certain instances also become vulnerable to criminal activities.

5. HOUSING RIGHTS AND EVICTIONS: JOHANNESBURG INFORMAL SETTLEMENTS

In terms of sheer numbers, the settlement of the poor in the inner city of Johannesburg is of course but one of many pressing housing problems to be found the Johannesburg Metropolitan Area, which contains at least 190 informal settlements.¹³⁵ At last count, these settlements contained 209,381 shacks inhabited by approximately 795,647 people.¹³⁶ Mostly located to the southern and western ends of the metropolitan area, they are home to Johannesburg's poorest. Household incomes average around R800 per month.¹³⁷ Thirty percent of informal settlements are conglomerations of less than 100 shacks. Sixty-four percent have less than 500 shacks. The largest informal settlement in the Metropolitan area, 'Thulani', at the far north-western edge of Soweto, is 14,500 shacks strong. Informal or 'squatter' settlements, as they are sometimes referred to, represent the bulk of the Johannesburg housing backlog, which, officially, amounts to around 250,000-300,000 units.

Some settlements, especially those hemmed in by formal townships – often in municipal parks – are squalid, densely packed, and have no access to even the barest services, such as water and refuse removal. Others are on open land, on the edges of formal townships, and are more navigable. Some of the larger settlements sport brick houses, constructed by long-term occupants, despite the fact they have no secure right to live in them. Around 40 per cent of Johannesburg's informal settlements are more than ten years old. Sixty-five percent are more than five years old. A further 32 per cent are of an unknown age.

Informal settlements represent the pernicious legacy of Apartheid settlement policies and the migrant labour system it served and sustained. They also represent the limitations of post-apartheid housing policy. Johannesburg's informal settlements burgeoned as a result of the collapse of influx controls and the rapid urbanisation of the late 1980s and early 1990s, sustained in-migration to Johannesburg during the 1990s, and South Africa's already chronic urban housing shortage. The post-1994 response to the needs of people living in informal settlements was the 'one-size fits all' housing subsidy scheme, through which the housing backlog has been tackled, household by household, according to municipal priority lists. As noted elsewhere in this report, the scheme, in itself, has been remarkably successful. But it has failed to address the needs of homeless or inadequately housed people who have not applied, or do not qualify, for housing subsidies¹³⁸, or those who have applied for subsidies but are waiting in the housing queue.

¹³⁵ Database of Informal Settlements and Housing Projects ('the Database'), obtained from the Housing Department of the City of Johannesburg, 5 August 2004. This figure includes separate extensions of adjacent informal settlements. All statistical data on informal settlements in this chapter have been derived from the Database, unless the footnotes indicate otherwise. Informal settlements are defined as a conglomeration of 2 or more shacks on open land. This does not include 'backyard' shacks, constructed to the rear of formal dwellings.

¹³⁶ Average household size in the Johannesburg metropolitan area is 3.07 (Statistics South Africa, Census 2001).

¹³⁷ Stats SA Census 2001.

¹³⁸ For example, a single man without dependents does not qualify for a housing subsidy.

Partly for this reason informal settlements have continued to grow and multiply. The growth of informal settlements is also related to continued urbanisation. A shrinkage in the average household size, which has led to a growth in the number of households out of proportion with population growth in Johannesburg and in many other urban areas, has also led to an increase in Johannesburg's housing backlog, even though housing delivery rates have been consistently high. The inability of the subsidy scheme on its own to provide adequate relief to many people living in informal settlements has been implicitly recognised by the Constitutional Court. In *Grootboom* the Court found that state housing policy did not have sufficient regard to the needs of people living in situations of desperation or crisis. This category of people can be understood to extend to many informal settlement households, where people are living in very desperate circumstances. At national level, too, the need to make provision for people in informal settlements has recently been acknowledged with the development of a national framework for informal settlement upgrading, recently published by the National Department of Housing.¹³⁹

Yet the need to make some minimum adequate provision for informal settlement dwellers while they wait in the housing queue, has long been recognised at a municipal level. Although not fully embodied in a single policy document,¹⁴⁰ the City of Johannesburg has a strategy for dealing with informal settlements within its municipal boundaries. This Chapter first describes the municipal strategy, and then assesses it with reference to two cases of informal settlements where the strategy is being implemented. We go on to name some of the limitations of the municipality's informal settlement strategy, and suggest some ways in which these could be addressed.

Informal Settlement Strategy in Johannesburg

The Johannesburg municipality ambitiously aims to eliminate informal settlements in its metropolitan area by 2007. It plans to do this either by upgrading and formalising informal settlements where they are ('in-situ upgrading'), or by moving informal settlers to sites where their tenure and access to services can be formalised and secured ('relocation'). Either way, informal settlement interventions generally result in the provision of 'incremental housing', which consists of a standard sized (usually 250m²) plot with access to water, sanitation and electricity. Settlers are then able to build a shack on the plot and await their housing subsidy.

Of Johannesburg's 190 informal settlements, 103 are earmarked for wholesale relocation, because they are on land which, according to the municipality, is unsuitable for in-situ upgrading. A further 42 will be upgraded in-situ. Thirty-five informal settlements, while in locations which allow for them to be upgraded, are too dense to allow for all of their residents to benefit from the upgrade, which involves the installation of services and road networks. They will be upgraded, but, according to the municipality, some residents will have to be relocated. The fate of a further 10 informal settlements is not recorded in the municipal database.¹⁴¹

¹³⁹ See our discussion of *Breaking New Ground* in chapter 3.

¹⁴⁰ The fullest statement of the City of Johannesburg's informal settlement strategy can be found in its 'Sustainable Housing Strategy', published in 2001. However, the status of this document is unclear, as it takes the form of a consultant's research report. It does not appear to be a statement of policy, even though many of the recommendations of the report have been implemented. COHRE also understands that the Sustainable Housing Strategy has yet to be formally adopted by the municipality.

¹⁴¹ Johannesburg Informal Settlement Database.

This developmental strategy is coupled with a ‘zero tolerance’ approach to ‘land invasions’, or the unauthorised creation of new settlements. Existing informal settlements are also strictly monitored, to prevent their growth. According to one municipal official, any growth of existing informal settlements, or erection of new shacks, in his region are promptly reported to the Johannesburg Metropolitan Police Department (JMPD). According to the official, the JMPD is empowered to evict new informal settlers within 48 hours of the establishment of their shacks ‘without a court order’. This practice, if it is used, is cause for concern. Despite the existence of a constitutional prohibition of eviction from one’s home without a court order, the municipality is said to rely on the common law right of counter-spoliation (the right to promptly repossess property of which one has been unlawfully deprived) to dismantle the shacks of informal dwellers constructed less than 48 hours from the moment of eviction. On the face of it, this application of the right of counter-spoliation is in conflict with the PIE Act and Section 26 (3) of the constitution. To the extent that they deprive homeless people of a place where they may lawfully live, the practice of ‘rapid response’ evictions is probably unlawful in itself, and ought to be abandoned.

Informal Settlements, Evictions and Relocations

The Johannesburg municipal informal settlement strategy is, according to one national official, the model on which the national informal settlement policy is to be based.¹⁴² Its emphasis on rapidly securing urban land tenure for some of the city’s most vulnerable residents at no cost to informal settlers themselves, is indeed to be applauded.

However, based on the informal settlements we visited, COHRE researchers found the municipality’s use of relocation as a tool of informal settlement development and management problematic, in a number of respects.

First, there is some evidence to suggest that the municipality has been too quick to resort to the relocation option, especially in cases where there are surmountable obstacles to in-situ upgrading. Second, relocations to peripheral sites can cause significant harm to informal settlers’ livelihood strategies. Third, consultation in advance of relocations was inadequate in each of the cases we examined. This lack of adequate consultation led to so-called ‘voluntary’ relocations metamorphosing into forced evictions. Fourth, the municipality’s failure to co-ordinate its relocations with other arms of the state involved with social service delivery – especially the departments of health and education – resulted in medium-term (but no less severe) deprivation of access to social services in one relocated community we visited. This chapter explores each of these issues with reference to two informal settlements COHRE researched in the course of the fact-finding mission.

As in the ‘bad’ buildings COHRE investigated, focus groups and in-depth interviews were conducted in each settlement. The settlements were:

- Mandelaville/Sol Plaatjie, at the far north western end of Soweto;
- Thembelihle, located on open land adjacent to the formal township of Lenasia.

These settlements were selected because of their experience of the relocation process. Mandelaville/Sol Plaatjie was evicted from the centre of Diepkloof at the far eastern edge of

¹⁴² Telephone Interview, National Department of Housing official, 7 September 2004.

