

LAND GOVERNANCE IN EKURHULENI MUNICIPALITY

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LAND GOVERNANCE PROGRAMME

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Abbreviations and acronyms

CoGTA	Cooperative Governance and Traditional Affairs
CSO	Civil Society Organisation
IDP	Integrated Development Plan
IUDF	Integrated Urban Development Framework
FEDUP	Federation of the Urban Poor
PARI	Public Affairs Research Institute
RLRP	Land Release Programme
SDF	Spatial Development Framework
SPLUMA	Spatial Planning and Land Use Management Act 16 of 2013



SECTION ONE

INTRODUCTION: The research and purpose of the research

The land question is a volatile issue in South Africa as land redistribution goals remain unmet. The land issue is entangled in a long history of marginalisation and dispossession dating back to the colonial era. The quest by the previously marginalised and dispossessed to address this imbalance has resulted in complex dynamics regarding land governance, especially at local level within cities and parts of the rural constituencies in the country.

Ngcukaitobi (2021:6) posits that, 'A new reality is emerging — not controlled from the center but springing from the ground, asking difficult questions of the unfinished business of the liberation struggle ...'. He highlights that property rights and in particular, land, was at the heart of the struggle for liberation and failure to address the question has resulted in an outcry from below. Since PARI conducted the fieldwork in 2021, the Ekurhuleni Municipality had 119 recorded informal settlements which reflects the incessant demand for urban land. The growing informal settlements point to the municipality's limited capacity to respond to the demand for land in its jurisdiction. At the intersection of the municipality and informal settlement, residents' demands demonstrate most of the dynamics regarding struggles for land.

The aims of this research project are to:

- Generate empirical evidence to contribute to the debates on land governance dynamics at the local government level;
- Contribute to initiatives to capacitate stakeholder engagements in land governance in Ekurhuleni; and
- Highlight innovations to improve land governance in Ekurhuleni.

Background of the municipality

The Ekurhuleni Metro was established in 2000 following the amalgamation of nine cities and towns east of Gauteng, and 11 further administrations. Ekurhuleni Metropolitan Municipality's major towns in the region include Alberton, Benoni, Boksburg, Kempton Park, Germiston, Springs, Nigel, Brakpan, Edenvale and Kayalami. The region has 119 informal settlements with an estimation of 164,000 households in need of adequate housing. The municipality itself is a large suburban region east of Johannesburg, totalling to 75 km² and with a population of 3,178,870.¹

The City of Ekurhuleni accounts for a quarter of Gauteng's economy; major factories for production are located in this region and it includes OR Tambo international airport — Africa's biggest and busiest — and an extensive transport network with major highways connecting to Johannesburg, Mpumalanga province and Mozambique.²

1 Ekurhuleni, 2014.

2 Mokoena & Sebola, 2020: 401.

SECTION ONE

According to the quality-of-life survey conducted by Gauteng City Region Observatory, Ekurhuleni was rated high in terms of residents' satisfaction with service delivery — clean water supply and refuse collection, among other services.³ Map 1 shows Ekurhuleni.⁴

The City of Ekurhuleni has a substantive conservation area. This includes untransformed grassland and protected areas. The municipality has five protected areas covering an area of 2,199 ha. This 40 per cent (78,865 ha) ecologically sensitive land within the municipality. The protected areas; Rondebult Bird Sanctuary, Suikerbosrand Nature Reserve, Rietvlei Dam, Marievale Bird Sanctuary, Meyersdal Nature Area, Kliprivierberg, and Korsman.⁵



Source: Ekurhuleni 2018/19 Annual Report

3 Germiston City News, 2018.
 4 Ekurhuleni 2018/19 Annual Report.
 5 City of Ekurhuleni, 2020a.

Demography

According to Statistics South Africa report, the city's population has grown exponentially from an estimated 2,368,283 in 2000 to 3,379,104 in 2016. The current population represents over 6 per cent of the total population of South Africa.⁶

The city has a median age of 30. 66 per cent of the population is between the ages of 18 and 64; 18 per cent is below the age of 18 and 6 per cent is above the age of 65.⁷ The city has a relatively young population.

The City of Ekurhuleni has 1,299,490 households and according to the household survey conducted in 2016, 18.7 per cent of these households live in informal dwellings.⁸

Economic activities

The main economic activities in Ekurhuleni are agriculture, mining, manufacturing, electricity, construction, trade, transport, finance and community services. The Ekurhuleni economy makes up a third of the total GDP of Gauteng Province.⁹ The manufacturing, finance and business, community services and general government sectors dominate the Ekurhuleni economy.

Table 1 shows the main sectors that drive the Ekurhuleni economy and how they changed between 2008 and 2018.

The finance, trade, community services and construction sectors registered the highest growth. The table shows that at R66.4 billion the community services sector made the biggest contribution to the economy of the City of Ekurhuleni, with 22.7% of total gross value added (GVA). The agricultural sector, which occupies 34,425 ha of land in Ekurhuleni, contributed least, at R 1.22 billion.¹⁰

TABLE 1: CITY OF EKURHULENI GROWTH GVA HISTORIC GROWTH BY SECTOR¹¹

	2008	2019	2020	Average annual growth
Agriculture	0.7	0.7	0.8	1.00%
Mining	4.6	4.5	4.3	-0.56%
Manufacturing	44.2	42.8	42.7	-0.35%
Electricity	4.5	4.4	4.3	-0.42%
Construction	5.7	7.1	7.6	2.83%
Trade	20.6	24.9	26.9	2.70%
Transport	18.0	20.6	22.4	2.25%
Finance	33.6	39.8	45.0	2.95%
Community services	31.3	37.9	40.7	2.65%
Total industries	163.2	182.9	194.7	1.78%

6 Statistics South Africa, 2017.

7 Statistics South Africa, 2017.

8 City of Ekurhuleni, 2020a.

9 COGTA, 2020.

10 Ibid.

11 IHS Markit Regional eXplorer cited in COGTA, 2020.



SECTION TWO

Methodology

This research drew from secondary and primary research for the data. The primary research included interviews with the metro officials, focus group discussions with the informal settlement residents and site visits. The secondary data was drawn from the published work available. The officials from the Departments of Human Settlements, City Planning, Legal Affairs, Real Estates and Corporate Legal Services participated in the key informant interviews. The sampling of the officials was opportunistic. Key informant interviews were conducted with civil society organisations. The participants were Plan Act, One-to-One, Utshani, FEDUP (Federation of Urban Poor) and Izinduna. Focus group discussions were held with the informal settlement representatives of the Makause and Primrose. A site visit was conducted in Primrose settlement.

The Covid pandemic posed various challenges which included, but was not limited to, restrictions on mobility and face-to-face interactions. The municipality had already decided to suspend any research taking place due reduced numbers of staff in their offices. These were significant obstacles to getting the committees to approve applications for individual and institutional research work.

The research was conducted with strict adherence to Covid protocols which included keeping social distance and the use of masks and sanitisers. Some interviews were conducted virtually where key informants were self-isolating during the time of fieldwork.

The 2021 local government elections also posed challenges in the scheduling of the validation. The local government elections preparations which were held on the first of November 2021 delayed the validation meeting.

However, PARI believes that the findings and conclusions of the report are an accurate basis for generating insights on land governance dynamics in Ekurhuleni Metro.

