



# Backyarding:

## Housing Vulnerability and Land Occupations under Covid

Practice Brief 2: 2020

## Acknowledgements

Backyard Matters is a partnership project initiative between Development Action Group (DAG), Isandla Institute and Violence Prevention through Urban Upgrading (VPUU). The project is aimed at strengthening the backyard rental market and contributing towards well-managed, quality rental stock that provides affordable, dignified and safe housing solutions. Backyard Matters is funded by Comic Relief.

Cover image: Isandla Institute / Eric Miller: Photo taken in Dunoon

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# Executive Summary

Media and government records have remarked an increase in land occupations since May 2020. These land occupations have been linked to increasing economic insecurity due to the onset of the Covid-19 pandemic. As a result, many people have been faced with increased difficulty to afford housing. There is an expectation that we will continue to witness increasing housing insecurity as a result of the financial hardship caused (or exacerbated) by the pandemic. Emerging evidence suggests the impact this may have on tenants and landlords of informal rentals, with the backyard rental market particularly affected.

While Covid-19 is a factor in present-day land occupations, it is important to bear in mind that land occupations are not new. In a context fraught by housing vulnerability and tenure insecurity, South Africa has a long history of land occupations as a means of laying a claim to the city and improving housing tenure. Not fully taking stock of the implications of this housing reality, land occupations are commonly framed in terms of illegality. This practice brief emphasises the importance of more nuanced thinking about the reality of housing insecurity, whilst acknowledging the economic and social cost of land occupations and land invasions.

Reflecting on current land occupations as evidence of genuine housing need in the context of increasing economic insecurity brought about by the Covid-19 pandemic, this practice brief distinguishes between organised invasions where certain elements benefit from the illegal sale of land to desperate people, and seemingly more organic land occupations stemming from poverty, homelessness and desperation. We recognise the need to address the element of criminality in illegal land invasions as an issue that requires attention because of its dire legal, socio-political and economic implications. It further provides recommendations on supporting the backyard sector, as well as preventing and responding to land occupations. Drawing on a virtual Community of Practice learning session hosted in August 2020<sup>1</sup>, the recommendations presented here are intended for use by urban practitioners and policy makers.

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<sup>1</sup> On 26 August 2020, Isandla Institute convened a virtual Community of Practice (CoP) event under themed 'Land occupations, housing vulnerabilities and Covid-19'. The session was attended by Development Action Group (DAG), Violence Prevention through Urban Upgrading (VPUU), People's Environmental Planning (PEP), Habitat for Humanity, Legal Resource Centre and the African Centre for Cities.

## Introduction

**“When we say there should be no land invasion, it is actually that what we mean. The responsibility of making sure it happens is a law enforcement matter. It is in our regulations therefore we expect that the law enforcers will make sure that any land that is on the brink of being invaded is protected appropriately.”**

**– Minister Lindiwe Sisulu**

**Lockdown regulations and the resultant massive job losses have had a particularly significant impact on housing security, both in the formal and informal housing sector.**

News reports have increasingly been zoning in on the rise of new informal settlements emerging from recent land occupations across cities in South Africa (Evans, 2020; Mafolo, 2020; Palm, 2020). In the City of Cape Town alone, there have reportedly been at least 260 incidents of alleged land occupations between April and July 2020, a further 147 incidents of occupations were recorded between July and September (Evans, 2020; PMG, 2020). These land occupations have been directly associated with hardships heightened by the onset of the Covid-19 pandemic, with some of these new informal settlements named ‘Covid-19’ and ‘Covid Village’ to reflect this (Nombembe, 2020).

The onset of Covid-19 triggered a number of anxieties with regards to public health, sanitation, socio-economic security and housing across the globe (UN Habitat, 2020). In South Africa, the exacerbated social and economic hardships as a result of the pandemic are most heavily felt by those who are already in vulnerable economic positions, further exposing the extent of inequality in the country (Arndt & Robinson, 2020; Ozili, 2020). Lockdown regulations and the resultant massive job losses have had a particularly significant impact on housing security, both in the formal and informal housing sector (Arndt & Robinson, 2020). Having pre-empted increased housing vulnerability, the Disaster Management Act regulations were amended during the declared state of disaster to include a moratorium on evictions. This was instated to protect housing rights. This, however, did not easily translate into real protections for some tenants (Eviction Lawyers, 2020).

