



# Surviving and thriving: Addressing, preventing and overcoming rental boycotts and invasions in social housing

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REPORT ON A SECTOR SURVEY

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## EXECUTIVE SUMMARY

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The phenomenon of organised rent boycotts has been one of increasing concern to the social housing sector in South Africa. Based on a comprehensive survey of 11 Social Housing Institutions (SHIs) and further research, this study has found that occurrences of rental boycotts by tenants in social housing and invasions by non-tenant occupiers has, in recent years, threatened the viability of SHIs as business entities and, therefore, their ability to continue to provide rental housing. By extension, this study also concludes that boycotts and invasions may compromise the ability of the Social Housing Programme (SHP) to fulfil its mandate of facilitating affordable rental housing development and urban restructuring. This study has also found that some SHIs have, in near-dire circumstances, addressed the challenges of boycotts and moved decisively to take back control and put practices in place to reduce the possibility of reoccurrence. However, it also shows that there are factors outside of the immediate control of SHIs that require interventions by other stakeholders both to prevent and/or mitigate the impact of the boycotts.

A tenant claim of the right to ownership of their units was found to be the most common ostensive reason for instigating boycotts, followed by affordability issues and rent levels. Claims around building conditions, maintenance, increasing service charges or issues with management were also cited. Yet, SHI management identifies the influences of persons or entities external to the tenant body as major factors in boycott or invasion instigation. One such entity is political groups seeking influence and votes and the other criminal syndicates aiming to gain control of the property for financial gain.

A finding of the study of particular concern was the responses by some elected officials. In many instances, such responses ranged from disinterest to active support of the boycotts. Yet, some SHIs found ways of building support and engaging with politicians in such a way as to at least end their support for the boycott. This report contains recommendations concerning the need to educate elected officials around social housing and to hold them more accountable.

The need for ongoing strategic engagement with officials from key public agencies in all spheres of government came across clearly in the study. This includes human settlements departments, law enforcement bodies and MECs. The study also found that while the SHRA, the National Department of Human Settlements (NDHS) and the National Housing Finance Council (NHFC) had generally been supportive, there was more that these authorities can do in collaboration to help prevent and address boycotts. The recommendations include a number of practices or new innovations that they could consider towards fulfilling this objective.

The study suggests that the effective SHI communication and engagement strategies with tenants and a visible, hands-on, consultative and responsive management style tend to work against the instigation of boycotts. The provision of community development services which address tenant need may also have this effect. SHIs need to become more legally savvy and strategic when undertaking evictions and in their external communications and education efforts. This study concludes, however, that SHIs cannot prevent, address and overcome boycotts in isolation. To do

so, requires a much broader collaborative effort of multiple players as well as sufficient political will not only within the sector and with housing authorities but more broadly across government.

## 1 INTRODUCTION AND BACKGROUND

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In order to build a better understanding of the multiple aspects of rent boycotts and how to best address them, NASHO developed a survey instrument for members to complete. Among other relevant factors, SHIs were asked to outline their experiences, provide what they saw as the ostensive and actual reasons for the boycott, the impact on their institutions, the strategies employed to address the situations and to share their views on how SHIs, the sector as a whole and other stakeholders can best respond.

This report captures the results of this survey and additional research, provides analysis, identifies ideas for discussion and further investigation, and presents a series of recommendations for the sector to consider. It is hoped that these will contribute to the already well-underway process of the social housing sector becoming more resilient to the effect of boycotts but, more importantly, become better-able to prevent boycotts and respond more effectively when they occur.

As outlined in the survey instrument, for the purposes of this study a *Rental Boycott* is defined as:

‘An organized campaign that encourages tenants to participate in withholding rentals and/or utility charges owed to the SHI in order to achieve an objective, and a number of tenants act on this encouragement and unjustifiably withhold rentals or other charges.’

Similarly, an *Invasion* is identified as:

‘An organized occupation by people of units developed for social housing, where such occupiers have not been accepted as tenants through an appropriate social housing screening process and have no leases from the SHI.’

## 2 METHODOLOGY

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The bulk of information to inform this study was drawn from a comprehensive survey completed in February and March 2020 by CEOs of 11 SHIs, all of which were members of NASHO. Eight of the responding SHIs had experienced one or more organised rent boycotts or invasions while three had not. Those SHIs which had not experienced boycotts were asked to respond to section three of the survey schedule which included questions on preventing and ending boycotts. The survey schedule (Appendix 1) contained both open-ended and closed ended questions as well as finance-related questions. The survey was designed and authorised by NASHO.

In addition to the surveys, interviews were undertaken with the SHRA CEO and a social housing industry expert. Follow-up interviews were also undertaken with seven of the responding SHIs in order to obtain further details on key points and, in some such interviews, CEOs were joined by senior members of their staff. Some Informal briefer discussions and e-mails on specific points also followed surveys and interviews. A small number of documents were reviewed including reports on specific boycotts and media articles. The study was qualitative but not representative and no sampling methods were undertaken.

This report mainly reflects the experiences and views of SHI senior staff members and other stakeholders in the social housing sector. While the findings have been analysed and recommendations made, this report is not an expert legal, financial or regulatory document even

as all of these areas have been addressed. While the researcher has been mindful to avoid making unrealistic recommendations, it will be up to the NASHO membership and, ultimately, policy makers to decide what is desirable and achievable.

### 3 FINDINGS AND ANALYSIS

#### 3.1 Details of boycotts

Of the 11 surveys completed, eight SHIs had experienced organised rent boycotts. Table 1 sets out the locations of the affected projects, the period of the boycott, the total number of tenancies at that project and the number of tenancies participating in the boycott at its peak.

Project Location	Boycott period	Total no. of tenancies	No. of tenancies boycotting at peak
Cape Town	Late 2016 – Current (nearing final evictions)	700	200+
Soweto	Feb 2015 – Current (all but 5 evicted)	300	80
Germiston	Jan 2019 – Current	1244	427
Tasbet Park Emalahleni	Sept 2019 - Current	1204	950 (approx.)
Pietermaritzburg	26 Feb 2018 – Current (Invasion)	952	261
Durban	April 2014 - Oct 2019.	212	212
Pennyville Johannesburg	Nov 2019 -Current	112	50
Cape Town	April 2019 – Current	219	

**Table 1: Details of boycott**

#### 3.2 Reasons given by the tenants for the boycott

CEO respondents provided the ostensible reason or reasons communicated to the SHI (and other parties) by the tenants for undertaking the rental boycott. Broadly speaking, such reasons fell into three main categories: 1) A claim to ownership; 2) affordability and rent increases; and 3) building conditions, services or issues with management.

##### 3.2.1 Claim to ownership

By far the most common reason given by tenants, or those purporting to represent them, for undertaking boycotts was a contention that they were entitled to ownership of their units. In most cases the justification for this position was loosely centred around an argument that because the housing built with government subsidies it is paid for so, therefore, beneficiaries should not have to pay rent.

By far the most common reason given by tenants, or those purporting to represent them, for undertaking boycotts was a contention that they were entitled to ownership of their units.

In some instances, tenants claimed that they had been promised ultimate ownership on taking up the tenancy and in at least two cases, tenants claimed that they were entitled to a “rent-to-buy” form of

arrangement. In one such instance tenants presented a formal demand for ownership transfer asserting that their monthly rental payments had supposedly been monthly instalments towards a fixed price.

Some survey respondents, however, maintained that such claims to ownership by tenants were disingenuous and one CEO asserted: *“They are well aware that social housing does not work like this.”* Among other factors, the tenancy agreements and the pre-tenancy education programme made it clear to tenants that their residency was on a rental basis only.

It is noteworthy that in two instances, the group claiming to represent the tenant body did not make a claim for either ownership or not being required to pay rent. Rather they wanted a blanket reduction in rent levels. In at least two cases, instigators made allegations of poor service delivery and / or maintenance as a partial justification for non-payment. Two CEO survey respondents, however, gave solid examples as to why this was not the case.

### 3.2.2 Rental affordability and rent increases

Some SHIs indicated that there were also incidences in which genuine financial hardship was the motivating factor for many tenant households. One CEO was quite clear that: *“They (the boycotters) do not have money for rent”*

The second most common reason provided by tenants was around the theme of the supposed lack of affordability and rent increases which were seen as unreasonable. One CEO asserted that *“ninety percent-plus of the (boycott) participants had a proven ability to pay”* and that increases were modest. Another two SHIs indicated that rents had been increased at a rate of only six percent while another noted that their rent increases were regulated by the SHRA in any event.

However, some SHIs indicated that there were also incidences in which genuine financial hardship was the motivating factor for many tenant households. One CEO was quite clear that: *“They (the boycotters) do not have money for rent”* and added that this was especially the case for tenants who had become unemployed since first taking occupation. Some tenants, while not necessarily unemployed, were certainly under-employed and / or making less money, while others were now making their income through different means from when their tenancy commenced.

There are no public subsidies to help meet operational costs for social housing in South Africa and, similarly, there is no state instrument that provides rental relief for tenants in social housing whose income decreases. Some SHIs can provide short term temporary relief but none are in a financial position to provide additional long-term financing for such tenants.

It should be noted, however, that not all tenant claims around rent increases are necessarily misinformed. One stakeholder cited information from TPN Tenant Monitor which showed a pattern of rent increases in social housing that were almost consistently at a level above the CPI, while rentals private sector housing had increased at a rate significantly below the CPI.