Soweto and relocated 15 km to an abandoned mine near Braamfischerville, Soweto in January 2002. Thembelihle successfully resisted an attempt to forcibly evict and relocate the entire settlement to Vlakfontein, at the far southern end of the metropolitan area in 2003. In Mandelaville and Thembelihle, in addition to their own data-collection activities, COHRE researchers accessed information from a number of other in-depth socio-economic and geo-technical studies of the settlements. These additional sources are acknowledged in the footnotes.

Case 1: The Mandelaville/Sol Plaatjie Forced Eviction

The community of Mandelaville settled on open land at the centre of Diepkloof, Soweto between 1976 and 2002. The only buildings on the site in the mid-1970s were a police station and a drinking hall. These structures were vandalized during the 1976 student uprisings. Some of Diepkloof's residents – possibly living in backyard shacks at the time – were subsequently granted residential permits to dwell in the vandalized buildings and upgrade them. The settlement steadily grew throughout the late 1970s and 1980s, swelling to some 2,000 households after influx controls were lifted in the final days of Apartheid.¹⁴³

After the 1994 election, all of Mandelaville's residents – whether or not they held residence permits issued under Apartheid – were treated as unlawful occupiers of an informal settlement and were advised to register for RDP houses. As early as 1996, the municipal Ward Councillor with responsibility for Mandelaville had promised that the community would be relocated to formal housing on another site. During that year, the municipality began to register Mandelaville's residents for housing subsidies.¹⁴⁴

The Relocation Process

In late 2001, the municipality proposed that the community be moved to the 'Sol Plaatjie Project' in Durban Roodepoort Deep, a disused mine compound, in a peri-urban area to the south of Roodepoort, around 15 km away from Mandelaville. Well in advance of the relocation, it became clear that the Sol Plaatjie Project was not the formal housing that the Mandelaville's residents believed they had been promised for well over two years. The municipality instead planned to re-accommodate about half of Mandelaville's residents in single rooms in disused hostel blocks on the abandoned mine site. The balance of Mandelaville's residents would have to construct their own shacks on open land adjacent to the hostels.¹⁴⁵

The community believed that Durban Roodepoort Deep's distance from the industrial areas to the south of the inner city of Johannesburg, schools, clinics and other essential social services would create considerable hardship after the relocation. In response to these concerns, the municipality, through the Ward Councillor, assured Mandelaville's residents that schools and clinics would be easily accessible from the new site. Mandelaville's residents were also promised that Sol Plaatjie would be upgraded for formal housing soon after their relocation.¹⁴⁶ They were

¹⁴³ Interview with Mandelaville/Sol Plaatjie Resident, October 2003; COHRE Focus Group, Sol Plaatjie Informal Settlement 1 May 2004.

¹⁴⁴ City of Johannesburg, Application for Institutional Housing Subsidy for the Sol Plaatjie Village, June 2004, 4

¹⁴⁵ City of Johannesburg vs. the Unlawful Occupiers of the Mandelaville Informal Settlement, High Court of South Africa, Case no. 2001/25450, Founding Affidavit, 7

¹⁴⁶ City of Johannesburg vs. the Unlawful Occupiers of the Mandelaville Informal Settlement, High Court of South Africa, Case no. 2001/25450, Founding Affidavit, 6 – 8.

also told that the land on which they currently lived at the centre of Diepkloof was required urgently for the development of a shopping complex.¹⁴⁷

Having visited the relocation site, a community representative body called the 'Mandelaville Crisis Committee', advised Mandelaville's residents that the site was, indeed, unsuitable for a number of reasons. These included:

- Its distance from main arterial transport routes;
- Its distance from the nearest healthcare facilities;
- There was no primary school at the site. In addition, the nearest primary school was full.
- The relocation site was 15 km away from the community's current location, and did not adjoin any part of any formal township.

A further meeting, in which these concerns were put to the Ward Councillor, ended in deadlock, with the Councillor again dismissing the community's concerns and telling the Committee that it 'would be moved whether [it] liked it or not'.¹⁴⁸

In December 2001, partly as a response to Mandelaville's residents' doubts about moving, the municipality launched an urgent eviction application. The explicit justification for the eviction application was that the development of Mandelaville's existing site was impossible because there was simply not enough space to accommodate all of Mandelaville's residents in formal housing. It was also common knowledge at the time that the Council intended to sell the Mandelaville site for commercial development. In its papers, the municipality alleged that the relocation site was 'approximately eight kilometres from the [Mandelaville] informal settlement'.¹⁴⁹ The municipality also said that:

- There was a primary school available 'on site' at Sol Plaatjie;
- 'Certain elements' with the community had mobilized resistance to the relocation because 'they would rather live on open land', than in the hostels in which some of them would have to be re-accommodated on the relocation site;
- The relocation was urgent because there was a high risk of 'land invasion' on the relocation site;
- Sol Plaatjie would be upgraded for formal housing within a year of the relocation, after which all of Mandelaville's residents would be provided with houses;
- That the settlement was the cause of a serious crime problem in the Diepkloof area.¹⁵⁰

In reality, there was no primary school available on the Sol Plaatjie site. Sol Plaatjie itself is 15 km away from Mandelaville, almost double the distance the municipality claimed. At the hearing of the eviction application, the municipality led no evidence that Sol Plaatjie was under imminent threat of invasion, and Counsel for the Mandelaville community did not raise the relocation site's protracted distance from Mandelaville area as a defence against the eviction. Although the fact that there was no school 'on site' was raised and partially conceded by the municipality (they said that 'on site' means 'within 5 km'), the consequences of this for Mandelaville's school-going

¹⁴⁷ Focus Group conducted by the Researchers from the University of the Witwatersrand in the Sol Plaatjie Project, September 2003. Transcript of Focus Group 1, 4

¹⁴⁸ Interview with Mandelaville/Sol Plaatjie Resident, October 2003; COHRE Focus Group, Sol Plaatjie Informal Settlement 1 May 2004.

¹⁴⁹ City of Johannesburg vs. the Unlawful Occupiers of the Mandelaville Informal Settlement, High Court of South Africa, Case no. 2001/25450, Founding Affidavit, 6.

¹⁵⁰ Ibid.

children were never fully explored in the hearing. Also not considered was the impact of the relocation on jobs, incomes, livelihoods and access to other social services.¹⁵¹

In the event, the eviction and relocation order was granted, and the bulk of Mandelaville's 2,000 households were moved to the Sol Plaatjie site in January 2002. Focus group discussions with the Mandelaville community showed that the process of the eviction was deeply traumatic. Most evicted residents had to spend a night in the open before being relocated.¹⁵² Those who dismantled their shacks by choice rather than have them destroyed by the security guards carrying out the eviction, spent longer periods without shelter:

'I woke up in the morning. I saw the police, the security guards in their red overalls surrounding Mandelaville, telling us to remove our furniture and other property from our houses. On the first day, these people did not destroy all the shacks ... but some were destroyed. Some of us were left outside without shelter for about six days and nights. We slept there without anything. We were then relocated with our possessions to the new place on the seventh day of the eviction.'¹⁵³

Accounts of the eviction itself are littered with stories of 'beatings' at the hands of the 'red ants'.¹⁵⁴ The term 'red ants' is the colloquial name given to employees of Wozani Security Company, which carries out many municipal evictions. They are so called because of the bright red overalls they wear when carrying out an eviction. While it has given rise to a rather derisive label, the clear identification of those authorised to implement a relocation is good practice. The violence which allegedly accompanied this eviction, however, is not.

Some of Mandelaville's residents claimed that their property was destroyed in the course of the eviction. According to one resident:

'Almost every resident lost something or had his property broken somehow. Even the truck drivers were driving with no mercy. You would hear many complaints about the way in which these trucks were driven from Mandelaville, breaking along the way [valued] property and furniture'.¹⁵⁵

A common complaint was that shacks were dismantled in a manner which did not preserve them for re-use. Video footage of the aftermath of eviction viewed by COHRE researchers shows what appear to be corrugated iron panels, commonly used to construct shacks, mangled, strewn around the eviction site and crushed by bulldozers. According to one source, about a third of Mandelaville's residents were not able to salvage the materials out of which their shacks were constructed, and had to purchase new material once they had been relocated.¹⁵⁶

¹⁵¹ Transcripts of the hearing in Case No. 01/25450, High Court of South Africa.

¹⁵² Interview with Sol Plaatjie Resident, 9 September, 2004.

