

ICLD Teaching Case

Backyard rentals, municipal connections, and the right to housing¹



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Photos: Jaap de Visser

Learning objectives

This teaching case introduces a scenario involving backyard dwellers in a city in South Africa and raises the question of whether the municipality should provide connection points for municipal services to backyard dwellers. It presents a dilemma between the right to housing on the one hand, and municipal concerns around planning, legal matters, safety, funding for infrastructure investments, on the other. More specifically, it presents a dilemma between two imperatives, namely (1) realising the right of access to housing for the poor, and (2) the need to integrate service delivery in a sustainable manner into municipal systems. Moreover, the teaching case encourages municipal practitioners to incorporate a rights-based perspective into town planning and municipal service delivery decisions.

Case description

From 2019 to 2021, the fast-growing Protea City has experienced both internal growth within the existing city population, and an increasing trend of rural dwellers moving to Protea City in search of economic opportunities. A key challenge for the city was the desperate shortage of housing, particularly for the low-income sector. Many of the rural dwellers that moved to the city arrived without access to formal housing and were often forced to integrate into informal settlements.

Protea City had a progressive housing policy to provide access to housing opportunities for everyone. In terms of this policy, it had set a target to build 4000 housing units per year. This was expected to go a long way to clear the backlog of 21 000, which represents the number of households that are on the waiting list for subsidised housing. The city had done reasonably well in trying to meet this target. However, the population growth meant the city could not 'keep up' with the growing housing demand, let alone clear the backlog of housing construction for low cost, subsidised housing. The backlog has thus remained approximately 21 000 housing units over the past few years, despite the City's efforts at creating new housing opportunities.

In many of the lower- and middle-income suburbs of the City, so-called 'backyard rentals' have emerged. A backyard rental refers to the phenomenon where people would informally rent a portion of an existing land

¹ This case study is fictional but informed by real life practice. It is adapted in order to apply to different countries.

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parcel and build informal dwellings, relying on the landlord's access to municipal services. The latest census results indicated that 13% of households in Protea City were so-called 'backyarders'.

A study, carried out by the local non-governmental organisation DignifiedLiving, showed the benefits of backyard rentals. The report listed five key advantages. In many cases, backyard dwellings:

1. were affordable, flexible and responded to the housing shortage in the city;
2. contributed, in an organic way, to densifying the city;
3. facilitated access to housing for the poor;
4. facilitated access to economic opportunities for backyard dwellers; and
5. provided rental income for property owners, many of whom were older women.

However, backyard dwellings were not formally recognised, thus they lacked municipal services and town planning arrangements. Backyard dwellers relied on the landlord for access to basic municipal services, such as sewerage, electricity, and potable water.



Backyard Dwelling South Africa

Photo: Jaap de Visser

The leadership of the city had been observing this trend but is uncertain as to how to respond. The Mayor was sympathetic to the backyarders' plight, and saw benefits in incorporating the backyard rental market into the City's approach to addressing the housing shortage. He was worried that the city would be unable to close the housing gap without formally recognising backyard dwellings. However, his officials had concerns with respect to the legal framework, pressure on municipal infrastructure, building regulations, zoning regulations and the impact on property taxation.

Civil society and representatives of backyard dwellers started urging the municipality to ensure that backyard dwellers were independently connected to the municipal grid. A local movement called *BackyardersUnite* had been campaigning for the recognition of the backyard rental market. It urged the municipality to install separate municipal service points for water, sewage, electricity and waste collection for backyard dwellers. *BackyardersUnite* launched a campaign, called #Dignity4backyarders and submitted a petition to Alderman Phala, the Mayor of Protea City.

Soon after, Alderman Phala decided to convene a workshop to better understand the plight of backyarders, and he invited *BackyardersUnite*, the councillors on the Council Committee on Community Services and

Human Settlements, and his senior management team. He also invited a group of property owners that broadly represented the landlords who rented out their backyards informally.

Ms Thuli Namilonga, representative of BackyardersUnite, made an impassioned plea to the Mayor:

“Please recognise our dignity, Mr Mayor! We really cannot be at the mercy of the owner for our dignity. We are willing to pay for our own services, if you just ensure that we get our own bill.”

She shared some of the backyarders’ challenges in having access to services:

“Some of the landlords deny our people electricity. They charge twice the amount that the city charges, simply because they can! Also, the electricity connections to the landlord’s house are often unstable or even unsafe!”

Mrs Hendricks, who owned two properties with backyard dwellers renting from her, offered another perspective:

“It doesn’t work for our tenants to be supplied by us. The taps and pipes are expensive to install. Also, we are punished by the city in our electricity tariffs. Because the higher our consumption, the more we pay for each unit of electricity! I don’t use that much electricity so I pay the lower prices but because my tenant’s family uses a lot of electricity, my prices also go up!”

Then Ms Sibonile Ncube, Protea City’s Chief Financial Officer took the floor. She remarked:

“I understand that it is a problem but I do have a number of concerns. First, these informal structures do not generate any additional property tax income. The valuation roll doesn’t capture the value of these informal structures. We’re just taxing the main structure. So if we install service points, how will we fund these services? Also, I don’t want to speak on behalf of the Disaster Management Department but shouldn’t we discourage the building of these dwellings? All these extra, illegal structures make it impossible for our emergency vehicles to enter those areas when there is a fire or a medical emergency.”