### 3.2.3 Increases in municipal and utility charges

In two incidences, increased utility costs were cited among the reasons given for the boycott. Respondents highlighted the fact that the rapid increase in these charges over the past five years

has increased pressure on tenants, particularly those in the primary target market, who could no longer afford the total cost of remaining in formal rental accommodation. Some municipalities have provided concessions for social housing landlords but there is no national policy that provides any relief in these charges for social housing tenants or SHIs.

### 3.2.4 Conditions and other issues

In at least two cases, supposed poor maintenance and poor provision of services were cited by tenants as motivating reasons to the boycott. The CEOs, however, claim that such claims were baseless with one noting that upon inspection by the Rental Housing Tribunal (RHT) to examine such claims the tenants stopped attending hearings.

In three examples, boycott instigators made claims that management at the development (or SHI) was corrupt on some level with an implication, or outright accusation, that the SHI was pocketing rent money for units which tenants were supposedly entitled to own. One CEO explained that:

*“Vulnerable people were influenced not to pay rental under the pretext that the SHI is corrupt. They were informed that these units were built for sales, not rental in perpetuity. This announcement was well received (by the tenants).”*

In one case a large number of individual complaints were made including complaints against members of staff. The CEO claimed, however, that such complaints were mainly part of any overall boycott strategy.

An industry stakeholder cited examples where some SHIs had not provided maintenance to an acceptable standard, intimating that at least some tenant complaints on this issue are valid. Another cited figures from the Tenant Monitor which showed a pattern of rent increases in social housing that were at a level above the CPI, while rent increases in the private rental sector were below the CPI.

An industry stakeholder, however, cited examples in which some SHIs had, at times, not provided maintenance to an acceptable standard and suggested that at least some tenant complaints on this issue were valid. Another industry stakeholder asserted that it is more difficult for tenants to make a case against an SHI which transparently operates with high levels of integrity, efficiency and professionalism. Underlying that tenant complaints around management deficiencies are not always invalid, one CEO asserted that the previous executives did not take responsibility for the problems at the development where the boycott occurred and added that the organisation had to undergo an “internal mind shift” in its approach to managing problems on the ground.

### 3.3 What did the SHIs think were the actual reasons for the boycott?

The survey participants were asked to provide their own perspective as to what they considered to be the actual motivations behind the boycott. Two factors stood out most strongly: 1) Power-building and / or vote catching by political groups; and 2) Attempts by organised syndicates to hijack the property and gain control over it for financial gain.

The claim concerning tenant’s right to ownership seems to have been capitalised upon by both political groups and criminal entities, usually accompanied with some sort of promise that they (the group), would help secure such ownership. One CEO noted that a major boycott was

encouraged by three different political parties while another noted that politicians from an opposition party had attended tenant meetings and incited these tenants to boycott.

Some SHIs painted a picture of political parties supporting or perpetuating boycotts in order to consolidate political support and secure a block vote in a development. One CEO lamented that:

*“The ground has been contaminated. It is fertile for politicking; hence political parties have opportunistically occupied the space with the hope to launching their campaign for coming local government elections.”*

In two instances, rent boycotts appeared to have been instigated by criminal groups without the veneer of a political movement. In these cases, the boycott was accompanied, on occasion, by violence, intimidation and destruction of property. However, as previously noted some SHIs identified that genuine financial hardship can be a significant factor motivating boycotts. One CEO asserted that:

*“Some tenants fall on hard times and eventually lose their jobs. They will never move back to informal housing and use rent boycotts as a means to stay for free as long as it takes.”*

While acknowledging the fact that some tenants cease rental payments due to sharp decreases in household income, one CEO asserted such residents influence other tenants thereby creating a “culture of non-payment.” From a slightly different perspective another CEO acknowledged that some tenants have legitimate budget constraints and asserts that:

*“(They) are caught up in the boycott because it addresses a real affordability issue and gives them the ‘protection’ of the group.”*

A “culture of non-payment” seemed to have extended to the non-payment of utilities in at least two cases and, in one instance, tenant representatives argued that no-one in that broader community paid for utilities in any event.

One SHI detailed their experience of what would be described more accurately as an *invasion* rather than a boycott.<sup>1</sup> Three political entities, two of which define themselves as “army” or military veterans, invaded a 952-unit project and ultimately occupied 261 units. At least one of the entities had felt marginalised in negotiations to provide housing for military veterans. The invasion was justified for this reason, as well as their belief that the development was owned by the municipality.

### 3.4 Tactics used to start and sustain the boycott

#### 3.4.1 Misinformation and violence

Ongoing efforts to promulgate misinformation (which some described as “campaigns”) was a common tactical theme as to how boycotts were instigated and sustained. In several instances such tactics were used not only in the complex but in the broader community, with the media and politicians. The high level of organisation of some groups is notable. One CEO explained that:

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<sup>1</sup> Some SHIs experienced invasions of different degrees in the chaotic period following the instigation of a boycott.

*“They are active on social media damaging our reputation, distorting the social housing programme and lying about their own agenda. They have also found lots of sympathy with journalists in print media and radio presenters.”*

Reflecting a situation in several other complexes, this particular group began to use violence and other criminal activities as tactics. In this case such actions dampened the media enthusiasm for

Sustained efforts to promulgate misinformation was a common tactical theme as to how boycotts were instigated and sustained. In several instances such tactics were used not only in the complex but in the broader community, with the media and politicians.

the group’s cause but even public authorities seemed unwilling or unable to control the violence and criminal behavior. In another example, evictions being carried out by the Sheriff in one project were met with violent resistance organised by those leading the boycott and, in several cases, successfully obstructed the eviction. And, according to the CEO, even when evictions were finalised, the group in control would facilitate the return of many evicted tenants.

At least four SHIs noted incidents in which tenants who refused to withhold rent and / or their own staff were subject to harassment and even violence. One CEO asserted that: *“It became unsafe for staff and service providers on site and there was a climate of fear amongst other tenants.”*

There seemed to be some variance between projects as to whether the external organisers were actually approached by tenants for support and those who foisted their way in with coaxing and promises. At least three CEOs asserted that the so-called “community leaders” purporting to represent the tenants had no legitimacy. However, this did not seem to be a universal factor and it seems that tenant bodies had varying degrees of legitimacy.

Four SHIs described a situation of some or all of those leading this boycott as not residing on the property. One CEO asserted that:

*“Some in the lead are former military veterans, disgraced legal professionals and people with links to organised crime and known gang affiliations.”*

Many tenants seemed to be vulnerable to organised and opportunistic entities with their own agendas who were able to convince enough residents that their interests are one and the same.

### 3.4.2 Corporate corruption

In one instance, a CEO described a situation of corporate corruption and fraud as the root cause of the boycott. The SHI contended that the company which built the particular development saw an opportunity to make money by “selling” units to tenants. The director of this company, who allegedly had close ties to government entities, called a mass meeting of tenants, announced that the company “owned” the units and would facilitate individual ownership agreements with the “installment payments” supposedly continuing for five years for people to acquire title deeds. Describing this as “music to their (the tenant’s) ears”, the SHI CEO noted that the false promise turned out to be a strong motivation to boycott.

### 3.4.3 Boycotter appeals to authorities

Appeals by instigators to municipal and provincial politicians was also a notable tactic in terms of sustaining boycotts. CEOs generally expressed the sense that this involved manipulation and misrepresentation on the part of the boycott organisers and, in some instances, expediency on the part of the politicians. One CEO asserted that:

*“Similarly, politicians everywhere have been petitioned by the disgruntled tenants claiming the organisation is eroding their rights”*

In at least three cases, boycott organisers were able to secure hearings with, and secure support from, highly placed elected officials (even a national Deputy Minister). In two of these cases the SHI had to deal with investigations into their management practices, something that had the effect of seeming to legitimise the boycott.

### 3.4.4 Exploiting the judicial system / delaying tactics

Tenants undertaking boycotts utilised lawyers in several instances, mostly (quite understandably) in response to eviction proceedings. In one example, tenants were assisted, both in terms of advice on the boycott and representation in court, by a statutory free law clinic. In other examples however, tenants retained their own private lawyers. Some apparently met legal expenses themselves but, in one case, two political parties offered to meet legal costs in addition to encouraging public violence. At least three SHIs expressed a belief that such lawyers acted unethically implying that they exploited the tenant’s misinformed belief that they were entitled to ownership of their units.

In some instances, lawyers representing tenants undertook a range of delaying tactics in court apparently hoping to wear down SHI resources and buy as much time as possible to avoid an almost inevitable eviction order. One CEO asserted that: *“They (the lawyers) had no legal argument, they just use tactics to delay and then to have the case postponed.”*

The requirement of the court to consider the personal circumstances of the tenants, in the experience of at least two survey respondents attempting to evict, was also used by some lawyers as a delaying tactic. Judges sometimes request information on tenant’s personal circumstances (often in the form of an affidavit) so the court can assess vulnerability to homelessness. One CEO explained that lawyers ensure that the information is not ready when the case returns (or submit it the night before so the judge has had no time to read it) and can sometimes obtain up to three postponements. In some provinces the court schedule is full for many weeks going forward.

Two CEOs (in different provinces) described identical scenarios in which lawyers sometimes hold themselves unavailable when the case is finally returned (even sending medical certificates) or even withdraw from the case entirely. Judges may be hesitant to grant an eviction order when the tenants become apparently unrepresented or are subject to a seemingly incompetent or no-show attorney. One aim of securing delays and postponement may be the hope of landing before a new judge who is unfamiliar with the case.

