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

From San Jose to MBV 1
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 San Jose to MBV 1* is the first Community Practice Note in the series.

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From San Jose to MBV 1

From San Jose to MBV 1 is the first in SERI’s Inner City Alternative Accommodation Series.

This Community Practice Note refers to a case known as “Olivia Road”, in which the Constitutional Court ordered the City of Johannesburg to provide accommodation for 332 people it sought to evict from unsafe buildings. The occupants of San Jose were provided with alternative accommodation in two buildings, called MBV 1 and Old Perm. This Community Practice Note documents experiences of residents at MBV 1.

It provides a brief background to San Jose, highlights key events in the struggle against eviction, examines residents’ experiences of life at MBV 1 and provides some conclusions regarding the provision of alternative accommodation.

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About San Jose

San Jose is a block of flats in Berea, Johannesburg, which was built in the 1960s. It is located on the corner of Lily Avenue and Olivia Road, about three kilometres from the Johannesburg CBD. At the time of the relocation approximately 322 people lived in the 16-storey building and three of the 129 units were owner-occupied. Historically, the building was owned under sectional title arrangements and managed by a body corporate. Over time most white owners moved out of the inner city and rented out their units to black people who were moving to the inner city as population “influx control” broke down under urbanization pressure at first and then with the end of Apartheid.

Various managing agents took over billing and collection functions which were, at first, performed effectively. Gradually, however, payments from the managing agents stopped and in due course rental payments also ceased. Formal tenancies gave way to informal occupation and by the time of the eviction proceedings the building was in a very poor state; it had no water and electricity, and residents used paraffin stoves for cooking and candles for light. They begged for water from neighbouring buildings. However, the residents, who mainly work or look for work in the inner city, had nowhere else to live. The building was their home.

Figure 1: Johannesburg inner city relocation cases
02
Key Events

- **1994–2004**: Occupation and informal building management
- **2006**: Eviction attempt and the High Court proceedings
- **2008**: Cons Court Judgment & Relocation
- **2012–2015**: Division and loss of hope. New ways of doing things?
- **2004**: City inspections
- **2007**: SCA & Cons Court; Meaningful Engagement & Settlement Agreement
- **2009–2011**: Building management problems and further legal steps

*Figure 2: Summary timeline*
Pre-1994

SECTIONAL TITLE COLLAPSES

From its construction in the 1960s up until the early 1980s, San Jose’s units are owned exclusively by white residents. They begin to leave the building as Africans move into Berea in the late 1980s and early 1990s, after the collapse of influx controls in the mid-1980s. The sectional title scheme collapses over several years: as owners leave the building various letting agencies manage the different units under the supervision of a body corporate, but the body corporate dissolves in 1994 after it runs up substantial water, electricity and rates debts. Largely informal rental arrangements develop between new, mainly African tenants, and white owners.

1994-2004

OCCUPATION AND INFORMAL BUILDING MANAGEMENT

In this period, spanning more or less a decade, the building is managed by a residents’ committee. The residents’ committee has a ‘petition’ that most people sign to agree to the building rules. The petition is an agreement, or covenant, that consists of written rules and a list of names and signatures. On entry, people pay a once-off joining fee. It is not a rental payment and it does not recur. One of the rules concerns keeping the building clean and all residents are expected to participate in the Sunday morning clean-up.

2004

CITY INSPECTIONS

On 31 March the City inspects the property. It issues a section 12(4)(b) notice in terms of the National Building Regulations Act 103 of 1977. The notice says the building is not fit for human habitation and it requires the residents to vacate the property. The parking garage is filled with waste and sewer water as well as refuse; the fire escapes are filled with refuse and are unusable; there is no fire-fighting equipment in the building; all the courtyards and other open spaces are filled with refuse; one passage on the first floor is flooded with sewer water; and the lift shafts on the ground floor are open and filled with water.
The City launches eviction proceedings against more than 300 people from six buildings in the Johannesburg inner city, including the residents of San Jose. These cases are collectively named “Olivia Road”, after the street address of San Jose, where most of the residents facing eviction live.

Another building in the case is located on Main Street in the Johannesburg CBD. A commercial property that once housed a car repair company, it belongs to a close corporation known as Zinns Investments but the property has been abandoned by the owners and 23 people live in the empty workshop and two small rooms adjacent to it. Residents lack the safety of a gate or door on the street-front and there is no kitchen, bathroom or toilet. The building lacks water and electricity.

