

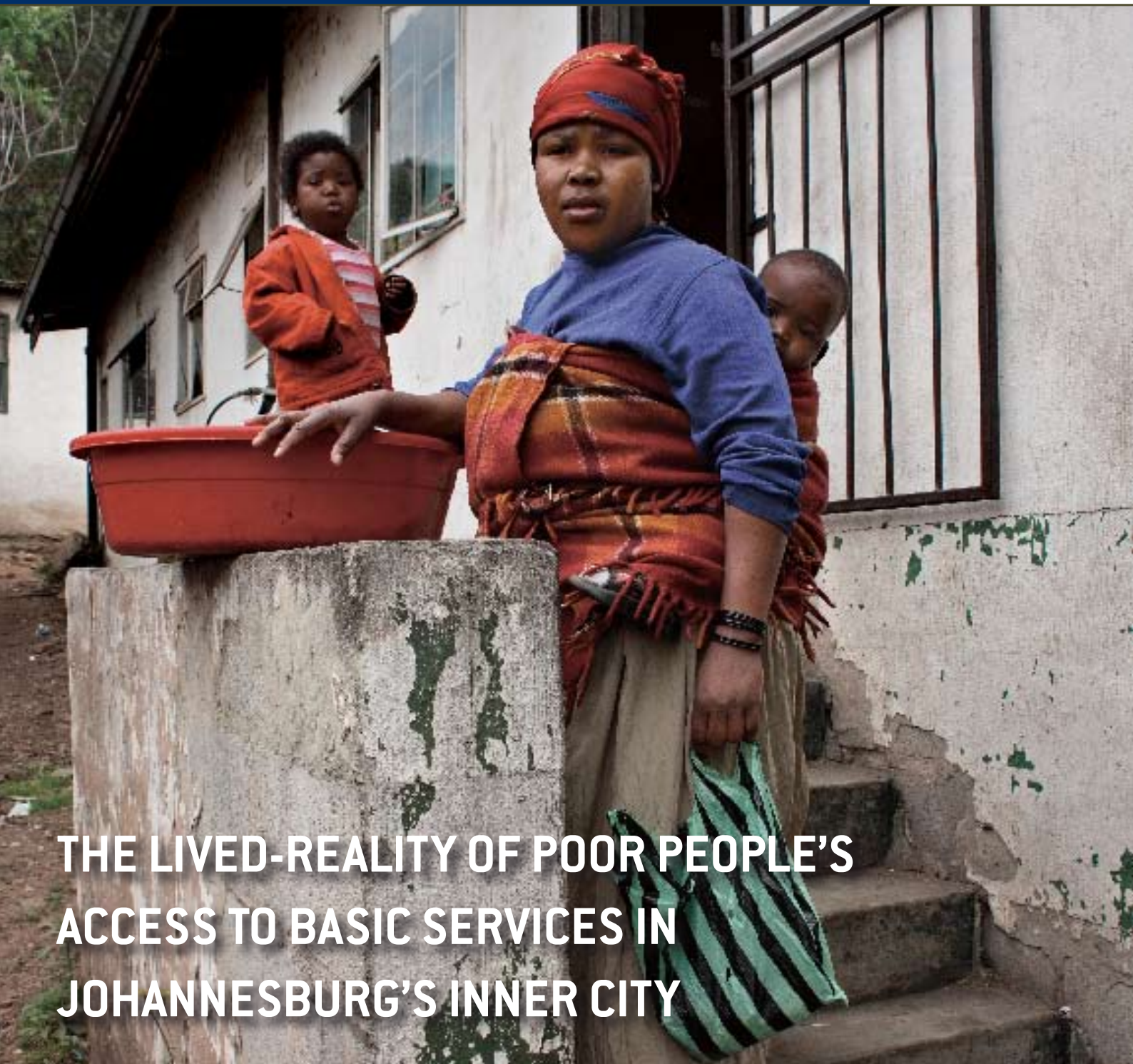
# A tale of six buildings

**CALS**  
Centre for Applied  
Legal Studies



ResearchReport

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**THE LIVED-REALITY OF POOR PEOPLE'S  
ACCESS TO BASIC SERVICES IN  
JOHANNESBURG'S INNER CITY**



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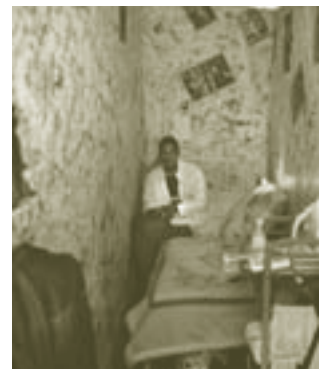
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# Preface

## & acknowledgements

This report was researched and written up over a fairly long period, between September 2006 and January 2008. The amount of time it took to conduct the research and to write the report reflects the complexity of the issues being researched. One of the complex issues we had to grapple with is the vulnerability of the subjects. Poor residents of Johannesburg's inner city live a very precarious existence, often harassed by police officers and officials, and they are understandably wary of interventions. As a consequence, it took a long time to gain the trust of the occupants of the six buildings in which we conducted the research and we are indebted to Shereza Sibanda, head of the Inner City Resource Centre (a not-for-profit organisation providing advice to inner city residents) for tirelessly assisting in our efforts to forge constructive relationships with respondents. We are very grateful to the occupants for their participation and interest throughout the course of the research.

Adding to the complexity and length of the research process, in the course of our engagement with residents we observed several services-related incidents (including disconnections of water supplies) that we wanted to respond to and document fully. To the extent that, in some instances CALS intervened to assist residents to secure access to basic water services, this social research was not detached. Moreover, we never intended the research to be an objective evaluation, and we did not interview City officials to elicit their explanations for the problems we observed. Rather, we

aimed to provide a socio-anthropological investigation of the systemic obstacles to accessing basic services in the inner city, as experienced by poor people and wholly from their perspectives (although we have contextualised the obstacles and experiences within a legal and policy overlay).

The fieldwork research was conducted by Alex Wafer and Muzi Ngwenya, with assistance from Shereza Sibanda. Policy research was conducted by Alex Wafer and Jackie Dugard. The research was written up by Jackie Dugard. Our thanks go to the Ford Foundation and to the Norwegian Centre for Human Rights for providing the funding for the research. Thanks also go to Stuart Wilson, who provided many useful comments on the research process and the report, and to Kate Tissington, who assisted with the final fact-checking and referencing. We are also grateful to Claire Bénit-Gbaffou, senior lecturer in the School of Architecture and Planning at the University of the Witwatersrand, for reviewing the report. Finally, we are indebted to Jürgen Schadeberg for allowing us to use his photographs of the inner city throughout our report.

Attempting to consolidate a shifting matrix of facts has been difficult. And, although we have attempted to update all factual information as we went along, we decided to cease further factual inquiries in January 2008, so that we could write the report. In any event, while pointing to structural and policy failings, our main purpose has been to highlight the lived-reality of life in the inner city, as seen through the eyes of its poorer residents.

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# ONE Introduction

In 2005 the City of Johannesburg (CoJ or City)<sup>1</sup> announced the Indigent Persons Policy (a revision of the indigency policy first introduced in 1998), which makes provision for poor households to benefit from a package of services aimed at alleviating their conditions of poverty. The Indigent Persons Policy provides:

- ▲ Six kilolitres (6kl) of Free Basic Water (FBW) per household per month<sup>2</sup>;
- ▲ Fifty kilowatt hours (kWh) of Free Basic Electricity per household per month<sup>3</sup>;
- ▲ No assessment rates charge for properties valued less than R20 001; and
- ▲ Free refuse and sanitation.

Access to the package is means-tested. Municipal account-holders (in other words, property owners) with a total household income of less than two times the maximum government grant plus R1 (currently R940 times two = R1880 plus R1 = R1881) are eligible, provided that the household is registered as a municipal account holder<sup>4</sup>. There is also a write-off of municipal debt<sup>5</sup>, as long as the account-holder accepts the mandatory installation of water and electricity prepayment meters, subject to roll-out<sup>6</sup>.

There is no doubt that this package provides some degree of relief to poor home owners in Johannesburg. However, of these benefits, only the rates rebate and free refuse collection

and sanitation are extended exclusively to poor households. The FBW and FBE allocations are extended to all households in Johannesburg, regardless of income. Moreover, and critically for this study, the Indigency Policy benefits are only available to property-owning account holders. This means that, by virtue of not owning property, many of the poorest households in Johannesburg are not able to benefit from the package despite being amongst the poorest of the poor - the intended beneficiaries<sup>7</sup>. Indeed, as this study highlights, most poor households in Johannesburg's inner city<sup>8</sup> are not able to access FBW and FBE, and many do not have access to any water or electricity services on their property.

The reality, as confirmed in this research, is that for many poor residents<sup>9</sup> living in the inner city of Johannesburg accessing water and electricity is often more difficult than accessing other public services such as schools and clinics. Yet people continue to endure these hardships because living in the inner city gives them access to work opportunities that they cannot access elsewhere. Based on this research, we believe that security of access to basic

services would significantly reduce the daily hardships and the precarious existence of Johannesburg's inner city poor.

Who are these people who are falling below the radar of a policy framework that is supposed to provide relief to the very poor? How is it that they are consistently denied access to water and electricity services? What strategies do they engineer to access such services? And what can be done in the short and medium term to ensure that these people can realise their right to water and electricity? This report, which is a study of poor people's access to basic services<sup>10</sup> in Johannesburg's inner city, represents a first step in answering these questions. We conclude that the City's commitment to providing free basic services to poor and indigent residents of Johannesburg will continue to bypass the inner city poor if policies and practise do not recognise that one of the features of poverty, particularly in the inner city, is insecurity of tenure and an inability to contract directly for basic services. More precisely, any strategy for poverty alleviation that dispenses benefits only to

The Indigency Policy benefits are only available to property-owning account holders. This means that, by virtue of not owning property, many of the poorest households in Johannesburg are not able to benefit from the package despite being amongst the poorest of the poor - the intended beneficiaries .



account-holders will continue to exclude precisely the most vulnerable people – tenants, unlawful occupiers and those who are hostage to the collective fate of sectional title schemes.

The report does not aim to provide an objective evaluation of the barriers to accessing basic services, and we do not incorporate any explanations from the City for the ongoing problems. Rather, in an attempt to present the complexity of the daily lives of the inner city poor and contribute towards the humanisation of ‘bad building’ dwellers, we sought to highlight the obstacles that poor people experience in accessing basic services, purely from their own perspectives. We hope that the report will contribute to a broader understanding of the multi-faceted condition of vulnerability in the inner city, as well as feed into policy discussions aimed at providing secure and sustainable livelihoods for the poor in Johannesburg. We also hope that the report will go some way towards revealing inner city residents as they are – ordinary people attempting to eke out a living in hostile conditions and forming an integral part of the economy - rather than as they are often portrayed – as illegal occupants and criminals to be relegated to the urban periphery.

## 1.1 Aims and Method

Based on extensive research and legal work undertaken in the inner city over the past five years, CALS has become aware of systemic problems in accessing basic services in the inner city and we have identified a relationship between

vulnerability and insecurity of tenure among poor households on the one hand, and a lack of access to basic services on the other. This report represents an initial attempt to document:

- ▲ The extent of access to basic services in the inner city;
- ▲ The main obstacles to securing access to basic services;
- ▲ The survival strategies that people rely on in the absence of formal service delivery; and
- ▲ Short-term and medium-term recommendations to enable poor households in the inner city have access to adequate basic services.

The underlying premise of the report is that access to basic services and security of tenure cannot be understood independently. Against this backdrop, CALS undertook an ‘anthropological’ study of six buildings – using each building as the site of a qualitative inquiry into the lived-reality of its residents - with a view to identifying systemic obstacles to service delivery in the inner city. The six buildings were chosen because they

comprise the kinds of management, ownership and occupation forms that are commonly experienced by very poor people in the inner city (each of the buildings displays characteristics of one or more of the modes of housing)<sup>11</sup>:

### UNLAWFUL OCCUPATION<sup>12</sup>

This describes a mode of housing in which people without either formal title or contractual rental agreements have occupied properties following the abandonment of the properties by the registered owners. Unlawful occupiers are afforded some housing rights-related protection under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act)<sup>13</sup>. However, as this research highlights, such protection does not – at least within CoJ’s current policies and practice – guarantee access to basic services. This results in a reality in which desperately poor occupiers build their homes in abandoned buildings but are unable to directly access water and electricity services. Building One, which was formally classed as a sectional title scheme before being abandoned by the unit owners, is an example of an unlawfully occupied building.

For many poor residents living in the inner city of Johannesburg accessing water and electricity is often more difficult than accessing other public services such as schools and clinics. Yet people continue to endure these hardships because living in the inner city gives them access to work opportunities that they cannot access elsewhere.



## ABANDONED RENTED/TENEMENT BUILDINGS

This describes a housing mode in which a single owner has abandoned his/her investment, leaving tenants with ambiguous rental agreements. It also leaves tenants unable to maintain municipal accounts and to access water and electricity services, because municipal services are contracted to account-holders (owners of property). Buildings Two, Five and Six are examples of buildings that have been abandoned by owners.

## UNMANAGED SECTIONAL TITLE SCHEMES

This refers to a housing model in which an owner has individual property rights over her unit, while property rights over the common property is shared with all other owners. Because there is shared ownership, each sectional title schemes is managed by an elected body corporate, comprising owners of individual units. Within such buildings, the City makes all contractual arrangements and services through the body corporate rather than with each individual owner. The problem with inner city sectional title schemes, especially in large multi-storey buildings, is that such schemes can quickly run into management and financial problems. This is because the fate of all units rests with the collective performance, as administered by the body corporate. If the owners of units stop paying municipal bills, and the body corporate is unable to force compliance, the building can descend into mounting debt. In such cases, it is hard for the body corporate to retain control and a building can quickly deteriorate to the point of

collapse of the body corporate (such as in Buildings Three and Four). Where the body corporate collapses, there is no formal interface between the building and the City, which means that residents have no means to contract for services etc. In such circumstances, buildings can easily succumb to hijackers (people who move into collapsed sectional title buildings and attempt to extort 'rental' and service fees without authority). Building Four is an example of a collapsed body corporate that has become a hijacked sectional title building. Building Three is an example of a body corporate caught up in the vortex of rising debt. Seemingly with no hope of staying afloat, the body corporate's downfall threatens the security of all occupants of the building and places in jeopardy their continued access to water and electricity services.

One of the major findings of this research is that these housing forms, which are the most common modes of housing for the inner city poor, reveal typologies<sup>14</sup> of obstacles to accessing basic services in the inner city. One typology of obstacles is linked to tenure insecurity and housing management-related problems and another relates more directly to municipal systems of contracting and revenue collection. However, all obstacles ultimately relate to the City's policies and practices, and all result in barriers to accessing reliable water and electricity services. The obstacles are outlined here and expanded on in the rest of the report:

## HOUSING TENURE/MANAGEMENT-RELATED OBSTACLES

- ▲ **Collapsed bodies corporate:** As mentioned above, especially in large multi-storey buildings, sectional title schemes are extremely complex to manage and maintain. Bona fide owners of sectional title flats are dependent on the cooperation of all other owners, and bodies corporate are easily dragged down into a morass of municipal debt by the weight of non-cooperative owners and/or dysfunctional bodies corporate. In the inner city, many bodies corporate have effectively collapsed under the burden of shared responsibilities for service payments, leaving buildings in excessive debt (in some cases exceeding the market value of the building) and resulting in water and electricity disconnections. In such buildings there is no way for individual owners or tenants to extract themselves from the downward spiral into decay and municipal debt without abandoning their properties/homes. Nor is there any way for them to secure access to municipal services if the body corporate has ceased to function.
- ▲ **Absentee landlords:** For all intents and purposes, many of the inner



Most poor households in Johannesburg's inner city are not able to access FBW and FBE, and many do not have access to any water or electricity services.

city's rented buildings (tenements) have no owners. This is because, during the 1990s, many landlords abandoned responsibility for their properties as property values in the inner city plummeted, and the people who moved into the empty buildings do not have formal title. In buildings with absentee landlords there are no formal means for the tenants to contract with the City, leaving tenants uncertain about their tenure rights and frequently without formal water and electricity connections.

#### MUNICIPAL SYSTEMS-RELATED OBSTACLES

- ▲ **No mechanisms for direct access to basic services:** The municipality has been unable or unwilling to contract directly with tenants for water and electricity services, preferring to have basic services contracts mediated by owners/bodies corporate<sup>15</sup>. Moreover, direct access to free basic services is not possible for most inner city residents as the City's free basic water and electricity policies and indigency benefits are only available to registered account-holders. These features of the City's policy and practice leave tenants dependant on landlords (whether present or absent) and sectional title owners, many of whom do not act in the best interests of the tenants, for access to both free basic services and contractual

services over and above the free basic amount.

- ▲ **Municipal neglect and debt:** There has been more than a decade of municipal neglect in the inner city, including systemic failures to: consolidate municipal accounts, accurately bill residents, collect revenue and hold owners responsible for municipal arrears. Under such conditions, dysfunctional tenure systems have flourished and debt has mounted to the point where in many of the buildings the amount of municipal arrears is greater than the market value of the building. Apart from generally deteriorating conditions,<sup>16</sup> this has led to widespread disconnections of municipal services. It has also resulted, in recent years, in numerous municipal expropriations and evictions<sup>17</sup>, which are not the subject of this inquiry but are mentioned here to highlight the links between neglect, debt, municipal services and tenure insecurity.

Because we wanted to find out about poor people's problems with accessing basic services, we opted for an in-depth, qualitative investigation of the experiences of residents living in the six identified buildings. The research, consequently, does not represent a statistically representative sample of residents in the inner city, and nor does the limited scope provide sufficient quantity

for statistical finding and extrapolation. The six buildings are home to about 2 000 poor inner city households, and were identified through ongoing research and advocacy that CALS undertakes in the inner city. In close consultation with the Inner City Resource Centre (ICRC), a community-based organisation operating in the inner city, the six chosen buildings represent a cross-section of housing arrangements available to poor people, as well as various degrees of access to water and electricity.

The initial field research was conducted over a six week period between September and October 2006. It was followed up with a two week period of fact-checking (whereby we attempted to verify any 'objective' facts capable of verification e.g. where reference was made to specific disconnections or to water sources etc.) in December 2006.

