



MANAGING AND CURBING UNAUTHORISED LAND OCCUPATION

RFP/JHB/2015/020

Housing Development Agency

ANNEXURE 2 Case Study Review



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Promoting active citizenship and good governance

Lead author

CS Consulting

Support from

Afesis-corplan

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1. BACKGROUND TO CASE STUDY

The Housing Development Agency (HDA) commissioned research into Managing and Curbing Unauthorised Land Occupation in South Africa.

This case study report deals with the approaches adopted by four selected Municipalities in South Africa in dealing with land occupation and forms part of a broader report on unauthorised land occupation. The four Municipalities that were selected by the Housing Development Agency to participate in this research project are:

1. Rustenburg
2. City of Cape Town
3. eThekweni Metro
4. Buffalo City Metro

The case study report seeks to highlight which approaches the four selected Municipalities are utilizing both from a reactive and a proactive perspective when dealing with unauthorised land occupation.

The methodology employed in this case study research was a threefold approach:

- Firstly, contact was made with the relevant officials in each of the four Municipalities who are dealing with unauthorised land occupations. In many cases, it was found that more than one Department had the responsibility of dealing with land occupations and that it was generally a multi-Departmental approach due to the complexity of the issues involved.
- Secondly, a briefing document was submitted to the relevant officials detailing the background to the study, the consulting team appointed and the terms of reference.
- Finally, a list of research questions was submitted to each Municipality with a deadline in which to submit responses. In the case of Buffalo City Metro, a meeting was convened with the relevant officials dealing with land occupations due to the location of the consulting team in East London.

Despite numerous follow up requests, the research team received no response from the City of Cape Town.

2. RESPONSE TO RESEARCH QUESTIONS.

The research questions and responses from the three Municipalities that responded to these questions is captured in Table 1 below.

Table 1: Responses from the three Municipalities

Question	Buffalo City	eThekweni	Rustenburg
1. Provide the following statistics on land invasions in your Municipality			
1.a) Number of invasions per year over the last three years	<i>One hundred and fifteen for both Coastal/Midland and inland including other areas.</i>	<i>Don't know</i>	<ul style="list-style-type: none"> • 2013 Plot 14 Structures 700- Population estimated at over 2000. • 2013-14 Land invasion in Popo Molefe Ext which is not named- Structures increased to 1264 and population is estimated at 4930 • 2015 Plot 14 mushroomed from 700 to 1270 structures which affected the community of the bonded houses nearby • 2015- Marikana, invasion of land next to railway line by approximately 700 households
1.b) Number of households involved	<i>More than two thousand households.</i>	<i>Don't know</i>	<ul style="list-style-type: none"> • Plot 14 households 700 • Popo Molefe Ext estimation of 1264 • Popo Molefe Ext land invasion increased by 564 households • Marikana estimation 700
1.c) Whether the land invaded was public, private or communal	<i>Both Communal/Private and Public.</i>	<i>Both Public and Private may also have been communal land. Need to state that courts take a harsher view (to evictions) when public land is invaded of private land.</i>	<ul style="list-style-type: none"> • Plot 14- the land is privately owned • New Popo Molefe privately owned • Marikana is public owned land
2. What is the current demand for land and housing in your Municipal area and how much housing does the Municipality and other government agencies supply on an annual basis?	<i>Our waiting list is currently +/-47 000 Special Needs- 581 Youth between 18-35 years- 17783</i>	<i>Demand based on backlog/ expected density Informal Settlement units = 245633/30 = 8188ha (assumed nett density of 30/ha) Informal Settlement + Backyard Informal units = 288784/30 = 9626ha Assumed no further land required for Traditional dwellings Based on current targets (growing from approx. 4600 at present to 8250 in</i>	

Question	Buffalo City	eThekweni	Rustenburg
		2019) approx. 150 to 300 ha per annum	
<p>3. What legislation do you follow and what policies do you have in place as a Municipality for dealing with land invasions both reactively (managing) and proactively (curbing)? Kindly attach the policies you have.</p>	<p><i>Housing Allocation Policy copy from Human Settlement</i> <i>Land Management Policy copy from Land Admin</i> <i>City Planning to supply info on NUSP/SDF/LSDf</i></p>		<p><i>Legislative Mandate Constitution of the Republic</i></p> <p><i>Founding provisions of the Constitution is on human dignity, the achievement of equality and the advancement of human rights and freedoms. Section 25 and 26 of the Constitution impose a duty on government especially the Municipality in dealing with the right to property and housing.</i></p> <p><i>Housing Act, 107 of 1997</i></p> <p><i>It confirms the powers and functions of Municipality in Housing development. National Housing provides interventions to be used to deal with development in land invaded, e.g. Informal Settlement Upgrading</i></p> <p><i>PIE ACT</i> <i>Recognise occupiers of land as having common rights over the land. It sets out process and procedures to be followed in eviction of the land occupiers</i></p> <p><i>Reactive Approach of dealing with land invasion</i> <i>In managing land invasion, the following process is undertaken by Municipality depending on the land ownership;</i></p> <p><i>Land own by government including Municipality</i></p> <ul style="list-style-type: none"> <i>• Negotiation with land invaders and Department owning land</i> <i>• Household Audit and establishment of household data base</i> <i>• Provision of Municipal services on</i>