In the eviction application the City relies on the notices that were issued under the provisions of the National Building Regulations and Building Standards Act. The City argues that it has the right to order residents by notice to vacate a building if it is necessary for their safety. If residents fail to vacate the building, the City contends that it is entitled to apply for an order of court for their eviction.

The residents argue that many of them have been in occupation for a substantial period of time; they are desperately poor; most of them have no formal employment; and many of them have no income. They argue that that they cannot be evicted without alternative accommodation being provided; and that the City of Johannesburg’s housing policy is deficient because it makes no provision for people living in unsafe buildings to be provided with alternative accommodation.

The eviction application is heard by Judge Jajbhay of the Witwatersrand Local Division of the High Court. In February Judge Jajbhay decides to visit the buildings. He finds the condition of the buildings appalling, abysmal and at times disgraceful; that the occupants are in an emergency situation; and that there exist fire and health hazards. He finds that the occupiers are forced to live in these conditions because they have nowhere else to go. He also finds that, if the City wishes to eradicate these conditions, then it must provide better and safer accommodation for those currently living in them.

Judge Jajbhay declares that the City’s housing programme falls short of what is legally required, orders the City to produce a programme to cater for those people in desperate need, and interdicts the eviction of the residents without the provision of alternative accommodation.1

The City appeals against the order of Judge Jajbay to the Supreme Court of Appeal. The residents cross-appeal.

The Supreme Court of Appeal orders the eviction of the residents. Its reason is that the buildings they occupy are unsafe and unhealthy. The City is ordered to provide

1 City of Johannesburg v Rand Properties (Pty) Ltd and Others 2007 (1) SA 78 (W); 2006 (6) BCLR 728 (W); [2006] 2 All SA 240 (W)
those of the residents who are “desperately in need of housing assistance with relocation to a temporary settlement area”.2

The residents appeal the Supreme Court of Appeal order to the Constitutional Court, where it is argued in August. The broad questions before the Constitutional Court are “whether the order for the eviction of the residents ought to have been granted and whether the City’s housing programme complies with the obligations imposed upon it by section 26(3) of the Constitution.”3

MEANINGFUL ENGAGEMENT AND SETTLEMENT AGREEMENT

The residents and the City enter into negotiations and a number of meetings are held over the course of 2008. In October the parties, through their lawyers, reach a settlement agreement that the City will not evict the residents and that they will relocate voluntarily.

Two buildings are identified for the residents’ relocation: MBV Phase 1 and Old Perm, both in Hillbrow. MBV, formerly a hospital, is a four-storey building located on the corner of Koch and Claim streets. Old Perm, formerly a commercial building, is a six-storey building situated on the corner of Kotze and Claim streets. The buildings are within walking distance of each other. The parties agree that monthly rental will not exceed 25% of household monthly income.

The settlement agreement also provides for the installation of interim safety equipment in San Jose while the occupiers are waiting to relocate. This equipment includes fire extinguishers on every floor, access to water at a shared water point in the ground floor foyer, and the installation of port-a-loos in the courtyard.

The parties agree to a survey of all residents in San Jose to determine, among other things, monthly income amounts so that rental can be set at 25%.

The parties agree that MBV 1 and Old Perm will be provided on a temporary basis, but cannot agree on the permanent accommodation that will come after. Instead, it is agreed that the City will provide permanent accommodation at a later stage in consultation with the residents. However, time frames are not set.

2 City of Johannesburg v Rand Properties (Pty) Ltd and Others 2007 (6) SA 417 (SCA); 2007 (6) BCLR 643 (SCA); [2007] 2 All SA 459 (SCA)

3 Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg 2008 (3) SA 208 (CC).
CONSTITUTIONAL COURT JUDGMENT

The Constitutional Court delivers its judgment on 19 February⁴. The Court approves the settlement agreement entered into between the parties and declares 12(6) of the National Building Regulations and Building Standards Act unconstitutional. It also finds that the City made no effort to engage with the residents at any time before proceedings for their eviction were brought. Yet the City must have been aware of the possibility, even the probability, that people would become homeless as a direct result of their eviction. In these circumstances those involved in the management of the municipality ought at the very least to have engaged meaningfully with the residents both individually and collectively.