One CEO provided more detail on such tactics as the SHI has experienced them on several occasions:

*“When it comes to judgment the attorney won’t be available. Finally, the court presents a judgement and then the lawyer reappears. At that point they (the tenant and lawyer) file for an appeal and move to suspend the court order. They apply for leave to appeal to high court and matters are often postponed for a month.”*

One SHI now documents the practices of unethical lawyers and uses the information to try and move cases forward. On several occasions they have been successful in securing a cost order from the judge which required the attorney, rather than the tenants, to pay the legal costs of the SHI.

Some of the tactical narratives used by tenants or third parties to instigate and maintain boycotts revealed a relatively good understanding of the social housing legal and regulatory landscape. This served to make the inaccurate or downright false information promulgated seem legitimate. In one instance the corporate boycott instigator told tenants that the development was a “presidential project” established before the Social Housing Act came into effect and was, therefore not subject to the regulation. In another instance, those purporting to represent tenants argued that the SHRA was not paying a regulatory role and that there was, therefore, no legitimacy in the SHI’s claim for rent and in denying ownership. (SHRA ultimately provided documentation confirming that the SHI was indeed under regulation).

### 3.5 Actions used by SHIs to end the boycott and responses from the boycotters

A pattern emerged of attempts to resolve the boycott through direct negotiation (in addition to formal notices) being mainly, but not always, unsuccessful. Reflecting the sense of others, one CEO concluded that in their first instance of a major boycott:

*“Our one big mistake was that we tried to make logical arguments to the group pushing for a boycott. You cannot win with logic alone. We could not persuade them and it constantly ended up in their assertion that they were entitled to ownership.”*

The CEO concluded that in this initial instance, the SHI had not acted quickly enough to the threat of the boycott. However, when a faction at another development began to withhold rent sometime later the SHI responded very rapidly. They immediately took the lead defaulters to court, beefed up security and senior managers were sent to the site to engage with tenants.

SHIs that responded with eviction action against the defaulters experienced mixed results but those which were able to persevere generally prevailed in terms of securing evictions notwithstanding the array of delaying tactics as set out in section 3.4.4. One SHI which persevered secured a series of eviction orders (successfully executed) and the eviction order pursuant to the final remaining defaulters became enforceable in May 2020. Among the non-evictees, rent collection at this SHI in March 2020 was at 110 percent, signifying a substantial recovery. The substantial legal costs notwithstanding, those SHIs which have been able to maintain the efforts and meet the costs of drawn out court action to evict key defaulters have overcome the worst effects of the boycott

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and are better-placed to respond to any future boycotts. The CEO noted that the boycott stopped getting traction following the eviction of 57 defaulting tenants.

The CEO of the aforementioned SHI cited two key elements for the boycott-affected project's road to recovery from near-collapse. One was the deployment of a very tight security operation that was almost military-like. The other was that the SHI had worked at a very strategic level and in close collaboration with, municipal and provincial law enforcement bodies.

A strategy implemented by one SHI of ongoing communication and engagement with tenants including letters, SMS and face to face meetings did yield some results over time. A significant number of tenants recommenced making rent payments albeit at a gradual rate.

In some instances, a strong public relations response on the part of the SHI helped to dilute support for the instigators among elected officials. This involved securing meetings with politicians to educate them around the structure and nature of social housing and why ownership was not possible.

### 3.6 Response and support received by the SHI from other sector stakeholders.

The survey revealed a varied range of support from other sector stakeholders. While some respondents sought and made at least some use of such support others did not reach out to those entities which could have potentially offered assistance, perhaps considering such entities powerless or even potentially counterproductive.

#### 3.6.1 Support from public officials and entities

Two SHIs in particular received notable support from municipal and provincial officials. In addition to providing "moral support and sympathy" a Provincial Department of Human Settlements provided at least one SHI experiencing a violent boycott with a R3 million contribution towards safety and security. Also on a positive note, another CEO stated that:

*"Both City and Provincial officials responsible for social housing have taken time to understand the situation; have attempted to brief their political principals; and have provided written communication which tenants have occasionally had access to confirming the proper provisions of the Social Housing Act and Regulations."*

Five of the eight SHIs which had experienced boycotts or invasions did not indicate that they had had any significant engagement municipal or provincial government. This is concerning given the significant role that those two spheres of government play in the Social Housing Programme.

One SHI was able to gain at last some measure of support from the municipality through the fact that, as a result of an invasion, the organisation had accumulated R15 million in arrears for services. It was at this point that senior municipal officials began to take notice and lobbied the politically-connected occupying entity to leave the premises. High-level party meetings were held on the issue of the invasion, and while not entirely successful in terms of ending the invasion at the time of writing, is certainly working strongly in the SHI's favour.

At least two SHIs briefly reflected on their interactions with senior provincial government figures. In one instance the SHI was able to secure a meeting with the highest level of Office of the Premier. While the officials were clearly concerned and promised action their efforts gradually

“fizzled out” quite possibly because of party-political factors. Another CEO described the SHI’s ultimately very successful efforts in engaging an MEC and other provincial politicians. Placing the issue in a broader context, the CEO explained that when boycotts and invasions occur:

*“...our challenge is that the SHI has to operate in a complex political environment. Politicians get nervous Their reflex is to start an enquiry to push it away from themselves and this puts them out of the firing line.”*

One CEO noted that once the matter goes to court the issue becomes *sub judice* and there is therefore very little that agencies such as the NDHS or SHRA can do. In at least one case, however (that of an invasion) the SHRA did join the case.

### 3.6.2 Utilising an ad-hoc forum

One group of particularly well organised tenants and their supporters gained the support of a national Deputy Minister who convened an inter-ministerial task team to investigate the tenant’s complaints. At first, the task team seemed to serve as a platform for accusations and misinformation against the SHI. However, SHRA and NDHS were later drawn into this forum, along with City and Provincial officials, and those authorities helped clarify provisions of the Social Housing Act and its regulations and the National Housing Code. They also confirmed that the SHI was in good standing with the SHRA and that the NDHS has no sway over the policies of private landlords (in this case SHIs) as long as they comply with the law. In this case a potentially damaging ad-hoc forum with a junior ministerial mandate was turned around to the SHI’s advantage, disproved accusations against the SHI and confirmed that there was no legitimate basis for the claim to ownership or the boycott. It was also a very good example as to how various public authorities were able work together and support an SHI dealing with a major boycott.

### 3.6.3 Support from NDHS

At least three SHIs experienced effective support from the NDHS. As in most situations this particular boycott centered around the tenant’s contention that they were entitled to ownership. Following intervention by the NDHS, 22 of the ring leaders were given RDP houses. The intervention came through a National Response Task Team (NRTT) sent by the department. While this extensive intervention contributed enormously to ending the boycotters it poses a potential problematic response in the rewarding of boycott organisers with RDP houses.

Another SHI also cited a very helpful intervention by NDHS. In this instance the department promulgated formal notices certifying that the transfer of unit ownership to tenants was not admissible under law. This seemed to have the effect of convincing a significant number of tenants to recommence rental payments.

### 3.6.4 Rental Housing Tribunal (RHT)

Four SHIs referenced the role Rental Housing Tribunal (RHT) in the context of the boycotts but two of these suggested that the RHTs are under-resourced resulting in cumbersome and lengthy processes. Yet there were also incidences in which RHT involvement was very helpful in terms of providing a forum for mediation, tenants being informed of the correct application of law and in

making orders. One SHI CEO and staff noted that the RHT in their province seems to be finally building greater functionality and they will look to using this resource in future.

SHIs should be aware, however, that RHT rulings may be challenged in court (by either party). In one instance the RHT, recognising that the boycotting tenants were in serious default, issued an attachment order which enabled their furniture to be seized in lieu of rent. The sheriff promptly executed this order but the tenants were successful in obtaining a *spoliation* order in court. This effectively nullified the RHT's attachment order and the sheriff was obliged to release the furniture.

### 3.6.5 Municipal Councillors

Two SHIs had found that municipal councillors who had been approached by the protesting group for support initially sided with the boycotters before making the opportunity to engage meaningfully with the SHI management. One CEO asserted that "extensive initial antagonism turned into support for us" while another explained that:

*"After meeting us and taking time to understand the situation from our perspective, the councillor's attitude changed."*

However, this CEO added, that while they were willing to be educated and change their stance, the Councillors did not take action to influence the disgruntled tenant group to act within the law and to honour their lease agreements.

### 3.6.6 SHRA

Most SHIs gave relatively positive feedback around the support they received from the SHRA during the boycotts within the context of their understanding that the regulator currently has limited power to intervene in such disputes. Similar to the situation with municipal councillors,

Most SHIs gave relatively positive feedback around support they received from the SHRA during the boycotts within the context of their understanding that the regulator currently has limited power to intervene in such disputes.

however, one CEO maintained that it took SHRA officials some time before realising that the tenant accusations that the SHI was selling properties were false. In at least one instance, the SHRA provided assistance in terms of helping to negotiate loan restructuring and financial support.