Question	Buffalo City	eThekweni	Rustenburg
			<p><i>ad-hoc basis</i></p> <ul style="list-style-type: none"> • <i>Determination of land suitability for human settlement development</i> • <i>If owned by Municipality, Township establishment process kicks in</i> <p><i>Land Owned Privately</i> <i>Municipal intervention will be determined by the approach of the land owner</i></p> <p><i>Proactive approach of dealing with land invasion</i></p> <ul style="list-style-type: none"> • <i>If within 48 hours, shacks are demolished by Municipality Law enforcement</i> • <i>Over 48 hours, the High Court is approached with a pray for eviction</i> • <i>Monitoring of Municipality owned land by Informal Settlement team</i> • <i>Rapid release of land for housing development to low income communities</i>
<p>4. What institutional arrangements does your Municipality have in place to deal with land invasions. (e.g. a land invasion unit, upgrading informal settlement programme etc.)</p>	<p><i>With the minimum resources, weekly checks undertaken in problem areas to prevent land invasions.. With the assistance of the new unit from Human Settlements Department and the resources they have, the material used during land invasion is being confiscated and retained.</i></p>	<p><i>We have a land protection section under the Security cluster as well as a Land monitoring section in Human Settlements Unit. Security unit personnel and land monitors visit existing settlements on a regular basis as well as look out for new land invasions which may be reported by public, councillors, etc. or else via their visibility. If new informal dwellings are in the process of being erected than the security section warns people and demolishes the incomplete shacks being erected. Land invasions are also monitored by ward councillors, committees, and the public who can phone a hot line to report such.</i></p>	<p><i>The Directorate Human Settlement has a Unit that deals specifically with monitoring, control and management of informal settlements. An accurate Register essential for the proper management and control of informal settlements is also in place. It serves not only as a source of information, but forms the basis for the following:</i></p> <ul style="list-style-type: none"> • <i>Provide information necessary for planning and development;</i> • <i>Assists the Municipality in determining the status of an informal settlement, i.e. whether the settlement is an “authorized” or an “unauthorized” informal settlement;</i>

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			<p>The Law Enforcement Unit has the following main functions:</p> <ul style="list-style-type: none"> • To act as a Task Team or Working Committee to assist the Authorized Official with the execution of his/her duties; • To execute any eviction order obtained by the Municipality (section 8 (5) of the By-law) in terms of the relevant provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 by – <ul style="list-style-type: none"> a) Eviction of residents of the unauthorized Informal Settlement; b) Demolishing and removing all shacks and removing all building materials and other personal property from the unauthorized Informal Settlement; c) Disposing of building materials and other personal property in accordance with the provision of the By-law.
<p>5. What approach does your Municipality employ in dealing with current land invasions and what are the advantages and disadvantages of this approach?</p>	<p>As soon as the Department has identified or received land invasion complaints, immediately with all present resources all incomplete building structures are dealt with in terms of Buffalo City Metro land protection policy. Shacks are dismantled and all material removed and confiscated. The disadvantage is when Law enforcement officers find the shacks completely built and furnished with beddings and other goods, there is no ways to dismantle such structures without a court order.</p>	<p>See above response, i.e., warn, take photos, videos, and demolish. If units are complete they should not be demolished and legal process needs to be followed.</p> <p>Advantage is that can be pro-active and reactive, disadvantage is that it is very difficult to monitor new shacks in existing settlements (but easier to monitor vacant land invasions.)</p> <p>The lack of consistency by the various courts and judgements works against local authorities, there should be a ruling by some high judges or courts as to</p>	<p>There are two approaches, immediate demolishing or evoke Section 26 of the constitution and approach the court for eviction</p> <p>Advantage Immediate demolition</p> <ul style="list-style-type: none"> • Quick and cheap • Serve as deterrent <p>Disadvantage of Immediate Reaction</p> <ul style="list-style-type: none"> • May lead to litigation • Draw media attention <p>Advantages of Eviction through Court</p> <ul style="list-style-type: none"> • Process is open and transparent