The research, which can be characterised as a targeted investigation into the problems of accessing basic services, comprised an initial focus group with residents from each of the six buildings, followed by a very open-ended questionnaire session with fifteen residents from each building. This was supplemented by between three and five in-depth interviews with particular residents per building (identified by the questionnaire on the basis of their interest in the research). In each case the sample group included residents' committee members, long term residents, and both owners and tenants (in sectional title buildings). In December 2006 a follow-up focus group was conducted



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with residents from each building. For a number of reasons it was not always possible to ensure that the same people who participated in the initial focus group participated in the follow-up focus group: many people leave Johannesburg during December, people have other priorities that made coordination difficult, and there is also a degree of transience in the precise populations of each building. But, since we were undertaking an investigation of specific problems rather than a statistically representative survey or a comprehensive policy evaluation, the 'snowball' methodology did not present analytical problems.

In addition, interviews were conducted with owners and managing agents of the buildings, and the ward councillor for the Berea/Yeoville area where four of the six buildings are located. The fieldwork was accompanied by a literature review that included a brief historic and political economy of municipal service delivery in Johannesburg; an assessment of the post-apartheid policy environment governing access to basic services; and City of Johannesburg documents and publications outlining its service delivery programmes and its vision for the inner city.

In the main we have aggregated the responses according to our typologies schema, but we have also reproduced individual responses where relevant. However, to protect the anonymity of inner city residents, we have not named any of the respondents. Nor have we named the buildings.

## 1.2 Structure of the report

Chapter Two of the report is a policy overview. The chapter outlines the legal and policy framework within which basic services operate at a national level. It then focuses on the City of Johannesburg, considering the history of unequal access to services in South Africa and the political processes towards securing equitable access, before turning to the current service delivery model. Finally, Chapter Two outlines the evolution and contours of the City's Indigency/Social Service Package, which provides a degree of respite to some poor residents against the otherwise commercial nature of basic services. However, as pointed out in this report, many of the intended beneficiaries of the relief, particularly in terms of water and electricity services, receive no benefit due to policy formulations that exclude most forms of tenancy (as opposed to property ownership).

Chapter Three and Four present the research findings. Chapter Three introduces the six buildings that make up the case-study of this report. It describes the conditions and status of the basic services in each building, and considers the strategies that people have devised in order to access basic services in the absence of formal provision of these

services. Chapter Four analyses the major obstacles to accessing formal basic services, and argues that they are linked to broader issues of tenure security, housing management and municipal systems.

Chapter Five concludes that the objectives of the City's free basic services policy are not being realised in the inner city. Specific policy and practice gaps are highlighted and a number of short-term recommendations are made, which would provide immediate relief to the inner city poor. Medium-term recommendations are also advanced.

It is hoped that this report will feed into ongoing policy discussions with officials of the City of Johannesburg, and that it will be useful to stakeholders in the fields of basic services rights and tenure security-related rights. More broadly, the report aims to contribute to the realisation of socio-economic rights for the poor in South Africa.



# TWO Basic services & the Johannesburg context

Achieving universal access to adequate and affordable good quality water and electricity services is intrinsically linked to positive transformation and developmental objectives that underpin post-apartheid socio-economic reconstruction. There is no doubt that the government acknowledges the scale of the problem of unequal service provision, as well as the need for local government to assume a progressive role in redressing the legacy of inequitable service provision:

[Apartheid] deprived millions of people of access to basic services, including water, sanitation, refuse collection and roads. Developmental local government has to address this backlog. Its central mandate is to develop service delivery capacity to meet the basic needs of communities<sup>18</sup>.

To this end, basic services are governed within a formidable rights-based legal

and policy framework at both national and local levels. However, as identified in this report, the reality of basic services provision in poor communities is often a far cry from the progressive vision in legislation. This is for a number of reasons. First, as a result of the municipal neglect of the inner city between 1990 and 2000, the influx of poor people has not been matched by a commensurate effort by the City to maintain adequate housing standards, rent-control or to protect residents from unscrupulous property speculators and managing agents etc. Also, municipal arrears have been allowed to mount up over the years so that today many buildings carry a debt of millions of Rands, well above the value of the properties. Second, many of the attempts to provide some respite for the poor have been ill-formulated and ill-executed. For example, the City's FBW and FBE policies, along with the indigency policy, are only available to municipal account-holders. This means that, on the whole, poor people are subjected to the 'business as usual' commercial model of services provision.

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## 2.1 Basic Services Legal and Policy Framework<sup>19</sup>

### WATER AND ELECTRICITY RIGHTS

The Constitution of the Republic of South Africa Act 108 of 1996 (Constitution) does not formally distinguish between civil and political rights and socio-economic rights. All rights are contained in the Bill of Rights (chapter 2 of the Constitution), which is explicitly justiciable, and the state is compelled to "respect, protect, promote and fulfil" every right<sup>20</sup>. The right to water is enshrined in section 27(1)(b) of the Constitution, which stipulates that everyone has "the right to have access to" "sufficient water". As with all enumerated socio-economic rights (with the exception of the section 29 right to basic education, which is unqualified), the right to access to sufficient water requires the state to take "reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right"<sup>21</sup>. In the landmark socio-economic rights case, *Government of the Republic of South Africa v Grootboom* (Grootboom), the Constitutional Court established that, to be reasonable, "measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise"<sup>22</sup>. Moreover, government programmes must "respond to the needs of the most desperate" and must ensure that social and economic rights are "made more accessible not only to a larger number of people but to a wider range of people as time progresses"<sup>23</sup>.



To complement the Constitutional right, national legislation provides for the right to water in South Africa. For example, section 3 of the Water Services Act 108 of 1997 provides that “everyone has a right of access to basic water supply and basic sanitation” and that “every water services institution must take reasonable measures to realise these rights”<sup>24</sup>. And section 3 of the Regulations Relating to Compulsory National Standards and Measures to Conserve Water made under sections 9(1) and 73(1)(j) of the Water Services Act 108 of 1997 provides:

The minimum standard for basic water supply services is –

- (b) a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month -
  - (i) at a minimum flow rate of not less than 10 litres per minute;
  - (ii) within 200 meters of a household; and
  - (iii) with an effectiveness such that no consumer is without a supply for more than seven full days in any year<sup>25</sup>.

Unlike the right of access to sufficient water, in South Africa there is no explicit right to electricity (nor is there an explicit right to energy). However, this right can be implied in the right of access to adequate housing, found in section 26(1) of the Constitution. The fact that the right to housing implies more than merely having a roof over your head was confirmed by the Constitutional Court in *Grootboom*. According to the Court, the

“state’s obligation to provide adequate housing depends on context, and may differ from province to province, from city to city, from rural to urban areas and from person to person” and while “some may need access to land and no more ... some may need access to services such as water, sewage, electricity and roads”<sup>26</sup>. This means that, in the Court’s view, one of the factors relevant to a consideration of the right to housing is electricity provision and this might actually form part of the definition of housing (in certain circumstances).

It can therefore be argued that there is an implied right to electricity in South Africa and more particularly so in rich urban areas such as Johannesburg. This thesis is strengthened by the inclusion of electricity in the South African government’s “free basic services” package. Arguably, the allocation of Free Basic Electricity to qualifying households (discussed further in section 2.4), alongside Free Basic Water, is an implicit acknowledgement of a right to “sufficient” electricity along the same lines as the Constitutional right, found in section 27(1), of everyone to “access to sufficient food and water”<sup>27</sup>. The inference of an implied right to electricity is that it creates the same obligations as is the case regarding the other socio-economic rights in the Bill of Rights. As outlined above, this means that the state is required to take “reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right”.

In addition to the explicit right to water and the implied right to electricity, there are three further legislative sources of generic principles governing basic services. The first is encapsulated in everyone’s right to equality of services. The second relates to everyone’s right to just administrative action and the third is the municipal services framework *per se*. Finally, there is a set of principles contained in national Free Basic Water and Free Basic Electricity policies of the Department of Water Affairs and Forestry (DWAF) and the Department of Minerals and Energy (DME) respectively, which govern the provision of free basic services at local government level<sup>28</sup>.

#### EQUITABLE SERVICES

Regardless of the commercialisation and/or corporatisation of municipal services entities such as Johannesburg Water and City Power, for the most-part water and electricity services remain public and 100% state-owned<sup>29</sup>. As such, all policy choices by the state in relation to electricity distribution must comply with the section 9 right to equality. This right obliges the state to ensure that electricity provision is equal (meaning that everyone should receive an equal standard of service) and equitable (in the sense that there should be no unfair discrimination between groups on any ground, including those listed in section 9(3)<sup>30</sup>). Specifically, section 9(2) requires the state to take steps to “promote the achievement of equality”.

The right to water is enshrined in section 27(1)(b) of the Constitution, which stipulates that everyone has “the right to have access to” “sufficient water”.

Against the backdrop of apartheid's legacy of unequal municipal services provision based on unfair discrimination on the grounds of race (and, concomitantly, on class), section 9(2) enjoins the state to take "legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination". In the case of *City Council of Pretoria v Walker* (Walker)<sup>31</sup> the Constitutional Court clarified that positive discrimination policies aimed at correcting past inequalities between formerly advantaged and disadvantaged groups do not amount to unfair discrimination. Indeed, such essentially redistributive policies, designed to promote the achievement of socio-economic equality, are not only permitted, they are constitutionally mandated. As recognised by the Constitutional Court in Walker, the Constitutional objective of equality "will not be achieved if the consequences of those inequalities and disparities caused by discriminatory laws and practices in the past are not recognised and dealt with"<sup>32</sup>. In relation to basic services, this means that the state is obliged to ensure that positive steps are taken to make water and electricity increasingly accessible and affordable to poor people<sup>33</sup>. In other words, the right to equality of water and electricity services incorporates the right to equitable services i.e. the right to redistributive policies and practices that aim to redress socio-economic inequality.

The Constitutional mandate to promote equality is recognised in national policy. In the context of water services, the Introduction to the 1997 White Paper on Water Services makes the point that

"South Africa's water law comes out of a history of conquest and expansion" and that:

The victory of our democracy now demands that national water use policy and the water law be reviewed. Our Constitution demands this review, on the basis of fairness and equity, values which are enshrined as cornerstones of our new society.

Similarly, the 1997 White Paper on a National Water Policy for South Africa<sup>34</sup> makes the following point:

Apartheid was an inefficient racial spoils system under which the distribution of water-use was racially biased, and access to water and the benefits of its use a privilege of those with access to land and political and economic power. In the context of the reform of water law, the right to equality requires equitable access by all South Africans to, and benefit from the nation's water resources, and an end to discrimination with regard to access to water on the basis of race, class or gender.

There is also a mandate to extend and to maintain affordable electricity services to everyone. The Eskom Conversion Act 13 of 2001, for example, provides that in the process of converting Eskom to a public company, "the Minister must take into account ... the promotion of

universal access to, and the provision of, affordable electricity" (section 6(5)(b)). Similarly, the Ministerial foreword of the Department of Minerals and Energy (DME)'s White Paper on the Energy Policy of the Republic of South Africa states:

... the state must establish a national energy policy which will ensure that the national energy resources shall be adequately tapped and developed to cater for the needs of the nation. Energy should therefore be available to all citizens at an affordable cost. Energy production and distribution should not only be sustainable, but should also lead to an improvement of the standard of living for all the country's citizens<sup>35</sup>.

And, it is worth remembering the Reconstruction and Development Programme (RDP)<sup>36</sup>, which in 1994 urged future energy policy to "concentrate on the provision of energy services to meet the basic needs of poor households"<sup>37</sup>. It also stipulated that "an accelerated and sustainable electrification programme" should be introduced to provide electricity to all citizens<sup>38</sup>.

#### JUST ADMINISTRATIVE ACTION

The second legislative source of generic principles for basic services is the legislation covering administrative justice. Supplementing the right to equitable services, Section 33 of the Constitution provides everyone with the right to just

Section 33 of the Constitution provides everyone with the right to just administrative action that is "lawful, reasonable and procedurally fair".



administrative action that is “lawful, reasonable and procedurally fair”. Further clarifying this right, section 3(2)(b) of the Promotion of Administrative Justice Act (PAJA) 3 of 2000 sets out the requirements for procedural fairness, including (i) adequate notice of proposed action, (ii) reasonable opportunity to make representations, (iii) a clear statement of the administrative action, (iv) adequate notice of any right to internal appeal where applicable, and (v) adequate notice of the right to request reasons in terms of section 5.

The right to just administrative action, which extends to water and electricity services, reinforces the embeddedness of basic services within a Constitutionally-entrenched human rights framework. Such administrative law principles extend to other relevant legislation. For example, the National Water Act 36 of 1998 provides in section 59(4): “A person must be given an opportunity to make representations within a reasonable period on any proposed restriction or suspension before the restriction or suspension is imposed”. Similarly, the Water Services Act stipulates in section 4(3) that:

Procedures for the limitation or discontinuation of water services must – (a) be fair and equitable;

(b) provide for reasonable notice of intention to limit or discontinue water services and for an opportunity to make representations...; and (c) not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority that he or she is unable to pay for basic services.

Administrative justice requirements are particularly important in the context of disconnections of water and electricity services, which must comply with the notification and representation elements of PAJA.

#### MUNICIPAL SERVICES FRAMEWORK

The third legislative source of principles governing basic services is the legislation around municipal services per se. Water and electricity, along with the other basic services (sanitation, and refuse collection), are governed by the overall policy framework for municipal service delivery, which stresses the need to advance equal services to all members of the local community. Thus, the White Paper on Local Government requires municipalities “to assume a developmental role in providing basic services”<sup>39</sup> and the Local Government Municipal Systems Act 32 of 2000 (Systems Act), which details municipal services provision, stipulates that municipalities must “ensure that all members of the local community have access to at least the minimum level

The Local Government Municipal Systems Act 32 of 2000 (Systems Act), which details municipal services provision, stipulates that municipalities must “ensure that all members of the local community have access to at least the minimum level of basic municipal services”.

of basic municipal services<sup>40</sup>. This reflects the sentiment of section 153(a) of the Constitution, which states that a municipality “must structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community”.

#### FBW AND FBE FRAMEWORK

In February 2001, Ronnie Kasrils (then Minister of Water Affairs and Forestry), announced that the government had resolved to ensure that poor households were given a basic supply of water free of charge. In May 2001, DWAF's Water Services Chief Directorate issued Version 1 of its “Free Basic Water” Implementation Strategy Document<sup>41</sup>. The document set out an implementation strategy to provide free basic water as part of the “Government's strategy to alleviate poverty<sup>42</sup>. While articulating “a broader policy commitment to the extension of free basic services to all households”, the document stipulated that “the primary target of the policy is poor households for whom free basic water services represent a significant poverty alleviation measure<sup>43</sup>. The date established for the implementation of the free basic water policy at local government level was 1 July 2001. The government's Free Basic Electricity Policy was announced in January 2001, with the aim of providing “50kWh of grid electricity a month to all qualifying households<sup>44</sup>.

The legislative and policy framework outlined above imply that water and electricity distribution occurs in an

equitable and transformative manner across South Africa. The sections below and the research presented in chapters Three and Four suggest that this is not always the case and that in many localities the imperatives of commercialisation and cost-recovery override the needs of the poor. The research also indicates that, despite the significant advances that have been made nationally in terms of the absolute number of people connected to water and electricity services since 1994, many low-income households have subsequently been disconnected through inability to pay for these services and/or policies aimed at extending relief are not reaching the most needy because of inappropriate targeting methods.

## 2.2 Urban Governance and Infrastructure in Johannesburg

Johannesburg has almost since its birth been characterised by infrastructure inequalities. In the early days of the gold rush wealthy rand-lords and the mining middle classes lived in the leafy suburbs north of the city and the budgets of the fledgling municipality were largely channelled towards these residents<sup>45</sup>. Working class residents both black and white were confined to the cheaper and less well serviced suburbs east and south of the city, closer to the mining and industrial development. During the 1960s this urban geography was further entrenched by state policies of racial segregation coupled with the

emergence of an increasingly wealthy white middle-class located north of the city. The first freeways were built going north from the city and allowing suburbs to spread beyond the reach of traditional urban public transport<sup>46</sup>. By the 1970s these northern areas were well serviced, enjoyed lifestyles similar to many first world societies, and increasingly attracted wealthy businesses away from the inner city<sup>47</sup>.

In stark contrast to the verdant northern suburbs were the townships. Hidden behind the mine dumps south of the city, places like Soweto remained under-served and predominantly poor. By the 1980s this inequality had consolidated rising urban protest in the townships, with black residents demanding inclusion into municipal decision making processes. The apartheid state instead organised townships into Black Local Authorities (BLA), a cynical effort to grant limited black self-governance<sup>48</sup>. Forced to collect rates and rental from boycotting black residents, the BLA were soon bankrupt and discredited. Protests erupted in the townships demanding inclusion into municipal budgeting and decision making protests under the slogan of “one city, one tax base”. This was finally realised in 1995 with the establishment of the Greater Johannesburg Transitional Metro Council (GJTMTC). This was the first non-racial municipality in Johannesburg's history and had the specific stated goal of addressing the service delivery inequalities that characterised Johannesburg<sup>49</sup>.

The government's Free Basic Electricity Policy was announced in January 2001, with the aim of providing “50kWh of grid electricity a month to all qualifying households”.







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Post-apartheid local government, conceptualised in the set of policies known as Developmental Local Government (DLG), was informed by the objectives of poverty-targeting, growth, sustainability and participation<sup>50</sup>. The RDP embodied an extremely progressive vision of the role of DLG. Central to the RDP was the aim to rectify “Apartheid created infrastructure disparities”, and it articulated a coherent strategy for achieving its targets<sup>51</sup>. In the extension of services, notably electrification and water to those who had been denied, the RDP proposed free lifeline tariffs, cross-subsidisation from areas with higher rates bases, and a National Electricity Fund, underwritten by government. Tariff structures were to reflect “relative affordability”<sup>52</sup>.

This progressive legislation was confronted in 1997 by the realisation that Johannesburg was approaching a fiscal crisis<sup>53</sup>. From 1996 residents in the rich northern suburbs (notably Sandton) had orchestrated a boycott of rates because they were resistant to redistributive policies which meant that wealthy areas would subsidise poorer parts of the city. Notwithstanding the Sandton rates boycott, which cost the City R220 million<sup>54</sup>, rates recovery in the richer areas remained significantly above that of previously poor areas. In former black areas rates recovery ranged from 5% (Orange Farm informal settlement) to 27% (Soweto as a whole) of municipal account holders<sup>55</sup>. By October 1997, the GJTCM was experiencing a negative cash flow of R120 million per month, prompting a policy shift in municipal

governance towards a more commercial cost-recovery model. In Johannesburg this was manifested in Igoli 2002, a strategy for municipal financial recovery that included the fundamental reorganisation of municipal services. Under Igoli 2002, municipal services were ring-fenced and corporatised, although each of the utility companies remained 100% publicly owned (with the City as their only shareholder). In terms of this arrangement, Johannesburg Water (Pty) Ltd.<sup>56</sup> became the City’s water service provider; City Power (Pty) Ltd.<sup>57</sup> became the City’s electricity service provider and Pikitup (Pty) Ltd.<sup>58</sup> became the City’s waste management and refuse service provider. Although the utilities are ultimately accountable to the City in terms of Service Delivery Agreements and the like, each ring-fenced utility is expected to operate financially independent of the City’s rates base, with each responsible for recovering revenues from account-holders.

