

Koliswa

# OPERATIONS OF THE GAUTENG RENTAL HOUSING TRIBUNAL



*"Vision without action is merely a dream. Action without vision just passes the time.*

*Vision with action can change the world."*

From The Power of Vision, By Joel Barker

*"What you plant now, you will harvest later."*

O G Mandino

**Presented by Trevor Bailey**

**Chairperson, Gauteng Rental Housing Tribunal**  
**to the Portfolio Committee on Human Settlements**  
**at Parliament, Cape Town on 7 December 2011**

## INTRODUCTION

1. Although this report of the Gauteng Rental Housing Tribunal (the Tribunal) is for the period 1 April 2007 to 31 March 2010, it provides a brief overview of the Tribunal's achievements since its inception. While there is much more that can be said, this report shows that the Tribunal has come a long way in a short period of time.

## ESTABLISHMENT

2. The Tribunal was established in July 2001 under the Rental Housing Act, 1999 (the Act) as a response to changes in the character of urban centres in South Africa. The establishment of the Tribunal was a significant step in efforts to ensure the protection of both landlords and tenants in Gauteng.



3. The primary purpose of the Act is to stabilise and regulate the residential rental housing sector through the establishment of -

- rental housing tribunals
- procedural and unfair practices regulations.



## COMPOSITION

4. The Tribunal comprises a chairperson, deputy chairperson, three members and two alternative members who are appointed by the member of the Gauteng Executive Council responsible for housing matters (the MEC).

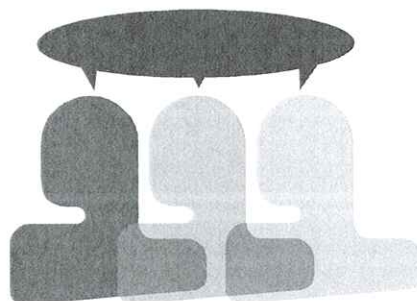
5. The current members of the Tribunal are-

- Trevor Bailey : Chairperson
- Maleho Nkomo : Deputy Chairperson
- Dombolo Masilela : Member
- Penelope Beck : Member
- Seeng Ntsapa-Letele : Member
- Thabo Morabe : Alternate Member
- Jakes Letsapa : Alternate Member.



6. The composition of the Tribunal is unique. It has a balance of skills, in that the Tribunal members have a wide range of legal, commercial and housing expertise. This allows the Tribunal the benefit of such expertise when deliberating on and handing down its rulings.

7. To assist the Tribunal perform its functions, the Tribunal has a support staff who are appointed subject to the laws governing the public service.



## THE TRIBUNAL IS BOTH AN EXPERIMENT AND A MODEL

8. The Tribunal is a new experiment in the rental housing sector in Gauteng. It is a skilful attempt to not only create access to adequate rental housing but also to create co-operation and remove conflict between landlords and tenants. The Tribunal is the first among its provincial peers and is the model on which other provinces have established or are establishing their Tribunals.

## BACKGROUND TO THE ESTABLISHMENT OF THE TRIBUNAL IN GAUTENG

9. The rental housing sector in Gauteng was at the time of the establishment of the Tribunal in 2001 characterised by-

- a high number of disputes between landlords and tenants
- a lack of maintenance to rental property, particularly multi-tenanted buildings
- the invasion of buildings by unscrupulous tenants committees, civic organisations, so-called estate agents and security firms
- the failure of local authorities to enforce their own by-laws
- estate agents contravening the Estate Agency Affairs Act and its code of conduct
- a general decay in living environments.



## THE TRIBUNAL'S RESPONSE:

### FORMATION OF AN OPERATIONAL PLAN WITH FOUR OBJECTIVES

10. It was in this context that the Tribunal set out to stabilise the residential rental housing sector by-



- regulating landlord and tenant relations
- resolving disputes between landlords and tenants.

11. This entailed putting in place an operational plan, which identified four objectives, namely-

- to stabilise and regulate the residential rental housing sector in Gauteng through the mechanism of the Tribunal, thereby protecting landlords and tenants against unfair practices
- to roll out the case management system to the rental housing information offices at the local authorities in Gauteng
- to improve interdepartmental relations with other provincial and national government departments
- to develop a marketing and media strategy for the Tribunal.

12. The implementation of these objectives is considered below.



## **OBJECTIVE 1:**

### **STABILISATION OF THE GAUTENG RESIDENTIAL RENTAL HOUSING SECTOR**

#### **Methods used to stabilise the residential rental housing sector**

13. The Tribunal has stabilised the residential rental housing sector-
- by resolving disputes informally or through mediation
  - where mediation fails, by conducting a hearing and making a ruling
  - where the dispute falls outside of the Tribunal's jurisdiction, by referring the complainant to an appropriate forum
  - by summoning a landlord, tenant, managing agent, municipality, expert or relevant person to appear before the Tribunal and answer questions or produce any documents concerning a dispute before the Tribunal
  - where appropriate, by requiring the Tribunal's inspectors to conduct building inspections and provide written inspection reports.



