Understanding and Planning for the Role of Municipalities in Evictions:

Case Study of the City of Johannesburg

June 2014

1. Introduction

SALGA has a partnership with its Dutch sister organisation, VNG International, under an overall Memorandum of Agreement between the National Department of Human Settlements and the Dutch Ministry of the Interior. One of the focus areas in this partnership is the capacity building of municipalities in the field of human settlements. As part of this programme, SALGA has conducted research on the consequences of evictions for municipalities, based on the Blue Moonlight court case in the City of Johannesburg and the experiences that can be drawn from the case.

The 2006 - 2012 Blue Moonlight court case became an important court case for the jurisprudence around evictions and the requirement for municipalities to provide alternative accommodation for people that are evicted and become homeless. The outcome of this case impacts significantly on the responsibilities of local governments in eviction cases, either from public or private stock.

There is a general shortage of low income accommodation in urban areas, which leads to people making use of informal and/or dangerous housing options, such as shacks and abandoned and dilapidated buildings in the inner city. Because people with little income do not have sufficient affordable alternatives, the municipalities are held responsible for providing accommodation to evictees who would otherwise become homeless.

Recent legal cases concerning evictions—including the Blue Moonlight case—have created a new framework within which municipalities must budget, plan for and manage evictions. This document serves to map the situation in the City of Johannesburg with regard to eviction processes and recent court cases on evictions. The research looks at the Blue Moonlight court case specifically, but also includes other court cases which have determined the new roles and responsibilities of municipalities in evictions. The ultimate aim of this guideline is share information with municipalities on what their obligations are with regard to evictions and to provide some advice on how best to handle these issues.

2. Background to the Blue Moonlight Eviction Case

The Blue Moonlight case is one of many legal cases over the past ten years which have contributed to the new role of municipalities in evictions. However, this case is unique in that it extends the obligation of a municipality

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1 The International Co-operation Agency of the Association of Netherlands Municipalities.
to provide alternative accommodation to people who will become homeless because of an eviction from either private or state owned land.

The Blue Moonlight case involved a private company called Blue Moonlight Properties (Pty) Ltd, the City of Johannesburg, and the unlawful occupiers of a building on Saratoga Avenue in Berea, Johannesburg. The case involved 86 people living in an industrial property that consisted of a large area filled with shacks and a double-storey building that had been partitioned into smaller rooms. The average income of the people living in the building was R940 – R2000 per month and most of the occupiers earned their income in the informal sector. Some of the occupiers had lived in the building for six months and others had lived there for many years.

In 2004 Blue Moonlight purchased the property, with the aim of redeveloping it. As such, the owners of the property needed the occupiers to be evicted. In 2010, the court granted an order to evict the occupiers and declared that the municipality was responsible for providing alternative accommodation to people who will become homeless after being evicted. As such, the City of Johannesburg was ordered to provide temporary accommodation as close as possible to where the Blue Moonlight property was located. The court further ordered the City of Johannesburg to compensate the owner of the building for the loss of the use of the property for the period that the occupiers lived in the building. The perspective of the court was that if affordable accommodation had been available, people would not have resorted to living in the Blue Moonlight building.

3. Alternative Accommodation Provided by the City of Johannesburg

In 2012 the City of Johannesburg moved the residents of the Blue Moonlight building into one of two forms of alternative accommodation. More than half of the occupants of the building were able to afford rent of R600 per month and were therefore relocated to a social housing project in a converted military hospital called the MBV Phase 2 building (communal housing with family units). MBV Phase 2 is managed by the Johannesburg Social Housing Company (JOSHCO). The remaining residents, who could not afford to pay R600 per month, were relocated to a “managed care” shelter called Ekuthuleni, which is free of charge. This section describes this dual approach taken by the City of Johannesburg in order to draw some lessons learned for other municipalities.

The Managed Care Shelter Approach

Ekuthuleni Shelter is an example of temporary accommodation provided by the City of Johannesburg for those who would be rendered homeless because of an eviction, such as in the Blue Moonlight case. The shelter management is outsourced to an NGO called Metro Evangelical Services (MES), which is a partner organisation of Madulammoho Housing Association.

People who live in the Ekuthuleni shelter sign an *individual transformation plan*, which states that they agree to comply with the programme. The individual is then allocated a social worker. Skills development programmes are provided to equip the residents with the necessary skills to find employment. The goal is for the individual to reside in the temporary accommodation for six months, while they find employment and alternative accommodation that they can afford. However, if the individual cannot transition in that period (to be able to afford their own accommodation) they are permitted to stay longer if the extension is approved by a social

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2 Communal Housing generally consists of individual rooms with shared communal facilities and is managed by a Social Housing Institution.
worker. However the maximum is 12 months. The dorms are gender based; therefore couples and families cannot live together. Residents must vacate the premises every day between 08h00 and 17h30.