The establishment of a “corporate governance” paradigm<sup>59</sup> of local government in Johannesburg entrenched a bureaucratic attitude towards urban governance and has continued to marginalize certain sectors of the urban population. Beall et al go so far as to argue that the fiscal crisis of 1997 was ‘talked up’ as a way of justifying metropolitan restructuring to suit market driven demands<sup>60</sup>. So, although the municipality can point to many improvements in the provision of services to poor and under-served areas since 1994, inequalities of service provision persist. In critical respects the geography of post-apartheid

Johannesburg Water (Pty) Ltd. became the City’s water service provider; City Power (Pty) Ltd. became the City’s electricity service provider and Pikitup (Pty) Ltd. became the City’s waste management and refuse service provider.



Johannesburg is characterised by an increasing wealth-gap between north and south<sup>61</sup> and between rich and poor. For example, a report by the Municipal Services Project of Queens University, Canada, found that in 2001 water and electricity in Soweto were more expensive per unit than in Sandton (the richest part of Johannesburg)<sup>62</sup>. Similarly, a 2006 report on comparative tariffs undertaken by the Palmer Development Group for the City's Corporate Planning Unit, found that "Joburg's monthly [municipal] bill is among the highest for poor households, but among the lowest for high households", and that "household bills for poor households are not affordable in Joburg and Ekurhuleni". The report concluded that it is only when indigency policies were applied that "bills become affordable for poor households"<sup>63</sup>.

There have undoubtedly been attempts to alleviate some of the historical legacy of poverty in townships such as Soweto<sup>64</sup>, including the City's indigency policy, elaborated on below. However, to a large extent the poor living in the inner city of Johannesburg remain underneath the policy radar. As we point out in this report, poor inner city households are unable to access any of the policy benefits because the current delivery paradigm (including the indigency policy) is based on property ownership and makes no provision for other housing arrangements such as tenancy, sectional title schemes and unlawful occupation. Moreover, the City's recent urban renewal efforts have tended to favour business and affluent interests over the poor, resulting in widespread evictions and tenure insecurity and

further eroding the livelihoods and living conditions of the poor<sup>65</sup>.

## 2.3 Competing Interests – basic needs versus commercial profits

During the 1960s and 1970s the political-economy of Johannesburg began to shift away from mining and manufacturing (located in the south and east) towards services and finance which began to locate in the newly emerging northern suburbs<sup>66</sup>. This was driven partly by high land values and rentals in the Central Business District (CBD), and transport infrastructure developments that made suburban office parks attractive locations for businesses<sup>67</sup>. This was intensified in the late 1980s by perceptions of crime and grime, encapsulated by images of deregulated street trading and the influx of minibus taxis<sup>68</sup>. The downward spiral of rejection and collapse continued throughout the 1990s, during which time the inner city became characterised by urban decay. Many businesses, law firms and one of the large banks relocated to the northern suburbs. Inner city buildings were left unmanaged and unmaintained and were either abandoned or quickly became overcrowded, and public services deteriorated due to neglect and underinvestment. There was an enduring perception on the part of many City planners that the inner city had been overtaken by anarchy and crime.

In fact, the inner city population is characterised less by social indigence than most traditional low-income areas of the city. According to information on the City's website, 28% of inner city residents have completed grade twelve, while a further 9% have completed some form of higher education<sup>69</sup>. While this is far below the 32% of people in Sandton with higher education qualifications, it is significantly higher also than Orange farm (3%) and Soweto (4%). Household size is also relatively small, typically between two and three people per household<sup>70</sup>.

Notwithstanding the demographics, in many respects infrastructural deterioration is far more acute in the inner city than in traditional poor areas. This is because there is a knock-on effect of decay in high-density, high-rise buildings – for example, where there is an unmanaged plumbing leak in one 20th storey unit, the water quickly seeps downwards affecting all lower units. Similarly, where one unit or building sinks into municipal debt, other proximate units and buildings are directly affected.

By 2000 the degree of inner city decay prompted a response by the City and in its 2001 "Inner City Position Paper" the City proclaimed that it needed to "turn the inner city around"<sup>71</sup> and, thereafter, began to identify the inner city as a priority area for urban renewal. This shift is reflected in various policy documents and position papers from 2001 onwards in which

Infrastructural deterioration is far more acute in the inner city than in traditional poor areas. This is because there is a knock-on effect of decay in high-density, high-rise buildings.



the inner city is reiterated as a valuable capital asset that needs to be protected<sup>72</sup>. One of the lead programs in “turning the city around” is the City of Johannesburg’s Better Buildings Programme (BBP), managed by the Johannesburg Property Company. Policy around the provision of basic services to poor households is a crucial component because excessive debt (often caused by unpaid services), and poor health standards (often resulting from inadequate water and electricity supplies) are two of the ways in which bad buildings are identified for expropriation and eviction under the Better Buildings Programme<sup>73</sup>. In this way there is a vicious cycle in which poor people without the means to manage buildings and to pay for basic services end up being evicted from their “bad” buildings. At the time of writing this report, the City did not provide alternative accommodation for poor people whom it evicts<sup>74</sup>.

The mechanics of the BBP programme is as follows: BBP identifies “bad” buildings and earmarks them for upgrading into “better” buildings. A bad building is defined as one: (a) where the owners owe large amounts of arrears, often greater than the building value; (b) where residents have stopped paying rents, or are paying rents to illegal collectors; (c) where the owners have abandoned the buildings and are not paying rates or utility bills; (d) a building that is derelict, overcrowded and in a deplorable state; (e) a building that is in contravention of various by-laws and other legislation; and (f) a building that is invaded by illegal squatters<sup>75</sup>. A legal process to acquire the

building is then embarked on that ranges from outright expropriation to purchasing the building. The building is then made available to a list of approved investors via a proposal call approach<sup>76</sup>. According to Neil Fraser, an urban consultant: “in practice the JPC [Johannesburg Property Company] has found that the legal process and the writing off of arrears slows down the process considerably ... It therefore encourages would-be investors to identify properties and bad buildings themselves and purchase them from liquidators, at auctions or privately”<sup>77</sup>, which has often involved the eviction of poor occupants. The programme focused initially on high-density buildings mostly in Hillbrow, Berea, Joubert Park and the CBD, but has been expanded to include a broader spectrum of buildings in the city. The Better Buildings Programme impacts on access to basic services because one of the definitions of a “bad” building is one that is in arrears and is not paying rates and utility bills. Of the six buildings in this case study, two are currently earmarked for possible attachment under the Better Buildings Programme<sup>78</sup>.

The problem, from the perspective of poor occupants of the inner city, is that the BBP, along with the City’s urban renewal programme more generally, emphasises capital investment and increasing property values as the solution to decades of municipal neglect. To put it simply, the City is looking for a private answer to a public problem.

The programme is intended to produce a ripple effect in the upgrading of the inner city. At the end of September 2005 there were 94 buildings in the process valued at R55-million and comprising 8 700 living units. R260-million in arrears were to be written off by the council, but the council expected about R6-million a month in rates and service charges that would otherwise be uncollectible<sup>79</sup>.

The problem, from the perspective of poor occupants of the inner city, is that the BBP, along with the City's urban renewal programme more generally<sup>80</sup>, emphasises capital investment and increasing property values as the solution to decades of municipal neglect. To put it simply, the City is looking for a private answer to a public problem. To exacerbate matters, national housing policy favours private home ownership (as opposed to the provision of publicly-owned council housing) and is focused on the provision of houses (as opposed to apartments), which typically are located on the urban periphery (as opposed to the CBD, which is where the jobs are)<sup>81</sup>.

As this report highlights, access to basic services is one aspect of a broader vulnerability for poor people in the inner city, and is directly linked to the degree of tenure security enjoyed. Yet, current policy and practice serve to entrench and exacerbate, rather than to alleviate tenure insecurity, thereby also denying poor people's rights to basic services. The result is that, increasingly, the question needs to be asked: is there "any room for the poor" in Johannesburg's inner city<sup>82</sup>.

## 2.4 The City's Indigency Policy

The City's first indigency policy was introduced in 1998 and it has undergone several name changes subsequently<sup>83</sup>. The name changes have, unfortunately, not reflected a commensurate increase in substantive benefits to the poor.

### INDIGENCY MANAGEMENT POLICY OF 1998

CoJ's first policy - the 1998 Indigency Management Policy - was a poverty reduction strategy aimed at creating a safety net for the poor. It provided the following to qualifying households (with a total household monthly income less than R800, or not more than two state pensions, with a ceiling of R1080):

- ▲ Subsidised, below-cost, water for the first 10kl of water each month;
- ▲ Subsidised refuse removal and sanitation; and
- ▲ A 25% net assessment rate calculated on the value of the average stand.

Households had to apply for the benefit and prove their income on application. An indigents register was established to register indigent households<sup>84</sup>. Following the establishment of national government's FBW policy, in 2001, CoJ amended its Indigency Management Policy to include 6kl of FBW. In July 2002, in line with national government's FBE policy, CoJ added 50kWh of FBE to qualifying households<sup>85</sup>.

### SPECIAL CASES POLICY OF 14 JUNE 2002

In July 2002, CoJ introduced its Special Cases Policy. The Special Cases policy sought to supplement the Indigency Management Policy by providing specific benefits to more targeted groupings<sup>86</sup>. The Special Cases Policy provided free sanitation and refuse removal services for those who qualified. It also provided full rates rebates on all properties worth less than R20 001.

The following groups qualified for the Special Cases Policy, as long as they were municipal account-holders (property owners): households on a property of less than 300m<sup>2</sup> with a monthly income of less than R1100, pensioners with a total income of less than two state pensions, breadwinners with full-blown AIDS and their direct orphans, disabled persons receiving a state grant and having a total monthly income of R1100 or less. In order to apply and to receive the benefits, applicants had to provide proof of identity and of being an account-holder. If successful, they received assistance for a period of 12 months and then had to re-apply.

On 20 June 2005 the Special Cases Policy was amended to provide an arrears write-off at the point applicants became approved for Special Cases status, if they accepted the installation of prepayment water and electricity meters (subject to rollout in their area). If meters were tampered with, the debt was to be reinstated).



Access to basic services is one aspect of a broader vulnerability for poor people in the inner city, and is directly linked to the degree of tenure security enjoyed.

## INDIGENT PERSONS POLICY OF 31 OCTOBER 2005

The amendments to the Special Cases policy were carried forward to the re-named, Indigent Persons Policy of October 2005. The re-named policy discarded the 300m<sup>2</sup> requirement for receiving full refuse and sanitation rebates (i.e. now all those qualifying in terms of the previous Special Cases Policy criteria received refuse and sanitation rebates, regardless of property size). Also, under the Indigent Persons Policy, an approved application provided benefits for 36 months (as opposed to 12 months under the Special Cases Policy).

In the almost ten years since its first indigency policy in 1998, the only benefits advanced to poor households in terms of alleviating the cost of water and electricity services, were the same benefits allocated to all households across the City, regardless of need, size or income. However, at the end of October 2007, in response to an application challenging the sufficiency of the City's 6kl FBW allocation, CoJ announced the first targeted water benefit: an increase from 6kl to 10kl per household per month to those households on the indigency register. This material change to the policy came too late to be assessed either in terms of whether it has actually been rolled out and whether the amount provided is sufficient for a poor household without work. In any event, as shown in the remainder of the report, even this benefit does not reach the people living in Johannesburg's inner city because, for the most part, they are not property owners and consequently have never qualified, and continue not to qualify, for any benefits.

## POSTSCRIPT: PROPOSED CHANGES TO INDIGENCY AND FBW/FBE POLICY

In April 2008 CoJ announced proposed changes to the FBW/FBE and indigency policies. In terms of these proposals, to be implemented from 1 July 2008, existing FBW and FBE allocations would be withdrawn from all households other than those on the indigency register. Households on the indigency register are to receive increased allocations of FBW (10kl per month) and FBE (100kWh hours per month). At the time of writing these proposals were open for public comment and it was not clear if they would be implemented.

Although CALS supports the increased amounts of FBW and FBE to poor households, it does not support using the indigency register as a poverty-targeting mechanism. This is for several reasons. First, the indigency register approach stigmatises the poor, reducing them to second-class citizens who do not fit into the normal contractual model. Second, Johannesburg's indigency register is not well publicized (for example, it does not even appear on the City's official website and, to date, the register has not been widely publicized across poor communities), so most poor households are not aware of it. Third, according to the current policy, acceptance onto the register is means-tested, requiring the applicant to provide proof of: being an account-holder (meaning that it is aimed at property-owners rather than tenants, who on the whole do not hold municipal accounts); having a combined monthly household income of less than twice the maximum government grant plus R1 (currently  $R940 \times 2 = R1880$

+ R1 = R1881); as well as furnishing positive formal identification, proof of earnings and tax status. Fourth, and most importantly from a poverty-targeting perspective (and related to the above reasons), Johannesburg's indigency register is hopelessly under-representative of the actual number of poor households, meaning that any benefit linked exclusively to the register will only reach a fraction of the formally qualifying poor households. A decade after its establishment in 1997, the indigency register reflects 109 000 households out of an estimated 500 000 formally qualifying indigent households. Moreover, there is no indication that the new indigency policy will cover non-property owners, the group of people this research has identified as being most in need of the assistance. For these reasons, the indigency register is a wholly inappropriate mechanism for poverty alleviation, especially if it is to become the City's only or main mechanism to allocate benefits to the poor.

# THREE Six buildings in the inner city

Not all buildings in the inner city are home to poor or very poor households, and many are well administered and accommodate middle and lower-middle income households<sup>87</sup>. Yet the inner city continues to be characterised (and sometimes caricatured) by poorly maintained and overcrowded buildings, often associated with crime and slum conditions. While these dystopian visions are often exaggerated, many people in the inner city are poor and live in vulnerable conditions<sup>88</sup>. For many poor residents living in the inner city of Johannesburg, accessing water and electricity is more difficult than accessing other public services such as schools and clinics. Yet despite sometimes poor conditions and lack of access to basic services many people prefer to live in the inner city than on the urban periphery where making a living is extremely hard and transport costs prohibitive. The majority of people we spoke to as part of this research do not want to leave the inner city despite their hardships in accessing basic services. People's livelihoods are closely related to the place they live in; continuing to live

in or near the inner city is vital for most inner city residents:

*I am a qualified fridge technician. I can fix fridges and stoves. I do free-lance work now and my income depends on the number of jobs that I can get in a month. My days are spent walking from shop to shop looking if I can fix broken fridges and air-conditioners ... I need to be near the city<sup>89</sup>.*

*I am self-employed as a carpenter. I work from home and sell things to people. I can make wardrobes, kitchen units, room dividers etc. I have some friends working in Jeppe and they give me off-cuts of wood. My wife works every day as a domestic servant in Bez Valley [a nearby suburb]<sup>90</sup>.*

A disabled man living in an inner city building without either water or electricity accepts these hardships because it affords him access to other urban infrastructure:

*They look after people with disabilities here ... I am unemployed. I survive on the disability grant that I get. I am going to go to the training college for disabled people in Braamfontein. They teach skills like crafts etc ... It's good to be in the city. Even the townships are too far. With a disability I get good care here in the city<sup>91</sup>.*

It was our attempt to understand and highlight the lived-reality of people such as these informants that governed our research across the six buildings<sup>92</sup>. All six buildings are located within the inner city, yet their specific contexts are different. Buildings One, Two and Three are all medium to high density residential buildings in the neighbourhood of Berea. They are all within walking distance of shops, a hospital and public transport nodes. Slightly south of Berea in the densely populated neighbourhood of Joubert Park is Building Four. Directly overlooking one of the few (and over-used) green spaces in the city, Building Four is surrounded by two taxi-ranks, the railway station, and the thousands of daily commuters from the urban periphery. This building represents in stark contrast one of the major choices facing poor people for whom the inner city is an opportunity for survival: between living in or close to the inner city or living at the urban periphery and travelling in each day.

A short distance east of the inner city is the low-rise neighbourhood of Bertrams.

The inner city continues to be characterised (and sometimes caricatured) by poorly maintained and overcrowded buildings, often associated with crime and slum conditions. While these dystopian visions are often exaggerated, many people in the inner city are poor and live in vulnerable conditions.



At the intersection between Bertrams and Berea are a row of single-storey houses that make up Building Five. The area is less densely populated than Berea, but also less accessible and with fewer amenities nearby. A sub-narrative in these areas is that the community is threatened by its proximity to Ellis Park stadium, a host stadium for the 2010 World Cup. The area is the target for a major urban renewal programme funded by the Johannesburg Development Agency (JDA), a municipal agency established to fund urban development programs across the metropolitan area, and comprising major corporate partnerships. People in the area fear that such a project will drive out poor residents, having been told there are official plans to relocate people from the area. Building Six is located on the eastern edge of the central business district in what was once the diamond-trading district. The area is a mix of low-value office blocks and light-industrial buildings interspersed with medium density residential buildings.

### 3.1 Building One: Unlawfully occupied

In a narrow tree-lined street in a densely populated part of Johannesburg's Inner City is a nondescript twelve-storey residential building. It is an unremarkable building and has neither a name nor any discernable features. Built in the late Johannesburg modernist style of the 1960s, its blank facade is like so many other buildings nearby. Windows are hung with old torn curtains, and the ground-floor entrance smells of urine.

Most of the roughly 300 residents prefer to use the entrance at the back of the building which enters onto the first floor landing. The building goes twelve levels up, with eleven apartments on each level. The lift no longer operates: there has been no electricity in the building for several years. The 130 apartments are all roughly identical; one living room with kitchen and bathroom, thirty five square meters. In one of these apartments, six floors up and halfway along the corridor, live Bianca and her sister. Bianca came to Johannesburg in 2002 from the Eastern Cape, hoping to find work:

*My sister was here and she told me to come and stay with her. I came here for a job. But now I am unemployed. I can get some piece jobs. But mostly I collect sponge pieces and make pillows. I spend a lot of my day walking around to find the sponge. I earn about R350 in a month doing this ... I have also to send some money home each month. My four kids live in Eastern Cape<sup>93</sup>.*

Her situation is not unique among the residents in the building. Once a functioning sectional title block, in 1994 the body corporate was dissolved after it was unable to service the rates and

services debt. The building has since fallen into a familiar spiral of rising debt and collapsed owner-tenant relationships. As property values in the area plummeted in the 1990s many owners simply abandoned their investment. There are now no people with formal title to their units residing in the building. Residents who occupy the building are some of the poorest in the city, many surviving on less than R500 per household per month.