#### **Target groups**

14. The Act requires the Tribunal to accept disputes within its jurisdiction referred to it by all landlords and tenants. Accordingly, the Tribunal targets all landlords and tenants in Gauteng. However, the Tribunal statistics show that low income earners in the inner city and surrounding suburbs use the Tribunal's services extensively.

**Promotion of stability and regulation of the rental housing sector**  
**through the unfair practices and procedural regulations**

**Unfair practices regulations**

15. The Act provides that the rental housing sector is to be regulated through the establishment of unfair practices regulations. Accordingly, unfair practices regulations have been promulgated in Gauteng by the MEC concerning-

- lease agreements
- changing of locks
- deposits
- maintenance
- damage to property
- unlawful evictions
- utility (municipal) services
- non-payment of rental
- nuisances
- house rules
- receipts



## **Procedural regulations**

16. The Act also provides for regulations to be made relating to the procedures and manner in which the proceedings of the Tribunal must be conducted. Accordingly, procedural regulations have been promulgated in Gauteng by the MEC concerning-

- the notices to be given by the Tribunal in the performance of its functions, powers and duties
- the functions, powers and duties of inspectors to ensure compliance with the Act.

## **Section 7 of the Rental Housing Amendment Act, 2007:**

### **National regulations**

17. Section 7 of the Rental Housing Amendment Act, 2007 (the Amendment Act), which came into operation on 13 May 2008, amends section 15 of the Act to give the Minister of Human Settlements the power to make regulations. The Tribunal awaits the Minister's regulations, which will result in uniform regulations throughout the country. In the interim, the Tribunal continues to use the regulations promulgated in Gauteng by the MEC.

### **A new South African rental housing jurisprudence**

18. The Tribunal is developing a new South African rental housing jurisprudence. The Tribunal is required to determine whether an unfair practice has been committed. This requires the Tribunal to look at the broader picture of what is lawful and fair. This broader approach is





contrasted to that of the normal courts, which are generally required to only consider the lawfulness of a dispute.

19. A ruling by the Tribunal is deemed to be in order of a magistrate's court and is enforced in terms of the Magistrates' Courts Act, 1944. Moreover, the proceedings of a Tribunal may be brought under review before the High Court. Accordingly, the Tribunal hands down reasoned rulings, which can be easily understood by members of the public. None of the Tribunal's rulings have been successfully reviewed in the High Court.



#### **The Tribunal's interventionist (or inquisitorial) role**

20. To ensure fairness and expedite the resolution of complaints before it, the Tribunal plays an interventionist (or inquisitorial) role by asking the parties questions and conversing with them in a non-threatening environment. This ensures that-

- power is not abused
- the economic and social rights in the Constitution of the Republic of South Africa, 1996 (the Constitution) are enforced
- the inequalities in our society are not made worse.



#### **The Tribunal's hearings are open to the public**

21. The Tribunal's hearings are open to the public. The Tribunal aims to ensure that justice is done and seen to be done. It aims to do justice to both the landlord and tenant. It intends to be corrective and to strongly communicate the unacceptable nature of

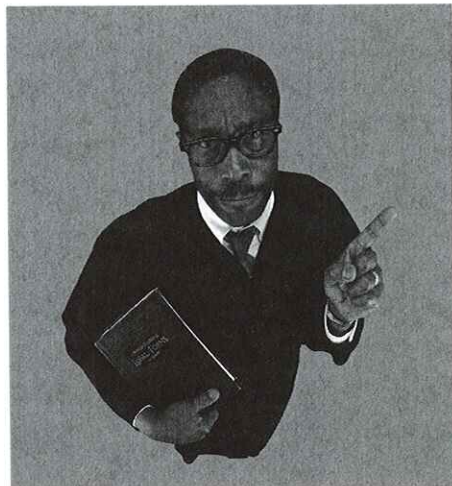


practices in the rental housing sector that are unfair. In this way, the Tribunal has set out to enhance the outcome of its rulings, which are deemed to be orders of the magistrates' courts, as being legitimate and acceptable.

### **Growing the status of the Tribunal**

22. Since the Tribunal exercises judicial functions under section 13(2) to (6) of the Act and its rulings are deemed to be magistrates' court orders, it was necessary to enhance the status of the Tribunal. Accordingly, the Tribunal-

- moved to another building, which enhanced the status of the Tribunal
- arranged for the room in which the Tribunal conducts its hearings to follow the normal court seating plan
- provided its members with specialist chambers directly next to the room in which the Tribunal conducts its hearings for use by Tribunal members when the Tribunal is not hearing complaints
- appointed a Clerk of the Tribunal
- writes easily understood rulings,