It is essential to note that while some aspects of the “managed care” shelter approach are favourable, there are elements of this approach which are currently being contested in court. Therefore, although shelters are a temporary solution to the need for emergency accommodation, they are not an adequate long term solution. Shelters are not “considered as a housing intervention, rather forming part of social welfare services” (Tissington, 2013). If a municipality has a shelter in place, they are advised to duplicate aspects of the approach but regard others, such as the separation of couples and families and the daytime lockout policy. The primary problem with the model is that, without sufficient affordable accommodation available, even people who are employed will not be able to find accommodation to move into after spending time in a “managed care” shelter.

**Social/Rental Housing as Alternative Accommodation**

Apart from the managed care approach described above, the second avenue used by the City of Johannesburg was to relocate some residents from the Blue Moonlight building to the “MBV Phase 2” social housing project managed by JOSHCO. The MBV Phase 2 building offered communal accommodation with shared ablution and kitchen facilities, for approximately R600 per month. If at some point the tenant cannot afford the rent, JOSHCO will not evict them but arrangements will be made for the rental to be paid off. A system of cross-subsidisation is used to assist in covering some of the risks of rent non-payments.

Applicants submit personal and employment details so that JOSHCO can do an assessment of affordability. Before the lease is signed, each individual receives training on the content and implications of the contract. Without prior written consent from JOSHCO, tenants may not cede any rights to any third party or sublet the unit. Tenants who default on their rent or do not settle arrears are given 120 days before they are served with an eviction notice.

4. **Legal implications for Municipalities**

The decisions by the courts on evictions that have determined the responsibilities of municipalities have been based on various legal and policy frameworks, which include:

- The Housing Act (1997)
- The Rental Housing Act (1999)
- The National Housing Code (2009)

The manner in which the courts have interpreted these legal and policy frameworks has altered and enhanced the obligations of municipalities in eviction processes. As a result, the outcomes of the Blue Moonlight case and other legal cases concerning evictions have impacted on the way municipalities must operate in terms of evictions that lead to homelessness. No one may be evicted without a court order. However municipal responsibilities do not stop there. Because of the responsibilities that fall to municipalities when evictions are taking place, municipalities need to plan and prepare for these situations and ensure that alternative accommodation is available when required.
The following table lists the most critical implications for municipalities of the major court judgements on evictions:

<table>
<thead>
<tr>
<th>Legal implications/obligations for municipalities</th>
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<tbody>
<tr>
<td>• Municipalities cannot ‘choose not to be involved’ in the eviction proceedings of people evicted from private land.</td>
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<td>• The State is obliged ‘to devise and implement within its available resources a comprehensive and coordinated programme progressively to realise the right of access to adequate housing’. This programme must include measures such as an accelerated land settlement programme to provide relief for people ‘who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations’.</td>
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<tr>
<td>• The State has a duty to make specific provision for the landless and homeless.</td>
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<td>• A reasonable government programme must provide for those living in urgent need and living in ‘intolerable conditions’. A reasonable housing programme was seen as one which:</td>
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<tr>
<td>• was both balanced and flexible, making provision for short, medium and long-term goals</td>
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<td>• did not exclude a significant sector of society.</td>
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<td><strong>Port Elizabeth Municipality v Various Occupiers (2005)</strong></td>
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<td>• Wherever possible, respectful face to face engagement should occur.</td>
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<td><strong>Sailing Queen Investments v Occupiers of La Coleen Court (2007 – 2008)</strong></td>
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<td>• Because the state has a constitutional obligation to prevent homelessness, the municipality can be joined as a party in cases where homelessness will result from evictions.</td>
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<td><strong>Occupiers of Olivia Road v City of Johannesburg (2008)</strong></td>
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<td>• State institutions are obligated to engage meaningfully with those facing eviction to determine if they will be rendered homeless by an eviction and to determine what alternative accommodation can be provided.</td>
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<td>• No evictions in terms of the PIE Act should occur until the results of the proper engagement process are known.</td>
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<td>• Courts will be reluctant to order an eviction if homelessness will be the result.</td>
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<td>• Engagement or “meaningful engagement” is face-to-face interaction between all stakeholders.</td>
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<td>• The larger the number of people potentially to be affected by eviction, the greater the need for structured, consistent and careful engagement.</td>
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<td>• The process of engagement must be open and transparent.</td>
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<td>• The engagement process should result in an agreement containing explicit provisions which are reasonable and which will facilitate the court process.</td>
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<tr>
<td><strong>Blue Moonlight Properties v Occupiers of Saratoga Avenue (2006 – 2012)</strong></td>
</tr>
<tr>
<td>• Housing policies and plans must be adapted to accommodate people who will be rendered homeless because of an eviction from state owned or privately owned land.</td>
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<td>• A municipality is responsible for providing alternative accommodation for people who are evicted from state owned or privately owned property and will become homeless because of the eviction.</td>
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<td>• In terms of PIE, the municipality is obliged to furnish a report on the personal circumstances of the occupier/s and the availability of alternative arrangements and emergency housing for unlawful occupants soon to be evicted in terms of PIE. (See box below on required contents of such reports.)</td>
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<tr>
<td>• A municipality must budget and plan for all categories of persons in need of emergency accommodation.</td>
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<tr>
<td>• If the municipality does not provide alternative accommodation for the evictees, the court can grant that the state compensates the property owner for the rental.</td>
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</table>
Legal implications/obligations for municipalities