Following the collapse of the body corporate in 1994, stranded residents established an informal resident's committee. Between 1997 and 2002 the committee was able to organise regular payments to cover the monthly water and electricity for flats where owners no longer paid for services. Until 2002, the building was able to contract the services of a managing agent: a company called Compact was managing at least a portion of the units in the building between 1997 and 2000. In late 2000, Compact pulled out of the building; the company did not feel that it was able to effectively manage the building. In a focus group session, and in a number of individual interviews, long-term residents claim that Compact never bothered to make regular services and rates payments to the municipality. Some accused the company of stealing the money that owners and residents had paid.

I am a qualified fridge technician. I can fix fridges and stoves. I do free-lance work now and my income depends on the number of jobs that I can get in a month. My days are spent walking from shop to shop looking if I can fix broken fridges and air-conditioners ... I need to be near the city .

Whatever the case, during this time conditions in the building deteriorated and the building's debt increased. The contractual relationships between owners and tenants began to break down or were reduced to informal agreements, with cash collected at the beginning of each month on behalf of largely absent owners. Debt increased to an estimated R2.5 million and in 2002 CoJ issued a notice of eviction. For a while another managing agent was engaged by a portion of the remaining owners but, unable (or unwilling) to make regular payments to the City, this agent was no longer present at the building after 2002. By this time most owners effectively abandoned their property, and most residents were not paying rent or rates. In September 2004 the electricity was disconnected, and two weeks later the water was disconnected. According to residents, the fire hydrants' water supply was also disconnected in early 2005. In the words of one resident:

*There used to be water and electricity. It was clean then, a good place to live. There has been so much corruption with the owners and the people in charge of the building ... we used to pay. We were happy to pay. But I don't know what has happened to the owners or the agent<sup>94</sup>.*

The building is categorised by CoJ as "unlawfully occupied" i.e. none of the people living in Building One have title deeds for their units or formal rental agreements. A report published in 2005 by the Geneva-based Centre on Housing Rights and Evictions (COHRE) and CALS

identified only 3 out of 129 units which were occupied by someone who could demonstrate legitimate ownership of own his/her flat<sup>95</sup>. Some residents claim that they were simply given the flat by a former landlord or employer. Most residents have had no contact with the original owners for several years, and some newer residents have no idea who the owners are, claiming simply to have paid a R250 reservation fee to the committee when moving into an empty flat. None of the residents has paid rent since 2002. As a result of the informality of residents' tenure, Building One has suffered non-existent or inadequate water and electricity services.

Up until recently<sup>96</sup>, like most other residents in Building One, Bianca accessed water each morning and evening from a row of houses in nearby J Street. This was the consequence of an informal agreement between the resident's committees of this building and the J Street houses respectively. J Street is at the top of a steep hill. Bianca had to carry the water up to her sixth floor flat, limiting the amount that she could use and meaning that Bianca and her sister were forced to survive on less water than the World Health Organisation (WHO) recommends for health and risk free living<sup>97</sup>.

They look after people with disabilities here ... I am unemployed. I survive on the disability grant that I get. I am going to go to the training college for disabled people in Braamfontein. They teach skills like crafts etc ... It's good to be in the city. Even the townships are too far. With a disability I get good care here in the city .





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Many residents have experienced similar hardships as a result of the lack of access to water:

*It's the toilets that use so much water. There is no water in the system so we have to pour sometimes 25 litres. But we can use dirty water for the toilet ... it's hard to collect so much water each day. We have to carry it up seven floors<sup>98</sup>.*

*I have no water in my flat. I carry the water for myself from the neighbouring property. My right arm and leg do not work properly so it's difficult to carry the water. I do get help now and again, but mostly I have to carry it myself. I use about 20 litres in a day and I have to carry that up six floors<sup>99</sup>.*

Building One also has no electricity; this was disconnected in 2004 after the last managing agent finally withdrew from the building. As a result, people are forced to cook and illuminate their homes using paraffin and candles increasing the risk of fire. In 2005 the water supply to the fire hydrants were disconnected, exacerbating the fire risk. For residents in Building One, and for many poor people in the inner city, access to basic services would considerably alleviate both hardship and vulnerability. Yet the lack of access to basic services persists, seemingly for two fundamental reasons: (1) the collapse of the sectional title scheme represents a failure of certain contractual models to provide secure

tenure for poor people; and (2) the policy on free basic services, designed to benefit precisely this group of people, does not include any benefits for non-account holders.

As vulnerable as residents of Building One are, there is one element of this community of inner city residents that has provided much needed security: community cohesion. The committee is an informal response to the breakdown of formal structures of management in the building (and in the inner city more broadly) and in some ways can protect residents' interests. It has managed to hold annual elections for the past six years, and it collects a monthly amount of R10 to clean and maintain the building. The Committee has also been able to negotiate certain benefits on behalf of residents including, since 2007, a water standpipe. However, the committee does not operate in relation to any by-laws or regulations concerning resident's committees, and is broadly powerless in respect of municipal actions.

Yet these small achievements are not insignificant. In 2005 the City sought an eviction order against the residents of Building One on the basis of section 12(4)(b) of the National Building Regulations and Building Standards Act

103 of 1977 (Buildings Regulations and Standards Act), which empowers the City to "order any person occupying ... any building, to vacate such building immediately or within a period specified in such notice"<sup>100</sup>. This eviction was successfully opposed partly because the judge was satisfied that the residents had made every effort, given the circumstances, to maintain the cleanliness and safety of the building. Moreover, he was of the opinion that the deterioration of the building was partly attributable to the council's own lack of concern for such buildings in the inner city.

### 3.2 Building Two: Absent owner

Nearby Building One, towards the cul-de-sac at the end of the street, are two redbrick two-storey apartment blocks. The two buildings occupy adjoining stands and form a single residential complex sharing a yard and a residents' committee. The two buildings are small in comparison with other nearby residential blocks: each building has 12 units and there are 7 backyard rooms, and 5 converted garages on the eastern end of the compound – 36 households in all. The buildings are officially registered to a property company that owns several

*I have no water in my flat. I carry the water for myself from the neighbouring property. My right arm and leg do not work properly so it's difficult to carry the water. I do get help now and again, but mostly I have to carry it myself. I use about 20 litres in a day and I have to carry that up six floors.*





buildings in the inner city. Residents refer to the owner as a man named George, who occasionally visited the properties until 2000. At this time, there were functioning leases, administered by a managing agent who collected rental (about R400 per month) and maintained the properties. However, some time in 2000 this relationship broke down. The agent ceased collecting rent from residents and shortly afterwards withdrew from all engagement with the properties. Residents have not seen George, nor have they paid rent since 2000.

After the managing agent and owner disappeared some residents formed a committee in order to collect money to continue paying for water and electricity and to maintain the building. Residents were asked to contribute R400 each month (the same amount that they had previously spent on rental) but the committee members agree that most people do not contribute this amount. About eight or ten people still make regular contributions towards maintaining the building, but they now each pay only R50 a month<sup>101</sup>. In late 2000, the water and electricity were disconnected by CoJ, presumably because the owner (the account-holder) had stopped paying the bills and the City's revenue department had caught up with the building's arrears situation. The committee has made some attempts to locate the owner but these attempts were unsuccessful.

What is clear is that the buildings are in substantial arrears. A termination of water service notice dated 27 November 2006, which accompanied a disconnection (of an illegal reconnection by residents)

reflects an amount of R237 097.42 owing on the account of one of the two buildings. Since the water and electricity were initially disconnected in 2000, residents have illegally reconnected these services numerous times, although most residents we interviewed were understandably apprehensive to admit this:

*We do not pay for water here. The owner has run away and there is no-one to pay. We do have electricity in the house but it is an illegal connection ... but mostly we use paraffin to cook and heat the home. We use candles also. It costs us about R50 per month<sup>102</sup>.*

These illegal connections are periodically identified and disconnected by the City. Residents claim that, following CoJ disconnections, the services are again reconnected shortly afterwards in exchange for a nominal fine (usually paid in cash by the committee). But sometimes the illegal reconnection takes longer and residents are forced to use candles and paraffin, and to collect water from nearby buildings. At the time of this research, CoJ had disconnected the water services between March and June 2006. The water was reconnected (whether legally or illegally) between June and August, it was again disconnected in August and,

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following another reconnection, again disconnected in November. In between, CALS sent a number of letters of demand to CoJ arguing that, notwithstanding arrears, residents could not be effectively denied access to basic water services, regardless of the status of the buildings. Following the most recent disconnection in November 2006, CALS took no further action because the service was soon reconnected at one of the two properties. At the time, residents claimed that the service was legally connected, although the council has not confirmed this. With access to water restored at one of the buildings, the second building and the backyard rooms access water from a stand-pipe in the yard:

*There is no water in our flats, but there is a yard pipe. We haven't had water in our units for about eight months. We were cut off, and now we get water from the pipe ... we have been without electricity for about two years ... they came and locked the meter. Instead we use paraffin and candles<sup>103</sup>*

*There is water in [the other building] now; the yard pipe is actually on the property of [that building]. Joburg Water wanted to come and reconnect the water at both buildings in August ... but they couldn't do ours because the pipes are supposed to be leaking<sup>104</sup>.*



The residents' committee is widely accepted by residents, but there are no elections and the committee does not hold regular meetings. It has no broad mandate, operating rather as a small group of concerned residents contributing R50 each per month towards a shared saving:

*We are few who are willing to pay each month. We are about nine people who are paying. The others are just getting free water. We go house to house collecting but we don't always get<sup>105</sup>.*

To some extent willingness to participate in community affairs is strategic. When emergencies arise, or when there is clear personal gain, residents are likely to be more committed. In contrast to the committee in Building One, the committee at Building Two has failed to develop into a strong and consistent support structure. Apart from periodically organising the reconnection of water and electricity services, the committee offers very little to residents. One of the possible reasons for the weakness of the committee is that there are apparent tensions between residents, making even instrumental cohesion difficult. The view of one committee members is suggestive:

*There are mostly drunkards around here. They sit and drink beer all day. Friday, Saturday and Sunday they are always drinking beer<sup>106</sup>.*

Such comments point to deeper social tensions in the buildings, primarily between the long-term residents and the more recently arrived residents. The committee comprises residents who have lived in either of the buildings for more than ten years. The members feel a sense of ownership, or at least custodianship, over the buildings and they are highly anxious that the already dilapidated buildings could become the target of a municipal expropriation. These tensions inevitably manifest in stereotyping of various groups, including non-South Africans. About 30% of residents are foreign nationals (a greater proportion than in any of the other five buildings researched), and most of these residents have arrived on the properties within the past five years.

One such resident is Dominic, an exile from the DRC. He is married to a South African and has lived in South Africa since 1992, and has battled to make a decent living since his arrival:

*I used to run a little restaurant but the tsotsis<sup>107</sup> stole it from me. I also used to make business with a car that I bought. I used it as a taxi. But that also got stolen by tsotsis<sup>108</sup>.*

Dominic has lived at his current address for the past five years. He has tried more

There is water in [the other building] now; the yard pipe is actually on the property of [that building]. Joburg Water wanted to come and reconnect the water at both buildings in August ... but they couldn't do ours because the pipes are supposed to be leaking.

recently to open a small restaurant in his flat, making traditional Congolese food. But other residents in the building forced him to close it down. The committee members are adamant that he should not be allowed to operate his restaurant because it would bring “unknown people” into their building at night. As a result, Dominic prefers to remain less visible within the community. This seems to be a common practice shared by many of the foreign residents, and perhaps is a more general lesson foreigners learn from the hostile inner city terrain. Many non-South Africans would not attend focus groups, and those that were willing to be interviewed were guarded about giving information.

There is also tension between residents of the apartments and those living in the backyard rooms. Although one of the members of the residents’ committee lives in a backyard shack and there does not appear to be any problem with his tenure, a number of the backyard rooms have been erected in the past five years by young men, whom the committee accuses of having little commitment to the community. There are also external tensions. On one of the days that we conducted interviews, a fight in one flat resulted in a man having to be hospitalised. Several respondents agreed that the particular flat was occupied by a bogus security guard who had been effectively “planted” by a property company located in Yeoville. Rumours suggested that this property company had shown interest in acquiring the buildings, and wanted to force the residents out.

Whether or not these particular rumours and accusations were true, residents are vulnerable to these sorts of machinations. Since the owner has disappeared residents are uncertain of their own status on the properties, and focus groups revealed a number of anecdotes about unknown people (possibly developers) visiting the properties over the past few years. Lack of access to water and electricity only compounds this insecurity. The arrears notice that arrived in November 2006 made residents concerned that the City might attempt to evict them - residents know of other buildings where eviction is foreshadowed by disconnection of services. Moreover, people’s daily lives are severely affected by disconnections: they are forced to use candles and paraffin making the risk of fire a reality, and they are forced to collect water from neighbours, sometimes after dark if people work late. The latter practice makes residents beholden to their neighbours or to residents of adjoining blocks and buildings. This means that if relationships sour, access to water is compromised. It also heightens the specific vulnerability of women, with women forced into exchanging sexual favours for water.

### 3.3 Building Three: Struggling body corporate

Nearby Buildings One and Two is the third building of the research report. It is a seven-storey sectional title block comprising one and two bedroom apartments. As in other sectional title buildings in the inner city, many residents in Building Three have owned their property since the late 1980s and early 1990s. As property values decreased and poorer people moved into the area in the 1990s, rentals began to drop to the point where many owners abandoned their properties. This provided the space for poorer occupants to purchase units in such buildings. However, the majority of owners in Building Three are poor and many struggle to pay the monthly levies and utility bills. As a result, the body corporate is largely defunct.

Two owner-residents act as trustees of the increasingly beleaguered body corporate. But they are unelected, unable to enforce regular levy payments, and there has not been a body corporate Annual General Meeting since 2000. Yet all of the apartments have identifiable owners, and just less than half the apartments

There is no water in our flats, but there is a yard pipe. We haven’t had water in our units for about eight months. We were cut off, and now we get water from the pipe ... we have been without electricity for about two years ... they came and locked the meter. Instead we use paraffin and candles.



are occupied by the owner. There is a body corporate account into which levies are paid, though not all owners make regular contributions. The account receives about half to two-thirds of the required levies and rates each month as well as other miscellaneous amounts. For example, one flat was abandoned by an owner in arrears on levy payments, and it was sold on behalf of the body corporate. The building has considerable problems. Debt is rising, owners increasingly renege on their levy payments and, as of June 2006, the building owed in excess of R1 million.

The matrix of basic services and vulnerability in Building Three reveals a complex interaction between different groups within the building. Each group is defined by a specific set of tenure circumstances, and a resulting particular relationship to access to basic services. By unpacking these complex interactions it is possible to understand some of the ways in which basic services entrench vulnerability in the context of shared responsibility for water and electricity services payments. There are three identifiable groups of residents and, in addition, there is a managing agent who is employed by the body corporate to administer the building. The first group comprises the owner-occupants. The members of this group have all made significant investments into the building and believed (as conventional wisdom suggests) that by buying their own homes they were making a wise financial decision. The individual circumstances for buying in this particular building differ but, more generally, the inner city provided a convenient and central

location. Now the investments they made are under threat:

*There are twenty eight units in the building, and only about nineteen are regularly paying. The body corporate is now left with only two people ... most owners don't even come to meetings any more. They get the rent from their tenants and they don't pay the levy ... there have been two security guys shot at the entrance to the building. It's not safe anymore. I bought this place for R65 000 in 1994. Now some people are selling for maybe R15 000<sup>109</sup>.*

For this group of residents, water and electricity are commonly viewed as a cost that threatens their investment. Although they require access themselves, they see the problems of the building stemming from the shared responsibility of water and electricity and would rather pay for their own usage only. But this is not possible because, although there

are individual electricity meters for each flat (by far the more expensive service compared with water), in terms of the Sectional Titles Act 95 of 1986 [Sectional Titles Act], the body corporate is ultimately responsible for all arrears<sup>110</sup>. In other words, these individual meters are of use only for the managing agent to distribute accounts, but do not represent individual contractual obligations with the municipality. When a resident is unwilling or unable to pay that is a dispute that must be resolved within the confines of the body corporate and, in Building Three, this inevitably means that the few who regularly pay bills must carry the many who do not.

In the sectional title circumstance, access to basic services becomes a means for the body corporate to attempt to enforce compliance (or to victimise unpopular residents) through disconnecting individual apartments. In Building Three, the trustees do not want this responsibility and feel it should rather be undertaken by the managing agent. The trustees are reluctant to disconnect

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entrance to the building. It's not safe anymore.  
I bought this place for R65 000 in 1994. Now  
some people are selling for maybe R15 000 .

apartments themselves because in the past they have been threatened with violence. When they have reported any intimidation to the police, they have been told that the police do not intervene in building relationships<sup>111</sup>. Moreover (as recognised by the trustees), most residents struggle to cover their costs:

*I am a body corporate member. But if I cannot pay then I can get kicked off. And they have threatened to force me out of the building ... last year I was fired from my job. Now to make money my wife and I are selling food in the industrial areas. We sell to workers ... but I am battling to pay the levy. It's R410 per month<sup>112</sup>.*

The second group of residents is made up of the tenants. This group comprises about half the residents in the building. This group is on average poorer and more vulnerable than the owner-occupiers, but consequently also less invested in (though by no means indifferent to) the status of the building. For the tenants of the building the immediate problems are somewhat removed:

*There are no real problems with the building. We have electricity and water. The lifts aren't working and the toilets are a problem. But it's mostly fine. I know that the building owes, though. Sometimes the pipes get blocked. There is no plumber that lives here, but one of the committee will always organise a plumber<sup>113</sup>.*

Tenants are frequently caught up in battles between the owner-occupiers and the landlord-owners. In cases where a landlord-owner has failed to pay levies, tenants have had their electricity switched off by the trustees without due process, which is unlawful. The trustees in particular, feel that tenants (and the increasing absence of landlord-owners) are a cause of the downward spiral of the building. Tenants are regarded as having problematic and uncooperative attitudes by many owner-occupiers, and the act that a proportion (about 20%) of tenants is foreigners exacerbates tensions.

