In SERI’s Community Practice Notes we document the struggles of communities in different settlement contexts in South Africa.

From Carr Street to MOTH
Johannesburg Inner City Alternative Accommodation Series

SERI’s second set of Community Practice Notes are a series on struggles for access to adequate housing in inner city Johannesburg. They highlight the histories of resisting evictions and the ongoing challenges faced by people in the relocation sites where alternative accommodation has been provided by the City of Johannesburg.

The right of access to adequate housing, enshrined in section 26 of the Constitution, is the most fiercely contested and frequently litigated socio-economic right in South Africa. Municipal provision of alternative accommodation where an eviction would otherwise result in homelessness is one of the key legal principles that has been developed through the case law. The courts have not, however, given content to what constitutes adequate temporary alternative accommodation. Residents have been provided with different alternatives, and municipal roles in developing and managing the accommodation are varied. The obligation is more a matter of hastily complying with a court order than a planned response that proactively addresses the right to housing.

The series documents how communities who lived in “bad” buildings in inner city Johannesburg were involved in litigation in defence of their housing rights. It explores their experiences of the alternative accommodation provided by the City of Johannesburg.

*From Carr Street to MOTH* is the second Community Practice Note in the series.

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From Carr Street to MOTH

*From Carr Street to MOTH* is the second in SERI’s Inner City Alternative Accommodation Series.

It provides a brief background to the Carr Street building, highlights key events in the struggle against eviction, examines residents’ experiences of life at the MOTH building and provides some conclusions regarding the provision of alternative accommodation.

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About Carr Street

Before it was demolished the Dina Glassware building was located at 112-114 Carr Street in Newtown, Johannesburg. Prior to its occupation the building was used for light industrial purposes. As of 2008 it was home to about 130 people, many of whom had lived there since 1995. Of these, 25 were children and 14 households were headed by women. The building was three storeys high and people lived in the top two floors. The building was in a poor state. Although the building had running water, there was no electricity, and the three toilets which serviced the entire building could only be flushed with buckets. The residents used chipboard and other materials available to them to partition the space into rooms. Most of the residents lived on very little income, and unemployment or underemployment was common, with many earning a living in the informal sector or in other precarious work.

The average household income at the time of relocation was approximately R580 per month. Many of the residents depended on informal livelihood strategies for their survival. These included hawking fruit and vegetables in the inner city or at taxi ranks, collecting paper or plastic for recycling or doing “piece-work”.

Figure 1: Johannesburg inner city relocation cases
Key Events

2006
Infringement notices

2008
Circumventing PIE
Eviction by fire

2007
Police raid

2009
City’s last ditch fightback
A contested relocation process

2014
Fire at MOTH
Accommodation at Linatex

Figure 2: Summary timeline
BEGINNING IN 2006, THE CARR STREET PROPERTY OWNERS RECEIVE SEVERAL INFRINGEMENT NOTICES FROM THE CITY OF JOHANNESBURG REGARDING THE BUILDING’S UNACCEPTABLE LIVING CONDITIONS AND LACK OF FIRE-PREPAREDNESS. RESIDENTS LIVE IN VERY POOR CONDITIONS BUT LACK OTHER PLACES TO GO.


THE COMPANY MANAGING THE CARR STREET PROPERTY IS CALLED CHESTNUT HILL INVESTMENTS. CALS AND THE CHESTNUT HILL ATTORNEYS CORRESPOND CONSTRUCTIVELY FOR A WHILE AND THE POSSIBILITY OF SEEKING A MUTUALLY ACCEPTABLE SOLUTION WITH THE ASSISTANCE OF THE CITY OF JOHANNESBURG IS RAISED.

The process of compiling a complete list of occupiers begins in February 2008. This is an extended process which needs to be done on weekends or evenings, requires fieldworkers who can speak the residents’ languages, and has to be performed with sensitivity, patience and attention to detail.

While this process is still underway, police raid the building, on 10 April, and they arrest several people, all of whom are released later that same day. During the raid a police officer hands Johannes Maite, one of the residents, a notice to vacate, apparently under the authority of Chestnut Hill Investments. During the raid many of the residents’ possessions are destroyed and some are stolen.