Also, the Constitutional Court holds that the City has constitutional obligations towards the residents of Johannesburg. It must provide services to communities in a sustainable manner, promote social and economic development and encourage the involvement of communities and community organisations in matters of local government. It also has the obligation to fulfil the objectives mentioned in the preamble to the Constitution to "(i) improve the quality of life of all citizens and free the potential of each person".

The Constitutional Court concludes that the Supreme Court of Appeal should not have ordered the eviction.

RELOCATION

Residents of San Jose relocate to MBV 1 and Old Perm over four days in October, once the City has completed the refurbishment of both buildings. The tenants sign lease agreements which require a deposit of R150 to be paid in instalments, with R25 due upon signing the lease agreement and moving in, R50 due on the first day of the second calendar month after relocation, and R75 on the first day of the third calendar month after relocation. Residents pay these amounts in October, November and December.

By the time of the relocation a monthly amount for rental has not been agreed. The reason is that the monthly income findings in the survey are disputed by the City. City officials involved in the negotiations argue that people cannot earn so little and that income and expenditure amounts do not tally. The City and the residents had agreed that monthly rental will be no more than 25% of the household income, but without agreement on household income, a value for rental is not settled.

⁴ Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg and Others 2008 (3) SA 208 (CC), para 3.
2009-2011

BUILDING MANAGEMENT PROBLEMS AND FURTHER LEGAL STEPS

By January 2009 the residents realise that the building has not been refurbished properly: water leaks and blocked pipes are common occurrences. Now that the litigation is over, it is difficult to obtain a hearing with the City about these problems. There are problems with building management as well: tenants struggle to develop a constructive relationship with the caretaker who sees them as “invaders”. The first building manager tries to let out storerooms to outsiders and when he is removed a replacement is not provided. The committee does not have anyone it trusts to report maintenance issues to. Without effective management, the city cleaners do not properly clean the bathrooms, toilets, kitchens, passages and courtyard. Coupled with the plumbing problems, it is not long before the building begins to decline.

SECURITY FAILURE

Security is outsourced and access control at the building entrance begins quite well. A biometric fingerprint system is installed. At first it gives people a sense of security, but when it breaks and is not fixed, security guards do not check people in and out regularly, and strangers easily access the building.

GETTING THE CITY TO PAY ATTENTION

When complaints at the building level are not dealt with, the residents resort to instructing their lawyers to engage the City in writing. In 2010 the residents’ lawyers send a list of problems that have arisen since the relocation. These relate to partitioning of communal rooms, plumbing problems, the fault-reporting procedure, contractors cleaning up after themselves, requests to use the second floor dining space as a play room for children, provision of space for people who work as cushion makers, security responsiveness to complaints, having a common room in one of the dining spaces for leisure activities, and setting up meetings with the City to discuss rental and to review room allocations. Further letters are sent in September and November as the City does not respond. In the November letter the tenants’ lawyers notify the City that it is failing to meaningfully engage on issues of building maintenance, partitioning of communal rooms, determination of rent and the development of a permanent housing solution. The residents also request a meeting with the City.

The City denies ever receiving a letter in September but it responds positively to the idea of meeting to discuss these issues. The meeting takes place in December. By this stage it has been well over a year since the residents moved into the building but, without agreement on monthly rental, rent is not being paid.

Following the December meeting, the City writes to the residents’ lawyers with proposals relating to rental, partitioning of common rooms, and a consultative process regarding permanent housing.
WRANGLES OVER RENT

The City proposes various rental amounts based on income. For people with a monthly income of less than R500, monthly rental will be R25 per bed. For individuals with a monthly income of more than R500 but less than R1000, rental will be R50 per bed. For individuals earning more than R1000, rental of R100 per bed will be due. The City indicates that partitioning will be done by 31 March 2010. Regarding the process of longer term permanent accommodation, the City will identify a process and submit it to the residents’ lawyers by January 2010.

However, while the City’s housing officials and the residents are still negotiating the appropriate amount of rental, the City’s lawyers send letters of demand to the residents, demanding payment of R600 per month in rent, and additional sums for property rates, waste management, electricity, water. The residents are threatened with eviction if they do not pay. This is completely at odds with the agreements negotiated between the City and the residents, and appears to be an administrative error by the City. Despite the City admitting that this was a mistake, the letters keep on coming.