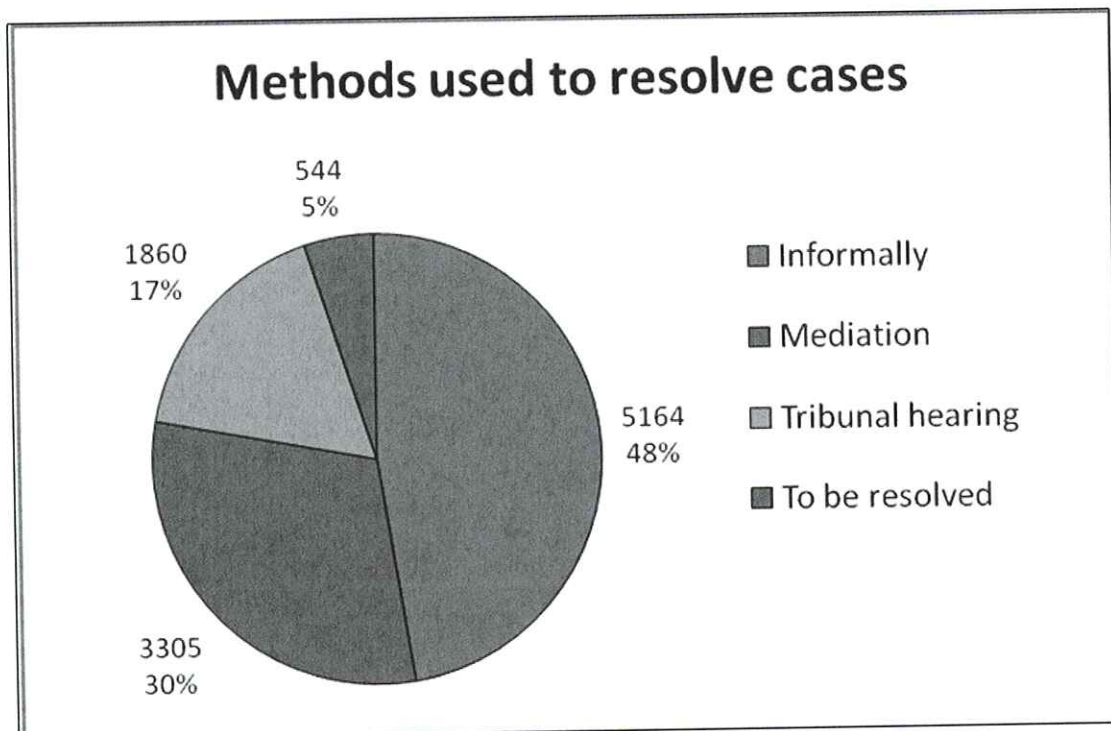


which will stand scrutiny if brought under review in the High Court. None of the Tribunal's rulings has been reviewed in the High Court.

**Performance statistics**

23. The Tribunal has given expression to the idea that landlords and tenants who have suffered prejudice through unfair practices should be able to obtain redress.

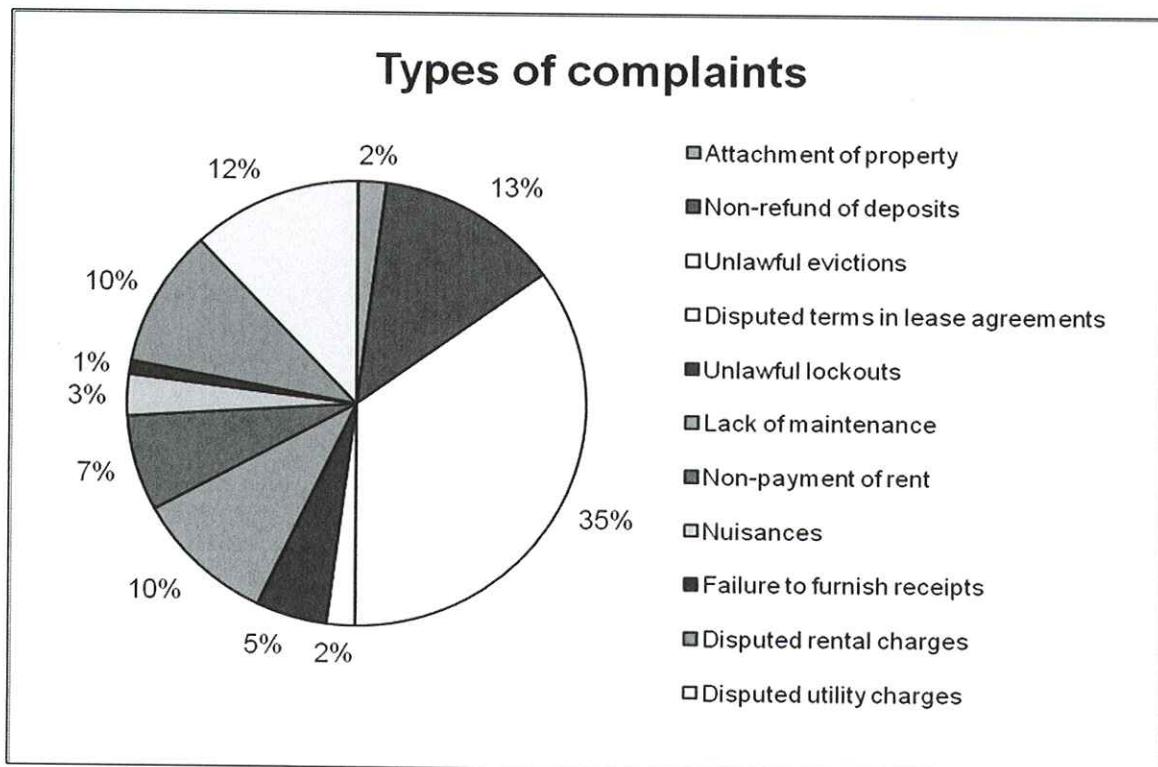
24. Since its inception in 2001 and up to 31 March 2010, the Tribunal has received 10 873 complaints and resolved 10 329 (95%) of those complaints. Of the 10 329 complaints, 5 164 (48%) complaints have been resolved informally through negotiation, 3 305 (30%) through mediation and 1 860 (17%) through Tribunal hearings.