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		<p>when a shack is considered occupied (furniture inside) and define a shack (not Plastic place on top of 4 poles which have just been shoved in the ground. We have examples where such 'structures have been 'erected' to try and fool aerial photography that we take). Informal dwelling should consist of all walls, door, and roof as well as have evidence of being occupied.</p>	<ul style="list-style-type: none"> • Application of principle of “audio altarem partem” • Process is seen to be fair <p>Disadvantages</p> <ul style="list-style-type: none"> • Tedious and expensive process • Mostly place duty on the Municipality to provide alternative land • Mostly don't take Municipality planning into account • In some instance Justice for the highest bidder
6. Describe in detail what proactive steps your Municipality is taking to prevent future land invasions from occurring?	<p>Land Admin, Law Enforcement and Human Settlement to provide info. City Planning e.g. NUSP, Future/Forward Planning Collaborative efforts by the two Departments, Law Enforcement Services and Human Settlement by immediately dismantling and removing material about to be used or suspected to be used for land invasion. Immediate action by Law enforcement officers when information about intended land invasion received from some community members who are against invasion.</p>	<p>Previously answered. We expect councillors and ward committees to inform people about the illegality of land invasions and the consequences of them. If land is invaded it delays development. Land invaders go to the bottom of the queue if possible.</p>	<ul style="list-style-type: none"> • Establishment of Informal Settlement Section dealing with land invasion and Informal Settlement upgrading • Promulgation of By-law dealing with land invasion • Rapid land release programme for human settlement • Monitoring of vacant land by Municipality law enforcement unit
7. What do you think are the key challenges making it difficult for you as a Municipality to (i) reactively deal with current land invasions (ii) proactively curb future land invasions?	<p>i. Reactively deal with current land invasions Capacity to react e.g. staff and vehicles Time gap between start of land invasion to reporting and action taken. Funding for staff (the establishment of a Land Invasion Unit), Human Settlements – Allocation Policy to supply more info. Illegal actions e.g. Selling of plots Political buy-in to help curb this BCMM to have its own eviction Policy Foreign Nationals that does not qualify for housing subsidies and rent from</p>	<p>i. Reactively deal with current land invasions As above, also dense tropical foliage does not help in terms of visibility. Lack of a consistent approach, different approaches by courts to private and public land. Lack of resources, National & Provincial government should assist and fund & resource capacity required at local and Provincial levels. Lack of regular aerial photography due to high costs.</p>	<p>i. Reactively deal with current land invasions</p> <ul style="list-style-type: none"> ➤ Land Invasions Reaction Unit not in place. ➤ The political intervention ➤ Sizeable open sterilised land for human settlement purpose ➤ Land used as a political tool for campaigns ➤ Retrenchment from the mine <p>ii. Proactively curb future land invasions</p> <ul style="list-style-type: none"> ➤ Development of the Land Invasion Reaction Plan / By

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	<p><i>beneficiaries that again start a new shack</i> <i>Inter departmental communication or lack thereof</i> <i>Local political quarrels e.g. Macleantown</i> <i>Political in-fights amongst the community members with their Cllr's against the available land whether communal /private or public land. Not enough resources to overcome present land invasion. There should be a Land Invasion unit which will daily deal with land invasion problems seven days a week.</i></p> <p><i>II. Proactively curb future land invasions</i> <i>Legal Service working on Eviction Policy and Court interdict to provide info</i> <i>Invest more in rural development and provide opportunities in rural areas vs urbanization</i></p>	<p><i>i. Proactively curb future land invasions</i> <i>There should be a defined period in the Act (1 month or more if possible) of time in which we should be allowed to demolish new shacks.</i> <i>Aerial photography should be undertaken on a regular basis in areas identified as sensitive, reserved for other development, dangerous, etc. and any new invasion between the former and current photos should be served with eviction notices. This should be funded by Province and National & not rate payers.</i></p>	<p><i>Law and</i></p> <ul style="list-style-type: none"> ➤ <i>The implementation of MOU with the Royal Bafokeng Nation on land issues because most of the informal settlements are on their land.</i> ➤ <i>Through engagement with mining forum.</i>
<p>8. What opportunities do you see going forward that you think can be built on to manage current land invasions and to curb future land invasions?</p>	<p><i>Consumer education</i> <i>Proactive approach to inform people to report invasions</i> <i>Hot line to report</i></p>	<p><i>No opportunities unless the PIE act is reviewed as suggested above, i.e. 1 month to demolish new shacks</i></p>	<ul style="list-style-type: none"> • <i>The Rustenburg Land Requirements and Acquisition Framework was devised to appropriately and effectively address the housing demand in the area of jurisdiction of the Rustenburg Local Municipality. Therefore, the municipality should allocate funds to acquire sufficient land according to the recommendations outlined in the document.</i> • <i>Rapid Land Release Program; the studies have shown that there is a relationship between the inability of Municipality to release land for low income groups and land invasion.</i>
<p>9. What recommendations would you</p>	<p><i>Establishment of technical staff</i></p>	<p><i>Manage by having people in the field as</i></p>	<ul style="list-style-type: none"> • <i>The stakeholders forums to be</i>