The roof tenants form the last group of residents. They live in ten small rooms on the roof of the building, which were originally built as servants' quarters and store rooms for the flats below, and are the property of the body corporate collectively. The rooms were not originally serviced with water and electricity and it is only in the past five or six years that the rooms on the roof have been occupied. When they were first rented out there was still no electricity in the rooms, and tenants would access electricity via extension cables hung down the side of the building and into one of the apartments. In terms of current services, there is a shared bathroom, toilet and

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stand-pipe on the roof, and electricity has recently been installed in the rooms. However, the roof tenants do not pay for their water and electricity services. The water and electricity that they consume is a shared expense of the body corporate in the same way that lights in the passages are a shared expense. This is a legacy of the historical use of the rooms as a shared resource.

Certain individuals (and in particular the trustees) collect rental from the rooms directly. Though the rental should belong to the body corporate, it is not accounted for in the body corporate account, and there are accusations by certain residents that the trustees are making money off the roof tenants. Roof rentals range between R200 and R350 for a single room. During the research, the trustees mentioned spending almost R10 000 from the body corporate account to connect electricity to the rooms on the roof - a surprising outlay of money given the body corporate's debt. They claimed this was for the benefit of the body corporate, which would now be able to charge higher rental for the rooms. However, there is no evidence yet that the

body corporate is reaping any financial benefits from this arrangement. Other residents and the managing agent of the building accuse the trustees of misusing body corporate funds to subsidise their own incomes.

Finally, there is a managing agent. The current managing agent was appointed by the body corporate (in effect the trustees) in 2000. The managing agent is employed by the body corporate to distribute accounts to individual owners, to collect levies and to ensure that the municipal accounts are paid. Payment for the agent is a flat fee each month taken from the collected accounts. The agent claims a monthly fee of R500. She administers several other buildings in the inner city. The relationship between the managing agent and the trustees is a peculiar one. The trustees accuse the agent of incompetence and mismanagement:

*We used to have XY as an agent. They dumped us when they thought we had no hope. Now we have Z ... not everyone is paying the levy, but the agent is not strong. We, as the committee, can sometimes switch off the electricity of someone who is not paying, but they just threaten us and we have to put it back on. It's not legal to just switch someone off. But the agent should be running this issue<sup>114</sup>.*

Residents also accuse the agent of corruption. There is debilitating confusion among residents about accounts and

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many claimed in interviews that the agent fails to pass on free basic water savings. The failure of intermediaries (including managing agents and owners) to pass on free basic water and electricity benefits is a common problem in the inner city, in large part caused by the City's refusal to contract directly with tenants (or individual owners in sectional title buildings) for water and electricity services. Some residents of Building Three believe that the agent is charging them for water and electricity that should rightfully constitute the free basic amount. The agent has in turn accused the trustees of corruption and of "eating the money" of the body corporate.

We were not able to establish who controls the accounts of the building. The trustees have access to the body corporate account but claim to require the signature of the agent before making withdrawals. The agent claims to have no such powers and is simply employed by the body corporate to manage the building. Certainly, all accounts from municipality are sent to the managing agent who then sends individual accounts to residents. The agent has all the account records on file but the trustees claim to be denied access to them. Communication between the trustees and the managing agent has largely broken down. The trustees feel threatened by the agent's presence in the building because it creates an alternative authority to their own, yet curiously there has been no attempt to cancel the agent's contract. This is for two reasons: first, the trustees are themselves mistrusted by many residents and so are politically unable to dismiss the managing agent

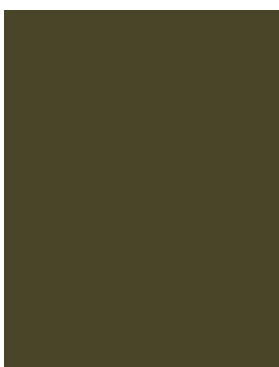
(even though they do have power within the building to e.g. control the roof apartments). Second, the trustees do not have many alternative options. The building is in crisis and it is unlikely that any other agent would agree to take on such a building. The trustees themselves are not capable of taking over the management function, and the managing agent herself has advised the body corporate to consider applying for a court-appointed administration as an option to salvage the building.

In the meantime, the continued confusion about accounts and billing in the building, the infighting between tenants and owner-occupants, and the constantly rising debt burden create substantial anxiety and insecurity among residents of Building Three. The sectional title tenure arrangement, with its onerous burden of joint cooperation or collapse, is clearly not working. The continued security of tenants is dependant on every landlord and owner maintaining complete integrity towards the management of the building and the functioning of the body corporate. On the other hand, the investment that owners have made is rendered vulnerable by the non-payment of services by tenants and other owners. The structural inability of residents in the inner city to directly contract with the municipality for services creates a huge collective burden in terms of which individual fates are held captive to the performance of the collective. In the case of Building Three, the result is a non-functioning building that is on the verge of collapse.

### 3.4 Building Four: Hijacked sectional title

In many respects, Miriam, Ernest and Zungu are ideal municipal customers<sup>115</sup>. All three are homeowners, each having bought his/her inner city flat ten years ago. Their flats have low values when compared with flats and houses in other parts of Johannesburg<sup>116</sup>, but all three have regular incomes, they contribute regularly and consistently to the levies of their apartment block (Zungu has records of payment going back to about 1999), and they all have a social and economic stake in the future not only of their building but the inner city in general. Yet they are currently in danger of losing their investment because the building in which they live – Building Four - is in debt and under threat of expropriation by CoJ.

Notwithstanding the integrity of many of its residents, such as Miriam, Ernest and Zungu, Building Four - which is located in the densely populated Joubert Park neighbourhood of Johannesburg's inner city - exemplifies the City's description of a "Bad Building" outlined in Chapter Two. It is not yet officially listed for attachment by the Better Buildings Programme but it has been mentioned as a likely candidate by the head of the Programme<sup>117</sup>. It is a densely populated building; there are 176 apartments in the ten-storey building, excluding the store rooms on each corridor, which are also occupied. All the apartments are bachelor units, although most are occupied by more than one person. It is a completely defunct sectional title scheme. Yet unlike the two other failed sectional title



buildings that are part of this study, residents in Building Four have been unable to maintain even a dysfunctional body corporate (as in Building Three), or to form a cohesive committee to jointly manage the building in its place (as in Building One). Long-term owners and residents admit that the body corporate was always weak and ineffective and, by 1999, had effectively ceased to operate under the weight of mounting debt and increasingly absent and indifferent body corporate members. A managing agent continued to collect levies and services from about 30% of residents, but amidst accusations by residents of theft and corruption the managing agent withdrew in 2001.

Building Four is visibly dilapidated. The lifts no longer function, and it owes over R5 million in debts (more than the value of the property, according to the Better Buildings Programme)<sup>118</sup>. However, residents have access to both water and electricity, although the electricity is illegally connected.

The tumultuous history of Building Four is exemplified in the narrative spanning the period from May 2006 until January 2007 and. It is a story of the breakdown under the force of social and economic pressure of cohesion and control. The main protagonists in this tragedy are:

1. Owner-occupants who bought their property through the housing market;
2. Owner-occupants who have gained ownership of their property through a government housing subsidy scheme;
3. The 'caretaker' – a man who no longer lives in the building but has effectively hijacked several apartments in the building and is actively engaged in extorting 'rent' from occupants; and
4. As with many situations in the inner city, the people caught in the middle are the tenants, who are often the most vulnerable group.

Following many years of spiralling debt and mismanagement, in May 2006 some of the owner-occupants (through CALS) applied for the building to be put under administration. This process, which represented a final attempt to safeguard their investments, involves applying to the court to appoint an administrator to regularise payments and building maintenance. Judicial administration is always a last resort and in many cases where it fails, it is followed by the legal dissolution of the sectional title scheme, expropriation, eviction and the sale of all property in execution of the debt.

In Building Four's case, the application to appoint an administrator was successful and the administrator began sending accounts and notices of payment to owners in June 2006. However, although

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legally empowered hold tenants and owners accountable through attaching property from defaulters and potentially to evict them, the administrator had little success. At any one time, only about 30% of owners made payments. The major reason for the administrator's lack of success, despite general agreement among occupants to apply for administration, was that in the period between the application and the appointment of the administrator, a building hijacker began to destabilise the building. Appointing himself as the 'caretaker' in the vacuum of authority, Aubrey lived in one of the flats and had been employed at some stage as the building's security guard. At the time of our research, Aubrey was no longer a security guard and he did not pay rent. Instead, purporting to be an owner of several flats in the building, Aubrey collected 'rent' from other occupants, sometimes through persuasion and, as a last resort, sometimes through coercion. Aubrey correctly saw that the potential appointment of an administrator would threaten his livelihood. He was unable to prevent the application for judicial administration from being made (he attempted to by engaging a lawyer but the lawyer he retained, who is well known to be unethical, failed to engage with the application process and the order was granted on the unopposed roll). So he sought to undermine the appointed administrator by agitating among tenants in the building.

Just over half of the residents in Building Four are tenants. Rentals range between R300 and R600 per month. Some tenants

have a degree of tenure security in that they have formal contracts with an owner. But many have only tenuous verbal agreements, and are vulnerable to summary eviction if they cannot pay rent on time. In a context of insecurity of tenure, and confusion about who in fact is the correct owner, tenants are understandably less concerned with the legitimacy of who collects the rent than their own immediate needs. This does not mean that tenants are indifferent to the condition and status of the building, but they have little agency to affect any change since their own tenure is fragile. Aubrey was able to capitalise on the confusion, and he managed to convince a sizeable number of tenants that he was a preferable patron to the administrator. He did this by charging a lower 'rent' than the administrator (most people did not understand that he had no authority to charge this rent and that he was not passing on monies received for water and electricity bills to the City) and by affecting a sympathetic demeanour (in contrast to the administrator, who was perceived to be arrogant and rude).

Aubrey also cultivated the support of the subsidy-owners in the building.

While most of the owner-occupants, who had bought their property through the market and wanted to encourage regular payment of levies and services through the administrator, many subsidy-owners had grown accustomed to the years of anarchy and they did not want to pay levies for flats they "already own"<sup>119</sup>. Clearly when they initially bought the flats using the governmental subsidy the notion of levies had not been made properly clear, or years of a reality in which they paid no levies and were not directly held accountable for this, had blurred such considerations. Although not all subsidy-owners were resistant to the administrator, Aubrey was able to foment conflict between owner-occupants and subsidy-owners to his benefit (by reducing the number of people who regularly paid the administrator, Aubrey's ability to extort 'rent' increased). To exacerbate matters, a particular city councillor held public meetings with residents of Building Four where she openly supported the subsidy-owners and undermined the administrator.

The inter-personal conflicts in Building Four, and the ease with which the 'caretaker' has been able to hijack much

Just over half of the residents in Building Four are tenants. Rentals range between R300 and R600 per month. Some tenants have a degree of tenure security in that they have formal contracts with an owner. But many have only tenuous verbal agreements, and are vulnerable to summary eviction if they cannot pay rent on time.



of the building, highlight the vulnerability of sectional title buildings to criminal interests. Because sectional titles require substantial teamwork, when such cooperation collapses, the entire building becomes hostage to the lowest common denominator and in such a vulnerable state, it is easy prey for criminals. Sharing the costs of water and electricity and communal upkeep of the building places a heavy burden on owners, whose investment is then subject to the cooperation, capacity and integrity of all others in the building. As the body corporate begins to collapse there are increasing incentives to free-ride on others, thus driving the building into debt and dilapidation. Owners are faced with the impossible choice between walking away from a long-term investment, or remaining in a building that is sinking under its own weight. At the same time, tenants are also made increasingly vulnerable as unscrupulous owners and hijackers overcrowd apartments in order to achieve short-term gains.

In Building Four, administrative incapacity and internal tensions culminated in a situation in which a building hijacker was able to convince many tenants to pay him R400 per month instead of paying the court-appointed administrator R800 per month. The end-result was that, in January 2007, the administrator resigned, not having been able to secure sufficient payments to cover the buildings costs, let alone his own fees.

Unfortunately, our research indicates that the City is unwilling or unable to respond to such situations outside of

expropriation and eviction. The fact that subsidy-owners (who have lived in their units for over ten years) are unwilling to pay for levies and services suggests a failure on the part of authorities to adequately conceptualise communal housing arrangements for poor people and to execute sustainable solutions. Moreover, the inability to contract directly with end-users for services places additional burden on people living in sectional titles and increases incentives for free-riding. Building Four represents a paradoxical situation in which residents have access to basic services (albeit partly illegally) and are ironically placed in a more vulnerable situation because of the regime under which these services are provided. By not intervening to regularise conditions, the City continues to place the residents of Building Four in an untenable situation. Judicial administration, while sometimes the only alternative to hold off eviction, is not an ideal solution. As illustrated by Building Four, the appointment by the court of an administrator is a private solution to what is often a public problem. If, as in Building Four, the conditions have deteriorated too much, or if residents are simply too poor to pay for an administrator, there are simply no solutions to the occupiers to secure their tenure and to regularise their conditions.

If, as in Building Four, the conditions have deteriorated too much, or if residents are simply too poor to pay for an administrator, there are simply no solutions to the occupiers to secure their tenure and to regularise their conditions.





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### 3.5 Building Five: 2010 fears

*They come in big cars ... black and white men. We don't know who they are, but they never speak to us and they leave again quickly ... we will have very few options [if we have to move] ... we are in crisis<sup>120</sup>.*

Building Five is actually a row of five single-storey residential houses in the neighbourhood of Highlands on the edge of the inner city. The houses are all registered to a single owner, although each house occupies a separate residential stand and is subject to a separate service account with the City. In 2000 the owner abandoned his properties, leaving the accounts for each house in varying amounts of debts. Building Five is in an area marked for significant change in the run-up to the 2010 World Soccer Cup and it is not clear that the residents will benefit from such changes or if they will be relocated to make way for soccer-related 'developments'. Understandably, there is a palpable air of anxiety among residents, who have no legal standing to take over municipal accounts and, as a consequence, feel powerless to safeguard their homes against potential municipal expropriation.

There are no fences between the five houses and their backyard rooms. And, although there is no committee, many of the residents regard themselves as part of a bigger community, with roughly 100 people living across the five properties.

They come in big cars ... black and white men. We don't know who they are, but they never speak to us and they leave again quickly ... we will have very few options [if we have to move] ... we are in crisis .

The first house in the row is a small three-roomed building with an adjoining outside room. Until 2000 the house operated as a crèche for children in the neighbourhood. Now it is home to Maria, her sister and the seven children they look after. Maria came to Johannesburg in 1995 to look for work, and she makes some money working as a domestic worker in the nearby suburbs. There is no water or electricity in their house, but there is a yard-pipe nearby in the grounds of the neighbouring house, and they have organised an informal electricity connection by running an extension cord to their neighbours' house. A young couple originally from Soweto live in the small backyard room in the yard.

The house next to where Maria lives was, until 1999, a tavern. When it closed down, the owner divided into nine rooms which he rented for R500 each. When the water and electricity were cut in 2000 the owner initially reduced the rent before he disappeared altogether. In one of these rooms live David and his seventeen year old son who is disabled. David was eligible for a subsidy house on the outskirts of the city but could not look after his son living in such an isolated place. He now makes about R800 per month doing deliveries for people using his old bakkie<sup>121</sup> (when it is not broken, as it was at the time of the research). There is electricity and water in the building, both illegally reconnected after they were disconnected in 2000.

The third house in the row has been occupied for much longer; the longest-standing residents have paid rent to the owner since 1995. One of these is Carlos, an immigrant from Mozambique. Carlos came to Johannesburg in 1995 to find work. Carlos makes about R1000

per month as a mechanic in the inner city and lives in Building Five because he does not have to pay rent. They were recently served with a notice of eviction by someone claiming to be the owner but they have not move out.

The residents are a tenuous community of people who have come to the inner city to improve their situations, but they share the vulnerability and insecurity of tenure due to the absence of the owner. The properties are registered to a company that owns a number of dysfunctional buildings in the inner city (including Building Two in this study). The residents know only a "white guy called George" who stopped coming to the properties in about 2000. After that there was a "black guy called Sipho" who was collecting rent. He claimed to be the owner of the houses and it is not know if he and George are connected to each other in any way. In 2003 he threatened to evict all the residents. He was seen once again in 2004 accompanied by a security guard but has not been seen since by residents. The houses have fallen into disrepair, basic services have long since been disconnected, and cannot

Building Five is in an area marked for significant change in the run-up to the 2010 World Soccer Cup and it is not clear that the residents will benefit from such changes or if they will be relocated to make way for soccer-related 'developments'. Understandably, there is a palpable air of anxiety among residents, who have no legal standing to take over municipal accounts and, as a consequence, feel powerless to safeguard their homes against potential municipal expropriation.



be reinstalled until outstanding debt is serviced (about R1 million across all five houses). The municipality is unwilling to open a new account for tenants, leaving them without possibility of accessing basic services. Residents have tried on a number of occasions to have new municipal accounts opened, but were told that this was not a possibility until the debt on account registered to the owner was paid in full. In focus groups residents indicated an ability to pay on average R190 per month if the water and electricity were properly restored but are unable to even contract with the municipality. Residents are therefore forced to act illegally in order to secure these services - in three of the houses residents have illegally re-connected services, but remain vulnerable to intermittent disconnections, prosecution and possible injury in attempting to access water and electricity.

Building Five illustrates the insecurity and vulnerability of inner city residents as a result of absentee landlords. Faced with uncertainty about the future of their homes, residents are unable to invest anything more than short term into their homes. Willing to pay, but faced with the debt of the absent landlord, residents have had to take illegal measures in order to access basic services.

### 3.6 Building Six: Tenuous resident's committee

When Albert died in late 2005 it was a blow to the residents of Building Six. He had been an active member of the residents' committee for the past eight

years. When Brian died less than six months later it was a disaster and the resident's committee collapsed. Among Brian's few possessions that are now lost or destroyed was a file documenting the affairs of the building since 1997. The rise and fall of the residents' committee of Building Six is a telling illustration of vulnerability in the inner city, highlighting the fine line between poverty and survival. The committee that was formed after the disappearance of the owner in 1997 was by no measure the equivalent of a functioning body corporate. Yet its minor successes in traversing the City's formal obstacles were not insignificant in creating a sense of cohesion among residents.