Two days later, on 12 April, the police return to the property and arrest the majority of the occupiers on charges of trespassing, which had been laid against them by Hercules Bezuidenhout, a Chestnut Hill director. The residents’ possessions are removed from the building and the entrance sealed. All of the arrested occupiers are again released the same afternoon. With the charges dropped, CALS lawyers obtain a spoliation order that night, ordering that the occupiers be allowed back into the building. CALS lawyers later argue that this attempt by Bezuidenhout to evict the occupiers via trespass charges, which is illegal under the PIE Act and violates the occupiers’ constitutional rights, can only be understood as an attempt to illegally circumvent the eviction process required by the PIE Act.

**CIRCUMVENTING PIE**

I came to Johannesburg for work in 1980 and I lived in domestic workers’ accommodation most of the time. I had polio as a child and it affects my leg and my movement. Then I lost my job and for a time I slept on the street near the Bree Street taxi rank. In 2004 a man told me about the Carr Street property and I moved into Room 216, which I had to share with five other people. They were all unemployed and had no income. The room was partitioned with curtains for privacy.

I get a disability grant of R960 per month, which I use to support myself and my two children. I was 56 years old when the eviction application was launched.
After the spoliation order is granted in April, the occupiers hear nothing from Chestnut Hill until a formal application for eviction is served on them on 4 August 2008.

On 14 August there is a fire in the building, apparently started by an unattended candle in one of the rooms. After the fire Chestnut Hill alleges that the building has been made unliveable, that the occupiers had vacated after the fire, and that therefore the eviction order should be granted. However, the occupiers are still living in the remaining portions of the building and submit evidence to this effect, defeating this new attempt to achieve summary eviction.

Approximately a year after the eviction application was launched in August 2008, the matter is settled by the parties on 21 August 2009. Judge Claassen makes an order in the South Gauteng High Court to the effect that the occupiers are to vacate the premises by 15 November 2009. The City is ordered to accommodate the Carr Street residents in the so-called ‘MOTH’ building at 14 Noord Street in downtown Johannesburg, also by 15 November. CALS is ordered to create a detailed list of the occupiers within 14 days, and the occupiers are ordered to participate in a City job skills programme. The residents will pay R25 per month in rental, and Chestnut Hill Investments agrees to pay the City R1.5 million towards the costs of relocating, housing, and training the residents. Importantly, the City is only ordered to accommodate the residents at MOTH for a period of 12 months. The MOTH building is clearly understood to be “temporary accommodation” to be used while the City and the residents seek alternative housing options.

On 18 September the City attempts to amend the terms of the court order which specifies the settlement agreement. It argues that refurbishing the MOTH building is too expensive, that the monetary contribution made by Chestnut Hill is too little, and that it has no way to absolve itself of responsibility for the occupiers’ accommodation once the 12-month period is concluded. The City is reminded by lawyers for Chestnut Hill and the occupiers that it agreed to the terms of the settlement and cannot appeal them, and in any case has already accepted some of the Chestnut Hill monetary contribution. It is also shown by the lawyers for Chestnut Hill that the claims about affordability are misleading at best, as the City is expected to gain significant benefits from the Chestnut Hill development. The City ultimately abandons its attempt to amend the court order. On 13 November, all of the residents are moved to the MOTH building.

As the order was granted by consent, there is no judgment and it is not reported.
October-November

A CONTESTED RELOCATION PROCESS

From the end of October, CALS engages with the City on how to manage the relocation of the occupiers to MOTH, due for 15 November, and on what terms the residents will be accommodated at MOTH. The two parties meet on 5 November. There is agreement on some issues, such as how the relocation process, now scheduled for 13 November, will work and how property will be stored on the premises. The City agrees to draw up house rules and a lease agreement to be sent to the Carr Street residents and their attorneys for comment. However, some issues remain unresolved after the meeting. The City’s plan for dormitory-style accommodation segregated by gender is not acceptable to the residents. Households made up of people of different genders would be split up, and in any case households would not be allowed to sub-divide the dormitories into small living spaces. The Carr Street residents and CALS argue that this would make family life impossible and force the residents to live without privacy and dignity. The dormitories would be very large and would not allow residents to have any private space they could call their own.

Some of the Carr Street residents visit the MOTH building on 11 November. They view the building as being unsuitable for accommodation. The residents view the lack of partitioning and enforced gender segregation as unacceptable violations of their constitutional rights to privacy, dignity, and family care. With their eviction looming on the 15th, and having received a very aggressive letter from Chestnut Hill on the 11th, threatening a damages suit if there is any delay, the residents agree to move to MOTH but to do so under protest. They explicitly retain the right to challenge the terms of their residency at MOTH.