Adherence to the moratorium on evictions has been difficult to track, particularly in the informal rental market (DAG, 2020b). Land occupations across urban areas in the country have been indicative of a stressed housing climate and the inability to fully ensure housing rights, despite the moratorium (DAG, 2020). Rather, there is increasing evidence showing that evictions have been occurring, and evicted residents have resorted to land occupation due to limited options. Anecdotal evidence further suggests that former backyard residents make up a large number of the population in these new settlements. These

former backyard tenants report eviction due to the inability to afford rent (Kumar, 2020). Landlords, though legally prohibited from effecting evictions, are also faced with weighing adherence to the moratorium with loss of livelihoods. Such tensions in housing and livelihood needs show the reality of housing and tenure security to be more complicated than accounted for by the moratorium on evictions.

The amendment of the Disaster Management Act was intended to protect and secure housing, yet a shortcoming of the Act is demonstrated in its ambiguity with regards to protecting housing rights in cases of demolitions. This ambiguity has been particularly highlighted by evictions and housing demolitions enforced by the City of Cape Town during lockdown. The ruling of the High Court in the case against the City of Cape Town brought by the South African Human Rights Commission (SAHRC) and Housing Assembly stressed that current land occupations emerge from a reality of poverty, homelessness and desperation. Further, the ruling declared that no evictions or demolitions may take place without a court order. In the case where a court order is obtained, evictions must be pursued in a manner that upholds the dignity of affected people (SAFLII, 2020).

The lesson emerging from this is that despite the presence of the moratorium on evictions, and despite the prohibition on land occupations, evictions and land occupations still occur. Instruments on their own are therefore insufficient for dealing with housing insecurity; instead there is a need to think of approaches that are fair, reasonable and enforceable. The current occupations demonstrate a tension between the reality of evictions, housing unaffordability and the prohibition of land occupation. Importantly, the moratorium on evictions is a temporary instrument; it will not be able to curtail the anticipated prolonged economic and social effects of the pandemic such as joblessness, housing insecurity and homelessness. It continues to press the questions: What measures can be pursued as an alternative for those who are evicted and have nowhere else to go? What measures can be undertaken by the state to prepare for increasing housing insecurity and homelessness exacerbated by the pandemic?

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## Land occupations not new

Land occupations stem from the reality of a national housing backlog.

**Housing is framed as a constitutional right in South Africa. However, accessing this right, particularly in urban contexts, has been fraught with tensions. In addition to the challenges to accessing the right to housing, social, economic and political factors continue to leave low-income residents of the city at the margins (Turok, 2018). The establishment of informal settlements and backyard accommodation has been a way of informally laying claim to home and laying claim to the city. Land occupations have historically served a similar function of advancing housing and tenure security for urban residents (Ngwenya & Cirolia, 2020).**

Historically, many poor households occupied land as a strategy to gain a stake to the city, establish a home, and force the issues of spatial transformation and redress on the table. Research suggests that in the 1990s and 2000s, land occupations were strategically organised consisting of layout plans and allocations for households; they were neither random nor disorganised, but operated under a set of informal rules towards a goal of improved housing tenure and the possibility of more dignified and secured housing (Ngwenya & Cirolia, 2020). These remain core considerations for understanding present day land occupations. Land occupations have been fairly common place in democratic South Africa due to ongoing human settlements challenges and a backlog in housing provision by the state, and the failure of the private housing sector to provide affordable housing opportunities. All of South Africa's cities have experienced land occupations, yet Cape Town's urban fabric has been particularly impacted by this form of land claim (Ngwenya & Cirolia, 2020). As noted above, present day land occupations suggest that this continues to be case. These land occupations stem from the reality of a national housing backlog that in 2018 exceeded 2.1 million units. In Cape Town, this backlog stands at approximately 400 000 units and is steadily increasing (Gontsana, 2020). The housing backlog is aggravated by a deficit in affordable accommodation options that increases vulnerability for poor or low-income households.