- Because the municipality is the main point of contact with the community, the joinder of the municipality is essential.

Changing Tides and occupiers v City of Johannesburg (2012)

- The municipal report should “directly” deal with: details of all engagement with the occupiers; information on the municipality’s housing policies and programmes; the specific housing needs in the municipality.

5. Drawing practical lessons from the experience of Johannesburg

Based on their experience with the Blue Moonlight case, the City of Johannesburg strongly recommends that municipalities become thoroughly knowledgeable on the laws which determine their obligations in providing affordable accommodation, as well as the laws on evictions. The following are other general lessons to be drawn from recent court cases.

➢ Undertake research on potential evictions

Municipalities may be asked to present their plan for alternative accommodation to the court, before an eviction will be ordered. Therefore, municipalities must:

- Research how many evictions will lead to homelessness in the municipal area,
- Plan for this eventuality by acquiring sufficient land and rental stock, and
- Maintain an updated audit/database on available accommodation.

➢ Plan for potential evictions

Municipalities must develop a comprehensive, coherent and effective housing policy and plans which:

- Include policy and planning on evictions
- Include policy and planning on engagement with occupiers and property owners
- Contain coherent, comprehensive and effective programme and plans (including budget) for reasonable temporary alternative accommodation (in the case of evictions leading to homelessness).

To this end, the Socio-Economic Rights Institute (SERI)³ advises municipalities to develop a rental housing policy that accepts the obligation for the municipality to provide sufficient and reasonable alternative accommodation to people who are evicted. In doing so, municipalities must look at the cost burden of “bad buildings”⁴ and evictions versus the cost of providing low income accommodation. By conducting long-term planning and spending on permanent options, municipalities can ease the cost burden of temporary accommodation—both to the municipality and to households.

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³ The Socio Economic Rights Institute (SERI) is a non-profit organisation providing professional socio-economic rights assistance to individuals and communities. SERI has a unique perspective on evictions as they relate to municipalities because SERI has represented occupiers in many court cases, including the Blue Moonlight case.

⁴ ‘Bad’ buildings are buildings which are no longer physically safe, have been abandoned by the owners or have inadequate access to basic services.
Establish early warning systems

Municipalities should consider establishing early warning systems in order to be prepared for evictions. Best practice examples of early warning systems can be found internationally. Early warning methods in countries such as the United Kingdom and Austria are based on gathering information about properties in specific neighbourhoods drawn from multiple data sources and using this information to estimate possible problem areas where evictions are likely to occur.

Develop meaningful engagement strategies

A municipality is responsible for engaging meaningfully with people before they are evicted and as such a municipality must develop an engagement policy and plan as part of an eviction policy and plan. Therefore it is advisable for municipalities to proactively develop guidelines for engagement with parties and communities which will form part of the framework for emergency housing.

The engagement should allow the municipality to gather information on the circumstances of those facing eviction and to discuss the availability of alternative accommodation. In the case of evictions from private property, the engagement process must also include the land owners. As such, SALGA advises municipalities to develop policies and plans for engagement as part of the eviction policy and plans of the municipality. Engagement with the evictees should take place during each phase of the eviction.