Some respondents expressed the sense that the SHRA provided the support they could but there was also frustration that the regulator's legislative limitations prevented them from doing more. One CEO, for example, had approached the SHRA for additional

funding for security when invaders were vandalising units and threatening tenants who continued to pay rent. This CEO's understanding was that SHRA was unable to assist in this way not only because of budget limitations but also because of limiting provisions of the Public Finance Management Act (PFMA). The CEO concluded:

*"We need a greater legislative scope for SHRA to intervene – and funded for such intervention because, if not, will cost so much more later on."*

### 3.6.7 SAPS

Respondents had varied experiences of SAPS. While some found police to be under-capacitated, un-responsive or compromised, there were at least three examples in which the SHI had built a good relationship with local precinct command which led to helpful responses.

One CEO found the local SAPS precinct to be highly responsive and proactive in terms of removing illegal occupiers from the premises. However, many of such persons would return and reoccupy with a short period of time. This example illustrates the fact that, even when SAPS acts decisively in the event of illegal occupation, police are in no position to fulfill the function of providing ongoing security. But even in this example it is telling that there did not seem to be any prosecutions for trespassing, even for repeat offenders.

Others experienced SAPS as less responsive and one CEO concluded that:

*“SAPS regard illegal occupations of vacant units as a victim-less crime, or a civil matter that can be resolved in the courts, rather than recognizing it as criminal (matter) since it is actually fundamentally trespassing and malicious damage to property.”*

Another CEO noted:

*“Working with SAPS has been difficult as the police are hesitant to get involved. They frequently perceive an unlawful occupation of a unit by a stranger, as a tenant/landlord dispute.”*

Aside from poor capacity, there appeared to be two underlying explanations in those instances in which SAPS was not responsive to criminal activity or invasion. One such reason was a reluctance to confront well-organised gang-related operations either because of fear or complicity. The other related to political symbiosis between SAPS and powerful political structures or apparent long-standing comradery between local police and “activist” figures leading an illegal occupation.

One SHI outlined how the long-term persistence in developing a working relationship with SAPS paid off. This SHI managed to find ways of working productively with more senior SAPS figures at the provincial level and the effect of this filtered down to the precinct. Consequently, there were some arrests and charges brought against a small number of occupiers (or tenants) who had committed criminal acts. The CEO noted that it only took a few such arrests to demonstrate that there were consequences to criminal activity and this led to substantially fewer incidences.

### 3.6.8 Sheriffs

None of the SHIs who commented on the issue experienced either incompetence or complicity on the part of sheriffs in terms of the execution of a court or Tribunal order. However, there were examples of factors which undermined the authority or effectiveness of sheriffs:

- One warned the SHI that while he was willing to go so far as to bring in the resources of several other Sheriffs in the execution of an order evicting numerous occupiers, the SHI could not expect any support from SAPS, and the evictions may thus be unsuccessful;
- Following a spoliation order to return furniture withheld under a previous attachment order an angry mob assembled outside the sheriff’s office and threatened vandalism if the furniture was not immediately returned;

- In one development the Sheriff's contingent was met with violence which, in at least one case, prevented the evictions;
- Even when physically removed from the premises by the Sheriff, many evicted persons returned without obstruction.

### 3.6.9 Ward Committees

The survey found that of the few Municipal Ward Committees which were made aware of the boycotts or invasion none played a significant role one way or another.

### 3.6.10 NHFC

Three SHIs noted significant and supportive involvement by the NHFC. In one instance the corporation assisted the SHI by rescheduling repayments and provided "extensive vocal support in stakeholder meetings." One CEO noted the NHFC had agreed to a loan repayment moratorium and in another instance the NHRC facilitated a meeting between the SHI and a tenant committee. One SHI, however, experienced the NHFC as disconnected from the reality on the ground faced by the SHI and as not sufficiently understanding of the SHI's perilous situation.

### 3.6.11 NGOs

In only one incidence did a respondent SHI note that there was any significant involvement of NGOs or CBOs but, in this case, such involvement was constructive and helpful. In Cape Town, two civic rights CBOs met with disgruntled tenants and the SHI itself. The CBOs advised tenants of their rights and also created opportunities for SHI management to engage tenants on the issues being disputed. Only two SHIs noted that any neighbourhood organisations had played any role, neither of them particularly significant.

### 3.6.12 Political parties

There was not a single case in which SHIs experienced the involvement of a political party (as distinct from those acting in a government capacity) as helpful. Indeed, as previously documented the actions of political parties have been experienced as fueling the effect of boycotts rather than mitigating them. One CEO described how, on different occasions, external tenant "representatives" had gone to the offices of political parties to lay a series of complaints against the SHI. While, on investigation, all such complaints were found to be false the CEO asserted that, in the meantime, damage can be done to the SHI's reputation and progression towards ending the boycott significantly delayed.

## 3.7 Number of evictions as a result of the boycott

SHI respondents affected by boycotts showed great variance in the number of evictions of defaulting tenants. Four of the eight affected SHIs indicated that there had been no completed evictions in connection with the boycotts. One SHI had secured a high 74 evictions, another 63, one had secured 36 as of March 2020 ("with a possible 125 still to come"), while another had only secured three unexecuted eviction orders and added that "our legal action is in process."

## 3.8 Number of voluntary departures by tenants

The numbers of tenants who had quit the premises voluntarily also varied substantially but, when averaged, was very low. Four of the eight affected SHIs seemed to indicate that no defaulting tenants had vacated in connection with the boycott. In one SHI, more than 20 tenant households (described as "ringleaders") had moved to RDP housing following intervention by the NDHS. One

SHI indicated that a total of 21 tenants had vacated (from two projects). Another had experienced more than 20 voluntary departures by early 2020 but expects that number to be higher, while another simply indicated that “less than five percent” had voluntarily vacated their units. However, there were suggestions that an indeterminate number of tenants who had not supported the boycotts may have vacated due to the difficult resulting environment at their development.

### 3.9 Financial losses suffered as a result of the boycott

SHIs were asked to estimate the financial losses experienced as a result of the boycott in six different categories (see *Item* column on the left). Understandably, some SHIs were only able to provide approximations and there was some overlap between categories. In the chart below the responses of the eight SHIs which had experienced boycotts are presented anonymously by number.

Item	SHI 1	SHI 2	SHI 3	SHI 4	SHI 5	SHI 6	SHI 7	SHI 8
Unpaid rentals	R11M +	R2m	R1 604 885	R28 186 751	R20.256M	R25 M	R800 000	R900 000
Legal fees	R6M	R500,000	N/A	R3 007 669	R450 000	R4.1 M	R70 000	
Extra security	R12M	R2.2m	R477 473	R7 583 224.	R50 000 (p/m)	R18 M		R1.228M
Cost of evictions		1.5M	N/A	N/A	R22.8M	R22.1 M	N/A to date	
Property damage	R350,000	R530,000	R189 000	R3 285 594	Unknown	1.26 M		R71.315 M
Other	See below							

Table 2: Financial losses suffered as a result of the boycott

The “Other” category included:

SHI 1: Unquantified team time

SHI 2: Vacancies due to not being able to let the units: R500,000 (rough estimate)

SHI 3: Accommodation costs for a housing supervisor at the hotel: R15 000

SHI 4: Vacancies due to not being able to let the units: R17 874 992

SHI 6: Professional fees: R1 500 000

SHI 6: Ex Tenants water bills: R100 000

### 3.10 From where did the SHIs obtain the money to cover these losses or extra costs?

Seven of the eight SHIs indicated that they utilised funds from their general reserves.

Of the seven who indicated use of general reserves, three estimated amounts utilised as:

- R12 million
- R23.6 million; and
- 600 000 (plus R200 000 from maintenance reserves)

Two SHIs simply indicated that reserves had been used while another two indicated that the entire balance of their general reserves had been exhausted. It should be noted that reserve funds are to be utilised for the long-term maintenance of the housing stock and investment in future

stock. The use of such funds undermines the long-term sustainability of the SHI and the protection of the asset.

The SHI which did not indicate use or non-use of reserves noted that they are now in default with the NHFC in terms of their loan commitments. Another SHI (which had indicated very high expenditure of reserve money) stated that they had secured a moratorium on their NHFC loan.

One SHI had secured an additional NHFC loan of R3 million (repayments on which were rescheduled), one had received grants of unspecified amount from the metropolitan municipality (of which the SHI was an entity), while another had claimed on an insurance policy to the amount of R3 285 592.<sup>2</sup>

### 3.11 Higher than normal rent increases resulting from the boycott.

Not a single SHI respondent indicated that rent levels were increased as a result of the boycott.

### 3.12 Major factors that contribute to developing boycotts

In either the survey itself or in follow-up interviews, nine of the overall 11 respondents, including three SHIs which had not experienced boycotts, responded to the questions concerning causal factors of the boycott.

#### 3.12.1 Gulf between management and tenants

Three respondents expressed the sense that poor communication and a “disconnection” from tenants as factors contributing to boycotts. Two of the SHIs rated this factor as being of significant importance while one rated it as being of average importance. Most telling, however, these three SHIs were the only respondents which had not themselves experienced boycotts. None of the remaining SHIs responding to this question (all of whom had experienced boycotts) cited alienation between the tenant body and SHI management, or even poor communication, as a factor at all, let alone a significant factor.

#### 3.12.2 Political interference

Seven of these nine SHIs expressed the sense that political interference, especially during election periods, was a significant (leading) factor in fueling boycotts while another felt that it was a factor of average importance. One CEO asserted that social housing is regarded as a “soft political target or football” by some politicians. Importantly, political interference, was cited as encompassing both ruling and opposition parties and also political movements which were not necessarily represented in a parliament.