Legislative context under which City of Ekurhuleni governs land

The Ekurhuleni Metro is guided by various legislation in its land governance mandate. These include the Constitution of the Republic of South Africa Act, 1996; the Intergovernmental Regulations Framework Act (13 of 2005), the Municipal Systems Act, 2000 and Regulations; the Expropriation Act 63 of 1975; the Restitution of Land Rights Act 22 of 1994; the Deeds Registration Act 47 of 1937; the Property Valuers' Professions Act 47 of 2000; and the Spatial and Land Use Management Act (SPLUMA).

The Constitution provides that developmental local government should make provision for a democratic and accountable government for communities. The Constitution encourages municipalities to ensure services provision to communities in a sustainable manner. Section 153 of the Constitution further states that 'each municipality should structure and manage its administration, budgeting, and planning processes to give priority to the basic needs of the community and to promote the social and economic development of those communities'.

The Constitution of the Republic of South Africa (1996) has major implications for environmental management. Section 24 of the Constitution therefore places a duty on all spheres of government to take reasonable steps, including making laws, preventing pollution, promoting conservation and ensuring sustainable development. The Municipal Systems Act 32 of 2000 requires municipal that municipalities undertake an integrated development planning process to produce integrated development plans in order to fulfil their Constitutional mandates. The Municipal Systems Act requires municipalities to produce Integrated Development Plans to achieve the objects of local government as set out in Section 152 of the Constitution; and give effect to its developmental duties as required by Section 153 of the Constitution. The Systems Act prescribes that each municipality prepare and adopt a single, inclusive strategic plan (an IDP) for the development of the municipality. Municipalities are required to write annual IDPs that address land management, to examine new challenges and adopt suitable development strategies. The Spatial Development Framework sets objectives that reflect the desired spatial form of a municipality's development of priorities, strategies alignment with national and provincial plans and guides land-use management systems for the municipality.

The Municipal Systems Act, 32 of 2000, together with the Local Government: Municipal Planning and Performance Management Regulations 2001 and its revisions, require that a municipality's key performance indicators be reviewed as part of the review of the IDP.

The Municipal Finance Management Act 56 of 2003, in Section 16, requires council to approve an annual budget for the municipality before the start of a financial year. Section 17(3) of the MFMA requires that the annual budget of the municipality be accompanied by the following documents among others: the measurable performance objectives for revenue from each source and for each vote in the budget, taking into account the municipality's IDP as well as any proposed amendments to the municipality's IDP following the annual review of the IDP in terms of Section 34 of the Municipal Systems Act.

The Intergovernmental Relations Framework Act 13 of 2005 provides that local and provincial municipalities, together with the national Department of Housing and the Department of Agriculture, have a responsibility to oversee all the land policies which are passed on to the provincial government, then the local government through municipalities.

The Spatial and Land Use Management Act (SPLUMA) provides a framework for spatial planning and land-use management in South Africa. The Act specifies the relationship between the spatial planning and the land-use management system and other kinds of planning and ensures that the system of spatial planning and land-use management promotes social and economic inclusion. SPLUMA provides for the sustainable and efficient use of land; cooperative government and intergovernmental relations between the national, provincial and local spheres of government; and redressing the imbalance of the past and to ensure that there is equity in the application of spatial development planning and land-use management systems.

The City of Ekurhuleni is guided by SPLUMA for their projects when developing land within the region to produce a spatial development framework (SDF) which must include the provision of basic guidelines for a land-use management system for

the municipality (Fonkam, 2017). SPLUMA requires all three spheres of government to produce SDFs. The National SDF provides broad strategic direction, provinces focus on a coordination role and municipalities develop detailed plans for the areas of their jurisdiction. A municipal SDF fits into a hierarchy of spatial plans, taking direction from the national and relevant provincial SDF. The national government monitors and oversees the establishment of a National Spatial Development Framework (NSDF) and other SDF guidelines. It is responsible for guiding any land development in the national interest and developing regulations and frameworks for the applications of exemptions, and for delegations in terms of the Act. Secondary responsibilities, such as land-use systems and alignment of authorisation are assigned to the Department of Cooperative Governance and Traditional Affairs (CoGTA). Section 10 of SPLUMA mandates provincial government to support and monitor municipalities and establish provincial SDFs, laws and regulations and to provide technical support and dispute resolution. Local government is responsible for establishing municipal SDFs consistent with provincial and national legislation. Municipalities may receive assistance from national and provincial governments when necessary. The municipal SDF, land-use systems and by-laws should be reviewed every five years.¹²

SPLUMA provides a platform for the municipality to improve land governance in Ekurhuleni by improving coordination of various stakeholders and creating certainty. SPLUMA also enables the municipality to craft land-use plans that are localised and flexible.

The Integrated Urban Development Framework (IUDF) is government's policy position to guide the future growth and management of urban areas. The IUDF sets out the policy framework for transforming and restructuring South Africa's urban spaces, guided by the vision of creating 'liveable, safe, resource efficient cities and towns that are socially integrated, economically inclusive and globally competitive, where residents actively participate in urban life'. The IUDF responds to the post-2015 SDGs, in particular to Goal 11: making cities and human settlements inclusive, safe, resilient and sustainable. The IUDF aims for spatial transformation by steering urban growth towards a sustainable growth model of compact, connected and coordinated cities and towns. The City of Ekurhuleni is required to consolidate existing and/or develop viable long-term growth and development plans, ensuring that each lever is addressed within its jurisdiction.¹³

In South Africa, people are protected from eviction by the Extension of Security of Tenure Act 62 of 1997. ESTA was enacted to prevent both unfair and arbitrary evictions and to safeguard the rights of people who live on land in rural and peri-urban areas.

Land governance stakeholders in Ekurhuleni

The Central Government, Gauteng Provincial government, Gauteng City Region, the judiciary, the municipality, the private sector, civil society organisations and communities are the stakeholders in land governance in Ekurhuleni. These will be explored in this section.

¹² City of Ekurhuleni, 2021b.

¹³ Ibid.

Role of the municipality in land governance in Ekurhuleni

The Ekurhuleni Municipality's role in land governance includes land management. The city also has a responsibility to deliver spatially-integrated human settlements and mediate historical spatial injustices. The city must provide basic services to the inhabitants and facilitate land availability for the provision of bulk infrastructure in the area under its jurisdiction. The city has a land acquisition responsibility to ensure access to those who require it. The city must contribute to its inhabitants' wellbeing by providing access to land for agriculture. It must also dispose of municipal land. The city must ensure that inhabitants have access to safe land as some of Ekurhuleni's land is dolomitic. The responsibilities for land governance are shared among the various city departments which include City Planning, Real Estate, Water and Sanitation, Transport and Fleet Management, Environmental Resources and Waste Management, Corporate Legal Services and Human Settlements.

Corporate Legal Services Department

The department is responsible for the City's compliance to relevant legislation and regulations. This includes all legal matters in the council, housing and development, infrastructure and litigation. This department focuses on compliance and all legal issues to formulate, guide and enforce policies. The Corporate Legal Services Department has a role in the governance processes and land being central in terms of its acquisition, management and disposal. The department is at the centre of all legal battles that the municipality engages, especially over land, which is a critical resource burdened by historical segregation. The Corporate Legal Services Department works closely with the Real Estate Department in terms of formulating policy frameworks and providing guidance in acquisition, management and disposal of land.