Ensure internal coordination in the municipality

Evictions will require coordination and cooperation between different departments in the municipality, therefore the Human Settlements departments and Legal departments of municipalities need to work together on planning for and dealing with evictions.
Requirements put in place by the court for engagement strategies

Residents of Joe Slovo community Western Cape v Thubelisha Homes and others (2008 – 2009)

• The engagement process must ascertain:
  – the names, details and relevant personal circumstances of those affected by relocation;
  – the exact time, manner and conditions under which the relocation of each affected household will be conducted;
  – the precise temporary residential accommodation units to be allocated;
  – the need for transport to be provided to those to be relocated;
  – the provision of transport facilities to the affected residents from the temporary residential accommodation units to amenities, including schools, health facilities and places of work;
  – the prospect of the allocation of permanent housing to those relocated to temporary residential accommodation units, including information regarding their current position on the housing waiting list, and the provision of assistance to those relocated with the completion of application forms for housing subsidies;
  – the date of commencement of the relocation;
  – a timetable for the relocation process.

Occupiers of Olivia Road v City of Johannesburg (2007 - 2008)

• Some of the objectives of engagement (which must be documented) are:
  – what the consequences of the eviction might be;
  – whether the municipality could help in alleviating those dire consequences;
  – whether it was possible to render the buildings concerned relatively safe and conducive to health for an interim period (in the case of “bad buildings”);
  – whether the municipality had any obligations to the occupiers in the prevailing circumstances;
  – when and how the municipality could or would fulfil these obligations.

Provide additional support

SERI also advises municipalities to consider linking evicted tenants with livelihood programmes. To assist people to afford to pay their rent and therefore decrease the number of evictions, Johannesburg advises that municipalities consider providing municipal service subsidies for low income groups in designated accommodation (e.g. the City of Johannesburg Expanded Social Package).

6. Steps in Participating in Evictions

Ideally adequate planning and programmes avoid the need for evictions. But if a situation has reached the point where the municipality is considering seeking an eviction order from the court, a number of processes are critical. The table below summarises the actions municipalities should undertake as part of the legal responsibilities related to evictions and homelessness.

Step 1
Municipalities must follow the legislative process according to the PIE Act and the national Building Regulations and Building Standards Act (NBRBSA) which contains the legislative provisions in terms of which evictions are examined.
### Case Study of Evictions in the City of Johannesburg

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<th>Step 2</th>
<th>The unlawful occupier and the local municipality will be given notice of the eviction proceedings by the court at least 14 days before a court hearing of the eviction proceeding.</th>
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<tbody>
<tr>
<td>Step 3</td>
<td>The municipality must engage meaningfully with the occupants and landowner (to try to come up with a mutually agreeable solution). If the engagement process results in a resolution between all parties and the occupiers agree to be voluntarily relocated, then a court case can be avoided.</td>
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<td>Step 4</td>
<td>The municipality must have comprehensive and specific information on the relevant circumstances of the occupiers and be able to provide this information to the court (e.g. if there are female-headed families, children, the elderly and disabled, if alternative accommodation is available, and if there had been any engagement (mediation)).</td>
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<tr>
<td>Step 5</td>
<td>The municipality must be able to provide the court with a plan for alternative accommodation for people who will become homeless because of the eviction.</td>
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<td>Step 6</td>
<td>The municipality must be able to provide the court with housing policies and plans that respond to the needs of the most desperate households.</td>
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</tbody>
</table>

Notably, the court may request certain information from the municipality before the eviction order will be granted and, as such, the municipality will need to be aware of what to do and what information to collect from the occupiers and the land owner (if the property is privately owned). The report provided to the court by the municipality must include:

- Information on the building or property
- Information on the demographic profile and personal circumstances of the occupiers
- Information on whether the occupier will become homeless because of the eviction
- Alternative accommodation that is available for the occupiers after they are evicted (if they will become homeless because of the eviction)
- The implications for the property owner
- Details of all engagements (mediation) between the municipality and the occupiers with the purpose of finding a solution
- Information on the municipalities housing policies and programmes
- The housing needs in the municipal area.

### Conclusion

Recent legal cases concerning evictions of the occupants of a private industrial building in Johannesburg, such as the Blue Moonlight case involving the City of Johannesburg, have expanded the roles and responsibilities of municipalities in evictions. The courts have now ruled that people who are evicted from private or state owned land or buildings and who will become homeless because of the eviction must be provided with alternative accommodation if no affordable accommodation is available to them. The municipality is obligated to present the plan for alternative accommodation to the courts, before an eviction order will be granted. Municipalities
are therefore required to develop comprehensive and coherent housing policies and plans which contain plans for evictions and alternative accommodation.

When looking at the issue of evictions overall, it is evident that the only long term solution to preventing a large number of evictions of low income residents, is to develop and implement a comprehensive public housing policy which includes sufficient low income accommodation options, such as Community Residential Units. Innovation is needed to develop low cost housing options to prevent people from resorting to living in “bad” buildings and occupying land unlawfully, where they face the threat of evictions.

References and additional resources