¹⁵³ Focus Group conducted by the Researchers from the University of the Witwatersrand in the Sol Plaatjie Project, September 2003. Transcript of Focus Group 2, 5

¹⁵⁴ Focus Group conducted by the Researchers from the University of the Witwatersrand in the Sol Plaatjie Project, September 2003. Transcript of Focus Group 2, 7.

¹⁵⁵ Focus Group conducted by the Researchers from the University of the Witwatersrand in the Sol Plaatjie Project, September 2003. Transcript of Focus Group 2, 9.

¹⁵⁶ *The Occupiers of the Mandelaville Informal Settlement vs. The City of Johannesburg*, High Court of South Africa Case No. 04/12453, Founding Affidavit, 16, paragraph 18.4.

The Socio-economic Impact of the Relocation

The trauma and injustice of a forced eviction goes beyond the immediate effects of the event. Even when well-managed, the relocation of a large number of very poor people from outside their immediate locality has the potential to severely disrupt the social and economic networks on which they depend. An analysis of the available data on the Mandelaville community suggests that their relocation from Diepkloof to the Sol Plaatjie Project had a severe and adverse impact on the quality of life of its residents. This section assesses the impact of the relocation on access to social services and access to livelihoods.

Access to Social Services

In Diepkloof, the Mandelaville community had access to a range of social services within easy reach. They were less than 3 km away from a major hospital and there was a municipal clinic immediately adjacent to the settlement. There were 20 schools (both primary and secondary) within a 2.5 km radius of the settlement, which the vast majority of Mandelaville's children attended. Social grants could be collected at the Diepkloof community hall, next to the settlement. The settlement was 1 km away from a police station. The settlement was at the centre of an extensive network of roads and just 3 km away from a major highway. While it is true that many informal settlements are poorly located, Mandelaville was very well located indeed.

In comparison, the physical situation of the relocation site is highly unsatisfactory. The entire site resembles a peri-urban transit camp, cut off from major arterial routes and unconnected to any formal residential or commercial area. At the time of the relocation, there were two full and very poorly resourced primary schools within a 5 km radius of the relocation site. The nearest secondary schools were 8 km away. The nearest clinic was 4 km away. The nearest satellite police station was 5 km away. The nearest grants and government offices were in Roodepoort or Dobsonville, both 5 km away. The nearest hospital was 6 km away and the nearest clinic was 5 km in the other direction.

Although these differences in distances from amenities between the two sites appear relatively small on paper, they represent a crucial difference between a short walk and a necessary taxi journey, costing between R3 and R8 one way.¹⁵⁷ These costs impact significantly on household budgets when the journey has to be undertaken regularly, as is the case with school-going children. It is also important to note that the concentration of particular amenities accessible from the relocation site was much lower than in or near Mandelaville. This point can be illustrated by reference to school access from the new site.

A study conducted by the University of the Witwatersrand in the Sol Plaatjie Project in early 2003 – one year after the relocation – showed that over half of Sol Plaatjie's school-going children were still registered at schools in Diepkloof, around 15 km away. One of the reasons for this was that there was simply not enough capacity in schools around the Sol Plaatjie Project to deal with a sudden influx of approximately 2,000 children from outside the locality. The provincial Department of Education said that it had not been warned of the relocation, and therefore took approximately two years to re-accommodate all of Sol Plaatjie's school-age children in a school closer to the site.¹⁵⁸ In the meantime, some households had to spend as much 20 per cent of their income on transporting their children to school. During this time 17

¹⁵⁷ Interview with Sol Plaatjie Residents, conducted by Wits University Researchers, 18 November 2002.

¹⁵⁸ Meeting between the Sol Plaatjie community and the MEC for Education, Gauteng Province, attended by researchers from the University of the Witwatersrand, August 2003.

per cent of Mandelaville's children simply stopped attending school for financial reasons, overwhelmingly because of lack of money for transport.¹⁵⁹ Free scholar transport was eventually provided to Sol Plaatjie's school-going children in October 2003, almost two years after the removal.

For the relocated community, travelling to social service delivery points was therefore much more difficult and expensive from Sol Plaatjie when compared with Mandelaville. Equally significant is the fact that the municipality had failed to consider the capacity of local social service networks to deal with a sudden influx of around 8,000 people.¹⁶⁰ Not only did the municipality not adequately safeguard access to education and other amenities; it emerges that there was virtually zero co-ordination with other arms of government concerned with social service delivery. The result was that increased pressure on the resources of an already poor community, as a result of their forced eviction.

Livelihoods

Due to an absence of data, there is insufficient information available to gauge the impact of the relocation of the Mandelaville community on incomes and employment levels. In a survey conducted in the Sol Plaatjie Project in early 2003, the mean monthly post-relocation household income was R851 and the unemployment rate was 41 per cent.

Similarly, it is not possible to quantify accurately the impact of the Mandelaville/Sol Plaatjie relocation on livelihoods, since there were no data collected on the status of livelihood strategies before the relocation. However, focus groups, household surveys and interviews conducted in the relocated community do provide some evidence on which to base longitudinal comparisons. On the basis of this information, it appears that the relocation impacted most severely on two distinct categories of people.

First, there are the formally employed, which account for around 40 per cent of economically active adults in the settlement.¹⁶¹ Most of these people are employed as cleaners, security guards or industrial labourers in areas in or to the south of the inner city, which is around 10 km from the Mandelaville site. There was easy access to these sites in the inner city from Mandelaville. Transport costs were R9 return by taxi from a major taxi rank just outside the Mandelaville settlement. People employed in light industry in Crown and Booyens, to the south of the city centre, were even able to cover the 5 to 7 km to work by foot. On a notional monthly income of R1,000 and a five-day working week, therefore, 'friction costs' entailed by transport to work for this group of people ranged from R0 to R180 per month.

In contrast, the Sol Plaatjie site is 20 km from the Johannesburg city centre. Once again, what seems a small difference on paper has huge impact in practice. Walking to work was no longer a possibility, not even for those workers working to the south of the inner city. A return taxi journey from Sol Plaatjie to the city centre is R22. This amounts to a monthly transport burden

¹⁵⁹ See S Wilson, Relocation and Access to Schools in Sol Plaatjie: A Research Report, Centre for Applied Legal Studies, University of the Witwatersrand (2003); 'Learning is a long, hard road' The Star, 22 September 2003, 8.

¹⁶⁰ There are 4 people in the average Sol Plaatjie household.

¹⁶¹ The University of the Witwatersrand surveys and focus groups read together with COHRE focus groups and interviews in the settlement found that around 40 per cent of people in Sol Plaatjie had little or no employment at all. Around 40 per cent had low-level formal sector jobs. Around 20 per cent engaged in informal livelihood strategies, such as collecting waste paper for recycling, casual, irregular domestic work and gardening (mostly in Roodepoort) and street trading.

of up to R440 for the relocated workers. Many of Sol Plaatjie's residents reported that their incomes had suffered as a result of increased transport costs after the relocation. Some had attempted to find similar jobs closer to Sol Plaatjie, but most had failed..

The second group most severely affected by the change is the informally employed, accounting for around 20 per cent of Sol Plaatjie's adults. People in this group reported that the relocation cut them off from the informal economic networks which had sustained them in Mandelaville. Some had been domestic workers in Mondeor. Others had cleaned taxis at the Diepkloof taxi ranks. Still others had handed out leaflets at the Southgate shopping centre. All of them had done some form of informal, menial work for a daily fee.¹⁶² All perceived Mandelaville as a place from which one could 'walk into' small scale economic opportunity, which had been lost as a result of the eviction.

Focus group participants in Sol Plaatjie spoke repeatedly of getting up in the morning in Mandelaville and walking around in search of small scale informal work – or 'piece jobs' – which would render a daily income of around R50. Over time, the economic 'landscape' around Mandelaville became familiar to them. They knew where to go to access small amounts of money to sustain them.

Focus Group Respondent, Sol Plaatjie: 'When we were still in Mandelaville, life was better because we were able to take a walk looking for a job, which we would get from the whites at Southgate.'

Focus Group Respondent, Sol Plaatjie 'At Mandelaville it was much easier because we were staying next to town [the city centre], where there was an industrial area, which used to give us part time jobs to earn a living.'

Focus Group Respondent, Sol Plaatjie: 'Mandelaville was excellent for us, as we could go and look for work on foot.'