On 13 November the Carr Street occupiers move to the MOTH building. The lease agreement and house rules have not been finalised at this point, so they move in without signing any documents. It is agreed that once these are finalised and agreed, they will be signed by the MOTH residents. There is significant contestation regarding the terms of the lease, especially the repair and maintenance obligations it places on residents, and a meeting is set for 27 November to resolve these issues. It is delayed for a number of reasons and the issues remain unresolved.

2010-2013

CONDITIONS AFTER THE RELOCATION

Over time households begin living together on the same floor and sub-dividing spaces for themselves. The effects of the gender-segregation are still evident, as floors are still predominantly occupied by men or women and children, but there are now some families living together. The building looks very different from when residents moved in. Rather than each floor being a large dormitory, residents have their own closed personal spaces which they create from materials such as bed-sheets, curtains, cardboard and plywood.

Maintenance of the MOTH building leaves much to be desired. As of April 2013, only one toilet and one shower is working. The access control system is no longer functional, and while the main entrance is still locked by a security guard at night, during the day there is effectively no process by which entrance is restricted to residents and their
guests. A February 2013 baseline Health and Safety Audit commissioned by SERI assesses the physical environment of the building and identifies a number of serious safety hazards. The building represents a significant fire hazard, and fire-fighting equipment such as extinguishers and fire hoses are found to be inadequate. Emergency and main exits are often locked and the keys are held by sometimes absent security guards. The fire hazard is mainly due to unsafe electrical connections, gas leaks, and the prevalence of flammable materials that residents use to sub-divide their rooms. The residents live very close together in overcrowded conditions and there is insufficient ventilation. There is a significant risk of electrocution due to crisscrossing electrical wires and the risk of flooding. This is partly due to very bad drainage and toilet facilities which do not flush.

2014

FIRE AT MOTH AND EMERGENCY ACCOMMODATION AT LINATEX

On the night of 24 May 2014 there is a fire on the top floor of the MOTH building. It destroys the possessions of the approximately 60 people who live on this floor, and renders them all homeless. From 25 to 31 May there is a process of consultation with the Gauteng MEC for Human Settlements, Jacob Mamabolo, who has just come into office after the national elections, and the MMC for Housing in Johannesburg, Dan Bovu. While this process is promising at first, it later falls through. On 26 May the Johannesburg Emergency Management Services (EMS) inspects the building and concludes that continued occupation could lead to the building collapsing. In light of this finding, Dan Bovu makes a speech at the building promising that all of the MOTH residents will be relocated to the Linatex building on 27 and 28 May after undergoing registration by the City. Residents are concerned about moving to Linatex, however, because as part of the City’s “managed care model” the Linatex building incorporates rules such as daytime lockouts and very strict gender segregation. In response Dan Bovu promises that the daytime lockout rule will not be implemented, that families will be allowed to live together, and that a permanent housing solution for the MOTH residents will be developed and proposed within 14 days.

RESISTING THE RULES

On 28 May residents are registered by the City but not relocated, and on 29 May, City representatives deny that the MMC made some of the promises outlined above. They say that MOTH residents will only be moved to Linatex once they have agreed to the Linatex rules, and that these rules will only be relaxed for the first 14 days of residence. They deny that any promise was made regarding permanent accommodation. This creates a significant dispute about the terms on which residents will move to Linatex. The City also explains that they will initially prioritise the relocation of those most desperate, which means those from the burnt out third floor, rather than all of the residents.
On 30 May the residents’ lawyers agree that the residents will move to Linatex as the dilapidated state of MOTH essentially gives them no choice. They do not agree to the daytime lockout rules or that families be split up. In response, the City hands a draft agreement to residents and their lawyers during the relocation process on 31 May, and makes further relocation contingent on this agreement being signed. The agreement contains a number of conditions which the residents have already refused to accept, such as agreeing to the Linatex rules. The residents say they will only move to Linatex on the understanding that they reserve the right to challenge the Linatex rules and seek court protection from eviction from Linatex without a court order. In response to this the City halts the relocation, with only 29 residents having moved.

A meeting is held between the different parties on 2 June which leaves the main issues of family accommodation and daytime lockout unresolved. Nevertheless, a number of residents move into Linatex over the next few days even as the terms of residence are disputed. Once approximately 50 families have moved into Linatex, the relocation process is closed as the City says there is not enough space to accommodate any more residents. The rules the residents object to are not ultimately enforced. Once again, families are forced to erect makeshift partitions for privacy.