The residents agree to pay the rentals negotiated by their lawyers from February 2010. But disputes soon arise regarding payment of rent because the lawyers’ contact person within the City leaves. Now the City wants rent to be paid from the date of occupation even though the amount is only agreed more than a year later, and the residents refuse to pay for the period when no rental was agreed. This refusal is also linked to the appalling state of the building and lack of adequate service provision and management by the City.

RESIDENTS DRAW THE LINE OVER PAYMENTS

In April 2010 the City contacts the residents’ lawyers to request a meeting. In that meeting, the residents make their demands clear:

• They refuse to back-pay arrear rental from the date of occupation because at this time no amount had been set and there has been no effective negotiation regarding rent in this period. The residents do not want to pay for what was the City’s fault.

• They request the City abandon its claims to “arrears”.

• They explain that they are willing to pay rental from February 2010, the date upon which an agreement for rental was reached.

• They refuse to pay tariff increases of 4.9% as proposed by the City, because such increases are not part of the lease agreements signed by the City and the residents.

• They make clear that if the City refuses to accede to these demands they will approach the courts.
CONFLICT OVER CLEANING

In October the City cleaners take up residence in the building without permission. By this time the relationship between the cleaning staff and the residents, especially the committee members, has degenerated because of the state of the building. This contributes to further breakdown in City-committee relations.

After numerous failed attempts to get the City to repair the problems in the buildings, the lawyers resort to lodging a court application to get the City to fix the problems, under instruction of the residents. The City does not respond to the papers through the formal court process, but contacts the lawyers in an attempt to resolve the matter. More correspondence follows between the City and the lawyers, with the City often slow in its responses.

DAWN RAID

In the early hours of 16 February 2010, City of Johannesburg officials, without notice, conduct a search of the MBV building. The City indicates that it is searching rooms for illegal occupants. The City is informed that the searches amount to improper raids that are in violation of the residents’ rights to human dignity and privacy, and the lawyers request to be notified by the City before any search of the building. In addition, they remind the City that if there are any illegal occupiers then this has to be seen as a result of the lack of effective access control of the building, which they have already raised with the City.

UNFINISHED BUSINESS

In January 2011 the City claims that some of the required works on MBV 1 were completed on 27 December and that remaining work will be completed in January. However, up to this point no work has been done on the building. In February some repair work is performed but it is substandard and inadequate, and the problems continue.

2011 is characterised by further exchanges of legal letters and perpetual physical problems with the building. In the meantime, little changes in the building and residents’ frustrations grow. They are reluctant to clean the building themselves because city cleaners are being paid to do so. The tenants’ committee begins to fracture as the leadership is no longer able to deliver on people’s complaints. A new building manager is appointed and relations are reasonable but his hands are tied because his reports to the City fall on deaf ears.

In August 2011 the lawyers write again to the City, on instruction of the residents, requesting that it attend to the outstanding maintenance problems in MBV 1. Specifically this relates to rooms that have mould as a result of water leaks, fixing the fingerprint identification system, partitioning communal rooms, and rectifying errors relating to some occupants’ accounts. The City’s attention is also drawn to fact that the building manager is failing to ensure that the house rules are properly implemented, has not been notifying residents about issues relating to their tenancy and has unlawfully allocated rooms to employees of the City.
SOCIAL RELATIONS FRAY

By now social relations are under considerable strain: in the relationships on the committee, between the committee and the community, and between the committee and the manager. The non-responsiveness of the City and the state of the building combine to undermine the relationship between the lawyers and the residents as well. The building is in such a state that residents begin to compare it to San Jose. MBV 1 floods due to leaking pipes, the walls are discoloured due to water damage, toilets are blocked, the building smells bad, stoves are not working, and the City’s cleaners no longer clean public spaces in the building.

In October a court application is launched on behalf of the residents after numerous engagements fail to get the City to repair MBV 1. After the court application is lodged the City begins to do the work and the court case does not proceed. Based on the fact that the City continues to ignore their requests to maintain the building, the residents have lost hope of getting the City to maintain the building without approaching the court for assistance.