Focus Group Respondent, Sol Plaatjie: 'In Roodeport there are not many firms or factories where we can find jobs. The whites have their own workers to rely on'.¹⁶³

Informally employed adults reported being completely cut off from their livelihood strategies by the relocation to Sol Plaatjie. The amounts they earned around Mandelaville did not justify the costs of commuting back to the areas where they once searched for jobs. In addition, the risk involved in paying R20 in taxi fares to go in search of a 'piece job' which may not materialise on any specific day, became too great for most of Sol Plaatjie's households to bear.

Informal livelihood strategies are highly localised and heavily dependent on local micro-economic flows. Relocation of a large number of people dependent on those flows puts them at the mercy of a new, unknown and in many cases yet undeveloped situation at the relocation site, where those flows cannot be relied on. In the Mandelaville/Sol Plaatjie case, the relocation of a community from an urban area, rich in micro-economic opportunity, to a peri-urban area, comparatively poor in such opportunity, has further impoverished an already very vulnerable economic group.

¹⁶² Focus Group conducted by the Researchers from the University of the Witwatersrand in the Sol Plaatjie Project, September 2003. Transcript of Focus Group 1, 1-6.

¹⁶³ Ibid.

Still No Houses

On top of the trauma experienced by many of Mandelaville/Sol Plaatjie's residents as a result of the relocation, on top of the significant socio-economic hardship experienced as a direct result of being taken away from services, resources and networks, there is the added sense of frustration and betrayal linked to the fact that the relocation site has still not been upgraded for formal housing. The conditions under which people have been living in Sol Plaatjie are best described as 'shockingly unsuitable'.¹⁶⁴ This is despite a municipal undertaking to the High Court during the Mandelaville eviction proceedings, that formal housing would be provided at Sol Plaatjie within one year of the relocation. At the time of writing, almost three years after the relocation, the old single-sex hostels into which some of the people moved, have still not been renovated. And there still is no formal housing on the site, omissions which surely qualify as direct violations of the community's right to adequate housing. In the words of a resident: 'Is this what the city council means by uplifting communities, dumping us, the previously disadvantaged people, away from the same developments that are supposed to benefit the people? Now we hear that the land we occupied is being developed by politicians. That is all not fair.'¹⁶⁵



Photo: Lebohang Mashiloane

Residents peer through a window of an un-renovated hostel in Sol Plaatjie (May 2004)

The municipality's failure to upgrade the site and to provide the promised housing became the focus of a new High Court action, in which, with the assistance of the Wits Law Clinic, the Mandelaville/Sol Plaatjie community sued the municipality to honour its original undertaking.¹⁶⁶ This action has recently produced success in the form of a negotiated agreement, which was

¹⁶⁴ 'Court Orders Council to Build Houses', in *Business Report*, 26 September 2004.

¹⁶⁵ Sol Plaatjie resident Hobson Mcweba, as quoted in *The Sunday Independent: Business Report*, 26 September 2004.

¹⁶⁶ See *The Occupiers of the Mandelaville Informal Settlement vs. The City of Johannesburg*, High Court of South Africa, Case No. 04/12453.

made an order of court. In the light of years of waiting, and many unmet promises, the community's representatives had insisted on very specific and detailed terms, including that:

'Each family living at Sol Plaatjie shall have their own kitchen and ablution facilities, including running water and a sewerage outlet'.¹⁶⁷

Prior to the settlement of the case, documents obtained from the municipality revealed that there were plans to relocate some of Sol Plaatjie's residents once again, this time to incremental housing in Dobsonville Extension, a site some 5 km further away from the centre of Johannesburg, where many of Sol Plaatjie's residents still make a living.¹⁶⁸ Others were be accommodated in upgraded hostels on the Sol Plaatjie site or on incremental housing around the site. These further relocation plans have now been nullified by the agreement of settlement, which guarantees that no further relocation will take place without the consent of Mandelaville's residents. In terms of the settlement agreement any incremental housing constructed must be upgrade for fully formal housing by October 2006. Meetings and interviews in the community suggest that most people in Sol Plaatjie are completely unaware of the municipality's prior plans for further relocation, and were never adequately consulted on them.

Ultimately, the Mandelaville/Sol Plaatjie relocation reveals two sets of shortcomings in the manner in which Johannesburg's informal settlement strategy was implemented. First, there was, and continues to be, little effort to consult informal settlement dwellers on their needs and aspirations. Ward Committees, chaired by local councillors, appear ineffective instruments of consultation. Accounts of the eviction and relocation process emanating from Mandelaville/Sol Plaatjie paint a picture of the Ward Councillor as an agent of the central municipality, rather than an advocate for Mandelaville's residents:

Focus Group Respondent, Sol Plaatjie: 'Our Councillor at the time was the very same person who was arranging a court order to evict us.'

Focus Group Respondent, Sol Plaatjie: 'The Councillor told us that if we went to [Sol Plaatjie], then every concern about services would be met. All the promises made were turned into lies, and here we are still waiting'¹⁶⁹

Focus Group Respondent, Sol Plaatjie: 'The Councillor tells us that if we do not want to be relocated, we better go back to our original homes in the Transkei, KwaNdebele, or anywhere that it could suit us'.¹⁷⁰

The Mandelaville/Sol Plaatjie case suggests that the municipality will have to find new ways to engage with informal settlement communities if its informal settlement strategy is to be successful. This re-engagement might not only have to encompass a change in the institution used to engage with informal settlers, but a change in the attitudes of local municipal officials to informal settlers. COHRE Focus Groups in the relocated community suggest that resistance to the relocation was motivated by legitimate concerns that their basic right to adequate housing -

¹⁶⁷ 'Court orders council to build houses', The Sunday Independent: Business Report, 26 September 2004. See also Legal Brief Today, 27 September 2004.

¹⁶⁸ Johannesburg Informal Settlement Database; City of Johannesburg, Application for Institutional Housing Subsidy for the Sol Plaatjie Village, June 2004.

¹⁶⁹ Focus Group conducted by the Researchers from the University of the Witwatersrand in the Sol Plaatjie Project, September 2003. Transcript of Focus Group 1, 1-6.

¹⁷⁰ Ibid. Transcript of Focus Group 2, 3.

and many other interlinked rights - would be violated. As we have seen, these concerns turned out to be well-founded.

In a COHRE interview with two regional officials responsible for the eviction and relocation of Mandelaville/Sol Plaatjie's residents, resistance to the relocation was written off as having been driven by 'criminal elements who knew that the relocation would upset their clandestine activities'.¹⁷¹ To dismiss dissent in this way is not only unhelpful; it also rings as a disturbing echo of the language used to describe ordinary people living in the 'bad buildings' of inner city Johannesburg.

Second, there needs to be a much more careful assessment of the risks and rewards of relocations for informal settlers. The Mandelaville case was one instance in which there might conceivably have been no alternative to relocation of at least some of its residents. What Mandelaville's former residents and the municipality could always agree on, was the fact that the over-dense, inadequately sanitised settlement was unhealthy and possibly unsuitable for an in-situ upgrade. However, options other than a long-range relocation could have been considered. Land closer by could have been identified, as there are a number of in-situ upgrading projects in deep Soweto amongst which Mandelaville's residents could have been distributed by their consent. In addition, medium or high-density in-situ upgrading options could have been considered for at least some of Mandelaville's residents.

Even if it is assumed that a long-range relocation really was the only available option, more could and should have been done to investigate the socio-economic opportunities available at the new site, and to co-ordinate the relocation with other arms of government responsible for the provision of essential services such as schools and clinics.

Finally, the municipality should have acted promptly on its promise to upgrade the Sol Plaatjie site for formal housing. If the municipality knew it could not upgrade the site within a year, then the promise should never have been made in the first place. As things stand, the Mandelaville/Sol Plaatjie relocation appears far from the 'success' one city official claimed it to be.¹⁷² Hopefully the recent court victory will make a difference to the plight of the residents.

Case 2: Thembelihle

The Thembelihle case further illustrates the propensity of relocation, or the threat of it, to lead to a breakdown in relations between the municipality and informal settlements. Thembelihle is the story of a failed attempt to relocate up to 6,000 households from a well-established informal settlement underlain by dolomite at the centre of Lenasia, to an incremental housing site in Vlakfontein, some 8 km away.

Homeless rural migrants to Johannesburg first settled Thembelihle in 1980. The initial settlers claim that they occupied the site with the consent of the government at the time. Officials acting on behalf of the Transvaal Provincial Administration gave them 'materials, including zinc sheeting' from which they were meant to construct informal dwellings on the site.¹⁷³ By 1990, the settlement had been regularised as a transit area in terms of the Prevention of Illegal Squatting

¹⁷¹ COHRE Interview with two officials from the Region 10 office of the Johannesburg Municipality, 19 April 2004.