#### 3.12.3 Desire for ownership

Of the five SHIs responding to this question which themselves had experienced boycotts, attempts to convert to ownership or at least aspirations to ownership were ranked as a significant factor by three, an average factor by one and a minor factor by one. (It should be reiterated that in two

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<sup>2</sup> The CFO of the SHI that claimed insurance in connection to loss of rent explained, according to their insurance policy, loss of rent is attached to damage to property. The insurer is SASRIA which claims to be only short-term insurer in South Africa that provides special coverage for risks such as civil commotion, public disorder, strikes, riots and terrorism. In addition to being able claim on property damage wrecked as a result of the invasion, the SHI was able to claim, pursuant to this policy, some of the related rent loss.

case overall, tenants were seeking blanket decreases in rent levels rather than ownership). Interestingly, none of the three responding SHI which had not experienced boycotts cited ownership as a motivating factor at all. It is also noteworthy that there are major parallels and links between the political interference factor and the aspiration to ownership, and rent increases or unaffordability.

#### 3.12.4 Rent increases or unaffordability

Rent increases was cited by only one respondent as a significant factor while two cited rent affordability as being of *minor* importance. This may be primarily connected to the loss of household income for some tenants rather than any issue of rents being generally unaffordable. Information from earlier questions indicated that most rent increases were not excessive (even if social housing rentals have increased overall at a rate higher than in the private rental sector in recent years).

#### 3.12.5 Asset grabs

Motives to “grab assets” and “hijack property for private financial gain” was cited by two SHIs as being of significant importance.

#### 3.12.6 Utilities

The increased price of utilities was cited by one CEO as a significant factor and another as being of average importance. The first CEO noted the impossibility of absorbing what was a substantial increase in utility charges by the municipality without passing the cost onto to tenants.

#### 3.12.7 Other factors

Significant importance

- Poor credit controls (typically outsourced) (1 SHI);
- Misleading statements by political leaders that there can be no evictions (3).

Average importance

- Very weak policing and limited recourse for criminal actions (2);
- Administrative justice being manipulated to stretch out legal action time frames (2).

### 3.13 Responses and mechanisms to prevent, end, and protect SHI businesses

SHI respondents were asked to consider what responses and mechanisms should be in place to:

- a. Prevent Rental Boycotts;
- b. Quickly end. Boycotts; and
- c. Protect SHIs Subject continuing boycotts.

They were then asked to rate these response factors or mechanisms at being of 1 – *Minor Importance*, 2 - *Average Importance* or 3 - *Significant Importance* in terms of the objectives set out in a), b) and c).

Nine of the 11 respondents provided this feedback, three of whom provided more detail in follow up discussions. These are outlined in the following three sub-sections.

### 3.13.1 Preventing rental boycotts

The most significant factor cited by the SHIs concerned the critical need to develop highly effective communication mechanisms with tenants and meaningful tenant engagement mechanisms. In summing up this general sense, one CEO asserted that there is a need for:

*“Pro-active communication with tenants on anything pertaining to their stay at the building. Short- and long- term maintenance plans, cleaning and security and engagement on rent and utility increases.”*

One CEO took this further and reflected on the SHI’s success in developing community development programmes which, inter alia, served to create an environment in which boycotts would be much less likely to take hold. This CEO identified the need for:

*“Extensive community development programs at buildings to make tenants feel that SHI cares about them as people.”*

Three SHIs considered that following factors as *highly significant* or at least of *average importance* in preventing boycotts:

- Rapid and decisive response when it is identified that a boycott may be brewing;
- Building strong, well-informed and decisive SHI leadership;
- Continuous engagement with tenants or any tenant structure;
- Utilising multiple means of communication with tenants including notice boards, SMS’s, letters, presentations at meetings, etc.;
- Multi-pronged strategy over the longer-term to maintain the best possible tenant relations.

The most significant factor cited by the SHIs in preventing boycotts concerned the critical need to develop highly effective communication mechanisms with tenants and meaningful tenant engagement mechanisms.

It was highly instructive to note that that two of the three SHIs which had not experienced boycotts described a ground operation characterised by daily and supportive interaction with tenants by project managers. The relationships that the managers have developed, their immersion in the social narrative, their level of awareness of the day to day issues faced by tenants as well as “internal politics”, means that they (the managers) will know well in advance of a boycott in the making. It cannot be concluded, however, that all the SHIs which were subject to boycotts did not have good management practices on the ground

when boycotts began. We can only conclude that those that were not subject to boycotts *did* have such standards.

One CEO asserted that the SHI’s property managers are very people-focused, develop personal relationships on the ground and are very much a part of ongoing discussion with and education of the tenants. This SHI also ensures that there is a visible executive presence on-site.

Even more noteworthy is that all three of the SHIs which have not experienced boycotts have embarked on community development programmes (including such aspects as health, art and recreation, skills development, etc.). These programmes are likely to raise the overall level of tenant satisfaction which would have the effect of helping to prevent the sort of disconnection or alienation that may fuel boycotts.

A high standard of communication needs to begin even before the tenant signs the tenancy agreement. It could even start before the commencement of the application process. One SHI has started a practice of pre-application seminars for people who have expressed interest. A central theme of the seminars is that if the prospective applicant is looking for ownership opportunities, this is not the right option for them. People are then asked if they still wish to proceed with an application knowing that there will be no possibility of ownership now or in the future.

One stakeholder interviewed described a successful practice they had implemented in which potential boycott instigators were approached in a constructive manner. In this practice these particular tenants were engaged with personally not only around their grievances and possible solutions but about their interests and how they might be included in a new project. In one example, this led to a presence of a church group undertaking activities on the premises and in another the tenant led an effort to develop a garden.

*Rapid, decisive responses and clear communication were most widely cited by respondents as being the most critical factors in quickly ending boycotts*

#### *3.13.1.1 Quickly ending boycotts*

*Rapid, decisive responses and clear communication* were most widely cited by respondents as being the most critical factors in quickly ending boycotts. This could involve a range of strategies such as immediately deploying executive staff to the complex to engage with tenants in various forums and on a one one-to-one basis, written and electronic communication, holding tenant meetings where presentations are made and discussion of grievances facilitated and negotiation undertaken, and moving quickly to address legitimate grievances and concerns. One CEO, however, asserted that such measures had proved to be insufficient and advocated for a practice of using biometric security systems to prevent the defaulter from accessing their unit and referring them to the office for negotiation.<sup>3</sup>

Three SHIs indicated that part of a rapid communication response should target other key stakeholders in addition to tenants particularly politicians and public administrators. The aim of such communication is education and advocacy with the hopeful outcome of building some measure of political support, or, at the very least, blunting political support for the boycott.

#### *3.13.1.2 Role of NDHS and SHRA*

At least three respondents advocated for swift action from the NDHS as a core intervention to help end a boycott. One CEO recounted how a boycott was defused after NDHS issued formal

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<sup>3</sup> This method has been tried by at least one SHI and, before expanding its use, their experiences should be considered along with legal implications.

letters to tenants confirming that individual title was not legally possible and that rent must be paid. Another CEO called for:

*“A clear and unequivocal public position from the National Minister of Human Settlements that tenants in rental housing must pay their rentals and use the rental tribunals to resolve their disputes.”*

Yet another CEO advocated for National Government to issue “A clear statement on social housing policy” in the event of a boycott over ownership. A suggestion was also made that in addition to the formal broader notice issue by NDHS, that SHRA could also promulgate formal notices confirmation, if it is the case, that the SHI is compliant with the Social Housing Act and is in good standing.

One CEO asserted that: *“Before we educate the tenants, we need to educate politicians and administrators.* Another saw a role for the SHRA in this task:

*“The SHRA could develop rapid response education toolkit for politicians and officials to quickly study up on what social housing is, what is regulated by SHRA and how, what is adjudicated by the Rental Housing Tribunals, tenant and landlord rights. This will ensure that those involved are able to quickly understand the law and can make better informed decisions about their involvement.”*

Another CEO identified a need for inter-ministerial interventions from the National Minister of Human Settlements. The idea would be for the Minister to ensure that politicians at all levels encourage tenants in social housing to pay their rents and stay within the parameters of the law during disputes.

### 3.13.2 Legal action

Prompt legal action to commence eviction proceedings was also widely cited as being of *significant importance*. One CEO noted that, initially at least, eviction action could be targeted at

Prompt action to commence eviction proceedings was widely cited as being of *significant importance*. Several SHIs underlined the need for legal support in terms of undertaking evictions and other matters associated with boycotts.

a small number of tenants. Another CEO, however, emphasised the need for SHIs to be given support and guidance to instigate mass evictions if the boycott spreads. It should be reiterated that those SHIs which have had the resources, the staying power and the skills to navigate the legal system, have, over time, been able to secure a sufficient number of evictions to help defuse or even end the boycott. Several SHIs underlined the need for legal support in terms of undertaking evictions and other matters associated with boycotts. More specifically one CEO identified the need to provide specialist support for attorneys retained by SHIs:

*“Attorneys, take a while to understand the aspects of law relating to this and to find the precise legal strategies that get results. Some vetted attorneys who can rapidly respond with pre-existing knowledge and experience of the legal arguments and strategies that work can save a tremendous*

*amount of time and money and help ensure that a boycott or occupation does not gain momentum.”*

### 3.13.3 Protect SHI businesses subject to continuing boycotts

The survey did not produce many ideas as to specific actions and strategies required to protect SHI businesses which are subject to boycotts as distinct from the ideas to prevent end boycotts. However, most respondents touched on the issue of loan repayments to the NHFC in instances where boycotts resulted in the SHI defaulting. At least two respondents underlined the need to facilitate loans moratoriums or loan grace periods for affected SHIs.