2012-2015

COMMUNITY ADVOCACY

This is the last time a legal process is initiated. The lawyers identify the need for a different kind of capacity to support the residents and begin to facilitate it. Dialogues with other NGOs and social movements are held. They are useful but do not provide immediate results to either the internal dynamics in the community or the material conditions that people live in. SERI identifies the need for community advocacy work to support the committee and the residents beyond litigation and a position is created and filled to capacitate this function in this and other cases.

COMMUNITY LOSES GRIP

Meanwhile residents remain frustrated and some people begin to withdraw their support for the committee. When visits by family members and friends turn into much longer stays the committee is powerless to put a stop to it. Outsiders are invited into the building and internal room re-allocations occur, sometimes without the consent of the committee and building manager, sometimes with it and sometimes with agreement from only one of the parties. Committee members are themselves accused of breaking the rules. Re-elections are held at least twice but no-one else stands for nomination and the same people are elected. Tenure is secure, however, and people cannot be moved out of the building unless permanent accommodation is proposed and accepted.
LEADERSHIP FRACTURES
The leadership begins to lose hope and their participation on the committee waxes and wanes. On occasion conflicts turn into disputes and the committee seldom meets as a unit. Towards the end of 2013 SERI hosts a workshop with the leadership of several different client groups involved in litigation in inner city Johannesburg. MBV 1 participate in this workshop, and the others that follow in the course of 2014. Solidarity helps with morale for leadership but does not overcome the fractures that now widen.

FLICKERS OF HOPE SNUFFED OUT
Periodically things change and there is more reason for hope. For example, in 2014 an agreement is reached with the City that monthly meetings will be held with the residents and their lawyers. These proceed for several months, but communication soon lapses again. The City official stops responding, but the process has lost momentum because he does not seem able to produce results. The City’s official complains that he is acting in his position, while doing another job at the same time. He cannot get responses from his superiors to the tenders he prepares for approval for the maintenance work that needs to be done, in MBV 1 and elsewhere in the region.

NEW ENGAGEMENTS
At the end of 2015 the lawyers secure an inspection at MBV 1 by the Executive Director of Housing in the City. He is appalled at the state of the building. At the time of writing it appears that this high level visit may achieve some immediate results: mops and cleaning materials are delivered and stored and agreement is reached to produce a new register of residents. The temporary alternative accommodation appears permanent after nearly eight years of residence and no progress is being made on the permanent accommodation front.
Life at MBV 1

Background to MBV 1

MBV 1 is the first phase in the conversion of a former military hospital building into alternative accommodation, with MBV 2 being the second (see the third Community Practice Note in this series). MBV 1 is managed by the municipal housing department.

At MBV 1 people lived in shared accommodation, either in dormitories or family rooms, with communal kitchen and ablution facilities. Although the settlement agreement made provision for the dormitory rooms to be partitioned to ensure privacy, the partitioning is never constructed. Toilet, washing and laundry facilities are communal and people also share the three kitchens. The city envisages that the communal spaces, furnished with tables and chairs, will be used as dining rooms, but residents prefer to cook in the kitchen and eat in their rooms.

Figure 3: Aerial photo showing MBV 1. Note that MBV 2 is a second phase of the building refurbishment and was provided to some of the occupiers of Saratoga Avenue (see third Community Practice Note in this series).
Life at MBV 1

Cleaning and security

Cleaning and security are enduring concerns for people living in MBV 1. Public spaces in the building, such as passages, “dining rooms” and kitchens, are seldom adequately cleaned. Eventually the residents begin to undertake the cleaning function themselves. Residents frequently identify that security guards are either absent, asleep or otherwise unavailable. As a result, it is not uncommon for residents to see strangers in the building, undermining their sense of personal safety and security and contributing to unauthorised stays by unregistered people.

Tenure security and access to basic services

Residents of MBV 1 now have tenure security but their access to basic services is regularly compromised because of the neglected condition of the building. Numerous inspections over the years identify frequent flooding due to leaking pipes, discoloured walls due to water damage, blocked and unusable toilets, unpleasant odours and broken stoves in the kitchens. Electricity failure is not unusual. The settlement agreement establishes that permanent accommodation will be offered in consultation with the residents. Although tenure is secure at MBV 1, the expectation of permanent accommodation has not yet materialised and frustrations grow, especially among people living in the dormitory rooms.

