



Managing and Curbing Unauthorised Land Occupation

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Gauteng

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Legal Context

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Case Study Findings

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Development Context (1)

- United Nations estimates that 71.3% of South Africa's population will live in urban areas by 2030, nearly 80% by 2050.
- South Africa's urban population is growing larger and younger.
- In South Africa, since 1994 the Government has provided more than 2.5 million houses and another 1.2 million serviced sites. Over this period, the housing backlog has nevertheless increased from 1.5 million to 2.1 million units, while the number of informal settlements has gone up from 300 to 2225.

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Development Context (2)

- In 1994 government spending on housing and community amenities accounted for 1% of gross domestic product (GDP). In 2015/16 expenditure in these spheres will rise to 3.7% of GDP.
- Despite this rapid increase in the housing budget, the delivery of "free" houses has slowed, and currently averages some 118 000 houses a year.
- At this rate, it will take almost 20 years to build enough houses for the 2.1m households now on the waiting list.
 - from South Africa's Housing Conundrum, SAIRR, @liberty, No 4, 2015/6 October 2015/Issue 20

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Policy and Legislation: The Constitution

- The right to reasonable & equitable access to land:
 - Section 25.5: the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- The right to not being arbitrarily evicted or deprived of land:
 - Section 25.1: 'no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.'
 - Section 26.3: no one may be evicted from their home or have their home demolished without a court order that orders the eviction after considering "all the relevant circumstances"
- The right to reasonably access adequate housing
 - Section 26.1: everyone has a right of access to adequate housing
 - Section 26.2: obliges the government to take reasonable steps to gradually give everyone access to housing

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Policy and Legislation: PIE Act 19 of 1998

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE):

- provides procedures for eviction of unlawful occupants and prohibits unlawful evictions.
- requires that the eviction of an unlawful occupier must be "just and equitable" after considering a range of factors.
 - Some of the factors a court will consider include whether the occupiers are vulnerable (the elderly, children and female-headed households), how long the occupiers have lived on the property and whether there is alternative accommodation available or if the government will provide alternative accommodation if the occupiers cannot themselves obtain an alternative place to live.
- aims to strike a balance between a property owner's common law right to exclusive use and possession of his/her property, & the needs of people who are driven to occupy land unlawfully because they have nowhere else to go.

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Policy and legislation: SPLUMA 16 of 2014

Spatial Planning and Land Use Management Act (SPLUMA) Act no 16 of 2014

- municipalities, in their SDFs should “identify the designation of areas in the municipality where incremental upgrading approaches to development and regulation will be applicable” (in section 21 (k)).
- The LUS of the municipality should “include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme.” (24(c))
- “land development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas” (section 7(v)).

White Paper on South African Land Policy (1997)

- *[Unauthorised land occupations] are increasing in the absence of suitable land being identified and assembled for affordable housing. They hamper efforts to release land in a planned manner and result in 'queue jumping' for the housing subsidy and for land.*
- *Government, while strongly discouraging land [occupations], does not believe that the only solution lies in evictions, which are often a route towards confrontation and civil disturbance. Evictions as a solution to land [occupations] are a measure of last resort and should only be considered after all other possible alternative solutions have been explored, including commitments to organised groups of landless people for the delivery of land within specific time frames.*

† Department of Land Affairs (1997) White Paper on South African Land Policy

Pr-draft of New White Paper on Human Settlement - 2015

- Upgrading informal settlements: The pre-draft policy builds on the NDP:
 - *Greater resources shall be shifted to support informal settlements upgrading on condition that they are located in areas close to jobs.*
- Land occupations: The pre-draft policy does not make any reference to unauthorised land occupation.
- Managed Land Settlement: The pre-draft policy makes reference to 'site and service' projects. The emphasis is in the original.
 - **Households between the ages of 18 – 59, with a total income of ≤ R3 500 shall be provided with a self-help subsidy that includes:**
 - *A serviced site and raft in a well-located settlement; and*
 - *Provision of professional assistance, if a household chooses to enrol to participate in a self-help project.*
 - *This group will be encouraged to complete on a progressive basis the construction of their homes through own funds.*