25. The Tribunal's resolution of 10 329 (95%) of the complaints is an outstanding achievement. The outstanding 544 (5%) complaints will be substantially resolved within the next 90 days. This means that by

30 June 2010 the Tribunal would have resolved all (100%) of the complaints lodged with the Tribunal.

26. In percentage terms, the 10 873 complaints comprise-

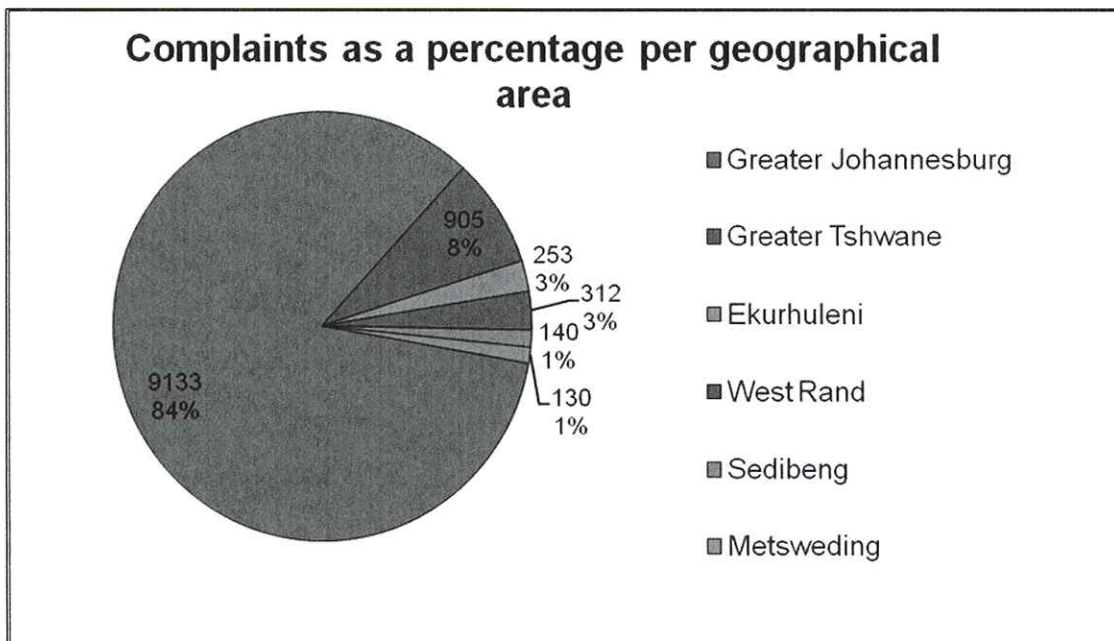


- Attachment of property (2%)
- Non-refund of deposits (13%)
- Unlawful evictions (35%)
- Disputed terms in lease agreements (2%)
- Unlawful lockouts (5%)
- Lack of maintenance (10%)
- Non-payment of rent (7%)
- Nuisances, changing of locks and penalties for late payment of rentals (3%)
- Failure to furnish receipts (1%)
- Disputed rental charges and rental determinations (10%) and
- Disputed utility charges (12%).

### Complaints per geographical area

27. The number of complaints received per geographical area since the Tribunal's inception and up to 31 March 2010 is broken down as follows-

