



Land invasion Management

Policy

Adopted by the Council on
(date)

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LAND INVASION MANAGEMENT POLICY

Approved with immediate effect from (date)

1. INTRODUCTION

Both **state land** (land under the control of a national or provincial government or municipality) and **privately-owned land** can be invaded unlawfully.

A clear distinction must be drawn between trespassing and unlawful occupation. Trespassing is regulated by the Trespassing Act, 6 of 1959 and unlawful occupation by the Prevention of illegal Eviction and the Unlawful Occupation of Land Act, 19 of 1998.

The unlawful invasion of municipal land within the UMngeni Local Municipal area is a very big risk and therefore measures should be put in place to handle such invasions. This policy seeks to spell out procedures to deal with land invasion within UMngeni Local be it state land or privately- owned land.

2. LEGISLATION

There are two provisions in law which governs the handling of unlawful invasion of land:

2.1. The Constitution of the RSA, 1996

Section 26(3) states: *“No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”*

2.2. The Prevention of illegal eviction from Unlawful occupation of Land Act, Act 19 of 1998 (PIE ACT)

“No person may evict an unlawful occupier except on the authority of a competent court”

The **definition of a structure**, in terms of the PIE Act, 1998 also needs to be taken into consideration. In this Act, unless the context indicates otherwise-

“Building or structure” includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter.

Both unlawful occupation and illegal eviction from land infringe upon basic Constitutional Human Rights as entrenched in the Constitution. Government (including a municipality) should therefore deal with the constitutional rights of both unlawful occupiers and landowners in a careful and balanced manner.

The purpose of the PIE Act is on the one hand to provide for the prohibition of illegal eviction and on the other to provide procedures for the eviction of unlawful occupiers. **The purpose of PIE is therefore to protect both the occupier and the landowner and applies to all land within the Republic of South Africa.**

The definition of unlawful occupier in PIE reads as follows:

“a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997,(ESTA) and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act 31 of 1996”

2.3. The Trespassing Act, Act 6 of 1959

Trespassing means to gain access/entry to someone’s property without his/her consent.

3. ORDERLY MANAGEMENT OF URBANISATION: WHY IS IT NECESSARY?

3.1. Unlawful occupation of land/squatting takes place because of various reasons, such as:

- Poverty and unemployment
- Past policies that prevented people from obtaining housing in urban areas
- Shortage of legally obtainable housing alternatives
- Faster urbanization and natural growth than the development of housing in urban areas
- “Jumping the queue”, hoping to be helped to housing sooner
- Shortage of developed land in the vicinity of job opportunities
- Intra-urban migration to better-located land
- Encouragement of unlawful land occupations for political and financial gain
- The perception of unfair housing allocation
- The unlawful sub-letting and vacating of dwellings, leaving sub-tenants in occupation
- The illegal selling of land before the expiry of the applicable sales restrictions.

4. SCOPE

There is a definite difference between **PRIVATE** property and **MUNICIPAL** land. The uMngeni Local Municipality (any municipality for that matter) can only act **on their land** and may not take action on private property. This policy applies only to actions on municipal land but guidance is

also given with regards to the process on privately-owned land. It must be remembered that an invasion is not trespass or a criminal offence. It is a civil case and needs to be channeled through the courts. **Backyard structures are excluded from this policy.**

5. HOW CAN LAND INVASION BE PREVENTED

By taking a few basic measures, unlawful occupation of land can be contained with reasonable effectiveness. The following preventative measures, although not exhaustive, are recommended for effective containment:

5.1. Identification and prevention

- Build a database of existing informal settlements within UMngeni Local Municipal area;
- Such a database should contain information on at least the number of people, their identities and age of the inhabitants of each settlement;
- Mark and number each structure that is on the database;
- Do not allow unauthorized extensions to existing structures, since this encourages the unseen growth of informal settlements. It might also be a good idea to take photographs of the structures to properly identify it as far as future extensions are concerned;
- Identify land (not only municipal land but all land in the jurisdiction of the municipality) that is likely to be invaded, as well as the details of ownership;
- If possible --fence off municipal land that is likely to be invaded;
- Erect signage to warn prospective invaders ; and
- Lighting should be considered, if feasible

5.2. Communication

- Establish a working relationship with the ward committee members in the particular community to assist with curbing the growth of the informal settlement;
- Sensitize all officials in the municipality (Traffic & Law Enforcement, Building inspectors, housing, engineering, community development, etc.) to monitor , note and report incidents of invasion/ unlawful occupation;
- Appoint a single person as lodging point for unlawful occupation and eviction complaints – this person should also be responsible to initiate the appropriate action;
- Inform both the community and municipal officials about the proper procedure and contact persons in the lodging of an unlawful occupation/eviction complaint;
- Inform all land owners about their rights and responsibilities as far as the protection of their properties is concerned; and

- Procure and maintain a good and working relationship with SAPS to ensure swift action against invaders.
- The South African Police Service (SAPS) will assist with ensuring the safety of municipal officials and occupiers and to maintain law and order.