¹⁷² COHRE Interview with an official in the central municipality with responsibility for legal services, 8 April 2004.

¹⁷³ The City of Johannesburg vs. Occupiers of the Thembelihle Informal Settlement, Case No. 03/10106, Answering Affidavit, 4.

Act (no. 52 of 1951). During the 1990s, residential stands in Thembelihle were marked out and enumerated, and water, electricity and telephone services were installed.¹⁷⁴ All this makes Thembelihle a rather aberrant case as an informal settlement. Until the municipality attempted to evict and relocate it, it existed with the consent of the municipality (and its predecessor institutions), which owns the land on which it stands. It had been partially regularised and serviced.

In the course of 1992, the municipality's predecessor – the Southern Metropolitan Council – undertook a geo-technical survey to assess the suitability of Thembelihle to benefit from an in-situ upgrade. The survey, according to the municipality, revealed that much of Thembelihle stood on dolomitic land. Dolomite is a rock which dissolves, over time, in water, creating subterranean gaps leading to the possibility of the ground literally sinking into the gaps, taking whatever is on the surface with it. The development of sinkholes¹⁷⁵ poses a safety risk to anyone living in a dolomitic area, and serious implications for the viability of formal developments on dolomitic land. A further report done in 1998, apparently confirmed the dolomite risk.

Principally for this reason, in 2002, the municipality proposed that Thembelihle be relocated to a housing settlement in Vlakfontein, some 8 km to the south east of Lenasia. There, Thembelihle's residents would be provided with security of tenure on serviced sites and would eventually be provided with subsidies to enable them to construct their own houses through the People's Housing Process.

There was significant resistance to this proposal from the community. Again, the community's concerns related to the relative economic and social advantages of Vlakfontein and Thembelihle. Thembelihle was well serviced by several primary schools in Lenasia, whereas Vlakfontein had just one fully operational primary school, with another under construction at the time the relocation was proposed. Access to transport to the inner city and to jobs and micro-economic flows was perceived to be much better in and around Lenasia than in Vlakfontein.

What matters about the Thembelihle case is not so much the correctness or otherwise of these concerns.¹⁷⁶ It is the manner in which the municipality allegedly responded to them. According to the community's answer to the municipality's eviction application, in the course of 2003, officials in the employ of the municipality threatened a number of Thembelihle's residents with the demolition of their homes if they did not consent to relocation to Vlakfontein.¹⁷⁷ As a result, the community claims, a significant number of people (the municipality says about a third) did relocate to Vlakfontein, but this was hardly a free choice.

The municipality, on the other hand, records that it held extensive public meetings in and around Thembelihle during which a large number of the residents, in light of the geotechnical survey, decided to relocate. There was an assurance from the local Councillor that no-one would be forcibly relocated without a court order.

¹⁷⁴ Ibid. 6-15.

¹⁷⁵ Which should not be confused with the municipality's term of art for some 'bad' buildings in the inner city.

¹⁷⁶ Although they do seem well founded. Vlakfontein certainly is more peripheral than Lenasia, and is further away from major economic nodes than Thembelihle. Access to social services from the site is undoubtedly poorer. In any case, Thembelihle had, in all probability, become an integral part of the economy of Lenasia, over the 20 years to 2002. The impact of destroying the economic linkages Thembelihle's residents had established with its surroundings should not be underestimated.

¹⁷⁷ *The City of Johannesburg vs. Occupiers of the Thembelihle Informal Settlement*, Case No. 03/10106, Answering Affidavit, 10-11.

Whatever the reality, tension between the municipality and the community came to a head in June 2002, when Wozani Security Company moved into Thembelihle to assist with what the municipality claims were further voluntary relocations to Thembelihle. According to the municipality:

‘On 21 June 2002, several hundred protestors attempted to forcibly resist the [municipality’s] attempts to relocate some volunteers ... It has been subsequently suggested in the media that the [municipality] had been forcibly relocating these residents: this is patently untrue

The [municipality] obtained an interdict ... to prevent interference with the voluntary relocation process, but unfortunately the violence continued unchecked: roads were blocked, council officials and the South African Police Services personnel were stoned, and a neighbouring school was attacked and pupils and teachers intimidated. A number of people have been charged with public violence in this regard.¹⁷⁸

By contrast, the Thembelihle community claims that:

‘On or about 12 June 2002, the Thembelihle Crisis Committee [a community-based organisation] held a meeting with the [municipality]. The [municipality] undertook not to send in the Red Ants [Wozani Security Company] to remove people from Thembelihle. The Red Ants are notorious for the violent manner in which they effect evictions of people across the length and breadth of the [municipal] area. The Red Ants are used by the [municipality] to evict people from informal settlements. At a subsequent meeting with the community Councillor ... the [municipality] reiterated this undertaking... However, on 22 June 2002, large numbers of Red Ants entered Thembelihle and began to demolish the dwelling of an old woman in the settlement. She protested that she did not want to move to Vlakfontein. Her protests were not heeded by the Red Ants. As a result a large group of residents gathered to assist her to resist the attempted forced relocation to Vlakfontein. Her dwelling was demolished and the materials comprising it were removed by the Red Ants. The Red Ants fired shots at the community. Three people were shot. One young man was shot in the upper arm and another in his thigh. The third man was also shot in the upper leg area... Stones were thrown by some of the residents in this incident. The incident sparked a period of violence in Thembelihle and led to the breakdown of trust between the residents and their Councillor ...’¹⁷⁹

These two very different accounts of the same incident show the extent to which trust between the Thembelihle community and the municipality had completely collapsed by the time the eviction application was lodged. What the municipality depicts as a routine effort to deliver housing and services to an impoverished community was seen by Thembelihle’s residents as a repressive forced eviction. It should be noted that most charges of public violence against members of the Thembelihle settlement were subsequently withdrawn. To the best of COHRE’s knowledge, all the Thembelihle residents tried for public violence were acquitted.

In COHRE focus groups in Thembelihle, the distrust of the municipality’s representatives was palpable. Witness the comments of one participant:

¹⁷⁸ The City of Johannesburg vs. Occupiers of the Thembelihle Informal Settlement, Case No. 03/10106, Founding Affidavit, 6.

¹⁷⁹ Ibid, Answering Affidavit, 11.

Male Respondent, Thembelihle Focus Group: ‘Another area of concern is our leaders, even the Councillor himself. They don’t tell the truth like they’re supposed to. They beat about the bushes. This is the reason why people lose their tempers and can no longer discuss issues with him in a proper manner. Our leaders do not put the facts on the table when they talk to us. Some of them hate each other. We have now decided that we don’t want the Councillor present in any of the meetings we have with the government.’¹⁸⁰

In April 2003, the municipality made an urgent application to the High Court to evict all of Thembelihle’s residents and relocate them to Vlakfontein. The public interest unit of the legal firm, Webber Wentzel Bowens, represented the Thembelihle community. The defences raised against the eviction revolved around the impact the relocation would have on incomes and access to livelihoods, as well as the quality of the accommodation on the new site. In particular, the community argued that:

- The quality of the structures to be provided at Vlakfontein was inferior to that of the structures already erected by the community at Thembelihle. There were a small but significant number of brick buildings erected at Thembelihle and its shacks were of a far better quality than could be erected on the Vlakfontein site;
- Many of Thembelihle’s residents would have to commute back to low paying jobs in and around Lenasia from Vlakfontein if they were relocated. The cost of doing so would set the average household in Thembelihle back around R300 per month;
- The social services provided at Vlakfontein were inferior to those provided at Thembelihle.

Answering papers were filed, but the municipality never replied to them. Although the application has been on the court roll for well over 18 months, the municipality has not taken any further steps to secure an eviction order.

Revisiting the Dolomite Risk

Is it really impossible to undertake an in-situ upgrade in Thembelihle? In the course of its investigation, COHRE has learned that both the 1992 and the 1998 geo-technical reports were much more equivocal about the dolomite risk in Thembelihle than the municipality had been prepared to admit. Both reports characterise the dolomite risk across the Thembelihle settlement as variable. According to the 1992 report, large areas of the settlement – around 60 per cent of the total surface area – are ‘low to medium risk’ and may be suitable for housing development, as long as stricter than usual water management measures are put in place. These include, for example, the sealing of road and parking areas and ‘earth mattresses’ for houses. Even the medium risk areas would be suitable for high density flat-type developments. Approximately 30 per cent of Thembelihle is at ‘medium to high’ risk, and is suitable for some commercial and light industrial development. The remaining 10 per cent of the settlement is ‘high risk’ and not suitable for residential development.