Building management

Maintenance, cleaning and security issues are the symptoms of a building management problem. The building is managed by the housing department with a caretaker dedicated to MBV 1 and a building manager with responsibility for several inner city buildings. Despite this capacity, the tenants’ committee struggles to have its concerns addressed. The narrative above, outlining the residents’ experiences since relocating to MBV 1, shows that the City tends only to respond once court action is brought against it. Even then, the City’s responses have been inadequate. The City’s absence is at the heart of the issues that the residents face, whether it is building maintenance, cleaning, security, unauthorised building access or the absence of negotiating about permanent accommodation. Residents often refer to the way things were at San Jose, where, despite their insecure tenure, people experienced a kind of informal building management that many feel worked better then, than City management does now.

Social relations and privacy

Residents of MBV 1 live either in dormitory style accommodation in large rooms that were once general wards or in smaller, family rooms that were once private wards. Internal partitioning in dormitory accommodation is never formally undertaken after the relocation. Lack of privacy affects the single women and men living in these rooms.
The families sharing the smaller rooms also experience the hardship and loss of dignity associated with the lack of privacy. Their children are exposed to sexual activities at a young age. In addition, the long stays of visiting relatives that were characteristic of people’s lives at San Jose can no longer be accommodated at MBV 1, where visits require permission and are limited in length to a few days. Finally, when relationships end or children grow up, there are limited alternatives for access to alternative rooms, placing further strain on parents, former partners and older children.

**Experiences of some MBV 1 residents**

_Nomsa Nkabinde*

_I moved to Johannesburg from KwaZulu-Natal to look for work. I arrived at San Jose in 2005. I lived with my husband and two children; we now have three children. We both had no formal employment. Before moving to San Jose we stayed in a neglected building in the Johannesburg CBD. We were informed that the building will be renovated and we were evicted and literally lived on the street pavement. We had nowhere else to stay because we could not find affordable accommodation. A passerby advised us to look for a place to stay at San Jose because there were unoccupied rooms. Fortunately we found a place to stay at San Jose, an unoccupied unit. We did not pay rent and this was suitable for my family. San Jose was in a good position for us because I could go around Johannesburg CBD dustbins to collect recyclable material that I would sell to recycling companies._

_At the moment I live at MBV 1. I make a living by selling bed pillows in the streets of Johannesburg. But I trade under difficult circumstances because most of my goods are constantly confiscated by Metro police for what they term non-compliance with bylaws. My husband works part time as a security guard in the Johannesburg CBD._

*all names have been changed*
Samantha Ndlovu*

I moved to Johannesburg from KwaZulu-Natal to look for work. When I moved to Johannesburg I stayed with my brother, his children and wife and my two children. This was a temporary arrangement while I was looking for work. The flat was very small and could not accommodate all of us. In 2005 I found part-time work in a sewing factory. I had to look for my own place. I could not find any place to stay that I could afford from the little income I was making from my part-time job.

In 2006 I heard from people that there were vacant units at San Jose and I could get one. I went to San Jose and found an empty unit and I moved in with my two children.

After the Olivia Road judgment, I was moved to MBV 1. I currently stay alone. My children stay with my sister in KwaZulu-Natal. I moved them back to KwaZulu-Natal because they would be raised better in rural areas than in a big city that is unsafe at times. The room that was allocated to me is also not big enough to house me and my children. I send them money every month.

Thembisile Mathebula*

I moved to Johannesburg from KwaZulu-Natal in 1997 with my husband and three children at the time. We now have five children. We were both unemployed and lived in Soweto. My husband sold cigarettes on the streets. We could not survive from the little income he was making in Soweto. We moved closer to the CBD where we could find odd jobs. We first moved to an unoccupied building in Berea and we did not pay rent. Violent crime was rife in and around that building and we did not feel safe. We had to find another place to live but it was difficult because we could not afford to pay rent as we were both unemployed.

In 2006 we moved to San Jose after hearing that there were unoccupied units. San Jose was also suitable for our family because it was safer and it was convenient for making a living in the Johannesburg CBD. People also lived as a united community. We did not pay rent and this was a perfect place since my husband was selling cigarettes on the streets and I was also selling bed pillows on the streets of Johannesburg.

*all names have been changed
From San Jose to MBV 1 documents a struggle for access to adequate housing and against illegal evictions in a context where the City was reluctant to provide alternative accommodation. The courts played a critical role in this struggle. However, challenges are ongoing at the new building and the experience of relocation for residents has been mixed.