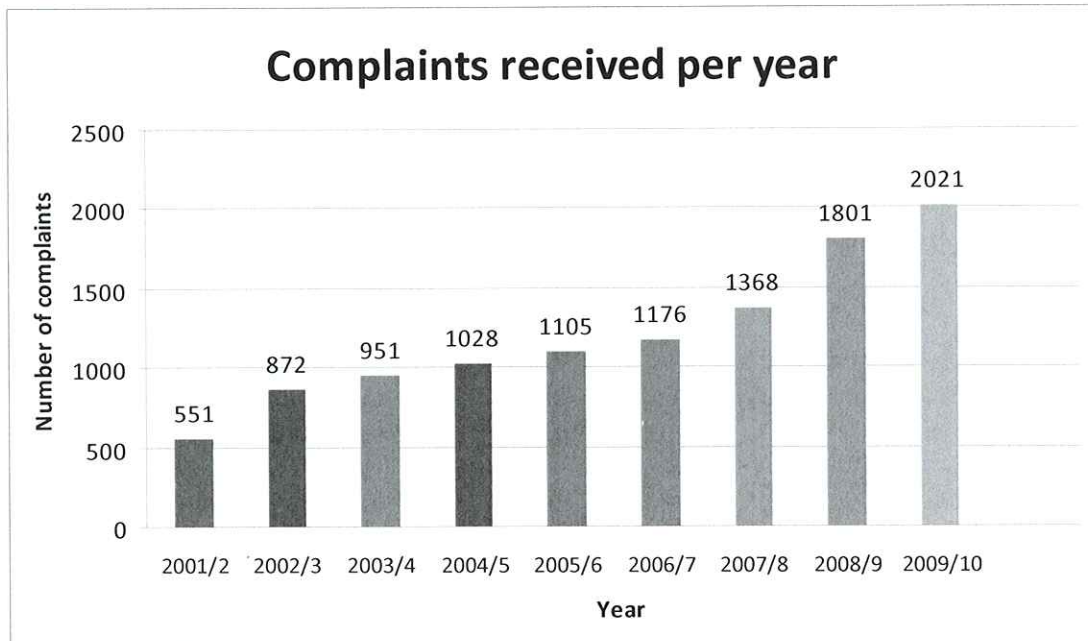
- Greater Johannesburg : 9133
- Greater Tshwane : 905
- Ekurhuleni : 253
- West Rand : 312
- Sedibeng : 140
- Metsweding : 130



### Dramatic increase in the number of complaints lodged with the Tribunal

28. The number of complaints lodged with the Tribunal has increased dramatically since inception. During the Tribunal's first year of operation in the 2001/2 financial year a total of 551 complaints were lodged with the Tribunal.

29. During the last three years the number of complaints has increased by 16,3% from 1176 complaints in 2006/7 to 1368 complaints in 2007/8 and by 31,7% to 1801 complaints in 2008/9 and by 12,2% to 2021 complaints in 2009/10.



**Benefits flowing from the Tribunal having stabilised and regulated the residential rental housing sector**

30. The Tribunal’s benefits may broadly be summarised as follows –

- the Tribunal has reduced tensions between landlords and tenants. This is evidenced by the fact that there are no longer large scale evictions in the Johannesburg inner city and surrounding suburbs
- the Tribunal provides free, easily accessible, expeditious justice to landlords and tenants *Free!*

- the mediation procedure enables parties to resolve disputes by agreement
- the Tribunal's rulings bring certainty and a conclusion to the parties' dispute
- these achievements have contributed to increased stability in the rental housing sector in Gauteng.



### **Impact in the fight against poverty**

31. The Tribunal's resolution of disputes has resulted in the following benefits in the fight against poverty–

- prevented the deterioration of living environments.



*For example, maintenance has been improved.*

*Tenants have hot water, toilets are repaired, electricity boxes and loose wiring are sealed off, windows are replaced, lighting is provided in common areas and fire hydrants are installed.*

- contributed towards the establishment of stable conditions, within which healthy communities can be established.

*For example, landlords no longer charge fees and penalties for late payment of rent, nor do they charge tenants more than the exact amount for services consumed.*



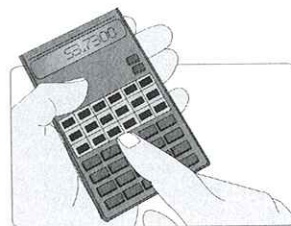
- reduced tensions between landlords and tenants.



*For example, the Tribunal facilitates arrangements between landlords and tenants for tenants to reduce their arrear rental incrementally. These arrangements give tenants breathing space, thereby reducing the pressure of the tenants' debt burden and alleviates poverty.*

- made rent determinations concerning the amount of rent payable.

*When doing so, the Tribunal takes into account prevailing economic conditions and the need for a*



*Rental determinations have resulted (although not always) in the rent payable being reduced, which means more disposable income for tenants and thereby alleviates poverty. This will in turn attract investment and*



*contribute to the regeneration of Gauteng's major cities,  
thereby providing employment and reducing poverty.*

## **Mediation**

### **Mediation is at the heart of the Tribunal's dispute resolution functions**

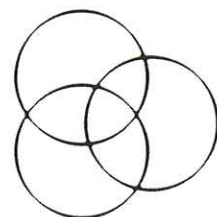
32. Mediation has established itself as the core alternative dispute resolution process. The need for an alternative to litigation is broadly accepted in society and is specifically provided for in the Act. In almost all instances, a dispute should be referred to mediation before being referred for adjudication to the Tribunal. It follows that mediation is at the heart of the Tribunal's dispute resolution functions.