City Planning Department

The City Planning Department works with the Real Estate and Human Settlement Departments. City planning is based on regions in the metro. These are East, South and Northern Regions. The East region constitutes Benoni, Brakpan, Springs and Nigel. The South region comprises Alberton, Germiston and Boksburg. The Northern region is Edenvale, Kempton Park, and Tembisa.

The department is divided into divisions that include the Corporate Geo-informatics Department division which is responsible for the geographic information systems (GIS), land survey and geotechnical services. GIS is mapping technology that allows creation and interaction with a variety of maps and data sources. The City Operations and Special Projects Department is responsible for facilitating large-scale strategic urban developments; that is, urban development of a metropolitan-wide, strategic nature and of critical importance to building the city.

The Metropolitan Spatial Planning Department is responsible for unlocking dolomitic land for development and land survey, measuring and determining property boundaries. This includes allocating land for development, identifying areas within the city jurisdiction that may be used for economic development purposes, and the delineation of land for the provision of bulk infrastructure in the metro.

The Spatial Planning Department is also responsible for electricity planning in areas that need planning such as the central business district. The City Planning Department provides support services, integration, reporting and monitoring related to the spatial planning in the city. This includes ensuring that the city's development conforms to the spatial trajectory of the city and managing billboard advertising.

Human Settlements Department

The Human Settlements head office is supported by 20 regional customer care centres (CCCs) and customer care areas (CCAs). This department derives its mandate from the National Constitution and the Housing Act, which prescribes that: municipalities must ensure that inhabitants have access to adequate housing, set housing goals, identify and designate land for housing development; create and maintain a public environment conducive to housing development; promote the resolution of conflicts arising in the housing development process and facilitate the development of housing in its area of jurisdiction. The Human Settlements Department conducts feasibility studies on land to determine its suitability for housing development.

Real Estate Department

The Real Estate Department is the custodian of council-owned immovable property. The Real Estate Department in the City of Ekurhuleni defines their portfolio as consisting of land and the buildings with its natural resources such as crops, minerals or water. Its mandate includes facilitating more coordinated approach to land management and administration. It achieves this mandate by acting as an agent for all other council departments in selling, acquiring, and managing council-owned land. The business of real estate includes the profession of buying, selling or renting land, buildings or housing.

The department is responsible for keeping inventory and making purchases and is involved in allocating and disposing of land to different departments and other projects for public and private use. The department's core function is to analyse the city's property portfolio so that sound strategies can be developed for each property segment. These strategies aim to ensure that the portfolio's social, environmental and economic benefits are maximised for the benefit of residents.

The department has four divisions. The first is the property management and portfolio advisory division which is responsible for vacant land and for leasing, selling and acquiring land. The property development division is responsible for construction of buildings such as clinics and other community facilities. The facilities management division is responsible for maintaining council buildings and facilities. The support services ensures that the other divisions in the department can hire and take care of the employees, including insurance services for the municipal assets; it also has a section on governance and compliance that deals with legal aspects. The governance and compliance section in the Real Estate Department deals with legal and compliance matters — however, there is also the Corporate Legal Services Department which deals with overall municipal legal matters. The governance and compliance section deals with matters of risk management, audit, legal compliance, and policy formulation within the Real Estate Department.

Environmental Resources and Waste Management Department

This department is mainly responsible for overseeing the city's delivery of the environmental protection as mandated in Section 24 of the Constitution. The strategic planning section is responsible for coordinating the city's climate change preparedness. The parks and cemeteries section is responsible for developing and maintaining the city's cemeteries, parks and conservation areas. The Compliance Department is responsible for the compliance and enforcement in place for protecting and enhancing natural environment as well as managing the Environmental Impact Assessments on land-use development within the city. The Environmental Protection, Resilience and Project Management Department is responsible for capital programme delivery and managing and developing instruments to monitor and report projects in the city. The waste management division is responsible for waste collection, transport, treatment and disposal sites.

Transport and Fleet Management Department

The Transport and Fleet Department provides high quality, integrated and well-maintained transport infrastructure and integrated public transport systems and provision of efficient public transport system. The department provides transport and accessibility infrastructure for the city's inhabitants and inclusive and reliable transportation for the city's commuters.

Roads and Storm Water Department

The Roads and Stormwater Department plans storm water and road infrastructure, maintains roads and storm water infrastructure and is responsible for the construction and maintenance of roads and storm water infrastructure.

External stakeholders in land governance in Ekurhuleni

There are non-municipal entities who have a role in land governance in Ekurhuleni. These include government, the private sector and civil society organisations.

The national government is responsible for making land governance laws and policies which have an impact on the land governance in Ekurhuleni. The national government retains the mandate for land administration, housing, water governance, mining and environmental governance. For example, the provincial and national governments are responsible for providing housing. The Gauteng Province has the mandate to designate the sites for the developments of housing. The municipality is responsible for facilitating the availability of land to ensure that low income and previously disadvantaged populations have access to housing land.

The Gauteng provincial government has a long-term vision of building the Gauteng City Region (GCR) using a Metropolitan System of Governance. The eastern corridor vision for the GCR is anchored around the City of Ekurhuleni and has the following key concepts: Aerotropolis: hub of manufacturing, aviation, logistics and transport industries; Smart, Creative and Developmental City; Sustainable and people-centred development services and a focus on social, environmental and economic regeneration of the area and communities.^{14 15}

14 City of Ekurhuleni, 2021b.

15 Robinson et. al., 2021.

The O.R Tambo International Airport Transport Infrastructure Task Team was established through a resolution by the Gauteng Member of the Executive for Roads and Transport, the Member of the Mayoral Committee for Transport in the City of Ekurhuleni and the Executive Management of the Airports Company of South Africa to implement the O.R Tambo International Airport and Aerotropolis master plans.¹⁶

Transnet, City of Ekurhuleni Gauteng Provincial Government and the Tambo Springs Development Company have partnered to develop an inland port. The R2.5 billion Tambo Springs Intermodal Terminal in Ekurhuleni was announced in 2018. The development will provide warehousing, distribution manufacturing and shipping facilities on a 607 hectare site.¹⁷

Ekurhuleni has four concentrations of mining land in its jurisdiction that include Reiger Park, east of Benoni, the area to the east of Springs and the three sites in the vicinity of Kwatsaduza Complex. The Department of Mineral Resources is responsible for regulations and granting operation and closure of mines in the country.

The courts also emerge as an important role player in land administration. Ekurhuleni has lot of litigation because of the prevalence of land invasions in the municipality. Private land owners sometimes resort to the courts for the eviction of illegal settlers. Informal settlement residents have also taken the municipality to court to enforce the municipality's constitutional obligations. The Socio-Economic Rights Institute of South Africa (SERI) supported residents of three informal settlements in Ekurhuleni to compel the municipality to install basic water and sanitation facilities as required by the Water Services Act 108 of 1997. In May 2015 another section of informal residents launched an application in the North Gauteng High Court to compel the municipality and the Gauteng Department of Human Settlements to take the necessary steps to grant the residents title to the land and other necessary steps to upgrade their accommodation.

Civil society organisations are a strategic stakeholder in land governance in the Ekurhuleni Municipality and hold the municipality, central and provincial government accountable in land matters. They facilitate engagements between the local government and the community. They exert pressure on the local authority to uphold legal and policy obligations that are the mandate of Ekurhuleni. Some of the strategies include boycotting rates and mobilising and organising communities to enforce their land rights.