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Introduction to Questionnaire

- Four Municipalities were selected by HDA to participate in the case study on 'managing & curbing unauthorised land occupation':
 - ✓ Buffalo City Metropolitan Municipality (BCMM)
 - ✓ Ethekewini Metropolitan Municipality
 - ✓ Rustenberg Municipality
 - ✓ City of Cape Town
- The City of Cape Town did not respond to the questionnaire

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The methodology

- Identified relevant officials in each Municipality
 - Challenge: often more than one department dealing with aspects of managing and curbing land occupation
- Sent following information to municipalities:
 - Background briefing document explaining purpose of case study
 - Questionnaire on how Municipalities managing and curbing land occupation (with deadline for responses)
- In BCMM, met with officials dealing with land occupations

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Responses (1)

Frequency of unauthorised land occupations

- BCMM: Large number of smaller land occupations in the recent past
 - Land occupied 115 times over the last three years with more than 2000 households involved.
- Rustenburg: Fewer land occupations involving more households in recent past
 - 4 recorded land occupations over the past three years involving 3228 households.
- eThekweni Metro: Not certain about the number of land occupations.

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Responses (2)

Housing demand and supply

- BCMM
 - housing demand - based on the current waiting list - is 47 000 households.
 - rate of delivery - according to the 2014/15 Annual Report - is 1254 housing units/ year.
- eThekweni
 - housing demand is 288 784 units with a land requirement of 9 626 hectares based at density of 30 dwelling units/ HA
 - rates of delivery is about 4600 units / year. At this rate eThekweni will clear its housing backlog in about 62 years time.
- Rustenburg
 - did not provide any information on demand and supply of housing

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Responses (3)

Policies, acts and applicable by- laws pertaining to unauthorised land occupations

- All case study Municipalities take their legislative cue in dealing with land occupation from:
 - The Constitution and
 - Prevention of Illegal Eviction From and Unlawful Occupation of Land Act (PIE Act, 1998).
- Rustenburg notes that the founding provisions of the Constitution are based on human dignity, the achievement of equality and the advancement of human rights and freedoms.

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Responses (4)

Institutional arrangements

- eThekweni & Rustenburg use a combination of their Human Settlement Departments and the Protection Services to monitor the occupation of land and carry out demolitions of new structures.
- BCMM use a multi-Departmental approach, with different Departments playing specific roles in dealing with occupations (although they acknowledge coordination challenges).

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Responses (5)

Reactive steps in dealing with unauthorised land occupation

- All three Municipalities follow similar procedures as governed by the PIE Act.
 - Land occupiers first warned of the unlawfulness of their actions and thereafter incomplete shacks/structures are demolished
 - In instances where shacks/structures are complete, a court order is obtained to deal with occupations on Municipal or private land.
- Rustenburg point out that there are both advantages and disadvantages of either effecting quick demolitions or obtaining a court order.

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Responses (6)

Proactive steps adopted by Municipalities to prevent land occupations

- Make ward committees and ward Councillors aware of the unlawfulness of land occupations & adopt policies to deal with current and future land occupations.
- Only Rustenburg stated that they have a rapid land release policy in place to make available land for human settlement purposes.
- Other Municipalities did not make the link between using new land development as a proactive tool to prevent unauthorised land occupation happening in future.