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<p>make to various stakeholders (e.g. national government, your municipality, the courts, etc.) on how best to manage current land invasions and curb future land invasions?</p>	<p><i>Forum/committee to share info and proactively find solutions (hands on staff) Staff component to be increased, e.g. Land Admin only 1 inspector Consumer education</i></p> <p><i>Law Enforcement Input Campaigns to educate communities about land invasion at community level by Ward Cllrs, Ward Committee members with Community Safety Forums and Community Police Forums. Land Invasion Unit to be formed to deal specifically with land invasion. The community have to be taught what the available land is reserved for. Once unit established put budget and resources together.</i></p>	<p><i>well as support of local communities and their structures (ward, development, etc.) Curb future by change in the Act, as explained earlier. Monthly aerial photographs</i></p>	<p><i>established</i></p> <ul style="list-style-type: none"> • <i>The collaboration between Royal Bafokeng Nation and Rustenburg Local Municipality be emphasised because some of the land which are invaded belong to Royal Bafokeng Nation</i> • <i>The mining Houses to be taken on board because most of the invasion of land is taking place around mining areas due to job opportunities</i> • <i>The available land of the Rustenburg Local Municipality be serviced and disposed</i> • <i>Speedy transfer of state land suitable for human settlement be transferred to Municipality</i> • <i>The PIE Act to be reviewed because in some areas it prevents action taken and it promotes illegal invasion of land</i> • <i>Incremental housing to be encouraged</i> • <i>Relaxation of provincial requirements of provision of full services by Municipality prior to allocation of subsidies.</i>
<p>10. Which of these recommendations do you think are the most important and why?</p>	<p><i>Spatial issues with GIS info available at each Dept. in BCMM to be used Budget and resources to be increased Community Education on importance to report invasions and rights Existing Legislation not in favour of municipalities Own Eviction Policy is needed Political will to take a hard stance on invasions Services and infrastructure is at capacity at the moment Child headed households to be treated</i></p>	<p><i>Change in the Act to empower government to be able to deal with shack lords that organize invasions, as well as others doing it for gain or otherwise. To consistently enforce the revised Act.</i></p>	<p><i>All the above recommendations are important because team approach is important to any development.</i></p>

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	<p><i>very sensitively</i> <i>Farm evictions put pressure on metro</i> <i>Develop policy on Illegal eviction/Legal Evictions/Prevention of future invasions/appointment of legal service provider/ etc.</i> <i>Resources should focus on prevention as opposed to eviction</i></p>		
<p>11 What obstacles do you foresee in implementing these recommendations and what do you think can be done to overcome these obstacles.</p>		<p><i>That many people (including councillors, local war lords, hostel 'mafias' opportunists, etc.) do not recognize that rights come with responsibilities. We cannot have a rights based society without responsibility based approach and constant enforcement of such responsibilities. Government needs to amend the Act.</i></p>	<ul style="list-style-type: none"> • <i>Inconsistence attendance of meetings by stakeholders may derail the plan</i> • <i>Brief meetings with deliverables and time frames</i> • <i>Lack of movement with regard to transfer of state land to Municipality coupled with Insufficient land acquisition budget for land is a challenge</i> • <i>Insufficient bulk services</i>

3. DOCUMENTS SUPPLIED BY THE MUNICIPALITIES

The following documents were supplied by the Municipalities that responded to the research questionnaire:

- Buffalo City Metropolitan Municipality Land Management Policy
- Durban Metropolitan Land Protection Policy
- Constitutional Court ruling: Case CCT/108/13
- Presentation by the Ethekewini Municipality's Land Invasion Division
- Legal Opinion: Jabulani Zulu and 389 others vs Ethekewini Municipality
- Cape Town Court ruling