Building Six is a two storey building in Doornfontein. It is unlike the other buildings in this research in two significant ways. First, it was not always a residential building. It was originally a light-industrial building (like many others in the Doornfontein area), having been converted into single-roomed quarters in the early 1990s by the owner. Second, being surrounded by other light-industrial

In one of these rooms live David and his seventeen year old son who is disabled. David was eligible for a subsidy house on the outskirts of the city but could not look after his son living in such an isolated place. He now makes about R800 per month doing deliveries for people using his old bakkie (when it is not broken, as it was at the time of the research). There is electricity and water in the building, both illegally reconnected after they were disconnected in 2000.

and office buildings, there are no shops in the nearby area and few other residents. The streets surrounding Building Six create a harder, less inviting, environment than the vibrant street life of areas like Berea and Joubert Park. At night the area is haunted by the occasional rattle of trolley wheels from cardboard and scrap-metal collectors. This local urban texture significantly impacts residents' access to basic services.

Twenty-eight people call Building Six home, living in 16 rooms (including the three store-rooms on the roof). Almost all the residents have been there more than five years, and some as long as fifteen years. The last time the registered owner was seen by residents was in mid-1997. In September 1997, a resident of the building who had collected rentals on behalf of the owner also moved out. By the end of 1997, residents ceased trying to pay their rent, assuming the owner was not returning. According to most residents, even when the owner was present, the building was poorly maintained. In 1993 the electricity had been disconnected, and the basement (where the electricity meter is located) was flooded by a leaking water pipe; it has proved impossible to reconnect the electricity ever since. Until that time, residents had been paying R400 rent per month; this was subsequently reduced to R300 and later to R250. Water continued to be available in a shared bathroom at the end of each corridor, but this was finally disconnected in 2002.

After the owner disappeared, residents formed a committee which maintained the building and attempted to deal with

residents' issues. The committee was driven primarily by the charisma of Albert and Brian. The committee attempted to make regular collections to cover rates and services and keep the building clean. This effectively translates into a monthly collection of R50 per household.

*We don't have to pay rent at the moment but we still are paying R50 per month. The committee is putting it into an account, so that we can use it for building repairs and things when we need it<sup>122</sup>.*

The residents' account was in the name of Albert and Brian, although Brian's wife has administered the account since his death. After the water was disconnected in 2001, the committee decided to deliberately destroy the toilets on each corridor and lock the bathrooms to prevent them from becoming a health hazard. Residents have subsequently had to use a public toilet located three blocks down Nugget Street. The public toilet is open between 7 o'clock in the morning and 6 o'clock in the evening every day. Water is collected from one of two places. Some residents collect water from nearby

Building Five illustrates the insecurity and vulnerability of inner city residents as a result of absentee landlords. Faced with uncertainty about the future of their homes, residents are unable to invest anything more than short term into their homes. Willing to pay, but faced with the debt of the absent landlord, residents have had to take illegal measures in order to access basic services.





Noord Taxi Rank, located three blocks up from the building:

*We get water from the nearby taxi rank, where we are charged R5 per container [by the young boys who wash taxi's]. We use about three or four of these per day. We have to bribe the guys who wash taxis at the rank<sup>123</sup>.*

There is also a tap near the Ellis Park railway station, about the same distance away. Two of the residents claimed that they make money by collecting water on behalf of other residents:

*We do not have any water. We fetch it from outside, at the hostels or the garage. It is about 1 km away. They don't charge us for the water from the tap. I use a trolley from Pick 'n Pay or wherever. I collect about six x 25 litres and it lasts about two or three days. The water was cut because the owner wanted us out. So he told the municipality and they cut the water in about 2004<sup>124</sup>.*

*We can fetch water from Bree and Bankett Street. I use a trolley to fetch the water. I use about nine*

*x 25 litres each three days. The trolley takes about four 25 litre drums and it takes about 30 minutes to fetch one trolley load. But I can charge R5 to fetch one 25 litre drum for people in the building<sup>125</sup>.*

Building Six has been in limbo following the death of Albert and Brian. In the focus group sessions and individual interviews most residents agreed that there continues to be some social cohesion within the building. But the well-functioning and active residents' committee no longer exists. One of the remaining committee members admits that increasingly over weekends people are unavailable for communal chores<sup>126</sup>.

In September 2006, an account from CoJ arrived at one of the doors of Building Six, for the amount of R403 000 owed by the building to the municipality. Surprisingly, the account was in the name of Brian, who had on one previous occasion visited the municipal offices and begged them to open a new account for the residents. The account provoked fear among residents, who feared the City would move to evict them.

As hard as life is for the residents of Building Six they can not imagine life anywhere else. There are no other flats available in the inner city that they could afford. Despite the lack of access to water and electricity, Building Six is a home to the people who live there.

In all six buildings in the case study, interviews and focus group sessions

Twenty-eight people call Building Six home, living in 16 rooms (including the three store-rooms on the roof). Almost all the residents have been there more than five years, and some as long as fifteen years. The last time the registered owner was seen by residents was in mid-1997.

indicate severe stress among residents, mostly caused by their conditions of poverty, including inability to access basic services and secure housing. This research has demonstrated that, however well-intentioned, the City's policies and practices are failing the inner city poor. The net result for many inner city residents is that the City remains remote and punitive:

*We have nothing from the council. We have to survive on our own. There is a committee in the building that is looking out for the building. We contribute and they ensure that the building is always clean. From floor one to floor sixteen. But the building owes much money and even the committee cannot pay for the arrears for the building. We are worried about having our water cut off and being evicted<sup>127</sup>.*

Inner city residents are precisely the people whom FBW and FBE policies were meant to benefit. Yet they are not able to access such critical assistance because of the unresponsiveness of the City's policies to non property owners. There is a clear need for policy solutions that are responsive to poor people's realities.



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# FOUR Systemic Barriers to accessing basic services

The six case studies in Chapter Three illustrate how, in attempting to secure access to basic services, inner city residents are faced with a number of obstacles, which in many instances leave residents with insufficient access to water and electricity services and increasingly vulnerable. In the introductory chapter the report outlined a set of barriers:

- ▲ Collapsed bodies corporate that have been dragged down under the weight of shared responsibilities and debt, where access to basic services is often the first casualty of the City's attempts to prevent further municipal arrears;
- ▲ Properties without registered owners or with absentee landlords where occupants are left without water and electricity and are uncertain about their tenure rights;
- ▲ No mechanism to provide direct access by tenants and occupiers to water and electricity services, including FBW and FBE; and
- ▲ A history of municipal neglect, which allowed dysfunctional tenure systems to perpetuate and debt to mount to the point where in many of the buildings municipal debt is greater than the market value of the building, resulting in generally deteriorating conditions and widespread disconnections of municipal services.

Not all of the buildings in this research demonstrate all of these obstacles<sup>128</sup>. Nor are these obstacles mutually exclusive; there is much overlap between the collapse of sectional title schemes and tenants wanting to contract directly with the municipality, for example. As we have highlighted, these types of barriers have a compounding effect, creating complex social and socio-economic problems in buildings that threaten access to services and living conditions, and which are hard to resolve without appropriate formal intervention.

## 4.1 Collapsed bodies corporate

Section 37 of the Sectional Titles Act stipulates that the body corporate is responsible for all debts owed by a building. Rentals and service charges are subject to individual rental contracts, but the municipality contracts service delivery to the body corporate (i.e. the owners in collective) and not to individual owners or tenants. In the past fifteen years, the value of the property in the inner city has fallen (although it has started to increase again, fuelling a drive towards urban regeneration). Yet broadly speaking a sectional title in the inner city bought for R65 000 in

1994 may be worth less than R40 000 in 2006<sup>129</sup>. Sectional title schemes are very burdensome for owners, who stand to lose their investment if others in the building do not/cannot pay levies and services.

Our research indicates that, especially in large buildings with many units, some owners do not feel they should pay for a flat that they already own. If many owners begin to default, the body corporate can no longer remain solvent:

*The owners are divided. We as the committee are willing to pay. But the administrator told us that these other people don't want to pay. They got their flat through a government subsidy, and they told [the administrator] that they will never even pay one cent ... these subsidy people believe the council will save them. But it's the council who will attach our property<sup>130</sup>.*

When good faith breaks down and bodies corporate collapse, there are few options for the building. In Building Three, two owner-occupants have 'volunteered' as trustees of the building, but they are neither elected, nor formally mandated to carry out the administrative duties of the

Very large buildings with numerous units tend to buckle under the strain of the collective burden of management, falling deeper and deeper into debt and mismanagement as the body corporate is unable to get everyone to pay levies and services.





body corporate. There has been no body corporate annual general meeting since 2000 and, although a managing agent is contracted to manage the building, even he considers the building to be beyond help:

*The building has huge arrears ... it is a time-bomb waiting to explode ... - the building has become part of the debt wave. A quick death is the best option ...<sup>131</sup>.*

All three sectional title schemes in this research are seriously in debt to the municipality, with a combined debt of over R10 million. Matters in Building One have reached the point where the City has initiated eviction proceedings<sup>132</sup>. Building Four has not yet received an eviction notice but, after the failure of the court-appointed administrator to resuscitate the building, residents are preparing for the worst.

It is clear from the many failed sectional title schemes in the inner city that such this form of tenure arrangement might not be appropriate for providing large-scale accommodation to poor people. This research suggests that very large buildings with numerous units tend to buckle under the strain of the collective burden of management, falling deeper and deeper into debt and mismanagement as the body corporate is unable to get everyone to pay levies and services. Unlike in townhouse schemes in the suburbs where there a limited number of units and mostly middle class occupants, in the inner city, body corporate members are invariably not in a position to cover non-paying owners or tenants and, in

multi-unit buildings, rising debt quickly spirals out of control. Because service fees are shared among all owners, individual owners are held hostage to the fate of the collective. Tenants are also vulnerable, especially when the downward spiral sets in, because their tenure security, as well as their access to services, depends wholly on the functioning of the body corporate (made up of owners).

A recent amendment to the Sectional Titles Act (the Sectional Titles Amendment Act 29 of 2003) has brought some relief to those owners of sectional title units who can demonstrate that they are up to date with their unit's municipal payments (prior to this amendment, any sectional title owner could be held personally liable for the building's debt)<sup>133</sup>.

However, in many buildings, such as Building Four, the demise of the body corporate heralds a period of murky governance and a collapse of formal accountability. In this grey world in which many sectional title schemes in the inner city currently languish, municipal accounts have often ceased and the only

When good faith breaks down and bodies corporate collapse, there are few options for the building. In Building Three, two owner-occupants have 'volunteered' as trustees of the building, but they are neither elected, nor formally mandated to carry out the administrative duties of the body corporate. There has been no body corporate annual general meeting since 2000 and, although a managing agent is contracted to manage the building, even he considers the building to be beyond help.

form of levies and service fees are in the form of illicit ‘rents’ by unauthorised agents and building hijackers. In such circumstances, it is all-but impossible for individual owners to extract themselves from the nightmarish sectional title “Catch 22”, as poignantly explained by Miriam of Building Four:

*My unit was given to my sister by her employer, and we lived in the flat together until she died of AIDS seven years ago. When my sister died, her son should have inherited the unit - and he told me that I could have it – but he could not get a clearance certificate from the municipality because the building as a whole was in debt to the council. I believe that I am the rightful owner of the unit and I have tried over the past seven years to pay the municipal bills, but they come to the body corporate, which no longer exists. For many years a few of us paid regularly into the account of one of the owners, who had set up an account called “City Power” and “Joburg Water”. We don’t know if that money went to the City. We were unable to get accounts in our names and so we were unable to pay the bills for our flats. We were very happy when we got an administrator. We started to pay him each month for services, but he left after only a short time – he was chased away by people*

*aligned with Aubrey. Now that Aubrey has hijacked the building, we owners don’t know what to do. We can’t get the City to contract with us directly and now Aubrey is threatening to switch off the electricity if we don’t each pay him R300 per month. But what can I do? If I leave my flat, where will I go? But even if I find somewhere else that I can afford, I am worried that tsotsis will move into my flat after I leave and the City might eventually come after me to pay the bills. What can I do<sup>134</sup>?*

## 4.2 Absentee landlords

The remaining three buildings in the case study (Buildings Two, Five and Six) are medium and low density rental buildings; Building Five is actually a row of houses converted into multiple dwelling units. In all three cases the owner of the property has abandoned his investment; two of the properties (Buildings Two and Five) are both owned by the same company. This company, along with the owner of Building Six, abandoned their properties many years ago – long enough for alternative

tenure patterns and relationships to have been established in the three properties. As we have indicated, occupants of abandoned buildings such as Buildings Two, Five and Six are able to support each other with varying success through forming residents’ committees and the like. However, there are structural limits to what residents’ committees can do without formal status, acknowledgement and support.

Our research has shown that, when owners abandon their properties, residents are unable to maintain payments for services because there are no municipal mechanisms to do so. Instead of the City pursuing the absentee owners for the municipal arrears (as they should), we have observed a practice in which the City disconnects water and electricity services to buildings inhabited by poor people. This is not only unlawful<sup>135</sup>, but it has the effect of deteriorating living conditions and exposing occupants to health risks, danger and the threat of eviction on health and safety grounds<sup>136</sup>. On such properties, notwithstanding the protections afforded by the PIE Act, there is a vacuum of formality that contributes to insecurity:

However, in many buildings, such as Building Four, the demise of the body corporate heralds a period of murky governance and a collapse of formal accountability. In this grey world in which many sectional title schemes in the inner city currently languish, municipal accounts have often ceased and the only form of levies and service fees are in the form of illicit ‘rents’ by unauthorised agents and building hijackers.





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All three sectional title schemes in this research are seriously in debt to the municipality, with a combined debt of over R10 million. Matters in Building One have reached the point where the City has initiated eviction proceedings. Building Four has not yet received an eviction notice but, after the failure of the court-appointed administrator to resuscitate the building, residents are preparing for the worst.

*There was an owner who was collecting rent then [before 2000] but now he has run away. We are still having problems here at the building. There was a meter before, and we knew how much was being used. Everything used to work before. That was when we paid rent ... but the person who used to collect rent no longer comes. We need to fix things in this place but there is no permission from the owner and we don't know who to contact. The owner is apparently somewhere around, but we don't know where. We have been waiting for the correct owner ... but we get no real information<sup>137</sup>.*

Residents from Building Two express similar anxieties:

*We do have water in our building, since last month, but before that it was six or seven months no water. The owner owes a lot, and he doesn't want to pay. So no-one knows what to do ... there is no-one to pay<sup>138</sup>.*

*We were originally renting through an agency, but the owner has not been paying the municipality. Eventually the water and electricity were cut. We do not have water and electricity now ... the owner has run away from his responsibility<sup>139</sup>.*

All three buildings are in debt to the municipality. On the few occasions when residents (or a particularly proactive resident in the building) have attempted to get services legally reconnected and a new account opened for the residents they are told that the debt needs to be serviced first. When owners abandon their property the result is increased vulnerability and insecurity among residents. In most instances residents are also effectively denied access to basic services because the building owner (and not the residents) is the account holder, and the municipality has no means to engage with non-account holders.

### 4.3 Inability of non-account holders to directly access water and electricity services

As highlighted in this report, accessing basic services in the inner city is complicated by the City's policy framework. In rental buildings, tenants are dependent on the good faith of owners who are often absent or do not prioritise passing on FBW and FBE benefits to tenants. In many sectional title buildings, the shared responsibility for becomes unmanageable and results in rising arrears with the City. The City of Johannesburg, for its part, has done little to recognise these structural barriers to accessing basic services. In terms of the City's indigency policy, free basic services are provided to poor households, but they must be municipal account holders. This includes bodies corporate collectively but excludes individual owners (in sectional title schemes) and tenants, who under normal circumstances would receive services by contracting with the account holder (i.e. the owner).

When owners abandon their properties, residents are unable to maintain payments for services because there are no municipal mechanisms to do so. Instead of the City pursuing the absentee owners for the municipal arrears (as they should), we have observed a practice in which the City disconnects water and electricity services to buildings inhabited by poor people.





This policy framework militates against many poor people in the inner city being able to secure formal water and electricity services. As our research highlights, these residents must either do without electricity and travel substantial distances to fetch water, or they must resort to criminality in the form of making illegal water and electricity connections. Not wishing to resort to illegal connections, residents of Building Six have had no access to electricity since 1993:

*In 1993 they cut the power. There is water in the basement now, and that's where the main switch is ... but the municipality had cut the power anyway. Instead we use candles and paraffin<sup>140</sup>.*

In one of the houses in Building Five the water was cut in 2004, accompanied by an account for R150 000. Residents illegally reconnected the water, but it was disconnected once again by the municipality in November 2006 accompanied by a notice for the full arrears. Residents are neither able nor willing to pay the full R150 000, but claim to have attempted to open a new account with the municipality. Residents of Building Five who participated in a focus group session were willing to

pay on average R190 for basic services (focus group one, Building Five residents, October 2006). Yet the City hardly ever allows tenants to open direct accounts<sup>141</sup> and when it does, it requires payment of 10% of the arrears on the account before reconnecting the service. Residents of Building Six, too, have attempted to open a new account, but again the City is unwilling to consider this until the existing debt of R403 000 is serviced<sup>142</sup>.

In most of the above examples, “attempting” to open an account means little more than going to the municipal accounts department in Braamfontein and explaining their situation to a departmental clerk or junior manager. For a poor and vulnerable person this can be an intimidating process, especially given the fact that their tenure situation is already precarious. In the context of urban regeneration and evictions, announcing to a city official that you are from a building that owes R400 000 in unpaid services potentially threatens your home. Moreover, they have to battle against a policy that only allows services in the name of account-holders. As a result, residents in inner city buildings, are forced to either illegally reconnect or to find alternative sources of basic services. Interestingly, none of our respondents was even aware of FBW or FBE, which is indicative of how far removed their reality is from the City’s policy framework. Yet they are among the free basic services’ intended beneficiaries.

In sectional title buildings, the City’s failure to contract with individual end-users requires different policy solutions.

In rental buildings, tenants are dependent on the good faith of owners who are often absent or do not prioritise passing on FBW and FBE benefits to tenants. In many sectional title buildings, the shared responsibility for becomes unmanageable and results in rising arrears with the City.

In the case of all three sectional title schemes considered in this report the fundamental problem with regards to accessing basic services was the burden of shared responsibility for payment. Not all debt relates to services. A portion also includes rates which are also a shared responsibility of body corporate members. Yet a significant portion of the debt of each of the three sectional title buildings includes unpaid municipal services such as water and electricity. In only one of the buildings (Building Three) are regular payments made by a majority of owners, and debt is still increasing. There are no municipal policy mechanisms which can distinguish between payers and defaulters. While her building was under administration, Miriam was one of a handful of owners making regular payments, yet if the building is expropriated she stands to lose her flat notwithstanding having made financial sacrifices in order to pay the municipal bills over the years (when they were forthcoming).