The vast majority of the residents who lost their homes to the third floor fire move to Linatex, while the other residents mainly stay at MOTH. As things stand those residents are still at MOTH, in an overcrowded, unsanitary building which the City’s EMS concluded was liable to collapse. The third floor of MOTH is in the process of being refurbished, possibly to allow for the return of the Linatex residents, though as of the beginning of 2016 very little work has been done.

Figure 4: Accommodation at Linatex
Background to MOTH

The MOTH building used to be owned by the Memorable Order of Tin Hats, a war veterans’ organisation which gave the building its name. MOTH is made up of three floors and a basement, with a large communal kitchen and dining room. At the end of each floor there are a number of toilets and communal showers. Each floor is essentially a large empty hall, with no sub-divisions. The City uses these halls as vast dormitories. When the residents first move into the building they are initially accommodated on a gender-segregated basis, with families split up between the different floors of the building. Access to the building is initially controlled by a biometric security system and the main gate is locked at 10pm by a security guard.

Life at MOTH

Family relations and privacy

The initial separation of men from women negatively affects family life, as it limits the ability of families to work as a unit and maintain mutually supportive relationships. This is addressed to some extent by residents moving across floors and largely ignoring the gender segregation rules, but this leads to other problems in a building not designed for family living.

The division of personal or family space by using curtains and other insubstantial material does not allow sufficient privacy for couples to comfortably have intimate relations, and also places limits on the extent to which families may feel that they have their “own space”. This issue is exacerbated by the extreme overcrowding of the MOTH building. There is overcrowding both in terms of the building as a whole, which is too small for the number of people residing there, and within the spaces sub-divided by curtain or bed-sheet. This places limits on privacy both because different households live extremely close to each other, and also because within households all the household members share a very small space. It is not uncommon to have parents sharing their beds with their children, or to have people sleeping on the floor.
Health and wellbeing

Health concerns remain a serious threat to all. Residents suffer from various illnesses, including some very serious and easily communicable diseases such as tuberculosis. The over-crowding and lack of effectively segregated private space increases other residents’ vulnerability to contracting these kinds of diseases. As of February 2013, four residents had died of active tuberculosis. Contributing to the unhealthy conditions associated with living at MOTH is the lack of effective maintenance and cleaning by the City. Residents live in dirty, unsanitary and unhygienic conditions, with the contract for a cleaning company having expired and not been replaced.

Children’s issues

Early in their residency, when there is still unused space in the building, the residents ask if they can establish a space for children to be cared for and supervised. The City refuses this request. Partly as a consequence of this, the children at MOTH face severe challenges.

Figure 3: Location of MOTH building
The physical infrastructure of the building does not allow for safe places for children to play and children often sustain injuries such as burns and cuts. The living spaces are used for cooking, sleeping and playing and the staircases are unsafe. Children have little space to move around and consequently exhibit delayed development when it comes to achieving milestones such as crawling and walking. The unsanitary and limited nature of the toilet facilities also limits the ease with which children may become toilet trained. The lack of a designated children’s space as well as general overcrowding and lack of privacy in the building mean that children are frequently exposed to age-inappropriate behaviour.

Experiences of some MOTH residents *

**Jabulile Mthembu (54)**

Before living at MOTH I lived at Dina Glass for five years. I had been living in other buildings in the CBD but I was not happy until some of my friends who lived in Dina Glass took me in. I was relocated here with all the other residents in 2009.

I was not prepared to stay here for so long. I only tolerated this place when I thought it was temporary. We were promised to be relocated after a year.

Living conditions have worsened from the time we moved in. We used to have hot water and working toilets. We have been living without hot water for more than six months now and most of the toilets in the building are not working anymore. There are leaking pipes which cause flooding in the building. The taps in the building have been leaking since even before we got here. I would say this building is no longer suitable for human habitation.

We were all meant to move to Linatex but I didn’t want to move because Linatex is just the same as this place. However, not everyone was relocated and we were never given reasons why. We need the housing department to move people out of this place to a suitable place.

**Sesethu Carol Jali (51)**

Before moving into the MOTH building I lived in Dina Glass for approximately six years. I was looking for a place to rent and that is how I found Dina Glass. The owner later wanted to evict us and we managed to find lawyers to help us. We were then relocated to MOTH in November 2009. We were only meant to be here for 12 months; that is the agreement we entered into but we are still here today, six years later.
It has been hard having to live with my children here. We live in an open space, separated only by curtains; there is no privacy. We forcefully opened this section I’m living in now to try and create better living conditions. I live with three children and three grandchildren all in this one room. When we got here we were separated according to gender. I felt that it was wrong and I raised it; you cannot separate families. People have now moved in with their families. However, these curtains reveal everything; you see everything. Children are exposed to things that adults do and they come and ask you about it; how do you explain it to them?