The occupations currently witnessed bring to the fore long-standing gaps in the housing market as well as the important role of the informal rental housing sector for both housing provision and housing insecurity (Kumar, 2020). Recent land occupations have taken on a somewhat different nature – appearing to be less organised and also motivated largely by economic factors. Some elements currently appearing differently with the current land occupations include (see Kumar, 2020; Ngwenya & Cirolia, 2020; Turok, 2018):

- Emphasis on Covid-19 and the impact it has had on housing affordability;
- Backyard tenants appear to make up a significant proportion of the demographic in recent land occupations;
- Occupations seem to happen at a more rapid pace and a larger scale;
- While land occupations were previously highly organised, current occupations seem more sporadic but evolve quickly;
- However, there are arguments suggesting greater organisation with regards to some criminal elements, e.g. selling of land, shack-farming, organising people to engage in sudden occupation of land, blocking off of law-enforcement from entering sites;
- The extensive use of force from law enforcement is not new, but continues to be of particular concern.

**Framing land occupations solely in legal terms is inadequate and does not help to address the core issue: the need for a space to call home.**

The elements of criminality noted above that may occasionally feature in land occupations threaten to undermine the legitimacy of housing needs driving land occupations. From the perspective of the state, land occupations are often framed in terms of illegality, which evokes a law enforcement response that is often experienced as violent and forceful. In the process, land occupiers who may have been displaced by former landlords or co-tenants because of their inability to contribute towards rent and have no alternative place to go suffer further victimisation at the hands of the state. Thus, framing land occupations solely in legal terms is inadequate and does not help to address the core issue: the need for a space to call home. Nonetheless, the reality of criminal elements as well as politically motivated disruptions must be addressed. However, this must be done with consideration that crime emerges from a context of hardship and frustration that 'compels' people to occupy land. Criminal elements engaged in illegal profiteering through the selling of state or privately owned land, the selling of shacks, as well as political manoeuvring in the build up to elections take advantage of genuine needs of a cohort of people that have not been able to access their constitutional right to housing whether through the housing market or through the mechanisms of state policy.

Government has taken a stark approach to land occupations, not only because of the aspect of criminality, but also because of its effect on development plans and intended beneficiaries of development. Available land is finite. When state land earmarked for housing opportunities or other public purposes (such as schools, clinics, etc.) is occupied, these development opportunities are thwarted and resources intended for housing provision and service delivery are diverted. The financial implications of protecting land from occupations are also very high. The Prevention of Illegal Evictions Act was established for the protection of citizen rights and state obligations. Furthermore, land occupations do not always bring forth the kind of promise that is hoped for. Furthermore, land occupations often occur on non-residential land – hazardous sites, sites prone to flooding, or land prone to sinking (Kumar, 2020; Turok, 2018). This creates a challenging reality that the state has to respond to or mitigate.

## Responding to land occupations

**Recognising the reality of legitimate housing crisis and a pressing housing need for the poor and for low-income earners should greatly influence the response to the surge in land occupations. This requires that dialogues on and responses to land occupations are not framed solely in terms of criminality – so as to not run the risk of criminalising poverty. This does not nullify the need to address the criminal elements that take advantage of genuine need for personal profit or to consolidate their power.**

Examples of this include the illegal selling of state or privately-owned land, shack farming and politically motivated land occupations in the run-up to elections. Multi-sectoral and proactive responses to land occupations are required, involving efforts towards prevention and mitigation.

**There is an opportunity for CSOs to provide education on protections under the law for both landlords and tenants.**

### *Tenure rights*

Addressing land occupations requires addressing the question of tenure security across informal housing options. This includes informal boarding, backyard housing and informal settlements, for example.

Since the Covid-19 pandemic, organisations for housing rights and the Rental Housing Tribunal have noted a significant increase in the number of people seeking assistance with issues of eviction, despite the moratorium (DAG, 2020). This indicates a potential increase in the rate of evictions, and a need for both legal and educational support. Such support could include rights-based education, establishing verbal and written contracts, and strategies for the protection of tenure. There is an opportunity for CSOs to provide education on protections under the law for both landlords and tenants, particularly in the informal rental market where protections may seem more blurred. Ndifuna Ukwazi has historically held advice assemblies aimed at building tenant power by increasing confidence through information provision. Noting the increased need for these assemblies juxtaposed by the restrictions imposed by the pandemic compelled a reimagining of their advice assemblies from community-based assemblies to incorporating alternative platforms such as radio. This way they were able to increase reach beyond the usual cohort communities. This case demonstrates the value of reimagining approaches to suit particular social and historical moments and, importantly, the potential of reaching communities at scale.