### **Why mediation works**

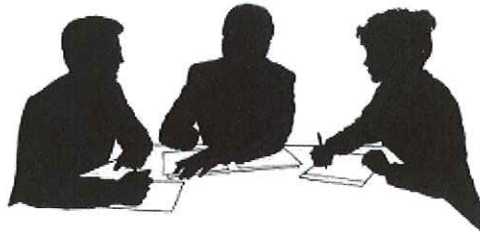
33. The focus of litigation is on the past, whereas mediation addresses the future. Mediation enables the parties to resume or sometimes to begin negotiations. The very presence of the mediator changes the dynamics of the negotiating process. The mediator brings negotiating, problem-solving and communication skills and deploys them from a position of independence and neutrality to make progress possible where direct negotiations have stalled.

34. The mediator therefore adds a valuable dimension to a negotiation, having no personal stake in the dispute, by bringing neutrality to detailed negotiation discussions and adding a fresh and independent mind to the dispute.

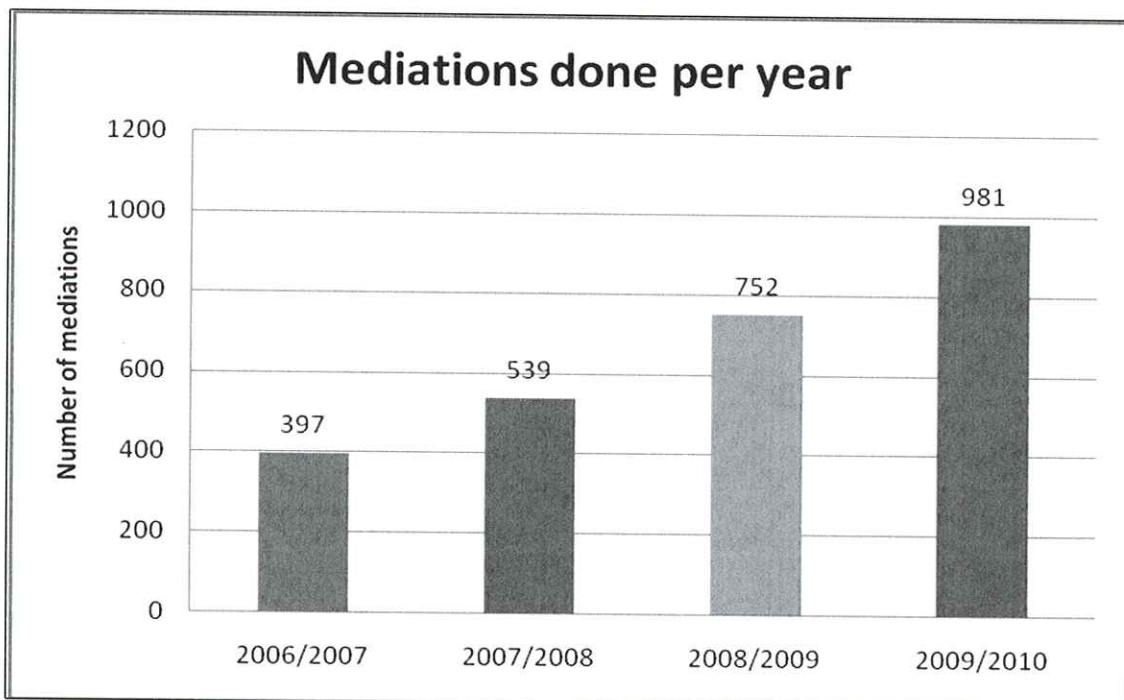


## Mediation statistics

35. The Tribunal's statistics show that the work of the mediators has increased significantly during the past three years and has contributed greatly to the success of the Tribunal.



36. The number of mediations increased by 35,8% from 397 in 2006/7 to 539 in 2007/8 and by 39,5% to 752 in 2008/9 and by 30,5% to 981 in 2009/10.



## Enforcement of the Tribunal's rulings

37. Although parties almost always comply with the Tribunal's rulings, there have been instances where parties have been unable to enforce rulings in their favour.

38. The Amendment Act clarified that rulings of the Tribunal must be enforced in terms of the Magistrates' Court Act, 1994. Accordingly, the Tribunal has made arrangements for parties to enforce rulings through the magistrates' courts in Johannesburg and Pretoria with minimum time wastage and inconvenience to the parties.

39. The ability to enforce the Tribunal's rulings through the magistrates' courts has empowered both landlords and tenants and enhanced the status of the Tribunal.

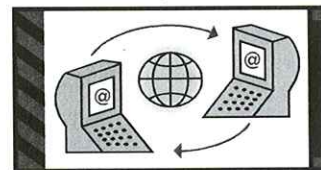
## **OBJECTIVE 2:**

### **THE DEVELOPMENT OF THE CASE MANAGEMENT SYSTEM AND RENTAL HOUSING INFORMATION OFFICES**

#### **The case management system: an innovation**

40. The Tribunal has developed a case management system to manage disputes. The system, which is the first of its kind in the rental housing sector-

- allocates a case number to each registered complaint
- generates correspondence online to save time and increase productivity
- enables the status of a dispute to be determined at any time and instantly communicate information to a party
- generates management reports



- enables cases to be entered per local authority, which can be extracted and used for planning purposes. For example, that consumer education must be consolidated

### **Establishment of rental housing information offices**

41. Section 14 of the Act provides for the establishment of rental housing information offices (information offices). The Tribunal, through its support staff, has spent much time and energy with local authorities to establish such offices.