The City needs to move us out of here. We want permanent places. We do not want to be moved from shelter to shelter. They need to get us places that will be allocated according to needs and size.

Pearl Mbelu (31)

I came to live at MOTH in 2009. Before that I was living at Dina Glass. I needed a place to stay while looking for work and so I found accommodation at Dina Glass. I lived there for six years before moving to MOTH. I moved in here with the father of my child. We stayed together with him in the building for a year until he left. He left due to the separation of genders that was enforced on us. So I have been badly affected by it.

People have now moved in together. There are some challenges with that because with the curtains you hear everything that is said and you see everything that is done; there is no privacy.

We also have a problem with security; it is not safe at all. You can’t lock your stuff anywhere.

*all names have been changed
From Carr Street to MOTH documents a struggle for access to adequate housing and against illegal evictions in a context where the City was reluctant to provide alternative accommodation.

Legal action was crucial in preventing the Carr Street occupiers from being summarily evicted by illegal police action (at Chestnut Hill’s behest) in 2008. The protection offered to residents by the PIE Act, made tangible by their having legal representation in the form of CALS, contributed towards a settlement being reached regarding eviction and the provision of temporary accommodation. However, the unsatisfactory nature of this temporary accommodation could not be effectively resisted by legal means. In two cases (the move to the MOTH building and when some residents relocated to Linatex) the residents were forced to move “under protest” as their material circumstances did not allow for resistance to relocation.

The MOTH residents face severe deprivations in multiple aspects of their lives related to their accommodation. The conditions in which they are forced to live in the MOTH building are clearly unacceptable. The City is ostensibly the manager of the building. Since the relocation, however, the City has done very little to manage MOTH and ensure that the residents are living in habitable conditions. It is difficult to avoid the impression that the City has abandoned the MOTH building, and effectively written off the residents’ struggles for a dignified existence as a lost cause.

A clear issue which arises out of the Carr Street relocation is that of supposed temporary alternative accommodation becoming permanent. Judge Claassen’s 2009 court order placed the Carr Street occupiers at MOTH for 12 months. At the time of writing this report, the residents have been at MOTH for over six years. Residents at MOTH and Linatex experience the absence of affordable, formal rental alternatives acutely. While the policy implications might be clear – that the City should develop an affordable rental programme – this Community Practice Note raises questions about what strategies will best serve the MOTH and Linatex residents. At the very least the City needs to manage and maintain the building better.
Recent legal victories regarding the form that state-provided accommodation must take in the ongoing *DladiLa*\(^2\) matter (which is detailed in the third Community Practice Note in this series) are significant for people living at MOTH and Linatex. *DladiLa* provides a framework for more humane house rules that promote the rights to dignity and family life, against which the City’s rules and practices can be judged.

Although further litigation to enforce the City’s obligations as a building owner may improve conditions at MOTH, the fundamental problem remains the absence of a humane programme to give effect to the City’s obligation to provide temporary accommodation to people evicted from their homes. Gender segregation to the point that it splits up families and accommodation in large single-sex dormitories are clearly inappropriate if temporary accommodation is likely to be occupied for several months, or even years after a relocation. Conditions in temporary accommodation provided on these terms rapidly deteriorate, destroy the bonds of solidarity and self-respect on which people rely, and quickly return residents to the very slum conditions that helped justify their eviction in the first place.

A further problem is the City’s apparent reluctance to do what is necessary to make sure that temporary accommodation leads to affordable permanent housing options. “Affordable” rental housing does not reach those likely to be placed in temporary accommodation. A public rental housing programme which provides basic accommodation at long-term rents that occupants of temporary accommodation can realistically afford is urgently required. Until that accommodation is provided, “temporary accommodation” like MOTH will, in reality, be permanent, making the appalling conditions the residents face there all the more unacceptable.

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\(^2\) *DladiLa and Others v City of Johannesburg Metropolitan Municipality and Another (39502/12) [2014] ZAGPJHC 211; 2014 (6) SA 516 (GJ); [2014] 4 All SA 51 (GJ) (22 August 2014)*
Court Judgments

SERIES 2

1. From San Jose to MBV 1

2. From Carr Street to MOTH

3. From Saratoga Avenue to MBV 2 and Ekuthuleni