The 1998 report is even more optimistic. Its results suggests that up to 90 per cent of the surface area of the settlement may be upgraded for medium or high density housing, with some special water management precautions. Only 10 per cent of the settlement is unsuitable for housing

¹⁸⁰ COHRE Focus Group, Thembelihle Informal Settlement, 9 May 2004.

development. Both reports conclude that much of Lenasia is at a higher risk of dolomitic sinkholes developing than Thembelihle.¹⁸¹

Civic Engagement in Thembelihle and Mandelaville

At the time of writing, the municipality still officially plans to evict the Thembelihle community. In the most recent plan, some will be relocated to Vlakfontein West, 5 km from Thembelihle. Others claim to have been told by the local councillor that they are to be moved to Orange Farm, more than 15km away, as a 'punishment' for resisting the original relocation plan.¹⁸² Again, the municipality is attempting to engage with the community and convince it to move. However, a number of community based organisations in Thembelihle have engaged Planact, a local planning NGO, to motivate, in light of the re-assessment of the dolomite risk in the area, for the municipality to undertake an in-situ upgrade of the settlement. This initiative's prospects of success are uncertain, given the breakdown in trust and communication between the community and the municipality. The Thembelihle community's renewed willingness to engage with the municipality is remarkable and should not be squandered.

However, the wider lesson to be drawn from both the Thembelihle and Mandelaville cases is that the municipality has to find new ways of engaging with informal settlements if its strategy is to be successful. Participatory methodologies should be used, with the help of trusted and experienced facilitators, to try to avoid counterproductive and time-consuming conflicts. The local knowledge and experience of the residents, particularly with regard to their hard-won networks and livelihood strategies, should be trusted, learnt from, and used in planning. International best practice shows that this is important for many reasons, not least of which the viability and social stability of the resulting settlement. The reassessment should also include an examination of alternatives to relocation across the 103 settlements it plans to move. In each of these cases, is the need to move the settlement so absolutely necessary that it can justify the possible destruction of economic and social linkages the residents have developed over time? Where is the settlement to be relocated? Is it beyond 5 km from its current site? If so, can no suitably located land be found? If a long-range relocation is necessary, can a location with substantial micro-economic flows be identified so as to allow a particular informal settlement to easily re-establish its livelihood strategies? Have adequate social service delivery nodes been established on the relocation site? Has subsidized transport been put in place for those who will have to commute long distances to school or work? Are the different responsible authorities for service delivery aware of the relocation and have their resources and plans been aligned in order to prevent the types of problems experienced in Sol Plaatjie?

It is essential for the Johannesburg municipality to put in place appropriate mechanisms to ensure these questions are considered in future. If it does not, the events which characterised both the Mandelaville and the Thembelihle relocations may well be repeated. The breakdown in trust and communication between local municipal structures and informal settlers cannot simply be written off as the project of 'criminal elements' using informal settlements as bases, as yet another municipal official did in his discussion of the Thembelihle case with a COHRE researcher.¹⁸³ Instead, the suitability of councillor-driven Ward Committees for conducting pre-

¹⁸¹ Interim Report to Keeve Steyn Inc on Engineering Geological Stability Investigations on Sections of Portion 129, Lenasia, Intraconsult Report No. IR69, May 1992; Engineering Geological Study of the Greater Lenasia Area for the Great Johannesburg Southern Metropolitan Substructure, Parts 1 and 2, Council for Geosciences (CGS) Report No. 1998-0091, June 1998,

¹⁸² Interview with Resident of the Thembelihle Informal Settlement, 19 November 2004

¹⁸³ COHRE Interview with an official from the Region 6 office of the Johannesburg Municipality, 19 April 2004.

relocation consultations must be questioned. In both Sol Plaatjie and in Thembelihle, Ward Committees were derided as ways for the municipality to implement its pre-conceived ideas of development, rather than for communities to meaningfully influence municipal policy. This has to change. More inclusive and time-intensive processes of consultation must be developed. The costs of doing so will be more than offset by the savings of not being forced to take legal action against the very communities the municipality exists to serve.

Conclusion: Land, Location and Settlement Policy

The fears and concerns that informal settlement communities have about proposed relocation, are invariably related to the impact the relocation will have on their livelihoods and access to social services. The destinations of relocations are usually planned low-income housing developments. Sixty two percent of these developments are located in the most economically deprived parts of the Johannesburg metropolitan area – to the south and west.¹⁸⁴ They are also usually on the very periphery of urban space, with the result that their access to microeconomic flows and employment nodes is often relatively poor. While many existing informal settlements are themselves admittedly not particularly well located, the new incremental housing development locations tend to offer them even less economic opportunity than those they have managed to identify and utilise from their existing settlements. For individuals, families and communities living on the edge of the economy, for whom survival is a daily struggle, the trauma of relocation, and the loss of networks and opportunities, amount to a major life disaster that should be avoided at all costs. This is why forced evictions are internationally regarded as the option of very last resort, when all other options have been exhausted.

In governmental housing and urban planning circles, the view is often expressed that peripheral settlements do not necessarily mean economically disadvantaged ones. In support of this they often cite research conducted by the Centre for Scientific and Industrial Research (CSIR). The report entitled ‘Cost benefit comparative assessment of low income housing localities’ compares livelihoods in Alexandra’s informal settlements and in Diepsloot.¹⁸⁵ The report points out that livelihoods and other economic opportunities between the two locations are comparable. It also suggests that there is not a uniform relationship between economic opportunity and proximity to the urban core. This is because urban development in Johannesburg emanates from a number of differently located economic nodes. Economic opportunity in Johannesburg does not emanate solely from its urban core.

Both of these statements, as generalizations, are undoubtedly true, but they were often used by some of the respondents to the COHRE research as a way of justifying removals to peripheral areas, on the grounds that such relocations are not necessarily damaging to the economic welfare of resettled groups.¹⁸⁶ This conclusion cannot be drawn from the CSIR research, for two reasons. First, the CSIR research has nothing to say about relocations *per se*. As one of the authors of the report was at pains to point out to COHRE, the report offers no longitudinal comparisons of individual households’ welfare before and after relocation.¹⁸⁷ Second, the comparison the CSIR research made was between two relatively well-off locations to the north and west of the

¹⁸⁴ City of Johannesburg Housing Projects Database. This figure includes in-situ upgrades.

¹⁸⁵ Sharon Biermann, Cost benefit comparative assessment of low income housing localities, CSIR (report for Housing Finance Resource Programme), 2004.

¹⁸⁶ The same research was also used by one respondent to downplay the importance of providing housing for the inner city poor.

¹⁸⁷ COHRE Interview with author, 10 September 2004.

municipal area, in relatively close proximity to a number of economic nodes. There was no attempt to address livelihood opportunities in the more impoverished south of the municipality, where high-yield economic nodes are fewer. Had the comparison been between Diepsloot, Alexandra and Vlakfontein, for example, the CSIR's findings would have had much more relevance to comparative advantages of the majority Johannesburg's housing settlements.

The municipality's own commitment to managing urban growth should also be a key consideration in its informal settlement management strategy.¹⁸⁸ Relocation of informal settlements to peripheral sites promotes urban sprawl and detracts from the municipal goal of promoting Johannesburg's development as a 'compact city'. This makes the identification of well-located land for housing development an ongoing, pressing problem which the municipality is seeking to address.

It is also a problem for which the municipality cannot be held solely responsible. COHRE found evidence to suggest that the supply of well-located land for provision of housing to the poor, is limited by collusion amongst private landowners, developers and industrialists. An example of this was the relocation, in 2003, of 7,000 people from informal settlements in Alexandra to formal housing in Braamfischerville, located over 36 km away; and to incremental housing in Diepsloot, around 25 km in the other direction. This was to make way for developments connected with the Alexandra Renewal Project. In that case, Alex Renewal's Project Managers did identify suitable land on three sites within 10 km of Alexandra to which informal settlers could have been moved. However, the owners of those sites refused to sell parts of their land for low cost housing development of the kind proposed by the Project's managers. This refusal was at least partly because they had bought the land on a speculative basis, expecting its value to increase. Large low cost housing settlements adjacent to their retained land would have brought property values down. According to a senior implementer, efforts to expropriate some land were thwarted at a political level by the Gauteng Provincial Government, apparently because it was unwilling to tackle the propertied interests at play.¹⁸⁹

So the difficulties of providing well-located land should not be underestimated. An increase in the provision of medium and high density housing to house people in smaller urban interstices may offer some answers. However, this would require revision of the subsidy structure for certain categories of housing provision, as under the present system the social housing solutions in which medium density housing are packaged are not affordable to most informal settlers.¹⁹⁰ However, there is a commitment in recent policy reform proposals made by the National Department of Housing, to scale up the provision of communal and transitional rental housing, to be provided at a rate of between R0 and R800 per month. As noted in Chapter 4, however, these housing options tend to be sustainable only at rental rates of at least R200-R300 per month. Even this meagre sum is beyond the means of many informal settlers.