As previously noted, at least three SHIs reflected positively on the way in which NHFC was supportive to and willing to be flexible in instances of boycotts. This resulted in loan restructuring in one case, a complete moratorium in another as well as instances of support in stakeholder meetings. Another SHI, which was subject to an invasion, reached an agreement with the NHFC to pay interest-only installments on the units which were legally occupied.

Staff at one SHI, however, asserted that: “(The NHCF) almost wanted to extract themselves from the problem” and felt that the NHFC was too removed from the dire “situation on the ground” that the SHI had to deal with. On a more positive note, however, this CEO noted that NHFC was the only stakeholder in that particular crisis which articulate the need for greater involvement and support from the provincial department and the SHRA.

Noting that the NHFC is itself subjected to financial pressure when boycotts force SHIs into loan default, staff members at the aforementioned SHI felt that the Corporation could play a more fundamental role in addressing boycotts. They felt that the NHFC’s support would be particularly constructive in terms of helping secure support from other agencies and using its high-level contacts to build awareness of the danger of boycotts to public programme delivery and investment. This may help build high-level administrative and political support against boycotts.

## 4 SUMMARY OF FINDINGS AND CONCLUSIONS DRAWN

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### 4.1 Core findings

This study concludes that, unless addressed decisively as a national problem, the phenomenon of rent boycotts poses a clear threat, not only to the survival of individual Social Housing Institutions, but to the ability of the Social Housing Programme to deliver at any significant scale over the long-term. Emerging SHIs in particular will fail and potential providers will be hesitant to enter this market. Invariably, boycotts cost the SHIs amounts well beyond what their operational budgets could sustain.

There are presently no formal mechanisms to address such loss. Most SHIs are required to carry these losses through utilising their reserves that are primarily earmarked to finance the long-term maintenance of the stock. Without finding other ways to help cover these costs, even SHIs are working within the

Invariably, boycotts cost the SHIs amounts well beyond what their operational budgets could sustain. There are presently no formal mechanisms to address this loss. Most SHIs are required to carry these losses through reverting to their reserves that are primarily there to finance the long-term maintenance of the stock.

regulations and best practice systems of the SHRA are undermined as important delivery agents in the sector. It is recognized that there were some helpful ad hoc responses to support SHIs in near dire-straits but these are not institutionalised for utilisation in future emergencies.

In many instances the core reasons for the boycotts relate to factors that have little to do with the actual policy and regulation of the sector or the performance of the SHI in delivering the service in terms of these regulations. The boycotts are often instigated, or at least actively supported by parties external to the project who play on the aspirations and misconceptions of tenants to build political support or to position themselves for illicit monetary gain. While the major responsibility for preventing boycotts and mitigating existing boycotts rest with the SHIs, this study has found that there is a great deal more that key stakeholders can do to support SHIs in these addressing these considerable challenges.

#### 4.2 Rule of law

Examining the issue in a broader context it is clear that the social housing sector's efforts to prevent and end rental boycotts (and invasions) is hampered by limitations in the relevant South African public institutions in maintaining the rule of law. This is indicative of multi-faceted deficiencies in the ongoing functioning of some South African state institutions. Contextualised for the experience of SHIs in dealing with rent boycotts, this study has identified that:

- The South African Police Service (SAPS) is often (but by no means always) insufficiently capacitated, or simply unwilling, to deal with the illegal behaviour associated with boycotts. SAPS is also sometimes reluctant to respond to requests to remove persons who have invaded housing units, seeing this as a "civil" matter. However, longer-term efforts by SHIs to build a good working relationship with local SAPS precincts (and where possible at the provincial level) can yield positive results.
- The court system tends to be backlogged and final rulings on evictions can take an inordinate amount of time at great legal expense to the SHIs. The court cases can be subject to a range of delaying tactics by defaulting tenants and their representatives. By being mindful such tactics (as detailed in this report) SHIs can be in a better position to implement counter-strategies.
- The Rental Housing Tribunals have different levels of capacity and effectiveness province-by-province but, while being mindful of possible limitations, should be utilised by SHIs wherever feasible around a range of issues from obtaining formal mediation to securing attachment orders.
- The capacity of Sheriffs to undertake evictions effectively is also sometimes limited by political issues, lack of support from SAPS, organised resistance and other factors. But the study found no instances of impropriety, unwillingness or incompetence.

It is clear that the social housing sector's efforts to prevent and end rental boycotts (and invasions) is hampered by an inability of the relevant South African public institutions to maintain the rule of law. This, in itself, is indicative of multi-faceted deficiencies in the ongoing functioning of many South African state institutions.

### 4.3 Impact on reserves and long-term maintenance

Boycotts have substantial financial impacts on the SHIs and, in particular, lead to substantial expenditure in legal and security costs in addition to the loss of rental income to fund day to day operations. Most SHIs have had no other option but to utilise, and even fully exhaust, their own reserve funds which are critical for long-term maintenance and capital improvements.

The impact of this may have dire consequences for what has been identified as one of the strongest justifications for public investment in social rental housing: *The long life of the stock*. In 2009 a comprehensive cost-benefit analysis (CBA)<sup>4</sup> study compared value for money through the investment of capital subsidies in social rental versus investment in the RDP / BNG ownership programme. Among a range of findings, the CBA found that the lifecycle financial costs of social rental housing per unit are 2.5 times higher than those in RDP housing. The CBA concluded that:

*“The higher lifecycle financial costs of social rental housing (SHR) are as a result of its central location, the higher cost of land and building standards, and better maintenance and servicing.”*

By depleting the reserves meant for maintaining such “higher building standards” and “better maintenance and servicing”, boycotts and invasions serve to undermine these very strengths in social rental housing which help make the capital subsidies such a sound public investment.

### 4.4 Advocacy and communication

Effective advocacy and communication around boycotts need to be undertaken more rigorously from the neighborhood level (where the affected project is located) right through to high-level national forums. When interacting with government structures or persons a core message should be that boycotts present a very real danger of the loss of quality, well-located housing stock developed by public capital subsidies which should be considered a public asset.

Furthermore, the message must be communicated that boycotts serve to work against the realization of any number of national, provincial and municipal government policies, plans, strategies and frameworks which (broadly speaking) have objectives to:

- Densify housing, particularly in inner cities;
- Take some measure of pressure off the urban fringe (thereby making use of existing infrastructure, reducing transport costs, maximizing access to services, etc.);
- Rejuvenate local urban economies;
- Promote socioeconomic integration and restructure of cities; or

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<sup>4</sup> Social Housing Foundation (2009): Cost-Benefit Analysis: Social Rental Housing and RDP Housing. Prepared by Rebel Group. [file:///C:/Users/Adrian/Downloads/CBA\\_main\\_report%20sm.pdf%202015.pdf](file:///C:/Users/Adrian/Downloads/CBA_main_report%20sm.pdf%202015.pdf)

- Provide well-located housing to people effectively excluded from the bond market but who earn too much for programmes aimed at the poor.

The highly uncertain prospects for low-income tenants who leave the development pursuant to boycotts or invasions, including those who do so due to harassment and fear, also needs to be emphasised in the discourses. One CEO, for example had noted that numerous tenants had vacated due to the dangerous and untenable situation at the project and the SHI had some anecdotal evidence that at least a few of them had returned to informal settlements.

Effective advocacy and communication around boycotts need to be undertaken more rigorously from the neighborhood level through to high-level national forums. A core message is that boycotts present a very real danger of losing quality, well-located housing stock developed by public subsidies which should be considered a public asset

These cases must be made in all relevant forums, particularly those which can influence government policy and action.

#### 4.5 Political opportunism, entitlement and culture of non-payment

Privately owned rental housing complexes at the lower end of the market have, for many years, been vulnerable to invasion and hijacking, particularly in inner Johannesburg. While SHIs have certainly experienced these (most recently one of the survey respondents), social housing has been even more vulnerable to rent boycotts either instigated or supported by political or “activist” entities seeking to build a power base and/or to gain block votes. The study has shown that such political entities range from fringe movements to mainstream political parties. Political instigators and “facilitators” of boycotts have ranged from those closely associated with criminal networks to senior elected officials. Tactics have included the exploitation of a range of legal or administrative resources, public slander, utilisation of political or law enforcement connections to undermine, and the use of vandalism or violence.

In most cases of boycotts there were instances of politicians (from both ruling and opposition parties) in all spheres taking up the cause of the boycotters in responses that ranged from token verbal support through to encouraging destructive activity. Yet there were also cases of politicians distancing themselves from boycotters and, most importantly, dropping all support for the boycott after being engaged and well-apprised of the situation from the perspective of the SHI (as well as on programmatic and legal matters).

The fact that social rental housing is a public programme, the development of which is funded by capital subsidies, means that it is vulnerable to mis-characterisation and political manipulation. It is possibly sometimes conflated with the goals of the BNG (RDP) programme giving rise to the assumption that it should be “free” and for ownership. Historically, the Extended Discount Benefits Scheme (EDBS) provided for the transfer of many thousands of public rental units to tenant ownership. It is also easily assumed that social housing complexes are all somehow government property, or even a form of public rental which, in South Africa, has a long culture of non-payment. This plays into an entitlement mentality that “government must provide.”