MBV 1 is managed by the City’s housing department. After spending seven years attempting to engage with officials at different levels in the City about managing the buildings, the residents are still living in a situation where the City does not manage the building actively or effectively, despite being the landlord. The absence of management creates significant quality of life hardships for people living in MBV 1 especially related to the unsanitary and unhygienic public spaces inside the building and a growing insecurity about the presence of unknown faces.

The priority building management issues are cleaning, security and access control, and maintenance. Although the City has capacity in place to perform these tasks (City cleaners, outsourced security guards, building managers and caretakers, and lease agreements) there is an absence of performance management. Only occasionally, when litigation is threatened, or when a senior official inspects the building, do the residents get a response. But even then it is only a matter of time before communication lapses again. These hard lessons might point to new ways of doing things: building cooperative relationships between residents and officials as soon as relocation takes place; experimenting with shared responsibility for certain functions like cleaning and the possibility of co-management; establishing clear lines of communication and management accountability.

The San Jose legal narrative covered in this Community Practice Note paints a disheartening picture about the City’s approach to its Constitutional obligations. Looking forward, this case, and the others in the series, shows that a more proactive strategy to occupied inner city buildings is required. Alternative accommodation policy development and implementation, rather than resisting having to provide alternative accommodation
by fighting cases in court, should be central to the City’s approach. Another aspect of a new City strategy should be meaningful engagement with residents when they are in occupation of inner city buildings and later, if relocation occurs, when they are residents in the alternative accommodation provided. This is preferable to the non-responsiveness and communication break-downs that currently best describe the City’s role.

The water and sewer problems at MBV 1 are severe. Whether or not a fundamental problem exists with the manner in which the building was refurbished is unclear. However, the building model at MBV 1 of rooms and shared facilities (common to MOTH, Ekuthuleni and Linatex as well and documented in the other Community Practice Notes in this series) means that maintenance of the common spaces is particularly important for functional living. So too are a cooperative set of social relations among building residents and an effective representative structure in order to deal with the tensions that are bound to arise in situations of communal living.

The San Jose/MBV 1 narrative holds important lessons about what happens to organisation when a relocation takes place. It tracks how a community once well organised and mobilised by a legitimate committee undergoes major changes after relocation. In this case, the leadership structure fractured as material circumstances deteriorated and as the committee was no longer able to have people’s complaints addressed. Inadequate building management also creates conditions in which divisions fester. Another complicating factor is when an existing ‘community’, however recently constituted, is relocated to two different buildings.

The case raises a number of issues about the payment of rent. The idea that ‘a culture of non-payment’ exists is misleading because it conceals a number of more complex factors that need to be addressed. Because the rental amounts took over a year to settle, residents did not begin payment immediately. The delay was the result of mistrust between the parties: the City officials believed people were lying about how poor they were and residents and their lawyers believed that the City could not afford to accept the results of a survey that demonstrated the scale and nature of housing need. Combined with the absence of management and maintenance by the City documented in detail here, and often inaccurate billing, this delay has created conditions where some residents are reluctant to pay. However, the rental amounts are low enough for people to afford them.

The broader impact of the Olivia Road Constitutional Court judgment is that a municipality cannot evict people from their homes without first meaningfully engaging with them. If it doesn’t, then it is broadly at odds with the spirit and purpose of the Constitution and can be taken to court, provided that the affected people can obtain access to lawyers. In addition to firmly establishing the meaningful engagement concept in law, the case provides direct, material relief to over 300 people with desperate housing needs.
However, residents continue to experience hardships in the alternative accommodation provided by the City.

Looking forward, while going the legal route offers some avenues for activating change, the most pressing intervention should be that the City puts in place appropriate building management capacity, including maintenance. Although MBV 1 was provided as temporary alternative accommodation, it has become a permanent place to live. This is because there are no other formal rental accommodation options that people without jobs and with very low incomes can afford. In this context, functional maintenance and management are even more crucial, as MBV 1 continues to deteriorate to the extent that it could become uninhabitable while the residents have nowhere else to go.
Court Judgments

City of Johannesburg v Rand Properties (Pty) Ltd 2007 (1) SA 78 (W):


Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg and Others 2008 (3) SA 208 (CC):
http://www.saflii.org/za/cases/ZACC/2008/1.html
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