42. A fully operational information office has been established in Tshwane. This office is the country's most outstanding example of the meaningful role that information offices can play in resolving disputes between landlords and tenants. Its overwhelming success has necessitated the Tribunal establishing 'circuit tribunals' in Centurion, Pretoria Central, Pretoria North and Akasia.

43. The Tribunal has sat in the Centurion and/or Pretoria Central circuit tribunals on Thursdays for the past year. As from 1 April 2010, the Tribunal will commence sitting in the Pretoria North and Akasia circuit tribunals on Tuesdays. The Tribunal hears on average four cases a day in the circuit tribunals.

44. The Tribunal has signed a Memorandum of Understanding with the City of Johannesburg to establish information offices in each of its eight regions. The City has established information offices in Region B (Claremont and Riverlea).

45. Further information offices will be established in Region E (Wynberg and Alexandra) and Region F (Rosetenville and Joubert Park) during the next financial year.



46. The Ekurhuleni Local Municipality has agreed to establish information offices at their 'customer contact points' in Alberton, Boksburg, Tembisa and Kempton Park.

#### **Difficulty of establishing information offices as an unfunded mandate**

47. The major difficulty concerning the establishment of information offices is their unfunded mandate. Another difficulty is the local authorities' failure to commit themselves to ensuring that information offices fulfil their functions under section 14 (3) of the Act.

### **The Tribunal's expectations of information offices**

48. The Tribunal must be clear concerning its own expectations of the role they expect information offices to play. This means the Tribunal-

- and the local authorities must be guided by sections 13 and 14 of the Act
- must have a clear strategy in place to optimise the establishment and functioning of information offices
- must ensure clear reporting lines between the information offices and the Tribunal
- must conduct regular audits to ensure that the information offices fulfil their functions in accordance with the Act.



### **OBJECTIVE 3:**

#### **IMPROVEMENT OF INTER-DEPARTMENTAL RELATIONS WITH OTHER PROVINCIAL AND NATIONAL DEPARTMENTS**

### **The Tribunal's inter-disciplinary approach**

49. The Tribunal has always recognised the need to adopt an interdisciplinary (or holistic) approach to ensure that it optimally stabilises and regulates the rental housing sector. Accordingly, the Tribunal, as a statutory body, has established both formal and informal partnerships with the various arms of government, non-governmental organisations and the private sector. This is a smart policy, which should

continue to ensure growing well being in the residential rental housing sector.



50. These partnerships have from time to time included-

- Local authorities: through the establishment of information offices
- National Department of Human Settlements (Housing): which is the conduit through which the Tribunal deals with issues of national consequence, such as amendments to legislation
- Other Rental Housing Tribunals: through the quarterly meetings of the Rental Housing Tribunals, where matters of mutual concern are discussed and planning for the future takes place
- South African Police Services, Directorate of Public Prosecutions, Department of Justice and Constitutional Development and Chief Magistrates (Civil): to assist the Tribunal promote stability in the rental housing sector through the enforcement of Tribunal rulings
- Estate Agency Affairs Board: concerning matters of mutual interest
- Small claims courts, non-profit law centres, university law clinics and the public interest law units in the larger firms of attorneys: to assist members of the public whose complaints do not fall within the jurisdiction of the Tribunal.

### **The need to continuously evaluate the partnerships**

51. Despite the Tribunal's attempts to build these partnerships, much work still needs to be done. It is necessary for the Tribunal to continuously evaluate



the nature of these partnerships and consider ways in which these partnerships may be enhanced.

## OBJECTIVE 4:

### THE DEVELOPMENT OF A MARKETING AND MEDIA STRATEGY

#### Development of a marketing and media strategy

52. Bestselling author, Stedman Graham writes that –

*From traditional corporations to the Internet, from top executives to people striving everyday in their communities, 'branding' has become one of the most significant marketing practices in pop culture today.*



53. To ensure that the Tribunal meets its objectives, the Tribunal developed a marketing and media strategy to build the Tribunal's 'brand' in the eyes of the public. This strategy included-

- placing the Tribunal on the departmental website
- appointing an in-house marketing and media person
- regular media briefings
- developing a Tribunal brand
- establishing a corporate identity
- stakeholder engagement
- advertising the Tribunal's services.