Such policy reforms can only be part of the solution. A more robust and effective approach would be to purchase and, where the owners are unwilling, to expropriate well-located land for the construction of additional low cost housing. (One example mentioned earlier would be the land available in the vicinity of Alexandra. There are many others.) To succeed legally, such expropriations should be in public interest, something that would be easy to show in the light of the prevailing housing crisis in the city, and the obvious need for the poor to have access to

¹⁸⁸ Spatial Development Framework: A Growth Management Approach, City of Johannesburg, 2003

¹⁸⁹ Interview with Alex Renewal Project official, 31 March 2004.

¹⁹⁰ For a discussion of the costs of social housing, see Chapter 4.

economic opportunities. To succeed politically, such expropriations should be unambiguously, courageously and unwaveringly pro-poor. In the long term, the social and economic benefits of well-located housing settlements will surely out-weigh the short-term problems caused by tackling the vested interests of landowners.

Finding a solution to the shortage of suitable land is of crucial importance. As many as 31 informal settlements are earmarked for relocation (perhaps over long distances) to *as yet unidentified* land. A further 64 are earmarked for relocation 'with the locality', to land which *has yet to be procured*.¹⁹¹ Land speculation and local opposition to the development of land for low cost housing are likely to be obstacles the municipality will face many times over the next few years.

Moreover, the above studies of the Mandelaville and Thembelihle cases suggest that much more should be done to involve informal settlers in the crafting of their own development solutions. If it is to avoid having to carry out dozens of forced evictions over the next two or three years, the municipality must be prepared to alter its plans to take account of community concerns. Where possible, relocation should be avoided and replaced by innovative, community driven in-situ upgrading programmes. In cases where the relocation of some or all of the residents is absolutely necessary, and has been agreed by them, steps have to be taken to ensure that the affected residents end up in situations equivalent (or better!) than those in which they find themselves now. As the above chapter illustrates, the location of the new settlement is a crucial element in determining whether or not the housing and related rights of the residents have been violated in the process.

¹⁹¹ City of Johannesburg Informal Settlement Database.

6. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

When considering projects and programmes that result in forced evictions on the scale considered in this report, one is confronted with two sets of questions.

The first set of questions relates to moral issues: Is what is happening right? Is it in line with national and international human rights laws and standards? Does it lead to outcomes that are fair and just? What are the impacts on the affected parties, particularly the poor?

The second relates to practical issues: Will it work? Is there a realistic chance that the outcomes promised by the proponents - those broader objectives for the 'public good' - will come to fruition? Can the process be concluded without major conflicts, delays or setbacks? Will the outcome be sustainable?

In spite of the existence of a body of exemplary law, supported by a number of progressive, landmark judgements from the Constitutional Court, a solid policy framework, and the presence of some highly committed and skilled people at many levels of City government, it is the conclusion of the COHRE team that the process of 'turning around' the city of Johannesburg has been the direct cause of a disturbing number of blatant human rights violations, both in the inner city and in the many informal settlements of Greater Johannesburg. What has been happening is most definitely not right, and needs urgent attention.

In addition, it is our conclusion that the Inner City Regeneration Strategy is based on the implicit, mistaken assumption that the urban poor should (and can) be removed from the inner city to peripheral areas where housing supply is easier and cheaper. In practice this objective is being pursued through a combination of clamping down on informal occupation of buildings and land, and the implementation of gentrification initiatives primarily aimed at 'a steady rise in property values'. Yet, given the sheer scale of need, the inexorable force of demographic pressure, the existence of entrenched rights, and the tireless determination and resourcefulness of people who struggle daily for survival, the objective of removing the poor from the inner city is not only undesirable, it is also highly unlikely that it can ever be achieved.

During the time this report was being researched and written, a further landmark judgement was handed down by the South African Constitutional Court. On 1 October 2004 the Court delivered judgement on the interpretation of the PIE Act in the 'Port Elizabeth Municipality vs. Various Occupiers' case, which had been heard on 4 March 2004. The 'Various Occupiers' were some 68 people, including 23 children, who lived in 29 shacks erected on privately owned land.

In early 2003, the Port Elizabeth Municipality had applied to the High Court for their eviction, under Section 6 of the PIE Act in response to a petition signed by 1,600 people who lived near the settlement. The Municipality offered the occupiers alternative accommodation in the form of open land in a place called Walmer Township. The occupiers rejected the offer on the grounds that Walmer was crime-ridden and overcrowded, and that the Municipality's offer did not come with a guarantee of security of tenure on the new site, rendering them vulnerable to further eviction in the future.

The Municipality said that providing security of tenure at Walmer, or on any other alternative land, was impossible. Given that it had embarked on a comprehensive housing development programme in terms of which access to land and housing is progressively addressed according to its priority lists, making land available to the occupiers would in their view effectively condone 'queue-jumping', and would undermine its attempts to address the housing backlog in an orderly fashion.

The High Court agreed with the Municipality and ordered the occupiers' eviction. The occupiers appealed successfully to the Supreme Court of Appeal against the eviction. The Municipality then applied for leave to appeal to the Constitutional Court, seeking a ruling that it was not constitutionally obliged to find alternative accommodation or land when seeking an order evicting unlawful occupiers.

In a unanimous judgment, the Court dismissed the Port Elizabeth Municipality's application for leave to appeal. The judgement emphasised the importance of interpreting and applying the PIE Act, and Section 26 (3) of the Constitution, in the light of historically-created landlessness in South Africa. The Court stressed the need for dealing with homelessness in a sensitive and orderly manner, and the special role of the courts in managing complex and socially stressful situations.¹⁹²

In effect, the 'Various Occupiers' judgement set out three broad principles relating to the steps an organ of state must take before seeking the eviction of poor people who have no secure access to a place where they may lawfully live. These were:

- An organ of state must not act precipitously to secure an eviction where it is clear that people have been in occupation of buildings or land for long periods of time;
- An organ of state must make every effort to determine the socio-economic needs and circumstances of people it wishes to move;
- While it will not always be required to provide alternative accommodation or land, an eviction order is unlikely to be granted where an organ of state has not made every effort to secure a mediated solution through which alternative accommodation, with some measure of tenure security, is provided.

The Constitutional Court's ruling in the 'Various Occupiers' case came a month after the release of the National Department of Housing's innovative 'Breaking New Ground: a Comprehensive Plan for the Development of Sustainable Human Settlements', discussed in Chapter 3. Both the Constitutional Court's ruling and the revised policy stance embodied in 'Breaking New Ground', confirmed the view that the authors of this report had already reached, viz. that South Africa has one of the more progressive regulatory frameworks for housing and tenure security in the world.

¹⁹² See <http://www.concourt.gov.za/summary.php?case_id=12900>.

The problems we have identified in this report, therefore, lie primarily at the level of practice. Where the Housing Act promises ‘the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities’,¹⁹³ COHRE’s Johannesburg investigation has found geographically peripheral, poorly serviced and largely ‘incremental’ housing settlements to which people have often been forcibly relocated.

Where the Constitutional Court has said that the formal structures of law should be ‘infused [with] elements of grace and compassion’¹⁹⁴ in dealing with poor people who lack secure tenure and access to adequate housing, COHRE has found that the Johannesburg City often prefers to peremptorily evict rather than talk to communities which stand in the way of its development plans.

Informal settlement relocations are preferred to *in-situ* upgrades, often at the expense of informal settlers’ livelihoods and access to services, often taking place with little or no genuine consultation. In the inner city, slum clearances on health and safety grounds are preferred to genuine attempts to re-accommodate people who live in slums precisely because of their inability to afford safe, habitable accommodation elsewhere.