6. PROCEDURE TO FOLLOW WHEN LAND INVASION ON MUNICIPAL LAND OCCURS

- Structures in the course of erection and not yet occupied may be demolished in terms of “counter spoliation.”
- When invasion are reported, law enforcement officers will be sent to access the situation --- is it land invasion or vagrants?
- If land invasion, alert all parties i.e. Municipal Manager, Executive Mayor, Director Protection Services, Chief of Traffic & Law Enforcement Services and SAPS.
- **Ownership of the land** in question needs to be confirmed by the **Economic Development, Planning and Human Settlement Department** of the Municipality. Make absolutely sure whether it is municipal land or private property.
 - The **Economic Development, Planning & Human Settlement Services** must help to confirm the ownership of municipal land.
- Determine the number of as yet uncompleted and un-occupied structures and remove them immediately and take the material of the structures to the municipal yard.
- Determine how many structures are already occupied.
- **When structures are already occupied** (Signs of living) the Building inspectors with the help and back-up of Law Enforcement will serve notices on all occupiers that they are on the land without the permission of the municipality and that legal steps will be taken against them for their removal.
- **Confront invaders** with the instruction to vacate the property voluntarily.
- Full detail of all the facts that led to the land invasion needs to be kept.
- Officials/ staff members who attend to this land invasion issues will be required to state all the facts/information in affidavits that will be placed before the courts. **It will also be required of staff to give expert evidence in the courts.**
- Officials/staff members **to take photos** of the illegal structures.
- The invaded area/ land needs to be monitored to prevent further land invasions.

7. COURT ACTIONS

- Lay a charge as quickly as possible, or encourage the owner of the land to lay a **charge of trespassing** at the SAPS, conveying details of the property and the municipality’s and/or land owners capacity to act.
- The **first step** is to prevent further invasions by **obtaining an interdict**. An interdict can be obtained within hours. Remember that we cannot remove occupied structures.

- **Second step** is to **obtain an eviction order via the court** for the eviction of illegal occupants and removal of the occupied structures – the Municipal Council lawyers to handle this.
- If the interdict is granted the sheriff will serve the notices.
- If in this process new invaders (against whom the interdict is applicable) move onto the municipal land, charges of “contempt of court” may be laid. SAPS will then be in a position to arrest the new invaders and vacant structures may then be removed.
- If the court issues eviction orders, the sheriff assumes responsibility for the removal in conjunction with SAPS and the UMngeni Local municipality.
- **NB:** The local authority /municipality has *locus standi* to bring an eviction application, where the owner of the land, notwithstanding the municipality’s request that they do so, has failed to evict unlawful occupants, and if such removal of unlawful occupants is in the public interest.
- **The municipality may give notice to a private owner to bring an action in terms of section 6 of PIE for eviction if it is in the public interest to bring an application and the relevant land owner refuses to do so.**

8. CONCLUSION

Both municipalities and private land owners find it very difficult to deal with unlawful occupation of land /and invasions. This policy document is an effort to guide the UMngeni Local Municipality to act swiftly and within the ambit of legislation.

9. IMPLEMENTAION OF THE POLICY

The policy shall be implemented after consultation with the UMngeni Local Municipal Management Team, Council Lawyers and SAPS and the approval of the Municipal Manager.

This policy was approved by the Council Committee on (date) and is immediately effective.

REFERENCES

1. The Constitution of the Republic of South Africa,1996 (Act 108 of 1996)
2. Prevention of Illegal Eviction from and Unlawful occupation of Land Act,1998 (Act 19 of 1998)
3. The Trespassing Act, Act 6 of 1959
4. Government of Republic of South Africa and Others vs Grootboom and Others 2001(1) SA426(CC)
5. Criminal Procedure Act,1977 (Act 51 of 1977)
6. uMngeni Land Use Scheme, of 2020
7. National Building Regulations,23 of 1985