Civil society organisations raise community awareness of constitutional rights and opportunities for enforcing these. They amplify the voices of the marginalised in Ekurhuleni and support marginalised communities in Ekurhuleni who are excluded from land ownership, land and infrastructure access, and use and participation in land governance. For example, SERI supported the 113 residents of Winnie Mandela informal settlement in Ekurhuleni. They launched an application in the North Gauteng High Court Pursuant to section 8(1)9a of the Promotion of Administrative Justice Act of 2000 to compel the municipality and the Gauteng Department of Human Settlements to take the necessary steps to grant residents the title to the land where they were resident and upgrade the residents' housing and accommodation.

¹⁶ City of Ekurhuleni webpage.

¹⁷ City of Ekurhuleni, 2021c.

Civil society organisations also mediate in the municipality and community engagement. Some are involved in civic empowerment work where they build the capacity of communities to understand their Constitutional rights and obligations with regard to land and other service delivery matters. Civil society organisations identify and provide innovative solutions to poor communities to deal with challenges that affect them: money saving schemes to buy their own land, among other services. They provide technical support for example layout development, land surveying, enumeration and GIS technology to resolve land issues and provide technical support to communities by, for example, unpacking court documents and land legislation into simple language and graphics for communities to assist them in decision making. They also unpack and present documents in the language that municipal officials can understand, to be able to engage with local communities.

Civil society organisations enhance land governance in the municipality by mobilising and organising communities to articulate their land concerns in the various municipal fora that exist.

Civil society organisations package community needs in formats that the municipality and the government understand. They capacitate the grassroots to communicate with the government and capacitate the government to listen. They disseminate information on land governance to the communities. This includes relaying messages about meetings and communications from the local councillors. They provide support to communities to unpack documents and interpret processes that need to be followed in acquiring land and defending their rights.

Other stakeholders participants in land governance, such as the private sector, have some authority and autonomy in how they contribute to land access and ownership.

The private sector has a potential role to play towards improving land governance in Ekurhuleni. This is through land release, mining land rehabilitation, infrastructure provision and initiating mediated land transfer over the costly legal engagements.

Municipal land acquisition

The municipality acquires land from the state, the private sector, Transnet, the Department of Infrastructure, private landowners and the church. The Real Estate Department, through the Acquisition Disposal Framework of 2018, acquires land by public tender, negotiated transfer, donation, exchange, expropriation and acquisition by operation of the law.

Acquisition by operation of law

The acquisition methods above are laid out to standardise and deal with shortcomings and complications that the municipality has tried to address using a council-approved policy. The framework tries to account for the weakness of the Municipal Management Act which is limited in terms of acquisition of immovable property, as opposed to disposal (cf. Acquisition Disposal Framework, 2018). The Real Estate Department employs the framework which was carefully put together by experts from the municipality, in consultation with the various legislative policies on land and municipal processes. At the core of the objective is to ensure that the needs and aspirations of the communities are met. It also emphasises addressing the historical racial imbalance regarding land acquisition, the realisation of which is still a distant reality for many poor and marginalised communities.

Municipal land allocation

Rapid Land Release Programme (RLRP) — Serviced Sites

The Rapid Land Release Programme (RLRP) — Serviced Sites programme was developed by the Gauteng Department of Human Settlements and aims to make serviced stands available to qualifying Gauteng households who would not be able to meet their own housing needs without government assistance. The sizes of the stands provided in the RLRP range between 150 m² and 200 m².

The programme also provides at least seven standard building plans for the beneficiary to choose from (two of the seven are double storey and independent building plans would be subject to approval of the municipal building approval processes at a cost to the beneficiary).

Beneficiaries of the RLRP are given 18–60 months (5 yrs.) to build incrementally. The stands cannot be sold without a top structure (eliminating speculation) and in case of sale of the serviced site, the department would have the first right of refusal. The beneficiaries will not be allowed to sell the stand in the first eight years of acquiring it.¹⁸

By law, the functions of province are supposed to help local government with providing houses to the poor, but this role has been delegated to local government alone. Local government has acknowledged that the development of acceptable and sustainable medium density rental housing can only be realised through sustainable housing institutions and adequate private sector involvement. Therefore, Ekurhuleni Housing Company (EHC) was set up to undertake the development and management of rental housing stock for low- and moderate-income households in the City of Ekurhuleni. It acts as a developer; by appointing contractors and professionals to build (in some cases refurbish) suitable housing.

The municipality is responsible for the land that was formerly held under the township councils and other pieces of land acquired by the city. The city purchases and avails land for different projects, which include, but are not limited to, housing and infrastructure development. Private individuals and corporations, provincial and national government, and the municipality own land in Ekurhuleni.

Challenges of land governance in the municipality

Complexity of land governance

‘Land governance is a messy affair,’ was uttered by one of the senior municipal officials. The complexity arises from the fact that the land governance mandate in Ekurhuleni is exercised in various departments, across the public and private sector, and contestations and lack of consistency in the way in which the national, provincial and departmental mandates over land are exercised in the metro. The city faces spatial planning and development challenges when the provincial, national plans do not conform to the Municipal Spatial Plan.

¹⁸ PMG, 2022.

This complex web poses challenges for those working at the city level to deal conclusively with land issues whose authority rests in provincial, national and international jurisdictions.

Land suitability

Although it has a mandate to deliver safe and sustainable public amenities, the City of Ekurhuleni faces several challenges in its land-acquisition mandate. The city must find suitable land on which to deliver its mandate within its jurisdiction, but an estimated 52 per cent of the Ekurhuleni land is dolomitic. This high incidence of dolomitic land increases the feasibility assessment costs for the municipality. Dolomite generally renders the development of residential units impossible and/or limits the scale of the development. The Department of Infrastructure, for example, offered land parcels to the municipality to develop housing. However, after feasibility studies, the municipality concluded that not all of the land availed was suitable. There is a high incidence of mining quarries, dams and abandoned and closed mining shafts which are not suitable for development in the city's jurisdiction. The impact of dolomite on housing developments is a source of tension between the municipality and communities. There is also some environmentally sensitive land within the municipality's jurisdiction which cannot be developed.

Mines and disused mines are a common occurrence in Ekurhuleni. The Department of Mineral Resources and Energy is responsible for regulations and granting operation and closure of mines in the country. It is through their intervention that the City closes shafts of mines which were deemed closed by the department.¹⁹

Land acquisition bottlenecks

The municipality struggles to secure land for specific spatial city planning programmes. This is because the land is held by jurisdictions other than the municipality. The municipality acquires land from the private sector which includes churches, corporates, private individuals and farmers. For example, land that is held by private landowners is transferred to the municipality on disadvantageous terms. Further, private landowners may be unwilling to avail the land to the municipality. Sometimes, the municipality may have to give concessions, for example provide bulk infrastructure to the landowners in exchange for land.

The land identification and verification process may take time and even then, some land may not meet the environmental criteria for development. The private sector can also dispose of land when it has been invaded. Private landowners can be problematic by demanding exorbitant compensation for their idle land that is identified as ideal for human settlement. Private landowners sometimes outrightly reject the municipal offer for the court route, which has not worked in favor of the municipality. Some landholders negotiate and allow the initial acquisition processes to kick in, then, when they get to the advanced stages and get to know the desperation the city has in purchasing their land, they increase the price on which they were initially willing to settle. Court battles with private owners are costly for the municipality and the municipality tries to avoid these. Litigation takes a long time to conclude, causing delays in land acquisition.