A representative of the legal department, Mr Maambo, expressed the following concerns:

“My first problem is this: how do we know whether the backyard dwellers live there with the permission of the owner? Sometimes these arrangements are very informal and difficult to trace. Also, I can’t see how we can do engineering work on property that is not ours. Don’t we need the consent of the owner first? And are we not using municipal funds to enrich certain individuals? I mean, the value of those properties will increase if we put in service connection points and the owner doesn’t need to do anything. He just leans back and watches us use taxpayer’s money to boost his wealth!”

Finally, Mr Molefe, the manager of the Planning Department explained his concerns:

“You know, when these neighbourhoods were created, they didn’t anticipate all these extra households. So the available infrastructure is already feeling the pinch. The sewerage pipes are simply not wide enough and the pressure on the electricity substations is already too much. If we install separate service points for each backyard dwelling, we will see more consumption and pressure on the bulk infrastructure. We would have to upgrade the bulk infrastructure as well, otherwise we will have problems down the line.”

Ms Phiri, a young woman from Acacia Heights then remarked:

“My landlord shuts down the water supply when I am one day late with the rent, and then I have to beg for buckets of water from him. If only we had our own connections, we would not have those problems.”

After a full day of conversations, the workshop ended and the Mayor committed to developing a policy on municipal services for backyard dwellers.

Discussion questions

After reading the case study, consider the following discussion questions:

1. If you approach this scenario from the point of view of Ms Phiri and Ms Namilonga (representatives of the backyarders), which human rights do you think are at play here?
2. Are those human rights listed in your country's constitution? Do you think they are recognised in international law?
3. Is Protea City responsible for fulfilling those rights?
4. What does Protea City stand to gain from adhering to the request of *BackyardersUnite*?
5. What can the municipality do to improve Ms Phiri's and Ms Namilonga's living conditions? Can it do so without making investments?
6. What do you think will be the consequence of the municipality not installing service points? What is likely to happen and how will this affect the municipality?
7. If you approach this scenario from the perspective of the municipality, what are the five most important impediments to adhering to the request of *BackyardersUnite*?
8. What would be required of the stakeholders in these areas, i.e., landlords and the backyard dwellers, to overcome these impediments?
9. What would be required from the municipality in terms of changes to policy, law and/or the budget to overcome these impediments? Do you think it is possible?
10. Does your city have similar issues lack of housing for low-income families? After reading this case, what human rights do you think are not fulfilled?

Case reflections and potential endings

Managing backyard rentals via traditional municipal regulations is complicated. However, approaching backyard rentals with a focus on the right to dignity, the right of access to housing, the right to safe environment, the right to water, and the right to other basic services helps present the possibility of creative approaches, a number of which are suggested below. They are based primarily on an existing practice and a policy document, prepared by the South African Local Government Association³

When municipalities choose to ignore backyarding in their areas, they risk encountering serious problems later. As Tshangana remarks, it may lead to “over-burdened services, unregulated urban environments, and

³ Alison Tshangana, *Local Government Position on Municipal Responses to Backyarders and Backyard Dwellings* SALGA: May 2014.

at its worst, anarchic and slum-like conditions of high density, fire and health hazards”. The following five points may assist in the development of a municipal policy to constructively address backyarding and include it in a municipal housing policy.

First, in order to address the pressure on infrastructure, it may be necessary for the municipality to upgrade the existing infrastructure. In general, bulk infrastructure in any event requires regular maintenance, and it may be possible for the municipality to use the regular maintenance of infrastructure to increase the capacity to accommodate backyarding.

Second, in order to deal with the cost of installing these service points, municipalities can consider accessing housing grants. Often, housing grants are destined for new developments but increasingly also for ‘upgrading’ informal settlements. Of course, the grant regime will differ substantially from one country to the next. However, municipalities can be encouraged to examine whether their housing grant regime offers possibilities to fund the additional infrastructure. If it does not, it may be an issue of advocacy with the national government.

Third, to deal with the problem of ‘illegality’, the municipality must consider adopting a policy that is dedicated to the issue of backyarding, but addressing it from multiple angles, such as town planning, financing, regulation and access to services. The municipality may consider adopting town planning instruments that permit owners to have more than one household/dwelling on their property. It may consider amending existing building regulations and developing a separate set of standards for this informal rental market. Some municipalities in South Africa have done so by allowing this as a new ‘standard’ on residential zoning. Other municipalities have applied special zoning regimes to areas with a high number of backyard dwellings. Bringing backyard dwelling out of the shadows and ‘into legality’, enables their integration into the municipal system and opens up possibilities to finance infrastructure requirements.

Fourth, in order to deal with the ‘consent’ issue, municipalities can negotiate with the landowners for permission to access the property and install the backyard service point. Ultimately, the ownership of the service-point would transfer to the owner, but the municipality enters into a contract directly with the tenant.

Fifth, municipalities can also intervene in the rental market itself and empower owners to be ‘better landlords’ to the backyard dwellers. Often, a lack of access to finance prevents these owners from investing in their rental property. The municipality can investigate whether it can play a role in connecting the owners to finance institutions or perhaps even guarantee or leverage funding to help landowners improve their properties for the benefit of their tenants.

In summary, the municipality can recognise the backyarders, not just as a regulatory problem, but as a community of individuals with human rights. While strictly speaking, backyarding may be unlawful, it can help the municipality solve housing shortages and densify the urban landscape. With the necessary assistance, combined with regulatory approaches, the municipality can harness these positive effects, while still minimising the negative effects, such as overburdened services, health hazards and chaotic conditions.