Empowering both landlords and tenants with suitable channels for recourse is important in addressing the issue of evictions. The Rental Housing Tribunal



plays a critical role as a channel for recourse in relation to both formal and informal rental agreements. The recognition of verbal rental agreements is particularly useful for backyard tenants, as this is the predominant form of contractual arrangement. Considering the diverse nature of backyarding<sup>2</sup>, it is important to take into account what these differences imply for securing tenure rights.

### **Financial support to backyard housing sector**

One of the core benefits of the backyard housing sector is that it caters to affordability. With affordability becoming a more pressing concern as a result of the economic impact of Covid-19, there is a greater need for state efforts to respond to economic vulnerabilities in the low-income and informal housing sector through the protection of incomes and livelihood strategies. It is more difficult, and in fact, unadvisable to intervene directly in the market functioning of backyarding as this could have unintended negative consequences, and would also be difficult to adhere to.

As noted earlier, the tensions between tenant affordability and landlord household livelihoods in the backyard sector present conflicting pressures under the context of Covid-19. Furthermore, the informal nature of backyard rental sector exposes it to further vulnerability and insecurity – being unable to access the same kinds of income protection for landlords or payment relief measures available in the formal sector for homeowners, landlords and tenants. With the economic effects of Covid-19 expected to be with us for a long time, there is a growing need for state and private sector support of the backyarding sector. On the one hand, this is about reducing the dual risk of evictions and loss of income for current tenants and landlords respectively, for example by pursuing temporary payment relief for tenants through the issuing of subsidies for occupied rentals to landlords. On the other hand, it is anticipated that with the impending crisis of housing affordability, low-cost rental options such as backyarding may become all the more prevalent. This makes it important to consider strategies towards supporting the sector more broadly.<sup>3</sup>

**It is anticipated that with the impending crisis of housing affordability, low-cost rental options such as backyarding may become all the more prevalent.**

<sup>2</sup> Diversity in the backyarding sector exists in the typology of backyard structures (types of neighborhoods, rental arrangements, and nature and quality of structures), as well as distinctions in types of landlords and tenants. Landlord types include subsistence landlords, homeowner landlords, and entrepreneurial landlords. Tenant types include backyard owners, backyard tenants, backyard residents and main house tenants. These typologies are detailed in Isandla Institute. 2020. *Backyarding: Affordability, dignified shelter and Covid-19*.

<sup>3</sup> More detailed recommendations toward improving the backyard sector are provided in the Isandla Institute practice brief published July, 2020 titled *Backyarding: A vital housing solution* [https://isandla.org.za/en/resources/item/download/149\\_d786d29fffbca9bd9986e96a0b0bb804](https://isandla.org.za/en/resources/item/download/149_d786d29fffbca9bd9986e96a0b0bb804)

### *Prevention of occupations through law and order*

There is a recognised need to take a proactive approach to land occupations. Some of the approaches currently pursued include:

- Court orders protecting from illegal occupations;
- Physical security of land in the form of fencing, patrol and protection of housing sites. These approaches however do have significant financial implications;
- Temporary land use of sites to avoid leaving land vacant;
- SAPS deployed to assist in ensuring safety and security.

Municipalities are encouraged to engage in a number of efforts aimed at the protection of land earmarked for development. In addition to mitigation efforts, planning should involve the purposeful engagement of relevant stakeholders in planning for development. This includes planning for relocation, understanding and responding to the informal housing sector, expediting the release of land for housing development, and supporting the incremental upgrading of informal settlements.