¹⁹ City of Ekurhuleni, 2020b.

The municipality may face challenges from communities who, with the support of civil society organisations, resist eviction. This obliges the municipality to provide alternative accommodation before evicting the illegal occupants.

The municipality has idle land housing abandoned factories and warehouses which it does not have access to as the land belongs to private landowners.

The municipality also faces challenges when acquiring land from the government. Land transfers take time if the parties involved in the transaction cannot agree on the terms of the transfer. The municipality land acquisition process may be undermined by delays associated with, for example, the acquisition of state land. This is because of the lengthy processes involved in the transfer of state-owned land. Sometimes the land that is offered to the municipality may be already developed and/or have dilapidated buildings on it. This means the municipality will have to incur additional costs and time to repurpose the land. Some of the land that the government avails to the municipality may not be located within the areas that are designated for housing development. Land donations may be delayed because of the donor's ignorance of, and failure to comply with, the guidelines and regulations in place to facilitate the transfer of land to the municipality.

In an example, the metro made proposals to develop the University of Ekurhuleni, which will focus on applied engineering, logistics, science, aviation, tourism and hospitality. The development of the university will require is 46 to 180 hectares over the long term to cater for expansion of facilities and services. The local authority identified ten sites of land to situate the university; along the M32 and Glengory Road, OR Tambo North, Jan Smuts Ext 2 and surrounds, Aerotropolis (Aero City Centre), Rondebult at Rondebult Bird Sanctuary, Tambo Springs (along the N3 Corridor, south of Vosloorus, Carnival Junction along the R23 north of Dalview and land located in and around Brakpan Civic Centre and Jan Smuts Dam.²⁰ The development of a major road to service the university site has been stalled because residents of an informal settlement in the proposed area did not consent to the construction of the access road. The municipality is obliged to relocate the informal settlement dwellers and provide them with alternative housing before they can gain access to the land for the development of a road.

Long Leases

The Ekurhuleni Municipality struggles to access and utilise land that it owns because of long leases that were signed by private entities at Independence. These long leases are typically 99-year leases at a nominal rent which locks the municipal land in. The land is used for old age homes, recreational parks and NGOs.²¹ The municipality has approached the Human Rights Commission to negotiate access to this land.

Land invasions

Land invasions also disrupt the municipality's ability to make plans and follow through on them. Due to unforeseen strain on the budget, municipal plans must constantly shift to accommodate the invasions, meaning that plans are not in municipal control. Plans for high-rise apartments, for example, can be foiled by land invasions. The city incurs huge costs to protect land from invasions. As a result,

²⁰ City of Ekurhuleni, 2020a.

²¹ Mthupa, 2020.

the city may delay purchasing and/or developing land if there are insufficient resources to secure it. Even when funds are available to develop housing structures, the threat of invasion is imminent. In some instances, houses are occupied before the department has a chance to allocate them to the qualifying beneficiaries. Land invasion negatively affects the City's budget, as it is often required to allocate unplanned basic services.²² In August 2020, the City of Ekurhuleni was grappling with the following land invasions.²³

TABLE 2: CITY OF EKURHULENI, LAND INVASIONS, AUGUST 2020

Area	Local authority action
MAYFIELD EXTENSIONS 32 & 34	Interdict in favour of the City
TSAKANE EXTENSION 23	Matter registered
SETHOGA	Matter on opposed toll set for hearing
DAVEYTON EXT 14	Invasion stopped — City seeks interdict
VOSLOORUS EXT 9	Interdict obtained
THEMBISA EXT 25	Interdict obtained
GLEN MARIKANA	Order issued for City to relocate illegal occupants
CHIEF ALBERT LUTHULI EXT 4 & 6	Eviction application before court
AIRPORT PARK EXT 2	Interdict obtained
PALM RIDGE EXT 10 & 12	Interdict obtained
GERMISTON BUILDINGS	16 privately owned buildings invaded in CBD, court ordered City to expropriate.

There is legislation that guides the municipality in the land management. This includes the PIE and ESTA Acts which protect the rights of the marginalised people. The Prevention of Illegal Eviction from Unlawful Occupation of Land Act of 1998 (PIE Act) for example, set out to prevent arbitrary evictions, protects both the occupier and landowner, making it difficult for the municipality. Similarly, the Extension of Security of Tenure Act 62 of 1997 (ESTA Act) compromises the municipality as it is mandated to be answerable when matters of eviction are brought to the courts.

Institutional coordination

In the municipality, internal coordination is an issue. This is a partially a consequence of the silos that the municipal departments responsible for land governance and management work in. For example, the development of the infrastructure for Tambo Springs inland port is taking place in an area that has been reserved for a cemetery by the Real Estate Department. There is limited shared interpretation of land policies and legislations within the municipality. For example, there is limited understanding of the Spatial Development Framework makes it difficult to have a coordinated vision among various departments that are engaged in land governance in the city. The various departmental representatives in the municipality do not have a shared understanding of the various land legislation and policies. As a result, there are inconsistencies which undermine the land governance function in the municipality.

²² City of Ekurhuleni, 2020c.

²³ Ibid.

Intergovernmental Relations in land governance in Ekurhuleni

The complex web of authorities governing land in Ekurhuleni include Department of Rural Development and Land Reform, Presidential Infrastructural Cooperation Committee, Industrial Development Cooperation Company, and the Department of Trade and Industry. In addition, the city has within its jurisdiction international, regional and continental projects which are managed by the World Bank and the Cities Support Programme.

In terms of the legislation, the national department responsible for land development in municipalities is the department of cooperative governance — even the national urban policy — and the integrated urban development framework is in that department. As a city official who is at the bottom of the chain, you are then left with a maze in terms of figuring out how to make decisions under such conditions, which are in some instances contending

— City of Ekurhuleni official key informant interview 2021

The differences in terms of land approaches, in most cases, results in challenges for municipal land management and planning. For instance, the provincial government is responsible for most of the housing projects and it prefers to have these projects on land that fall under its jurisdiction. Some of the municipal managers highlighted challenges in the lack of consolidated land policies which results in urban expansion in directions that the city would not have envisaged. The principles of cooperative governance stress that the spheres should work together accordingly without assuming powers that have not been given to them, nor can they undermine the work of the other one (Constitution of Republic of South Africa, 1996). Local government is undermined in terms of finances, policies and human resources since the deployed cadres are shifted to the lower (Legislature and Governance NEC Subcommittee, 2010: 14). There is also little cooperation since provinces sometimes dump some of their functions to local government are transferred with very little financial and capacity scale.

The city is challenged to manage diverse plans and priorities taking place in their jurisdiction. For example, the provincial department tends to carry out its own mandate without consulting local municipalities. Further, priorities for local government and province are not the same. Poor coordination and some contradictions from national and local policies pose challenges for senior municipal management in dealing with land administration and management.

A point of reference is the Special Planning and Land Use Management Act (SPLUMA), which is to do with urban planning, but sits under the land reform department. Some national departmental mandates like for example mining have not been decentralised to the local municipality level. This poses challenges and limitations for the City of Ekurhuleni's efforts to resolve mining-related issues in its jurisdiction.