This disjuncture between law and practice is neither socially sustainable nor legally permissible. The City sees informal settlements and inner city slums as blights to be eliminated, in its quest to package Johannesburg as an ‘African World Class City’. This results in human rights violations, and further suffering for large numbers of people who are already locked in a desperate struggle for survival. It also runs contrary to innovative new urban management philosophies that are emerging, often based on bitter experience, in other developing countries - Brazil in particular. To be ranked truly ‘World Class’ in the current global environment, and to cope with the unprecedented and unstoppable influx of migrants to Johannesburg, it is essential for the City, and indeed all other South African urban centres, to take stock of those lessons and to incorporate those new philosophies into daily urban management practice.¹⁹⁵

It is recognised that the problems being faced by the City of Johannesburg are not primarily of local origin. The influx of more and more people to urban centres in search of survival opportunities is a national, regional and international phenomenon, with complex causes demanding a vigorously implemented combination of local, provincial, national and regional strategies, backed up by the necessary resources. Notwithstanding the complexities, it is now clear that the current approach will continue to re-create and exclude the poor. By contrast, the ideal ‘african city’ needs to be an inclusive community marked by justice. The challenge is for the City to develop the vision of how this is to be done, in a way that squarely faces the fact that

¹⁹³ Definition of “housing development” in Section 1 of the Housing Act 107 of 1997

¹⁹⁴ PE vs various occupiers, paragraph 20.

¹⁹⁵ See Marie Huchzermeyer, Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil, Africa World Press (2004), 232, 236. Huchzermeyer argues for ‘a significant paradigm shift in South Africa that would allow the development of progressive approaches to informal settlement intervention that respond to ... informed and reflected demands from the informal settlement population and its organised initiatives’ She finds that ‘It is in the relationship between intellectuals, progressive individuals based within government departments, and community based organisations or social movements, that an analysis of four decades of Brazilian experience is of relevance to the struggle against exclusion and the search for more appropriate informal settlement intervention in South Africa.’

slums and informal settlements are manifestations of structural poverty and historical injustice, which can only be addressed in direct and constant consultation with, and in the interests of, the communities inhabiting them.

Recommendations

On the basis of COHRE's 2004 fact-finding mission to Johannesburg, and subsequent research and consultations, COHRE respectfully recommends that the City of Johannesburg, and other relevant provincial and national departments, should take the steps listed below. As indicated, the present report, including these recommendations, is a draft for discussion purposes. COHRE looks forward to elaboration and improvement of these recommendations in the course of discussion and debate.

Inner city

The City of Johannesburg and other relevant departments should:

1. Immediately abandon the practice of seeking eviction orders against people living in 'bad buildings', without prior and full exploration of all alternatives which should include the provision of suitable, affordable alternative accommodation within reasonable reach of their present employment opportunities;
2. Immediately end the practice of routinely seeking eviction orders in the Johannesburg Inner City on an urgent basis. Urgent applications should be the absolute exception, in cases where lives are in immediate danger. In all such cases, alternative accommodation should be provided for the affected residents;
3. Institute a community facilitation programme through which the needs of occupiers of all the 'bad buildings' on the list can be identified and dealt with;
4. Develop participatory implementation strategies, based on the experience, knowledge and initiative of the residents;
5. Revise the Better Buildings Programme to scale up the provision of low cost housing genuinely accessible to people in the R0-1000 per month income bracket.

Informal settlements

The City of Johannesburg and other relevant government departments should:

6. Urgently review the capacity and effectiveness of its consultations and communications with informal settlement communities;
7. Declare a moratorium on the relocation of the 103 plus informal settlements discussed in Chapter 5 above. This moratorium should remain in place pending genuine consultation with the communities concerned, exploration of all possible alternatives to relocation, and agreement on the terms and process of relocation;

8. Implement the terms of its Agreement of Settlement with the occupiers of the Sol Plaatje site it relocated from Mandelaville;
9. Take a decision to do an *in situ* upgrade of the Thembelihle informal settlement, and all other similar settlements;
10. Ensure, prior to any pending relocation which has been deemed absolutely necessary in consultation with the community concerned, that schools, clinics, social grants collection points, Home Affairs offices and transport links are accessible at the relocation site, having regard to the limited ability of informal settlers to afford long range transport.

General

The City of Johannesburg and other relevant government departments should:

11. Introduce all managers and officials to innovative urban management philosophies and policies in other developing countries, particularly Brazil, and apply these where appropriate;
12. Develop effective joint management systems with all relevant provincial and national departments;
13. Allocate sufficient resources to regenerate Johannesburg in a way that improves rather than worsens the situation of the poorer segment of the population, with particular focus on the position of women.

The Government of South Africa should:

14. Without any further delay ratify the International Covenant on Economic, Social and Cultural Rights of 16 December 1966.



Photo: Jean du Plessis

ANNEXURES

ANNEX A: KEY INFORMANT INTERVIEWS

(In chronological order)

1. Ms Li Pernegger, Programme Manager: Area Regeneration, Economic Development Unit, City of Johannesburg, 30 March 2004
2. Dr Marie Huchzermeyer, Coordinator: Postgraduate Housing Programme, University of the Witwatersrand, 30 March 2004
3. Mr Moray Hathorn, legal representative of a various inner city residents threatened with eviction, Webber Wentzel Bowens Attorneys, 30 March 2004
4. Ms Carien Engelbrecht, World Bank, 31 March 2004
5. Geoff Mendelowitz, Manager: Better Buildings Programme, Johannesburg Property Company, 1 April 2004
6. Ms Leila McKenna, CEO: Johannesburg Property Company, 1 April 2004
7. Mr Greg Vermaak and Mr Clinton Povell, legal representatives of Johannesburg City, Moodie and Robertson Attorneys, 2 April 2004
8. Ms Nellie Agingu, Executive Director: Planact, 2 April 2004
9. Ms Rebecca Himlin, Programme Manager: Planact, 2 April 2004
10. Ms Shereza Sibanda, Representative of the Inner City Forum, 2 April 2004
11. Mr Thulani Magoma, member of Inner City Forum and resident of Johannesburg inner city, 3 April 2004
12. Mr Innocent Mazeka, member of Inner City Forum and resident of Johannesburg inner city, 3 April 2004
13. Mr Yakoob Makda, Regional Director: Region 8, City of Johannesburg, 6 April 2004
14. Mr Martin New, Manager: Inner City Renewal Programme, Region 8, City of Johannesburg, 6 April 2004
15. Mr Andrew Wheeler, Inner City Renewal Programme, Region 8, City of Johannesburg, 6 April 2004
16. Ms Odette Crofton, Social Housing Foundation, 7 April 2004
17. Ms Karen Brits, Director Legal Services, City of Johannesburg, 8 April 2004

18. Ms Lauren Royston, Director of Development Works, 8 April 2004
19. Ms Salome Sengani, Executive Manager: Home Ownership Division, National Housing Finance Corporation, 13 April 2004
20. Mr Luthando Vutula, Head: Alternative Tenure, National Housing Finance Corporation, 13 April 2004
21. Dr Mark Napier, Director Research, National Department of Housing, 13 April 2004
22. Ms Durkje Gilfillan, Director: Legal Resources Centre Johannesburg Office, 13 April 2004
23. Mr Taffy Adler, CEO: Johannesburg Housing Company, 15 April 2004
24. Mr Chris Lund, Johannesburg Trust for the Homeless, 15 April 2004
25. Mr Michael Oelofse, Housing Finance Resource Programme, 16 April 2004
26. Councillor Sol Cowan, Member of the City of Johannesburg's Mayoral Committee responsible for the Inner City, 16 April 2004
27. Mr George Huntley, Manager: Housing, Region 10, 19 April 2004
28. Mr Patrick Lephunya, Director: Region 6, City of Johannesburg, 19 April 2004
29. Mr Neil Fraser, CEO Central Johannesburg Partnership, 20 April 2004
30. Councillor Strike Ralegoma, Member of the City of Johannesburg's Mayoral Committee responsible for Housing, 27 May 2004
31. Ms Uhuru Nene, Director: Housing, City of Johannesburg, 27 May 2004

ANNEX B: COMMUNITY BASED INTERVIEWS AND FOCUS GROUPS

(In chronological order)

Inner City

1. Manhattan Court, 28 April 2004
2. Park Court, 1 May 2004
3. Junel House, 4 May 2004
4. Milton Court, 6 May 2004
5. Khanya College, 10 May 2004
6. The Four Joel Street Properties, several visits 23 May to 27 November 2004
7. San Jose, several visits 1 July 2004 to 27 November 2004
8. Kingsfold Mansions, 25 July 2004

Informal Settlements

9. Mandelaville / Sol Plaatje, several visits 1 May 2004 to 27 November 2004
10. Thembelihle, 9 May 2004
11. Zandspruit Informal Settlement, 13 May 2004