#### 4.6 Swift action

The need for SHIs to react quickly to a boycott or invasion, or even the threat of one, came through very strongly in the study. The ways to respond appropriately will vary from case to case but may

include such things as immediately engaging (in multiple ways) with tenants and addressing legitimate grievances, reaching out to as many stakeholders as necessary to explain the SHI's case, deploying executive staff to the affected project, utilising legitimate mediation services such as the Tribunal, building support as appropriate from government agencies and persons, and commencing eviction procedures against defaulting instigators without delay.

Some SHIs could further develop their public communications and relations capacities in ways that would be helpful in the event of boycotts, including media relations.

#### **4.7 NHFC**

The study revealed a reasonably high level of satisfaction with the NHFC's support around boycotts, particularly in terms the corporation's willingness to consider loan moratoriums and loan restructuring. The NHFC should continue its practice of assisting SHIs which are subject to boycotts along these lines. However, there is more the Corporation can do. In one example the NHFC played an extremely helpful mediation role between the SHIs and the boycotting tenants. This role could be expanded as a matter of policy and utilised in as many situations where it could be helpful. The NHFC could also utilise appropriate high-level contacts it has in government and public entities to build support against boycotts and to suggest action relevant to each party. This could include senior figures in Treasury to call for action to protect public assets, National and Provincial Departments, the office of the Minister and any number of other relevant stakeholders. One aim would be to secure support against boycotts at a high level in order that this may filter down to more local-level instrumentalities including law enforcement and local political entities.

#### **4.8 Claim to ownership**

Whether a genuine desire arising from the tenant body or part or a tool of a political, corporate or criminal grouping, the call for home ownership has provided fuel for rental boycotts more than any other single factor.

The core message that social rental housing cannot be converted to ownership must be echoed and re-enforced at every opportunity. It must be a core piece of tenant education across the sector, made extremely explicit in documents, including a possible separate rider that tenants are required to sign. One SHI was even considering videotaping new tenants confirming their understanding that they are entering a rent-only agreement. But tenant education must be ongoing and the message needs to be integrated into written material and in discourse on the ground, reflected in meetings and seminars, etc. Municipal and provincial officials could also be of assistance here. These factors may provide importance tangible evidence in court and in other forums that tenants were fully aware of that ownership is not possible and that this is no basis whatsoever on which to default on rental payments.

The core message that social rental housing cannot be converted to ownership must be echoed and reinforced at every opportunity. It must be a core piece of tenant education across the sector, made extremely explicit in documents, including a possible separate rider that tenants are required to sign.

The SHRA should also be able to publicly verify that it is unable to approve such transfers and, if necessary, confirm in writing, that the SHI is under regulation and in good standing. The relevant human settlement authorities could also intervene where appropriate to help source more appropriate accommodation for some defaulters. For tenants with slightly higher incomes who want ownership, assistance might be provided to apply for programmes such as FLISP.

There needs to be a much stronger commitment at the executive / MEC / ministerial level to ensure that politicians are not only fully aware of the nature of social housing but that they are corrected when making claims to the contrary.

However, there were two instances in which the tenant's contention was not so much around the issue of ownership but around a claim for a reduction in rent levels. In the same way that communication and education strategies need to emphasise the rental-only nature of social housing, such efforts also need to also highlight the need for a rent level sufficient to ensure quality day-to-day operations, maintenance, tenant services, security and other vital features. It should be emphasised that the SHI is a strictly not-for-profit entity, that it cannot access any subsidies for operations and that rent levels are generally significantly lower than for comparable accommodation on the private market. Again, this message must be promulgated in different ways on an ongoing basis. When rent increases are planned, tenants need to be fully engaged.

#### 4.9 Style of management

The survey findings suggest that those SHIs which have a highly present and visible, engaging, relationship-focused management style on the ground tend to create environments in which boycotts are much less likely to be instigated. Project managers who engage with people daily, help address problems swiftly and who develop cordial personal relationships with tenants will be able to identify problems leading to boycotts much more quickly and be much better positioned to act in a prompt, well-informed and divisive way.

SHIs need to develop this form of management and senior staff should also regularly spend time in dialogue with tenants on-site. The expansion of community develop programming may also serve to mitigate against a tendency to foment boycotts in many cases. As they are required to do by regulation, all SHIs should undertake annual (or more frequent) tenant satisfaction surveys. Such surveys need to be designed in such a way that would enable the SHI to pick up on the sorts of factors that may fuel boycotts and management must then act swiftly on these concerns.

#### 4.10 Role of the SHRA

The survey revealed a general sense that the SHRA had been supportive of SHIs facing boycotts as far as its mandate allowed. However, there was a sense of frustration among at least two SHIs that the SHRA did not have the regulatory or fiscal scope to provide more substantial support. Two CEOs had also noted that the cost of providing extra security, so critical at crisis periods, was entirely prohibitive for the SHIs. One further noted that, while the SHRA was supportive, the

regulator was seemingly prevented by provisions of the Public Finance Management Act (PFMA) from providing funds for extra security that would help prevent damage to property, harassment of paying tenants and SHI staff, as well as the return of evictees and new invasions.

There is a strong case to be made that the SHRA should be given the authority and additional resources to provide funds to SHI to help cover the costs of security services in instances in which it is satisfied that: 1) There is a clear danger to the safety of legitimate tenants and / or SHI staff brought about by boycotts or invasion; 2) There is a genuine threat of destruction of property or actual destruction of property; and 3) The SHI does not have any means to provide the required additional security. Along these lines, it is highly significant to note that one SHI received a special R3 million once-off grant for emergency security measures from the NDHS.

As one CEO noted, the expenditure on additional security to protect the development – itself a publicly-funded asset – from malicious damage is most likely to prevent the need for much greater expenditure down the line to repair and rebuild, not to mention the human and others costs associated with violence and intimidation.

The SHRA could expand its compliance monitoring to include more qualitative oversight of SHIs determining tenant satisfaction, the complaints made and the progress in addressing complaints.

#### 4.11 Municipal rates and changes

The survey revealed only two cases in which the high cost of municipal services was cited as a reason contributing to the boycott. However, it is true that great financial pressure is placed on SHIs through higher-than-inflation increases and, in particular, assessments in many municipalities which charge SHIs a level of rates as if they were for-profit businesses. While SHIs have made significant efforts to absorb this, it is near-impossible for most to not pass costs onto tenants through rent increases. Efforts to lobby municipalities to charge SHIs at a rate applicable to registered non-profit organisations (NPOs) have had success in Cape Town but less so in most municipalities.

Sector stakeholders should examine the feasibility of pushing for an amendment to the *Local Government (Rating) Act 2006 Amended in 2015* which would ensure that SHIs, upon presenting evidence of accreditation with the SHRA, would have to be charged at the same rate as an NPO or CBO. The passage of such an amendment may require long-term lobbying effort by sector stakeholders. Initially, it may be helpful to obtain an expert legal opinion as to whether a case could be made that SHIs fit into an existing organisational category to which a lower rate charge applies.

## 5 RECOMMENDATIONS

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Most of the following recommendations are NOT specific to any one stakeholder but will require inputs from different stakeholders in different degrees.

### 5.1 SHRA

- Improve SHRA's compliance monitoring by moving from a paper based-approach to include the regular assessment/measurement of: a) the relationship between the SHI and its tenant community; b) the levels of satisfaction or dissatisfaction with the services provided by the SHI; c. the complaints records (what they are and how they are addressed); and c. non-adherence records. This would be further enhanced by a

compliance monitoring system in which compliance officers had a more direct relationship with SHIs in order to better use both formal and informal systems to provide necessary support.

- Develop a comprehensive set of national best practice guidelines concerning tenant relations, engagement and participation. Inter alia, these guidelines should help inform the parts of the workshop series aimed at helping SHIs developing best practices to prevent boycotts and manage speedy resolution when they do occur.
- Per the recommendation above, such guidelines to be properly implemented: a) through a series of training sessions (not once-off); b) included as a core component of the incubation programme for newer SHIs and in capacity building / training mechanisms for established SHIs; and c) integrated as a component into the SHRA's compliance monitoring and support function.
- Develop a formalised mechanism whereby complaints and investigations into misconduct on the part of SHIs are made to the SHRA and conducted by the SHRA as the industry regulator. This may require regulatory and / or legislative amendments and an objective should be to oblige all public entities, politicians and members of the public to refer any complaints regarding the conduct of an SHI to the SHRA rather than setting up their own "independent" investigations.
- When SHIs are falsely accused of impropriety as part of a boycott or invasion, respond rapidly by promulgating a formal directive that the SHI is compliant with the Social Housing Act and is good standing (where this is indeed the case).
- Similar to the above, in situations where tenants are purportedly boycotting pursuant to a claim for ownership, the SHRA should promulgate a directive explaining why transfer of title is not possible, legally or programmatically. Such notices should be issued on joint SHRA and NDHS letterhead and signed by both parties.
- Consider how the Institutional Grant (IG) funding stream currently utilised for SHIs in distress could be utilised for specialist legal, tactical and strategic advice around evictions connected with boycotts and invasions. This may involve developing a specific framework guiding the engagement of a specialized and experienced legal services provider to: a) Develop a legal brief on how to deal with the specific situation; and b) Where necessary, provide for advice and support to the attorneys engaged by the SHI.