Capacity Challenges

The capacity of many local government officials is limited. It was noted that the city's human settlements team had undergone Upgrading Informal Settlements Programme UISP training through National Upgrading Support Programme (NUSP), and were well aware that their informal settlement 'upgrading' approach was not in line with the NUSP approach. (Basson, 2019: 52)

Marginalisation of the poor from land governance processes

The struggle for land within Ekurhuleni is laden with linguistic and juristic challenges. In trying to be more efficient in land management and administration, the legal and linguistic abilities of differently positioned groups is crucial because of the ways in which land is contested. Power inclines toward the elite and middle and high working classes in terms of access and possession of these different forms of legal and linguistic abilities or having access to those who can represent their interests in that regard. The struggle is won through an appreciation of and ability to interpret and employ the political, legal and linguistic resources for the parties involved — in most cases, the poor and marginalised are further excluded.

Municipal land governance of informal settlements

Ekurhuleni has a large number of informal settlements. The City of Ekurhuleni defines informal settlements as 'the unauthorised occupation of land. In addition, the use of the land may be unauthorised, and in most cases the construction standards do not comply with building regulations' (The housing development agency 2013:7 cited in Marutlulle, 2017). Informal settlements may be argued to play a crucial role in South African cities by providing shelter, access to social networks and livelihood opportunities (Brown-Luthango et. al. 2016; Tshabalala and Mxobo, 2014). Informal settlements will be around for a while (Marutlulle, 2017).

Informal settlements are caused by housing delivery bottlenecks. In 2015 the Ekurhuleni Municipality had a huge housing backlog with 134,000 shacks in 122 informal settlements and 360,000 backyard shacks.²⁴ High migration into the city also fuels informal settlements. The lack of access to land and housing through formal means, particularly through government channels, has left the many urban poor to fend for themselves. As a result, a mass of the urban population, particularly the urban poor, are resorting to informal processes to address their land and housing needs. In locations where the living experience is inadequate, informal settlements thrive. Citizens (particularly the landless, the poor and the homeless) occupy spaces on vacant land within and adjacent to the outskirts of towns or in existing townships. However, when people are evicted from the private property, they establish informal settlements.

The high number of foreign nationals whose status excludes them from formal housing consideration contributes to the informal settlements. In addition, South African citizens who have already benefited from the Human Settlement Department in their home province become ineligible for formal housing allocation when they relocate to Ekurhuleni. The apartheid government, population growth, government economic policies [Reconstruction and Development Programme (RDP), Growth, Employment and Redistribution (GEAR) and Accelerated and Shared

²⁴ Ekurhuleni Metropolitan Municipality, 2015.

Growth Initiative (ASGI-SA)], administrative issues (municipal maladministration, lack of control and corruption), economic variables (poverty, unemployment, unaffordability and poor access to housing finance), housing shortage and land unavailability have been identified as causes of informal settlements in Ekurhuleni (Marutlulle, 2017). Informal settlements grow when people who lose their jobs move into the existing settlements as they can no longer afford to pay rent.²⁵

The informal settlement dwellers alone and with the support of civil society organisations also participate in the governance of informal settlements in Ekurhuleni.

The city, civil society organisations and informal settlement dwellers have initiated some activities to mediate the challenges of informal settlements. These include service provision, upgrading, reblocking and resettlement. The Integrated Urban Development Framework (IUDF) is South Africa's guideline for urban development encourages the prioritisation of investment in public areas above the provision of top structures to individual households in informal settlements.²⁶

Informal settlement service provisioning

Although they are established illegally, the City of Ekurhuleni has obligations to provide basic services to the informal settlement inhabitants. The services must be provided regardless of where the people chose to occupy land. The provision of basic services is central to reducing vulnerability and risk in informal settlements. In 2018, the city had a target to provide 119 informal settlements with access to electricity, water, sanitation, waste collection and graded roads.²⁷

Upgrading

Incremental in-situ upgrading is the predominant intervention in informal settlements in the global South. Upgrading involves the installation of infrastructure and requires the displacement of a minority of households. The National Housing Code informs the considerations for settlement upgrading. These include tenure, feasibility of the area for basic service supply, value of the location and proximity to other social infrastructure. The provision of basic services could send signals of de facto tenure security to informal settlement dwellers and attract further invasion of the informal site. This creates a situation where municipalities avoid legitimising informal settlements. (Basson, 2019).

Reblocking

The reblocking process aims to reorder shacks into standard sizes arranged into blocks, with roads that can be easily traversed by vehicles. Reblocking is one of the improvised plans that the department has been carrying out to enable emergency services and other provisions to reach informal settlements. Reblocking is the formal upgrading of an informal settlement in its current location (Basson, 2019: 40). Reblocking is meant to create an enabling environment for informal settlements and the municipality to plan and implement community development projects together. It would, for example, reduce the risks of fires developing and spreading quickly and mitigate the negative impact of potential disasters and health hazards. In line with the National Upgrading Support Programme, some of the work carried

25 GroundUp, 2019.

26 Pieterse and Cirolia, 2016 cited in Basson, 2019.

27 Infrastructure News, 2018.

out during reblocking includes the electrification of all structures to prevent illegal connections and overloading on the network, and the numbering of structures. Settlements that have to be relocated in either the short or the long term are mostly not reblocked. The relocation of informal settlements should be a last resort. In some informal settlements several households have been identified for relocation to reduce congestion and ensure provision of access roads.

Whatever strategy the City of Ekurhuleni uses to approach informal settlements, they have to engage with the community. Public meetings involve the city's reblocking team, the relevant councillor and the settlement committee. The intention is that information cascades down to the community at large through this structure. By January 2020, 34 of the 119 informal settlements have been re-blocked and electrified resulting in almost 50,000 people enjoying electricity for the first time. This included an additional 6,546 electrified informal settlement households under the Eskom licensed areas.²⁸

The communities in the informal settlements have their own initiatives to address the challenges of informal settlements in Ekurhuleni. These include conducting tests to assess the suitability of land for settlement. The settlement dwellers also construct their own housing on land acquired from the market. In some cases, the community takes the municipality to court to enforce Constitutional provisions.

For example, the Harry Gwala informal settlement at Rietfontein, near the town of Benoni in the Ekurhuleni Municipality was situated in an area found to be unsuitable for human settlement. An alternative site was identified and was being developed, but residents were reluctant to be relocated to the new site 25 km away. The residents brought a court case against the Ekurhuleni Municipality to demand that water, sanitation and refuse removal service were provided in the settlement. They also demanded high-mast lighting of the area at night. The municipality was instructed by the court to provide water and sanitation services but the other demands were dismissed. The case has gone to the Constitutional Court on appeal.²⁹ In another instance in 2018, the municipality was ordered by the court to compensate informal community dwellers. This was after the municipality attempted to evict land occupiers. The community, represented by Lawyers for Human Rights, took the municipality to court in May to stop it from evicting them without a court order. The community won the case and the City of Ekurhuleni was ordered to pay each occupier R1,500 for the damage to their property during the evictions.³⁰

The lack of faith in government bureaucratic processes, which have been riddled with incapacity and corruption, prompts self-help initiatives from local communities who do not see themselves getting any reprieve from the government. One of the young men in the FEDUP leadership registered his frustration as follows:

People are trying to do things for themselves. When poor people identify and buy their own land, there is lack of support from government. This is frustrating, my mother waited for an RDP house until she died. I lived and grew up in the informal settlement and I will also die and leave

28 City of Ekurhuleni, 2020d.

29 PMG, 2009.

30 GroundUp, 2019.

my children in informal settlements. This becomes a cycle, and these politicians are playing games with us. They do not want to address the problems because they benefit from the informal settlement tenders and, come elections, the poor will be desperate and will vote for them.