**Working towards trustful and supportive relationships with communities requires a fundamental shift in local governance, which will take a while to cultivate.**

### *Transparency about planned developments*

Municipalities tend to be guarded about sharing information about planned developments and identified beneficiaries, out of fear that local stakeholders will object or seek to derail these initiatives. In an environment where demand significantly outstrips supply, contestation about who gets to benefit from development interventions, in particular related to housing, is very likely. On the other hand, community support for an initiative can help to safeguard planned developments and public investment. Many land invasions occur because people assume that the land is vacant and they are not aware that significant investments have been made to prepare the land for development. Working towards trustful and supportive relationships with communities requires a fundamental shift in local governance, which will take a while to cultivate. While transparency does not fully guarantee that land occupations will stop, its absence certainly doesn't contribute to an environment where communities trust that the decisions made by the municipality are fair and prudent.

### *Investing in alternative housing typologies*

Addressing the broader human settlements challenge is an important long-term strategy. Moving beyond the ownership model to include rental models meets the needs of a more diverse range of people. The model of home ownership is being increasingly recognised as unsustainable. There has been encouragement towards self-build and incremental development on serviced sites. Some provincial government and municipalities have begun considering the use of vacant buildings as interim shelter options.

The single plot approach for households is also unsustainable. Investing in backyard accommodation is one way to increase densities on plots whilst investing in livelihoods. Another option is to build state-subsidised housing upwards, building towards a 'vertical city'.

### **Managed land settlement**

Managed Land Settlement (MLS) is an incremental approach to settlement development, that involves the allocation of individually serviced sites and a rudimentary settlement layout with access roads and shared services, as well as community facilities. MLS allows for the pursuit of in-situ upgrading pursued through a multi-sectoral and incremental approach. The approach recognises context, both at environmental and individual level, and allows for development based on particular needs and available resources.

Government's role in this approach is in the provision of basic services and a form of basic tenure recognition for people in need of housing. People are then allowed to pursue housing development incrementally on the land provided with developmental support from government. MLS improves tenure security and holds the potential for poverty reduction and increases the potential for integration into the city (Afesis-Corplan, 2017). The City of Cape Town has noted exploring this as a suitable approach.<sup>4</sup>

**Moving beyond the ownership model to include rental models meets the needs of a more diverse range of people.**



Isandla Institute / Shaun Swingler

<sup>4</sup>In its presentation to the Western Cape ISSP (Informal Settlement Support Programme) Forum on land occupations, held on 30 September 2020, the City of Cape Town indicated that it sees 'Managed Settlement' as a key component of "the response to massive land invasions and housing demands as result of economic conditions (COVID19)".

## Conclusion

**The onset of Covid-19 has significantly added pressure to South Africa’s existing housing challenge, with housing affordability being at the forefront of this challenge. This plays out in the occurrence of evictions, particularly of informal rentals, which has contributed to the surge in land occupations in 2020.**

**There is a clear need for responses that take into account the complexity of these new forms of land occupations and their implications for future urban development issues.**

Particularly striking in this ‘new’ wave of land occupations is the prevalence of backyard tenants in the demographic profiles of those involved. We argue that this is indicative of heightened tenure insecurity and housing vulnerability facing backyard tenants and fewer protections for tenants and landlords’ income in the sector.

In an increasingly insecure social and economic context exacerbated by the Covid-19 pandemic, it is anticipated that we will continue to witness land occupations being employed as a strategy towards accessing land and housing. In this context, it is all the more inadequate to frame the conversation on land occupations in terms of a dichotomy of legality and illegality. Considering the importance of housing and its implications for health and safety, there is a clear need for responses that take into account the complexity of these new forms of land occupations and their implications for future urban development issues.

With the effects of the pandemic expected to be with us for a long-time, land occupations are expected to increase, with anecdotal evidence suggesting that backyard tenants may be particularly affected by evictions stemming from housing unaffordability. There is a need for interventions directed at not only at preventing land occupations, but proactively supporting the informal rental housing sector and targeting efforts at addressing the broader human settlements challenge.



Isandla Institute / Eric Miller: Police presence in Dunoon

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**Isandla Institute**  
70 Rosmead Avenue  
Kenilworth, 7708  
Tel: +27 21 683 7903  
Fax: +27 21 683 7956  
Email: [admin@isandla.org.za](mailto:admin@isandla.org.za)  
[www.isandla.org.za](http://www.isandla.org.za)