## 5.2 NHFC

- Continue its practice of supporting SHI clients beset by rental boycott or invasion by temporarily suspending loan repayments and / or restructuring loans, and providing other forms of strategic financial advice.
- Consider how the organisation could develop or expand a role in mediating disputes pursuant to boycotts (see also final recommendation).

- With other key stakeholders consider what possibilities may exist for the creation of a loan guarantee fund to be utilised in instances when SHI clients face boycotts in a no-fault scenario. Modeling could be undertaken to determine the extent of the recapitalisation required and consideration given as to possible sources for the fund.
- In collaboration with the SHRA and NDHS, use its connections and influence to build an awareness the danger of social housing rent boycotts in terms of the effective loss of assets built with public subsidy and in achieving critical human settlement and urban restructuring policy goals, among high-level stakeholders.

### 5.3 SHIs

- Move as swiftly as possible to address a boycott or a threat to boycott, and even developing a preemptive action plan. Among a host of factors this may include responding quickly and decisively to any tenant allegations and commencing eviction proceedings.
- Pursuant to the SHRA recommendation concerning *national best practice guidelines (above)*, benchmark with SHIs which have implemented successful tenant engagement practices. Consider how models of tenant relations, communications and engagement could be contextualised and implemented for the particular SHI or developments.
- Review practices on the ground to examine ways to move towards a more engaging, and consultative model of day to day management. Such a model would see staff developing close working relationships with tenants, be focused on joint problem solving, provide for a stronger presence of executive staff, and (where feasible) assist tenants to address other issues of concern. An objective would be that project staff are well placed to identify circumstances which might presage boycotts. (Professional development training for staff may be of assistance for this purpose).
- Develop or improve communication, public relations and outreach strategies aimed at politicians, administrators, community groups, the media and the general public. This should include developing strategic relationships with all relevant institutions. A generic template or sample of such a communication plan could be developed to assist SHIs in developing their own.
- Ensure that the message that social housing is for rental only is emphasised in multiple ways and on an ongoing basis from the initial seminar, through contracting and in periodic communications and forums. Undertake similar education around the issue of rent levels and undertake tenant consultation when rent has to be increased.
- Consider ways and means by which appropriate community development services, relevant to the needs of tenants, could be provided.

### 5.4 Minister of Human Settlements

- At appropriate times, the National Minister for Human Settlements should be asked to take a firm public position that tenants in social rental housing have an obligation to pay

their rentals and that they should utilise the Rental Housing Tribunal (RHT) (and other legitimate services) to resolve their disputes. The SHRA could utilise existing institutional arrangements such as the MINMEC forum to make this request of the Minister.

- Propose / facilitate appropriate inter-ministerial interventions to ensure that politicians at all levels encourage tenants in rental housing to pay their rentals and use the RHT to resolve their disputes.

#### 5.5 General (multiple stakeholders)

- Develop a rapid response education toolkit for politicians and officials to quickly study up on what social housing is, what is regulated by SHRA and how, what is adjudicated by the Rental Housing Tribunals, and tenant - landlord rights and obligations.
- Ensure that a comprehensive social housing element is embedded into municipal housing training programmes. SALGA's social housing toolkit could be updated and promulgated more widely. There should be a strong emphasis on the fact that title transfer is not possible under the social housing programme.
- Utilising and building on the above, develop and implement an education and information campaign targeting provincial and local government politicians and senior officials across the country. A central piece of this would be education around the nature, purposes and scope of the Social Housing Programme.
- Strategise around engaging the National Government's Justice, Crime Prevention and Security Cluster to contextualise criminal activities associated with rent boycotts and invasions in social housing as major law enforcement issues. Develop specific, realistic proposals for the Cluster to address.
- Provincial and municipal departments to have a stronger presence in the event of boycotts including the possibility of holding workshops in projects to emphasise that the project is social housing which is for rental and under no circumstances for ownership
- On a municipal and neighborhood basis, investigate what forums or processes might be appropriate to engage key law enforcement figures around illegal occupation and criminal activity sometimes associated with boycotts, and the role of various agencies. Engagement could be centered around dealing with illegal occupations consistently and rapidly. Forums might include, for example, engagement with city council committees, ward committees, SAPS commander's meetings and sheriff's offices.
- Develop a national approach around addressing municipal service charges and rates as they apply to the social housing programme. This may require promulgating amendments to the Local Government (Rating) Act 2002 (as amended in 2015), to create a special rates category for accredited SHIs.

- Develop a formalised procedure by which the SHRA, NHFC, relevant provincial and municipal officials come together on an ad-hoc basis to mediate in disputes related to boycotts, provide information and engage with tenant groups and third parties. Such ad-hoc groups should be able to be formed swiftly in response to a crisis and might incorporate the recommended SHRA function of investigating complaints against the SHI.



## **APPENDIX A RENTAL BOYCOTTS AND OCCUPATIONS – INTERVIEW SCHEDULE**

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### **RENTAL BOYCOTTS AND OCCUPATIONS INTERVIEW SCHEDULE FOR SHIS**

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NASHO is undertaking a study on the reasons for and the impact of rental boycotts on the sector and individual SHI businesses. The intention is to develop a strategy to try and prevent such boycotts and/or shorten their duration while protecting SHIs that are subjected to rental boycotts.

As the Phase 1 we are requesting information from all NASHO members whether they have had rental boycotts or not. Once the information is received, collated and analysed we will organize a workshop to feedback to our members the results and explore a way forward including defining interventions.

#### **WHAT IS A RENT BOYCOTT?**

For the purposes of this study a Rental Boycott is defined as follows:

‘An organized campaign that encourages tenants to participate in withholding rentals and/or utility charges owned to the SHI in order to achieve an objective, and a number of tenants act on this encouragement and unjustifiably withhold rentals or other charges.’

#### **WHAT IS AN OCCUPATION?**

‘An organized occupation by people of units developed for Social Housing, where such occupiers have not been accepted as tenants through an appropriate SH screening process and have no leases from the SHI.’

**Closing date for submission is 20<sup>th</sup> March 2020**

Please return completed Schedules to [vanessa@nasho.org.za](mailto:vanessa@nasho.org.za)

Queries to **Malcolm McCarthy 082 6005479** or [malcolm@nasho.org](mailto:malcolm@nasho.org)



## RENTAL BOYCOTT AND OCCUPATIONS NASHO INTERVIEW SCHEDULE

### 1 SECTION 1

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1.1 Name of SHI:

1.2 Name of Person Completing Schedule:

1.3 Cell No. of person Completing Schedule:

1.4 E-mail address of person Completing Schedule:

1.5 Has your SHI had any rental boycotts?

YES

NO

If 'yes' please proceed to **Section 2** of the schedule and then do Section 3.

If 'no' please proceed to **Section 3**

### 2 SECTION 2

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If you have more than 1 Rental Boycott please fill in this section for each incidence.

2.1 Name of the Project with Rent Boycott

2.2 City where located:

2.3 Date of start of boycott:

Date of end of boycott:

2.4 How many tenancies on the project?

2.5 How many tenants were involved in the boycott at its peak?



2.6 What were the reasons given by the tenants for the boycott (list in priority order from the most mentioned to least mentioned).

REASON	COMMENTS

2.7 What does your SHI think were the reasons for the boycott? (list in priority order from the most important to the least important)

REASON	COMMENTS

2.8 Who was involved in organizing the boycott and who was involved in sustaining it? (here not wanting personal names but that of any organizations, official positions of individuals involved)

NAME OF ORGANISATION OR POSTION	CONTRIBUTION TO BOYCOTT

2.9 What tactics were used to start the boycott and sustain it?

ACTION	EFFECTIVENESS



2.10 What actions did your SHI take to end the boycott and what were the responses from the boycotters?

ACTION	RESPONSE

2.11 What response and or support did you receive from other sector stakeholders?

STAKEHOLDER	RESPONSE
Govt. Officials	
Elected Reps	
SHRA	
NHFC or other investor in project	
Political parties	
Ward Committee	
NGOs or CBOs	
Neighbourhood organisations	
Other (please specify)	

2.12 How many households were evicted as a result of the boycott?

2.13 How many left voluntarily?



## FINANCIAL LOSSES

2.14 What and how much financial loss did you suffer because of the boycott?

CATEGORY	AMOUNT LOST
Unpaid rentals	
Legal fees	
Extra security	
Cost of actual eviction	
Damage to property	
Other please specify	

2.15 From where did you obtain the money to cover these losses or extra costs?

SOURCE	ESTIMATED AMOUNT
General reserves	
Maintenance reserves	
Additional loan	
Grant	
Other	

2.16 Did the boycott result in your organization having to increase rentals higher than normal?

YES  NO

If 'YES' by what percentage was it more?



### 3 SECTION 3

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This section is for SHIs that have and those who have not had boycotts.

3.1 In your view what are the major factors that contribute to developing boycotts?

(Please rate in accordance with importance

1 – Minor Importance    2 - Average Importance    3 - Significant Importance )

FACTORS	RATING

3.2 What responses or mechanisms do you think should be in place to

**a. Prevent rental boycotts**

**b. Quickly end boycotts**

**c. Protect SHI businesses subject to continuing boycotts**

(Please rate in accordance with importance

1 – Minor Importance    2 - Average Importance    3 - Significant Importance )

FACTORS	RATING		
	a.	b.	c.



**3.3 Do you have any other comments?**