The community and civil society organisations work together to address challenges in informal settlements. Most civil society organisations begin with identifying needs within communities which people rally around to find a voice, or expertise to deal with what the state fails to provide. Such appreciation of the importance of capacity building and respect for leadership-from-below defines organisations like One-to-One, SERI, PlanAct, CORK, Utshani and FEDUP. They empower communities by unpacking laws and legislation on land, providing technical support and community fundraising initiatives and infrastructure provision. For example, communities have organised some layouts of their settlements and the field visit showed that the settlements were organised according to layout plan. The commercial, institutional and residential areas were clearly delineated.

The community leaders had information on the estimated number of people within their communities. A community leader had this to say:

We have an informal settlement that has been getting it right. The name of the settlement is Skoon Plaas, an Afrikaans name meaning 'clean farm'. The settlement has been there for seven years, which resulted from a farm invasion that was taken to court by the municipality to get eviction approval, but the municipality lost the case. The settlement has an environment policy, though not written. The settlement is very clean and at each community meeting, the message on the environment is reinforced. Anyone who sees anyone throwing even a small piece of paper has the right to report to the community leader's office. They even have their own cemetery that they allocated in their land use, a business site and other clearly marked land zones.

Civil society organisations mediate the stakeholder interactions in Ekurhuleni. One-to-One, a group of architects, initially entered Ekurhuleni in 2012 to the support the design of kindergartens and clinics in informal settlements. Over time, the mandate evolved to providing a graphic layout of policies; translating government documents, such as policy documents and court documents, into graphics and roadmaps that people could understand. They do the same with community needs; packaging them as graphics and documents that the government can understand. They capacitate the grassroots to communicate with the government and capacitate the government to listen. One-to one has since supported a community in Slovo Park, Johannesburg, that was suing the provincial government over an illegal eviction. In 2021, One-to One was supporting 60 informal settlements in Ekurhuleni.

The South African Homeless People's Federation (SAHPF) introduced group savings schemes for housing to assist the poor to secure decent housing. This initiative is a strategy by civil society organisations to use their own savings because they do not qualify for bank loans. The civil society organisations support the communities to raise money, then identify idle state land and private land to buy. The Utshani

fund helped women to establish savings schemes and provided them with housing loans, which had low-interest rates. Women were involved in the building of their homes. They helped during the construction of their homes physically. As a result, women were able to have control of the project and they contributed to the decision-making process. Utshani, a civic organisation group, and poor people's movements such as FEDUP, use this model to harness the communities' desire to control access to and own land for the development of housing infrastructure in Ekurhuleni. The initiative also works where people have already invaded but would like to purchase and own the land. One success story is Thina Zonke, a community-based organisation that managed to purchase their own land. At the time of the fieldwork in 2021, another community-based organisation, Randwater Group (named so because it is negotiating with Randwater for a piece of land), had raised more than R300,000. FEDUP also managed to buy different portions of land using the same model that Utshani introduced.

FEDUP was established some 20 years ago in an effort to support low-income earners, pensioners and the unemployed in building decent housing. The organisation has been in a long struggle to present an alternative model to the government. The state's failure to address the urban housing land challenge is what prompted the initiative.

The FEDUP federation purchased a couple of pieces of land in Katlehong and Thokoza, but were struggling to get the municipality to provide services:

...and we said to government please support us, this is our land. It is your job to provide infrastructure like sewage, water and other services and give us the chance to build our houses, but they say no, this is private land. How do you define that as private land because it is bought by poor people's organization? That is when you see that you are dealing with another monster. They say sell us back your land then we will build you houses not you are building your own houses. To sell them the land, they tell you this is how much we will pay you for the land that we bought from private owners. There is no democratic process.

Civil society organisations avail mapping technology and tools like GIS software to clarify boundaries and verify land demarcations. One-to-One mobilises land-use professionals to support communities to design land-use plans for community layouts and building plans for kindergartens and clinics in informal settlements. The professionals also provide communities with the expertise to interpret layouts, follow government protocol and translate government documents — such as policy documents and court documents — into graphics and roadmaps that people could understand.

Civil society organisations mediate the community-municipality and private landowner interactions. This includes mediating discussions, controlling protests and discouraging violent evictions.

Information gathering has been one of the important tools employed by civil society organisations in equipping communities to challenge and persuade municipalities to formalise settlements. They provide support and train communities to partake in enumeration and profiling, which gives them leverage as they approach the municipality, demanding that they be acknowledged and given rights to formally settle. The civil society organisations provide professional support in data collection and analysis, ensuring that the information is presented in a way that municipalities will find difficult to refute.

Municipalities are engaging with the feasibility studies in relation to settlements. They engage and share information with the communities. The communities are encouraged to inform the councillor before or after the enumeration, then ask the councillor to escort them when presenting that data to the municipality. The intent is to force the municipality to challenge their data which then allows to them to demand that the municipality take part in verifying that data. This process has worked, with some civil society organisations confirming that they have used this strategy resulting in the municipality verifying. Once that process is done, the municipality's hand is forced to provide services and formalise the settlement. The verification is used to acknowledge the presence of the number of people and the municipality's endorsement technically extends rights to those who have been enumerated, to occupy land.

Challenges of informal settlements

The city faces a shortage of land to deliver housing to those in need. This fuels the informal settlements. Delays in accessing and owning housing, according to the civil society organisations and community leaders we spoke to, is attributed to corruption and lack of willingness from the municipalities and the state to address the challenge. Such delays have lasted decades for some who, like those in Primrose, have been on waiting lists since 1994. This has resulted in initiatives by poor people. Some of the strategies have included land invasions while others have become more innovative, such as the Utshani model. Such models have not been without challenges, as was noted by leaders of the poor people's movements.

According to City of Ekurhuleni Annual Report (2010/11: 7), many of the informal settlements are situated on land unsuitable for housing and well-located land suitable for housing development is not readily available. A total of 66 informal settlements are currently located in areas not suitable for development and were earmarked for relocation by the Department of Human Settlements.³¹

Sometimes communities refuse to be relocated from land that is dolomitic. The continued mushrooming of informal settlements in the city poses challenges. In addition, the city has budgetary constraints.

Reblocking has been criticised for being a standardised, top-down and authoritarian approach that ignores existing urban forms designed via grass-roots urban planning.³² The reblocking process has often been met with resistance. One recent example of this has been in Vusimuzi, Ekurhuleni, east of Johannesburg. The Vusimuzi Ward Committee Chair, Mkatshwa Zephania, told New Frame that reblocking has stripped many people of the lives that they had built for themselves over the past 23 years while waiting for housing and services from the government. The process

³¹ South African Government, 2014.

³² Nyoka, 2018.

has often been marred with allegations of corruption, indignity and marginalisation of the community.³³ Reblocking on land owned privately is a challenge. 'Sometimes officials face threats of violence. The Ekurhuleni Metro Police Department (EMPD) are not always willing to enter some notorious settlements' (Basson, 2019: 53).