The problem with sectional title schemes is exacerbated by their scale. While many rental buildings are low and medium density buildings, sectional title schemes were developed precisely as a mechanism to manage high-density buildings of multiple owners. In the inner city most such buildings were built when property values were high in the inner city and interest rates were low. Shared responsibility for service fees was sustainable and many buildings were not built with individual meters for water and electricity. The cost of retro-fitting over 50 000 inner city apartments with individual

meters is most likely substantial, but unless the municipality can find some mechanism for individual metering sectional title schemes will continue to struggle to stay afloat.

Whether for sectional title schemes or tenants, the City needs to ensure a stable basic services framework in which each household is guaranteed at least free basic water and electricity, and in which those tenants who are able to pay for additional services, can directly contract for water and electricity services over and above the free basic amounts. In the meantime, in the absence of the registered owner, and with no mechanisms available for registering tenants as municipal account holders, it appears that residents of many inner city buildings will continue to be denied access to rights automatically provided to poor households elsewhere in Johannesburg.

#### 4.4 Municipal debt

The most common recurring problem faced by buildings in the inner city is debt. Debt is closely associated with years of neglect in the inner city and it directly impacts the ability of residents

to access basic services. All six buildings in the study are run-down and all are in varying amounts of debt to CoJ and its utilities. The three rental buildings owe on average R400 000 to the municipality. The sectional title schemes each owe in excess of R1 million. According to Geoffrey Mendelowitz, the City's BBP manager:

The amount of municipal arrears owed by the properties exceeds the estimated market value of the building if the building were capable of being sold as a freehold property. [Building Four], for example, owes the City about R3,4-million in arrears and [its] market value has been pegged at R900 000<sup>143</sup>.

As discussed above, debt affects access to basic services for owners (in sectional title buildings) and tenants differently. Owners in a sectional title scheme are jointly liable for repayment of a building's debt and can possibly have their properties attached if debt is unpaid. Tenants also stand to lose their homes if a building is attached since they will have to vacate the building. Of

The City needs to ensure a stable basic services framework in which each household is guaranteed at least free basic water and electricity, and in which those tenants who are able to pay for additional services, can directly contract for water and electricity services over and above the free basic amounts.



specific concern to tenants, however, is the fact that debt accrues to the owner. This means that if an owner runs up a debt, they are powerless to prevent their services from being disconnected, and remaining disconnected, until that debt is serviced. In the meantime, tenants are left without access to legal water and electricity connections.

Building Three and Building Four are both sectional title schemes. In Building Three water is metered to the building as a whole and so billed to the body-corporate directly. Even though electricity is metered individually to each flat, the body corporate is also ultimately liable. In addition, the body corporate is liable for water and electricity that is used communally (for example the light in the corridors and the caretaker's quarters on the roof). Theoretically the levies are supposed to cover these costs, but not all owners contribute regularly. Similarly in Building Four, water and electricity are individually metered but the body corporate is ultimately liable for the rates and services of the building. In both these buildings many owners are either unwilling or unable to make their monthly contributions. Both buildings have experienced disconnections in the past twenty-four months for failing to pay services and for un-serviced debt. When this happens residents are all disconnected.

In order to try and encourage regular payments the trustees of Building Three have occasionally threatened individual owners with disconnection. Most often this affects a tenant. Moreover, the

trustees have been physically threatened in the past for doing this.

Building Two, Building Five and Building Six are all rental buildings, each owned and let by a single owner. The buildings are all in debt, but in each case the owners' unwillingness to account for this debt has affected tenants' access to basic services. In all three of the buildings, ownership and tenure security are uncertain.

In the case of the Building Five houses the original owner ceased collecting rent from residents in 2000. Other people have subsequently claimed to be the new owners, even serving the residents with an eviction notice in 2004. Services were disconnected subsequent to the disappearance of the owner and the suspension of service payments. Although residents have illegally reconnected the services, the Building Five houses have no legal and reliable access to basic services. Residents have been advised by council that they cannot resume normal service until the outstanding debt is serviced. Similarly, residents of Building Six have been denied access to basic services because of an outstanding debt of R405 000 owed by the owner of the building.

The issue of debt is a clear bind. The City understandably wants to be assured of some recovery of costs. However,

there are limits to how much of the inner city's debt occupants can afford to repay. In addition, given that the debt has been accrued over a decade or more of mismanagement by owners, as well as much neglect by the City, it is not clear how much of the debt in each case has been accrued by current occupiers. This raises questions of fairness and suggests that it might be better for the City to write off most of the debt and start from scratch, setting up municipal accounts for anyone who wants water or electricity<sup>144</sup>.

In 2006 it was reported that CoJ's Better Buildings Programme planned to scrap debt to the value of R260 million as part of an incentive package for the re-development of old buildings<sup>145</sup>. Many buildings in the inner city currently provide no source of revenue for the City, although a majority of residents interviewed for this report said they are willing to pay for services if the services were properly supplied. As evidence of this willingness to 'contract' for services, the residents' committees of three of the six buildings have made attempts to register new accounts in cases where an absent owner has left the existing account in arrears.

It appears that the City is institutionally un-responsive to the context of tenure arrangements and service needs in the inner city. The City's cut-off policies are

The most common recurring problem faced by buildings in the inner city is debt. Debt is closely associated with years of neglect in the inner city and it directly impacts the ability of residents to access basic services.

certainly cruel and probably unlawful. Cut-offs also appear to be uncoordinated. For example, although the two buildings that constitute Building Two are in arrears, the buildings are not always simultaneously disconnected. In addition, when cut-offs occur, no notice is given to tenants. This suggests that debt (and contractual relations around basic services more broadly) are restrictively defined. Similarly, while some buildings with illegal electricity connections are detected and disconnected, others with large populations and huge electricity consumption are not. The haphazardness of the City's cut-offs might benefit some occupants, but this kind of benefit is no substitute for a formal framework that is sensitive to the lived-reality of poor people and is flexible to their needs and constraints.

Moreover, even where directives not to disconnect are given by CoJ, the utilities do not take heed. For example, although Building One is subject to a court order (and a settlement process) to connect water services, Johannesburg Water has recently disconnected the building's standpipe<sup>146</sup>.

There are few alternatives for residents when faced with municipal debt other than to pay the debt (usually impossible) or to resort to illegal reconnection of services. The City continues to understand its relationship with its residents as customers, where punitive measures are taken against non-payers. Yet the reality is that residents in the inner city are unable to respond to the

City as customers, not only because of conditions of poverty but also because the City refuses to contract with non-account holders. Worse still, although professing to provide free basic services "to all" and that "all its programmes are aimed at improving the quality of lives of all citizens with the emphasis being on the poor"<sup>147</sup>, and despite numerous revisions to its social assistance package, the City does not ensure that FBW and FBE go directly to intended beneficiaries.



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There are few alternatives for residents when faced with municipal debt other than to pay the debt (usually impossible) or to resort to illegal reconnection of services. The City continues to understand its relationship with its residents as customers, where punitive measures are taken against non-payers.

# FIVE Conclusion

The evidence from six buildings in the inner city suggests that there is a strong correlation between form of tenure and security of access to basic services. Feedback from the buildings highlights that the kinds of housing forms (unlawful occupation, abandoned rented/tenement buildings and unmanaged sectional title buildings) that very poor people can afford do not guarantee access to water and electricity services, even at the free basic level.

It is clear from the research that the City's service delivery framework (both policy and practice) does not adequately cater for the inner city poor. The report has highlighted specific policy and practice gaps:

- ▲ Failure to provide free basic services to all inner city residents;
- ▲ Failure to directly contract with tenants for water and electricity services above the free basic allowances;
- ▲ Failure to engage constructively with tenants to establish alternative forms of management, for example tenants' cooperatives, and also to assist struggling bodies corporate; and
- ▲ Failure to provide appropriate and affordable forms of low-cost housing (inclusive of basic services) for the very poor.

Until these gaps are properly bridged the inner city poor will continue to suffer diminished access to basic services and

the City's indigency policy will remain meaningless to many of its intended beneficiaries.

Based on our research, we make the following short- and medium-term recommendations:

## SHORT-TERM RECOMMENDATIONS

- ▲ In the immediate future, the City should provide at least a free basic water supply to all buildings that are disconnected. Options include full reconnection where possible, and in cases where internal plumbing has become unusable as a result of long neglect, the City should provide either standpipes or regular water-tankers. In addition, adequate provision should be made for potential emergency situations such as fires. This might include non-water fire-extinguishers or versions of grey-water recycling.
- ▲ The City must move, as quickly as possible, to allow inner city residents to directly receive FBW

There is a strong correlation between form of tenure and security of access to basic services. Feedback from the buildings highlights that the kinds of housing forms (unlawful occupation, abandoned rented/tenement buildings and unmanaged sectional title buildings) that very poor people can afford do not guarantee access to water and electricity services, even at the free basic level.





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and FBE. The City must amend relevant bylaws and make any other necessary changes to bypass landlords and bodies corporate in the provision of FBW and FBE, and to ensure the individual metering of units throughout the inner city.

#### MEDIUM-TERM RECOMMENDATIONS

- ▲ The City must pursue owners rather than tenants for non-payment of municipal arrears. Although the current model is that owners, rather than tenants, are responsible for rates and services

payments, the City commonly disconnects tenants' services without notice when there are municipal arrears. This practice is unfair and the City should regularly and vigorously pursue owners for municipal arrears, while leaving tenants with at least the free basic services intact. The City should also play a much more active role in holding owners accountable for the conditions on their properties.

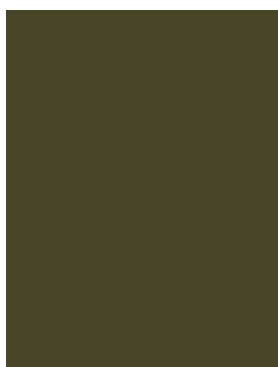
- ▲ At the same time as pursuing registered owners for municipal arrears, a separate account for current consumption should be established for those tenants who can afford to contract for water and electricity services beyond the free basic amounts. Each tenant should be individually contracted with, creating a direct relationship between the City and the individual end-user.
- ▲ The City should do more to protect inner city residents against unscrupulous landlords, managing agents and building-hijackers e.g. it should respond to reports of intimidation, extortion etc., and it should move towards rent-control (and perhaps some form of ultimate oversight) in certain buildings in the inner-city.
- ▲ The City should create a rapid response unit to assist tenants with governance- and services-

related problems. This unit should also meaningfully engage with residents about alternative forms of management, including cooperatives, and support struggling bodies corporate.

- ▲ CoJ should establish a register of buildings occupied by a majority of very poor and vulnerable residents, and it should intervene to establish safe and affordable conditions for the occupants, including guaranteeing affordable rentals and services, and ensuring that such buildings are not disconnected from services for inability to pay municipal bills.
- ▲ Ultimately, to ensure safe and affordable housing, CoJ should provide publicly-owned and publically-maintained social housing at cheap rentals (that include service charges) for very poor residents.

# Endnotes

- <sup>1</sup> Reference to “the City/CoJ” suggests one, coherent, structure. This is not the case – the City of Johannesburg has a very decentralised and fragmented structure, operating many of its services through arms-length (though public) utility corporations. However, for ease of reference and because the City has ultimate responsibility over all sub-structures, including utility companies, we have maintained the generic terms.
- <sup>2</sup> In late-2007 - in response to a High Court application by residents of Phiri (Soweto) for the court to grant them additional Free Basic Water (Mazibuko & Others v City of Johannesburg & Others) - the City of Johannesburg introduced a policy to increase the allocation of Free Basic Water to those on the indigency register from 6 kilolitres to 10 kilolitres. At the time of writing this report it was unclear whether all those on the indigency register received the increased allocation. The 6kl amount is still the amount of FBW reflected on the City's official website: [www.joburg.org.za/content/view/35/66/1/2/](http://www.joburg.org.za/content/view/35/66/1/2/) (accessed on 07/02/2008).
- <sup>3</sup> Although initially the City allocated 50kWh FBE per household per month through a tariff, and only to households that consumed below a specified consumption threshold (this is in line with the national policy on FBE: [www.dme.gov.za/energy/elect\\_fbe.stm](http://www.dme.gov.za/energy/elect_fbe.stm)), at the time of writing, the City's website proclaimed the provision of “50kWh of free basic electricity to each household in Joburg each month” (in other words to all households, not just to qualifying households) jurisdiction: [www.joburg.org.za/content/view/34/66/1/2/](http://www.joburg.org.za/content/view/34/66/1/2/) (accessed on 07/02/2008). However, as this report highlights, in practice many households – particularly in the inner city - do not receive FBE because the City provides the FBE benefit (along with the FBW benefit) to account-holders only.
- <sup>4</sup> Johannesburg News Agency 10/03/2007
- <sup>5</sup> As explained in the sections below, as a result of years of mismanagement and neglect, many inner city buildings have accrued massive municipal arrears in respect of rates and services charges.
- <sup>6</sup> Currently, CoJ only plans to rollout water prepayment meters to former deemed-consumption areas - former townships such as Soweto where, as a result of apartheid-era politicisation, water was not metered but was rather charged at a flat-rate.
- <sup>7</sup> Department of Water Affairs and Forestry (DWAF) (May 2001) Free Basic Water Implementation Strategy Version 1, para. 3.2; Department of Minerals and Energy (DME) (July 2003) Electricity Basic Services Support Tariff (Free Basic Electricity), Ministerial Foreword
- <sup>8</sup> Throughout this report, we use the term “inner city” to delineate a geographic area within the City of Johannesburg that stretches over a region bounded by the southern end of Parktown and the Louis Botha Avenue in the north, to the northern edges of Selby and Kernse, skirted by the M2 highway in the south. To the east, it ends at the eastern edges of Bellevue, Bertrams and Troyeville. In the west, it ends with the western borders of Fordsburg and Vrededorp. It is an area of around 12 km<sup>2</sup>. It is home to around 220 000 people, but its population swells to over 1 million during the day, as, despite a period of decline during the 1990s, it is still a hub of significant commercial and some light industrial activity. It includes Hillbrow, Berea, Joubert Park and parts of the Central Business District.
- <sup>9</sup> We have not attempted to use any objective definition of “the poor”. Rather, having identified the buildings that we wanted to research, we asked residents about their household incomes. Although not necessarily statistically relevant across the inner city more generally, the vast majority of respondents in our study (70%) indicated a total household income (from all sources, including government grants) of below R1 000 per month. Such households cannot realistically afford to pay much more than R400 per month for accommodation, including water and electricity.





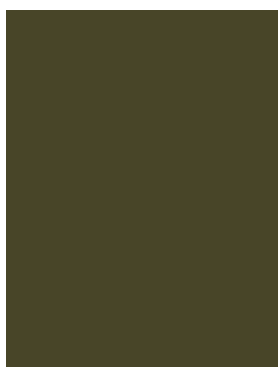
- <sup>10</sup> There are no clear definitions in South Africa, whether legal or policy oriented, of what basic services comprise. The Local Government Municipal Systems Act 32 of 2000 defines “basic municipal services” as: “a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety of the environment”. This definition is far from clear, but this study focused on water (including sanitation) and electricity services only, and more so on water services than on electricity services (because of the critical importance of water to everyday health and dignity). This is not to suggest that refuse, health, education and transport services are not also critical services.
- <sup>11</sup> Two other forms of inner city housing – market-related rental housing and social housing - were not investigated. We did not cover market-related rental buildings because such rentals are well beyond the means of the poorest inner city residents. According to property management agency Trafalgar’s 2006 Inner City Report, in 2006 average rentals for one-bedroom flats in Johannesburg’s inner city were approximately R1 800 per month: <http://www.trafalgar.co.za/cms/Downloads/InnerCityReport/Report-4.pdf>. It is likely that, by now, the cheapest rentals are more in the region of R2 500 per month. Regarding social housing, CoJ has recently started to provide some social housing, but even this is too expensive for most of the respondents in our study and, in any event, it is hopelessly over-subscribed. According to Jean du Plessis, acting Executive Director of the Centre on Housing Rights and Evictions (COHRE), the cheapest low-cost housing in the inner city – at the New Europa House, opened in October 2005 – costs R600 per month (for a family of four), excluding water and electricity. This is too expensive for most of the households in our study and, in any event, all 68 units are fully occupied and there is a long waiting list (supporting affidavit of Jean du Plessis in the matter of *Olna Investments (Pty) v Maria Mkhwanaz, Abery Mbedele and The Unlawful Occupiers of Erf 221 Fairview Township*).
- <sup>12</sup> We use the term as defined in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) in section 1: “unlawful occupier’ means a person who occupies land without the express or tacit consent of the owner or person in charge, and without any other right in law to occupy such land”.
- <sup>13</sup> Briefly stated, the PIE Act reinforces the right to housing contained in section 26(3) of the Constitution of the Republic of South Africa Act 108 of 1996 (“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”), stipulating that, as with other occupiers of property, unlawful occupiers may not be evicted without a court order made after considering all the relevant facts.
- <sup>14</sup> We use the word typology to describe related, but distinct, classes of obstacles.
- <sup>15</sup> The only way for a tenant to acquire direct access to water and electricity services is by furnishing the City with a letter of consent from the owner at the time of contracting the rental agreement with the owner. Obviously this avenue is closed to people in dysfunctional sectional title buildings, as well as those in buildings with absentee landlords.
- <sup>16</sup> This research is more focused on debt - and particularly how this impacts access to basic services - than on documenting the physical conditions of the buildings. Neglect is mentioned only to make the point that current municipal debt is so excessive precisely because of years of municipal disregard.
- <sup>17</sup> See, for example: Centre on Housing Rights and Evictions (COHRE) and Centre for Applied Legal Studies (CALS) (8 March 2005) “Any room for the poor: Forced evictions in Johannesburg, South Africa”
- <sup>18</sup> Department of Provincial and Local Government (DPLG) (1998) White Paper on Local Government, para. 2.3