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Challenges

- People resort to unauthorised land occupation as they claim they don't have anywhere else to stay.
 - Not enough RDP houses are being built fast enough for everyone who needs accommodation
 - Housing allocation procedures not always perceived to be fair
 - Legislation makes it difficult for households to build temporary structures on land they acquire
- Upgrading of informal settlements is being slow to implement
- Eviction procedures are not always done lawfully

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Shacks spring up – with no control

By MAMELA GOWA on May 3, 2016

<http://www.dispatchlive.co.za/news/shacks-spring-up-with-no-control/>



GROWING THREAT: Informal settlements continue to sprawl around BCM, causing concern over illegal electricity connections, health dangers due to no services, and more. The metro has been lambasted for failing to dispatch law enforcement officers to the affected areas Picture: SIBONGILE NGALWA

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Opportunities

- Government and communities are open to trying new innovative solutions to addressing the land & housing needs
- The HDA is developing a:
 - cohesive approach to land policy,
 - land acquisition & development strategy
- Government is developing a new human settlement policy (white paper)

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Promoting active citizenship and good governance

Recommendations

Ronald Eglin

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Definitions revision

- 'Land invasion' is the act of a person or persons coming onto land for the purposes of residential settlement, without any right in law to do so.
 - where people 'invade' land because they have no other realistic alternative place to live then the term **'unauthorised land occupier'** (or occupier for short) is a more appropriate term, as it still recognises the dignity of the occupiers.
 - where people 'invade' land for their own reasons, not all to do with seeking a place to live, the term 'land invader' can be used.
 - *Government of the Republic of South Africa v Grootboom* 2000 (1) SA 46 (CC), para 92

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Vision

- People have access to land so they do not have to resort to unauthorised land occupation
- Informal settlements are being upgraded or relocated as last report
- Constitutional and legal provisions are applied when dealing with unauthorised land occupation

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Recommendations

Three prong approach

1. Acquire and develop land so occupation does not happen in future
2. Deal with occupation that has happened in the past
3. Respond lawfully to occupation that is happening the present

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1. Prepare land so no need to occupy

Four sub activities:

- A. Implement land acquisition and development plans
- B. Implement land and housing subsidy allocation policies
- C. Accommodate Incremental Settlement Areas
- D. Implement Managed Land Settlement

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1A. Implement land acquisition & development

- Require Municipalities to implement land acquisition and development strategies as part of the SDF/ IDP
- Buy/ acquire more land (negotiate for land, expropriation, etc.)
- Encourage land owners to release land (vacant land tax, land swops, etc.)
- Reduce land holding costs (reduce rates, use land availability agreements, etc.)
- Focus implementation of land management strategies in priority land acquisition areas

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1B. Implement land and housing subsidy allocation policy

- Review and develop national guidelines for land and housing subsidy allocation:
 - separate procedures for land allocation (for ‘anyone’) from housing subsidy allocation (for those that qualify)
- Require municipalities to develop & implement land and housing subsidy allocation policies and municipalities (& monitor its implementation)

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1C. Accommodate Incremental Settlement Areas

- Develop national guidelines for how municipalities can develop incremental settlement areas (ISA) under SPLUMA that includes special rules for (1) land tenure, & (2) land use
- Develop national ‘templates’ for incremental residential ‘zones’, that municipalities can incorporate in Land Use Schemes
- Require municipalities to establish ISA’s (for informal settlements, MLS areas & rural areas) as part of SDF

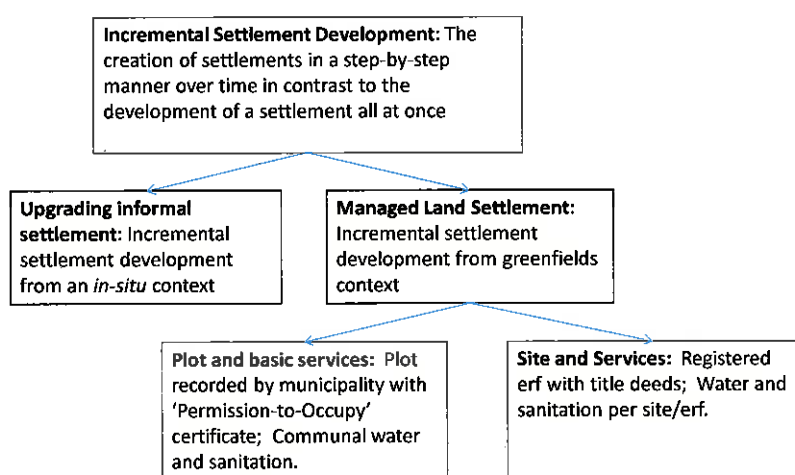
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1D. Implement Managed Land Settlement (MLS)