The informal settlement communities claim they are overlooked when the City of Ekurhuleni disposes of land, as the municipality does not recognise them as a potential beneficiary of land disposal.

The informal settlement dwellers are marginalised from decision-making processes around land governance in Ekurhuleni. They specifically highlighted the establishment of criteria for resettling informal settlements, the disposal of municipal land, marginalisation from housing grants and municipal failure to provide basic services lack of transparency in the management of the RDP housing beneficiary selection.

The municipal-informal settlement dwellers engagement is flawed and the participatory processes marginalise the informal settlement dwellers.

Death of platforms to engage with informal settlement dwellers

Although Ekurhuleni faces challenges of informal settlements, there is a gap between the municipality and settlement dwellers when it comes to land governance. The municipality has processes and procedures for resolving land issues on informal settlements. Engagements highlighted that informal settlement dwellers lacked legitimacy to engage with the City of Ekurhuleni on land issues as they were not formally recognised. There is distrust between the municipality and some informal settlement communities, as the latter do not have access to information that the municipality uses to reach certain decisions. Settlement dwellers in Primrose alleged a lack of transparency on the municipal housing waiting list administration. They also queried the claims by the municipality to avoid upgrading settlements deemed dolomitic. This was because the municipality did not share the technical reports with the communities — as a result, communities carried out their own verification. Although the municipality has a joint working group, the community alleged that this was not convened at the local level.

Corruption

The lack of transparency on land governance processes and distribution of land and housing benefits is a basis of mistrust among the stakeholders involved in land governance in Ekurhuleni Municipality.

Settlement upgrading delays

Delays in accessing and owning housing, according to the civil society organisations and community leaders we spoke to, is attributed to corruption and lack of willingness from the municipalities and the state to address the challenge. Such delays have lasted decades for some who, like those in Primrose, have been on waiting lists since 1994. This has resulted in initiatives by poor people. Some of the strategies have included land invasions while others have become more innovative, such as the Utshani model.

33 Ibid.

Innovations to improve land governance in Ekurhuleni

Coordination

There are efforts by the municipality and civil society to improve coordination of stakeholders within and outside the municipality involved in land governance. The municipality has an interdepartmental platform aimed at improving coordination among the various departments involved in land governance. The civil society organisations play a mediatory role by facilitating engagement between the municipality and informal settlement dwellers. SPLUMA has provided an opportunity for the establishment of a tribunal which can be used to improve institutional coordination on land governance matters in the city.

Land delivery

The Gauteng Department of Human Settlements launched the Rapid Land Release Programme. The programme aimed at releasing land by making stands available to qualifying Gauteng households who would otherwise not be able to meet their own housing needs. The programme provides stands of between 150 m² and 200 m². The programme also provides building plans for the beneficiary and beneficiaries will be expected to develop the stands within a 60-month period. In Ekurhuleni the residents were eligible to benefit from this initiative. The City of Ekurhuleni was the first municipality in Gauteng to implement the Rapid Land Release Programme. 120 Ekurhuleni farms were availed for this programme.³⁴

Land expropriation

The municipality initiated a process of expropriating land as a last resort to unlock land delivery bottlenecks. In 2018, the municipality announced that it had earmarked four pieces of land in the city for expropriation without compensation at its monthly council meeting. Three pieces of land are privately owned, while the other is owned by government. The identified land had been vacant for a long time.³⁵ Landowners responded by settling for reasonable compensation for land in their dealing with the municipality. The municipality is proposing to terminate long-term leases for council-owned facilities, in order to amend the rental value to charge tenants.³⁶

Land invasions and informal settlements

The City of Ekurhuleni has drafted the Draft Informal Settlement Management and Land Invasion By-Law. The main objectives of the by-law are the regulation, monitoring and control of informal settlements; prevention regulations monitoring and control of the development of informal settlements; provide guidance and procedures for dealing with informal settlements and provide frameworks for incremental settlement upgrading.³⁷

SPLUMA has generated opportunities for improving land governance in Ekurhuleni. For example, the city was able to establish the Ekurhuleni Development Tribunal which supports decision making on development applications and advises the municipality. The municipality has used the platform generated through SPLUMA to establish by-laws, which enables it to identify informal settlements for upgrading and introduce development.

34 Kempton Express, 2018a.

35 Kempton Express, 2018b.

36 Mthupa, 2020.

37 City of Ekurhuleni, 2022.

Collaborations

There have been intergovernmental platforms set up to facilitate the interactions at various levels. The intergovernmental relations networks are mostly in housing, finance, and consumer participation. The Gauteng Intergovernmental Relations Framework (GIGRF) was set up in 2010 to review intergovernmental relations and structures in the province. The GIGRF facilitates intergovernmental relations and cooperative government within the broader policy and strategic context of the Gauteng provincial government (Mandisha, 2021).

Platforms

The private landowners in Ekurhuleni have an association which interacts with the City of Ekurhuleni. The platform is used for informing the private land holders about plans, new developments, opportunities, status of planning applications and the procedure for submitting planning applications to the municipality.

Bottom-Up initiatives

There are various community-based initiatives that are promising innovations for land governance in Ekurhuleni. These include self-provisioning of technical services by informal settlement dwellers, their work to secure land from the private sector and interventions by civil society organisations. There is potential in these innovations for the city to resolve some of its land delivery bottlenecks.





SECTION THREE

Conclusion

Land governance is a complex and dynamic phenomenon. The issue in South Africa is framed by plural land jurisdiction entities whose mandates are not consistent. Local authorities as the entity that deals directly with communities is the face of the state, province and global policy and legislation. This report drew from primary and secondary data to illustrate the experience of Ekurhuleni Municipality in land governance.

The report shows that although the local authority is the face of formal land governance, there are various stakeholders drawn from in and outside the state who influence land governance in Ekurhuleni. The report shows how historical, political and environmental concerns inform and frame land governance and Ekurhuleni's efforts to address the diverse challenges with land governance. Some of the challenges include land invasion, limited power to enforce legal provisions, land delivery bottlenecks, lack of mandate over some land parcels, stakeholder coordination, institutional coordination, limited capacity and reactive approaches to the land invasions and informal settlements.

The report illustrates that the municipality deploys several strategies to address the challenges of land governance in Ekurhuleni. The innovations include informal service provisioning, internal coordination, land delivery, land expropriation, policy making and providing platforms for multistakeholder collaboration. The municipality has also invoked legal provision to expropriate land from the private land owners. These efforts are complimented by the work of community organisations, the courts and civil society organisations. The civil society organisations play an oversight role, broker municipal–community impasse, community empowerment, community mobilisation and providing technical solutions. The community-based organisations are engaged in self-provisioning, proactive land acquisition and infrastructure provision.

There is need to align the IGR spatial land governance mechanisms in Ekurhuleni. This includes decentralisation of national offices that have mandates with a local impact like for DMRE for example. The IGR could facilitate release of land to the local authority by simplifying the existing laws and policies governing the process.

The local stakeholder platforms on land governance should be inclusive and accessible to the stakeholders. A comprehensive, transparent and accessible local land information system has potential to reduce corruption and improve efficiency in land management. The acknowledgement and scaling of community level innovations in land governance have potential to inform more efficient and less confrontational engagement between the local authority and its stakeholders. The role of civil society organisations in brokering, mediating and providing much needed capacity cannot be overemphasised.

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