- <sup>19</sup> This report focuses on relevant legislation from a human rights perspective. Some of this section is derived from the following conference paper: J. Dugard (2006) "A rights-based analysis of water and electricity services in South Africa", Annual Conference of the Norwegian Association for Development Research, 13-15 September 2006, Oslo, Norway.
- <sup>20</sup> Section 7(2) of the Constitution of the Republic of South Africa Act 108 of 1996 (Constitution)
- <sup>21</sup> Section 27(2) of the Constitution
- <sup>22</sup> Government of the Republic of South Africa v Grootboom 2000 BCLR (11) 1169 (CC), para. 44
- <sup>23</sup> Ibid, paras 44-45
- <sup>24</sup> Section 1 of the Water Services Act defines "basic water supply" as meaning "the prescribed minimum standard of water supply services (which includes sanitation services) necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene".
- <sup>25</sup> Regulations Relating to Compulsory National Standards and Measures to Conserve Water made under sections 9(1) and 73(1)(j) of the Water Services Act 108 of 1997, GN R509 of 8 June 2001
- <sup>26</sup> Grootboom, note 22 above, para. 37
- <sup>27</sup> Section 27(1)(b) of the Constitution
- <sup>28</sup> Although FBW and FBE are policies rather than legislation, the Constitutional Court has clarified in Grootboom at para. 42 that, in terms of the state's obligations regarding socio-economic rights: "The state is required to take reasonable legislative and other measures. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive".
- <sup>29</sup> Very little actual privatisation of water services, and no privatisation of electricity services has occurred, although varying degrees of outsourcing of functions is fairly common. This means that, almost without exception, services are provided by wholly state-owned entities. For example, regarding electricity, Eskom (which distributes electricity to many rural areas and also to Soweto) is wholly owned by the Department of Public Enterprises. City Power is wholly owned by the City of Johannesburg. But both operate as ring-fenced, corporatised, entities horizontally as well as vertically; as between each other and also vis à vis other government agencies and services.
- <sup>30</sup> According to section 9(3) of the Constitution "the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."
- <sup>31</sup> City Council of Pretoria v Walker 1998 (2) SA 363
- <sup>32</sup> Ibid, para. 46
- <sup>33</sup> The connotation of the right to equality of electricity services is therefore almost the same as that of the implied right to electricity. The difference is that the right to equality is an explicit right, and one that the courts seem readily willing to accept.
- <sup>34</sup> DWAF (1997) White Paper on a National Water Policy for South Africa, para. 2.1.4
- <sup>35</sup> DME (1998) White Paper on the Energy Policy of the Republic of South Africa (White Paper on Energy)
- <sup>36</sup> The 1994 RDP was the government's essentially redistributive economic manifesto, which was replaced by the more austere (and not very accurately named) Growth, Employment And Redistribution (GEAR) programme in 1997.
- <sup>37</sup> African National Congress (ANC) (1994) The Reconstruction and Development Programme (RDP), para. 2.7.3



- <sup>38</sup> Ibid, para. 2.7.7
- <sup>39</sup> G. Khumalo, L. Ntlokonkulu & T. Rapoo (2003) "Alternative Service Delivery Arrangements at Municipal Level in South Africa: Assessing the Impact of Electricity Service Delivery and Customer Satisfaction in Johannesburg". Research Report 102, Centre for Policy Studies (CPS), Johannesburg, p. 8
- <sup>40</sup> Section 73(1)(c) of the Systems Act
- <sup>41</sup> DWAF (May 2001), note 7 above
- <sup>42</sup> Ibid, para. 1
- <sup>43</sup> Ibid, para. 3.2
- <sup>44</sup> [http://www.dme.gov.za/energy/elect\\_fbe.stm](http://www.dme.gov.za/energy/elect_fbe.stm) (accessed on 31/01/2008)
- <sup>45</sup> K. Beavon (April 2000) "Northern Johannesburg: part of the 'rainbow' or neo-apartheid city in the making?" *Mots Pluriels* no 13: <http://www.arts.uwa.edu.au/MotsPluriels/MP1300kb.html>
- <sup>46</sup> Ibid
- <sup>47</sup> A. Mabin (2005) Draft article: "Suburbs on the veld, modern and postmodern": [http://www.wits.ac.za/mabina/suburbs\\_on\\_the\\_veld\\_mabin.pdf](http://www.wits.ac.za/mabina/suburbs_on_the_veld_mabin.pdf)
- <sup>48</sup> J. Beall, O. Crankshaw & S. Parnell (2002) *Uniting a Divided City - Governance and Social Exclusion in Johannesburg*. Earthscan, London, pp. 58-59
- <sup>49</sup> Ibid, pp. 77-78
- <sup>50</sup> DPLG (1998), note 18 above, para. 1
- <sup>51</sup> ANC (1994), note 37 above, para. 2.3.5
- <sup>52</sup> Ibid, para. 2.6.10 and para. 2.7.8
- <sup>53</sup> R. Tomlinson (1999) "Ten Years in the Making: A History of the Evolution of Metropolitan Government in Johannesburg" *Urban Forum* volume 10 (1), pp. 1 – 39
- <sup>54</sup> Ibid, p. 19.
- <sup>55</sup> Ibid
- <sup>56</sup> <http://www.johannesburgwater.co.za>
- <sup>57</sup> <http://www.citypower.co.za>
- <sup>58</sup> <http://www.pikitung.co.za>
- <sup>59</sup> P. Bond (2000) *Elite Transition: From Apartheid to Neoliberalism in South Africa*, Pietermaritzburg & London: University of Natal Press/Pluto Press
- <sup>60</sup> Beall et al (2002), note 48 above, p. 94
- <sup>61</sup> Beavon (2000), note 45 above
- <sup>62</sup> M. Fiil-Flynn (2001) "The Electricity Crisis in Soweto" *Municipal Services Project Occasional Papers Series No. 4*
- <sup>63</sup> Palmer Development Group (2006) "City of Joburg: Corporate Planning Unit Draft Final Report: Comparative Tariff Analysis", p. iii and iv
- <sup>64</sup> Unlike other most other poor urban areas in Johannesburg, in Soweto the majority of people own the houses they live in. This is not because they all had the money to purchase their houses. Rather, it is because, as a product of the transition to democratic rule, the City transferred the apartheid-era 99-year leasehold system into title deeds, with the objective of providing black people with permanent land rights in urban areas (this broader policy objective is set out in the Department of Land Affairs (1997) *South African Land Policy White Paper*, para. 2.5.
- <sup>65</sup> See, for example, C. Bénit-Gbaffou (forthcoming 2008) "In the shadow of 2010 – A fast-tracked local democracy, or how to get rid of the poor in the Greater Ellis Park Development Project, Johannesburg" in O. Bass, U. Pillay & R. Tomlinson (eds). Pretoria, HSRC Press
- <sup>66</sup> P. Larson (2005) "The Changing Status of the Sandton Business District: 1969 – 2003", Thesis submitted to the Faculty of Humanities, University of Pretoria
- <sup>67</sup> Beavon (2000), note 45 above
- <sup>68</sup> Following broader international trends, during the mid to late 1980s, the apartheid government embarked on a deregulation and privatisation drive.
- <sup>69</sup> City of Johannesburg website: <http://www.joburg.gov.za> (accessed in the course of March 2007)
- <sup>70</sup> Ibid

- <sup>71</sup> City of Johannesburg (2001) "Inner City Position Paper" p. 1: [http://www.jda.org.za/keydocs/inner\\_city\\_position\\_paper-jan2001\(2\).doc](http://www.jda.org.za/keydocs/inner_city_position_paper-jan2001(2).doc)
- <sup>72</sup> Ibid
- <sup>73</sup> L. Davie (10 January 2006) "Better Buildings kicks up a level" Johannesburg Development Agency website: [http://www.jda.org.za/2006/jan11\\_buildings.stm](http://www.jda.org.za/2006/jan11_buildings.stm)
- <sup>74</sup> However, there are indications that, due to ongoing challenges to the City's housing policy, in the future, the City will provide some temporary housing for evictees.
- <sup>75</sup> N. Fraser (28 November 2005) "Better Buildings just gets better", City of Johannesburg website: <http://www.joburgnews.co.za/citichat/2005/nov-28citichat39.stm>
- <sup>76</sup> Ibid
- <sup>77</sup> Ibid; L. Davie (10 January 2006), note 73 above
- <sup>78</sup> Ibid
- <sup>79</sup> Ibid
- <sup>80</sup> In 2007 the City launched an Inner City Charter process, which aims to pull the private sector into providing solutions for regenerating the inner city. For example, the City is hoping to entice private companies to provide and manage mixed-income buildings, where richer occupants would cross-subsidise poorer ones.
- <sup>81</sup> There is limited provision in the City, in the form of an institutional subsidy, for people wanting to purchase flats but this subsidy is very inflexible and insufficient to provide adequate and appropriate inner city public housing.
- <sup>82</sup> COHRE/CALS (2005), note 17 above
- <sup>83</sup> The information for this section on the City's indigency/social service package is mainly derived from the Supporting Affidavit of Rahid Ahamed Seedat (Director of the Central Strategy Unit within the Office of the Executive Mayor of the City of Johannesburg) in the case of *Mazibuko & Others v City of Johannesburg & Others* [all affidavits, including Rashid Seedat's are available on: <http://www.law.wits.ac.za/cals>].
- <sup>84</sup> Although, as of February 2008, indigency policy benefits are contingent on being registered as an indigent, there is no information on the City's website on how to register. A search under the category of "City Services" mentions nothing about the indigency policy, the indigents register or how to register: [http://www.joburg.org.za/index.php?option=com\\_content&task=view&id=534&Itemid=160](http://www.joburg.org.za/index.php?option=com_content&task=view&id=534&Itemid=160) [accessed on 08/02/2008].
- <sup>85</sup> Unlike FBW, which has, all along, been provided to all households in Johannesburg, regardless of need, size and income level, originally FBE was only extended to certain households. Within the Eskom jurisdiction (including Soweto and Sandton), initially all households consuming below 150 kWh per month received the 50kWh of FBE. For many years, there was a discrepancy in terms of which households under City Power's jurisdiction (the remainder of Johannesburg) could choose a tariff that provided for a FBE allocation up to the consumption level of 1020 kWh per month (almost ten times higher than for Eskom). In 2004 CALS (on behalf of Soweto residents who were missing out on the FBE allocation because hardly any qualified under the Eskom threshold) brought this unfair discrepancy to CoJ's attention, and the threshold was equalised in 2005 at a monthly household consumption level of 820 kWh per month. At the time of writing this report, the City's website claimed to provide 50kWh of FBE to all households. It has not been possible for us to verify whether all households now receive the 50kWh allocation.
- <sup>86</sup> It is worth remembering that the 6kl FBW benefit has always been available to all property owners in Johannesburg and the FBE benefit has always been available to all property owners who consume below a specific amount of electricity each month (meaning that a rich individual living on her own in Saxonwold is likely to be able to access the FBE benefit by virtue of her household's low monthly electricity consumption).
- <sup>87</sup> Trafalgar (2006) "Inner City Report", p. 7: <http://www.trafalgar.co.za/cms/downloads/InnerCityReport/Report-4.pdf>





- <sup>88</sup> Extrapolated from household income data from Statistics South Africa Census 2001 (<http://www.statssa.gov.za/census01/html/default.asp>), approximately 64 000 people in the inner city (out of an estimated total of 220 000 people living in the inner city) live in households earning less than R1 600 per month.
- <sup>89</sup> Interviewee 5, Building One, October 2006
- <sup>90</sup> Interviewee 12, Building Five, September 2006
- <sup>91</sup> Interviewee 11, Building One, October 2006
- <sup>92</sup> Because some of the issues raised in this research have the potential to exacerbate the already vulnerable existence of our informants (for example, by exposing illegal electricity or water connections, we might unintentionally expose informants to criminal charges by the City), we have neither named the informants nor the buildings.
- <sup>93</sup> Interviewee 2, Building One, September 2006
- <sup>94</sup> Interviewee 13, Building One, October 2006
- <sup>95</sup> COHRE/CALS (2005), note 17 above
- <sup>96</sup> During early-2007, in response to discussions between CALS and the City arising from a series of legal challenges (around evictions and water services delivery) brought by CALS, the residents of Building One were able to secure a standpipe in the street below the building, making the daily task of accessing water much simpler.
- <sup>97</sup> World Health Organisation (WHO) website: [http://www.who.int/entity/water\\_sanitation\\_health/diseases/en/](http://www.who.int/entity/water_sanitation_health/diseases/en/) (accessed in March 2007)
- <sup>98</sup> Interviewee 12, Building One, September 2006
- <sup>99</sup> Interviewee 11, Building One, September 2006
- <sup>100</sup> The City orders the vacation of a building in terms of the Act, purportedly in the interests of the residents' safety. It has been CALS experience, however, that, having sought urgent eviction orders under the Act, the City often fails to execute the orders for months at a time, suggesting that urgent safety concerns are not the primary determinant of the eviction.
- <sup>101</sup> Interviewee 5, Building Two, September 2006
- <sup>102</sup> Interviewee 2, Building Two, September 2006
- <sup>103</sup> Interviewee 1, Building Two, November 2006
- <sup>104</sup> Interviewee 1, Building Two, November 2006
- <sup>105</sup> Interviewee 11, Building Two, September 2006
- <sup>106</sup> Interviewee 5, Building Two, September 2006
- <sup>107</sup> Tsotsi is a colloquial word for gangster.
- <sup>108</sup> Interviewee 2, Building Two, September 2006
- <sup>109</sup> Interviewee 4, Building Three, September 2006
- <sup>110</sup> Section 37(1)(a) of the Sectional Titles Act
- <sup>111</sup> Interviewee 3, Building Three, September 2006. While we did not specifically focus on the role of the police, in the course of the research many residents complained about police failure to take up reports of intimidation, coercion, extortion etc. For example, when one resident went to Hillbrow Police Station (in January 2008) to report that persons claiming to be from City Power were asking for cash in hand to stop them from disconnecting electricity, the police told her that they could not help her ("we don't deal with buildings") and she should go back to confront the men herself (interviewee 1, Building Four, January 2008). This transfer of responsibility for public order to private individuals exacerbates insecurity and fosters a climate in which vigilantism thrives. It is obviously also worrying to contrast police inaction to such reported problems with their very evident aggressive action in the inner city against foreigners. For example, at around midnight on 30 January 2008 police officers from the Johannesburg Central Police Station raided the Central Methodist Church (in the inner city) and detained 520 people who seeking refuge at the church. According to the police, the raid aimed to pursue criminals. Yet, the only 'crime' the detainees were charged with was being in South Africa illegally. Of the 520 detainees, all but 15 were able to prove that they were innocent of even this – 505 of the detainees had documentation giving them a legal right to remain in South Africa.

- <sup>112</sup> Interviewee 3, Building Three, September 2006
- <sup>113</sup> Interviewee 2, Building Three, September 2006
- <sup>114</sup> Interviewee 6, Building Three, September 2006
- <sup>115</sup> The City commonly uses the term “customer” to describe its relationship with residents. Progressive groups prefer the term citizen.
- <sup>116</sup> For example, Zungu bought his flat for R8000 (he recently made the final payment on his home loan from ABSA bank) and it is likely that his flat would not be valued much higher today.
- <sup>117</sup> N. Dlamini (24 June 2005) “Seven Buildings marked for expropriation”, Johannesburg News Agency: [http://www.joburg.org.za/2005/june/june\\_24.better.stm](http://www.joburg.org.za/2005/june/june_24.better.stm)
- <sup>118</sup> Ibid
- <sup>119</sup> Interviewee 10, Building Four, July 2006
- <sup>120</sup> Interviewee 12, Building Five, September 2006
- <sup>121</sup> An Afrikaans word for a small truck-like vehicle with a cab for the driver and an open back.
- <sup>122</sup> Interviewee 14, Building Six, September 2006
- <sup>123</sup> Interviewee 11, Building Six, September 2006
- <sup>124</sup> Interviewee 14, Building Six, September 2006
- <sup>125</sup> Interviewee 13, Building Six, September 2006
- <sup>126</sup> Interviewee 14, Building Six, September 2006
- <sup>127</sup> Interviewee 10, Building One, September 2006
- <sup>128</sup> Nor was our research exhaustive in its documentation of typologies of barriers. For example, the case studies in this report do not include an example of a landlord restricting access to services to effect constructive evictions.
- <sup>129</sup> Trafalgar (2006), note 87 above
- <sup>130</sup> Interviewee 4, Building Four, January 2007
- <sup>131</sup> Interview with managing agent, Building Three, October 2006
- <sup>132</sup> At the time of writing, the matter (City of Johannesburg v Rand Properties 2007 (1) SA 78 (W)) had been heard in the Johannesburg High Court, the Supreme Court of Appeal and the Constitutional Court – the latter’s judgment was delivered on 19 February 2008.
- <sup>133</sup> Section 47 of the Sectional Titles Act
- <sup>134</sup> Interviewee 1, Building Four, December 2007
- <sup>135</sup> Poor people have the same rights as everyone in South Africa to access sufficient water, and to access FBW and FBE. Moreover, as outlined in Chapter Two, they also have the rights to equitable and justly administered services, meaning inter alia that they need to have adequate notice of the proposed disconnection and a reasonable opportunity to make representation. In our research we observed instances in which these safeguards were absent. Indeed, it is hard to see how the City would satisfy the requirements for just administrative action given that municipal accounts are in the name of the absentee owner and any warning would be sent there, rather than to the occupiers. Moreover, in terms of remedying the situation, occupiers are not able to directly contract for services, so they would not be able to pay for the arrears, even if they could afford to do so.
- <sup>136</sup> Many inner city evictions are secured in terms of the health and safety grounds of the Buildings Regulations and Standards Act. Clearly, where there are genuine and immediate health and safety threats, the City should not act to safeguard residents. However, this should only be done when the City can offer appropriate alternative accommodation – being evicted onto the street without alternative housing exposes residents to worse health and safety threats than they are exposed to in almost all ‘unsafe’ buildings.
- <sup>137</sup> Interviewee 13, Building Five, October 2006
- <sup>138</sup> Interviewee 5, Building Two, September 2006



<sup>139</sup> Interviewee 7, Building Two, September 2006

<sup>140</sup> Interviewee 6, Building Six, September 2006

<sup>141</sup> There were no instances in our case studies of the City allowing tenants to open municipal accounts. Through CALS's broader community work, we know of a few instances in which residents have secured such access, but only after paying a proportion of the arrears on the existing account (which must almost always be unfair since there is no way to determine how much of the arrears has been accrued by the current tenants/occupants).

<sup>142</sup> Focus group 2, Building Six, December 2006

<sup>143</sup> N. Dlamini (24 June 2005), note 117 above

<sup>144</sup> It is worth noting that debt write-off has been advanced en masse to the residents of Soweto (because, for historical reasons, Soweto residents are significantly organised, mobilised and militant).

<sup>145</sup> L. Davie (10 January 2006), note 73 above

<sup>146</sup> This disconnection occurred towards the end of January 2008, while residents were waiting for the Constitutional Court judgment. Following CALS's intervention, the water was reconnected.

<sup>147</sup> N. Thatisi (4 December 2007) "Joburg is committed to the poor", City of Johannesburg website: <http://www.joburg.org.za>







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