- Include MLS as part of a broader incremental settlement strategy in national land and human settlement policies (see next page)
- Implement MLS pilot programmes and learn from this experience
- Set MLS targets for all spheres of government
- Use existing legislation (e.g. UISP, USDG) to fund MLS
- Consider establishing a dedicated MLS programme in future

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Incremental settlement



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2. Deal with past occupations

- Continue to develop municipal upgrading informal settlements policies & strategies that categorise informal settlements and place them on appropriate development paths (upgrade, relocation)
- Provide interim/emergency services while waiting to upgrade or relocate
- Fund and support dedicated upgrading of informal settlement programmes
- Provide alternative accommodation in instances of relocation

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3. Respond lawfully to land occupations happening now

- Develop national principles & guidelines on unauthorised land occupation
- Municipalities develop unauthorised land occupation policies & strategies
- Municipalities implement lawful unauthorised land occupation response system (hotspots, hotlines, response team, etc.)
- Land owners (public and private) follow lawful eviction procedures
- Provide interim accommodation in situations where people would be rendered homeless by eviction
- Compensate land owners for loss of use (during eviction)
- Establish provincial housing rights support units

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Key recommendations

1. Include the three pronged approach to dealing with land occupation in the national Human Settlements Policy (white paper) and in the Land Policy (white paper)
2. National DHS (& DRDLR, CoGTA) require all municipalities to develop a land acquisition strategy as part of their IDP/ SDF, that includes commitment to MLS targets
3. Provincial DHS (& national DHS & others) establish:
 - incremental settlement units to support municipalities undertake UISP & MLS programmes and assist municipalities to establish Development Support Services
 - housing rights support units to advise and train municipalities on how to deal with unauthorised land occupation

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Political (bureaucratic) will

- Build political will to:
 - Increase MLS compared to conventional RDP
 - Speed up implementation of UISP compared to past upgrading experiences
 - Follow lawful eviction rather than cutting corners
- Achieve this by increasing:
 - Pressure from above: modify policy
 - Pressure from below: raise awareness within communities and civil society
 - Pressure from within: conduct training and awareness raising

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MTSF 2014-19 Targets: outcome 8

- *750 000 households in informal settlements upgraded to phase 2 of the informal settlements upgrading programme by 2019*
 - *Of these, 250 000 households in informal settlements relocated to land up to phase 2 of the UISP by 2019*
- *10 000 of hectares of well located land rezoned and released for new developments targeting poor and lower middle income households*
 - *Of these, 33 333 hectares are for managed land settlement developments*

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Next steps

1. HDA (& NDHS) organise further workshops with key departments and stakeholders to introduce the three pronged approach & coordinate interventions in line with recommendations.
2. Include recommendations in new Human Settlement White paper
3. HDA organise training material (as part of UISP training) on 'managing and curbing unauthorised land occupation'

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Conclusion

- Unauthorised land occupations will be difficult to stop, unless government adopts a three prong approach:
 1. Pre-emptive Land Development Strategy:
 2. Upgrading Informal Settlement Strategy
 3. Rights-based Relocation Strategy
- With priority given to prong one (land acquisition & development).
- Do not waste the opportunity to embed this three prong approach within:
 - coherent and inclusive approach to land
 - land acquisition and development strategy
 - Human Settlement Policy
 - land Policy

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Thanks

All this is nothing new!

- *In the final analysis it is the delivery of appropriate land at a rapid pace that is the solution to [unauthorised land occupations].*
 - 1997 White Paper on South African Land Policy



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