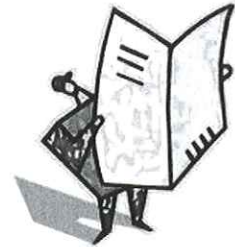




### **Benefits of the strategy**

54. This strategy has resulted in the Tribunal-

- placing the Act together with the Tribunal's forms, background and functions on the department's website
- producing information booklets, banners, folders, posters and a corporate video to increase the Tribunal's profile
- participating in live radio interviews and talk shows on Radio Pulpit, Radio 702, Alex FM, Morelete FM, Theta FM, Jozi FM, Voice of Tembisa, Kasie FM and Soshanguve FM
- participating in television programmes on Soweto TV and ETV's 3rd Degree.



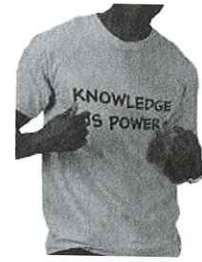
### **Launch of the Tribunal's corporate identity**

55. The Tribunal, being mindful of its adjudicative independence from the Department, has developed its own corporate identity, which was officially launched in the presence of the Tribunal's stakeholders at Emperor's Palace on 12 June 2008.



## **Education**

56. If knowledge equals power, then education is the best representation that landlords or tenants will have to enforce their rights. With this in mind the Tribunal has-



- conducted education in the Kagiso, Meadowlands, Dobsonville, Westbury, Molapo, Berea, Hillbrow, Malvern, Evaton, Bekkersdal and Soshanguve communities
- interacted with civil society. For example, the Tribunal addressed the South African National Civic Organisation annual general meeting in July 2008
- engaged officers stationed at the Jeppe Police Station concerning criminal violations of the Act
- participated in the Gauteng Department of Housing's information exhibition at the Rand Easter Show.

## **AWARDS**

57. The Tribunal is a good story with a good outcome. As a result the Tribunal-

- in 2003 received an award from 'The Impumelelo Innovations Award Trust' for being an exceptional model of public service delivery in infrastructure development



- in 2004, received a commendation as a 'good initiative' from the Dubai International Awards for Best Practices

- in 2006, was selected as one of the 48 shortlisted Best Practices by the United Nations Human Settlements Programme
- in 2006, was awarded a Silver Premier's Service Excellence Award for promoting stability in the rental housing sector in Gauteng
- in 2007, was short listed as one of six finalists for a Premier's Service Excellence Award
- in 2008, was short listed for an award from 'The Impumelelo Innovations Award Trust' for once again being an exceptional model of public service delivery in infrastructure development.

58. The Tribunal can justifiably be proud of its achievements and the acknowledgement it has received through these awards.



## THE TRIBUNAL IN THE FUTURE

59. J F Kennedy, a former President of the United States, once said-



*"Change is the law of life and those who look only to the past or present are certain to miss the future."*

60. During the past three years the Tribunal has experienced exponential growth, which has severely strained the Tribunal's resources and ability to resolve disputes within the required period of three months of having been lodged with the Tribunal.

61. Given the Government strategy to diversify tenure options and having identified social housing institutions as a catalyst in urban regeneration, it is expected that the demand for the Tribunal's services will continue to outstrip current growth rates.
62. Accordingly, it is imperative that the Tribunal-
- revisit its current institutional arrangements and work towards being registered as a separate entity or agency
  - ensure that legislation facilitates the Tribunal's vision
  - ensure that its budget is increased and ring fenced by the Gauteng Department of Housing
  - fill and even increase its support staff component
  - increase its office space
  - revisit its operational systems to ensure that the Tribunal works more efficiently and makes better use of technology.



## **ACKNOWLEDGEMENTS**

63. I would like to thank-
- the Deputy Chairperson of the Tribunal, Maleho Nkomo and members of the Tribunal
  - mediators
  - the Director of the Tribunal support staff, Betty Kgobe, and the support staff, and
  - interpreters
- for their support and contribution to the work of the Tribunal.

64. I would also like to thank both the former and current Heads of the Gauteng Department of Housing, Benedicta Manama and Mongezi Mnyani for their support and willingness to assist the Tribunal.

65. I would also like to acknowledge the significant contribution of the City of Tshwane through its ongoing support of the Tshwane Rental Housing Information Office and the role played by Violet Mehale and staff of that office in the work of the Tribunal.

## **CONCLUSION**

66. The Tribunal is bridging South Africa's past and present. While the Tribunal has achieved much since its inception, its exponential growth shows that its work in giving meaning and content to the right to access to housing as set out in Section 26 of the Constitution is just beginning.

67. Since the Tribunal is the model on which other provinces continue to establish their tribunals, the Tribunal must remain the eminent Tribunal among its peers in South Africa.



68. This means that the Tribunal must be the product of –

- the provincial government's political will and ability to finance it
- a dedicated, well trained, efficient and empathetic support staff

- committed and creative Tribunal members
- the Gauteng Department of Housing's commitment to ensure that the Tribunal is a useful tool to stabilise the rental housing sector
- the Tribunal's continuous search for new ways to achieve its objectives

which will ensure that the Tribunal is a major role model, catalyst and contributor in Gauteng to the new South Africa.

69. This should always be the big picture and it will always be a great challenge. The Tribunal must continue to release the seed of creative energy within it to meet this challenge.

