

# **Complaint, and request for holding a Public Hearing.**

**Lodged with  
The South African Human Rights Commission.**

**Concern: rapid public health deterioration in  
Masipumelele, a residential area within the precinct of  
the City of Cape Town.**

**Submitted by Tshepo Moletsane  
Resident and community leader,  
On behalf of the residents of Masipuhmelele.**

**Supported by Ubumelwane, an interest group of residents in  
neighbouring suburbs of Masiphumele.**

**March 2016.**

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Appended to this submission are recent photographs that support this submission.



An aerial view of Sections D and E in Masiphumelele. Brick houses can be seen to the south, and 'wetland' to the north. Two of four stagnant water canals can be identified.



An aerial view of the same area, after Sections D and E burnt down on 29 November 2015. 1123 structures were destroyed.

## Summary.

Conditions in the informal 'wetland' section of Masiphumelele (Masi) are a longstanding and current threat to the health of at least 15,000 residents.

- **Overcrowding** leading to frequent and devastating fires that have rendered thousands homeless in the past 12 months.
- **Totally inadequate sanitation:** There is one toilet per 100 persons. The City says they provide 1 toilet per 25 residents.
- **Insanitary and dangerous storm water** canals that contain stagnant wastewater with high faecal content. Children play on rickety bridges across the canals. Washing is done above the canals. Many people sleep, wash and eat without ever being more than a few meters from polluted and smelling sewer water. Many houses exist on soil kept moist from the canals.
- **Unsafe and insanitary living conditions:** Many houses are built on mounds or stilts in unsafe water that spreads from the canals like a delta into the 'wetland'.

All these conditions could be averted if the City would allow access to land bought expressly for Masi's expansion in 2004 and 2014.

The urgent health concerns in Masiphumele are intertwined in a confluence of factors which includes deficient planning, perverse budget priorities<sup>1</sup> and poor services delivered by the City of Cape Town to the people of Masi. This happens on the back of grinding poverty, the lack of access to available land, rapid and inevitable urbanisation, the exceptional density of dwellings, frequent and massive fires, and resultant social consequences.

## 2. History, geography and social factors.

Around 500 people settled in the area, then known as Site 5, in the 1980s. During apartheid residents were continually and forcibly removed to Khayelitsha, over 30 km away, but those settling increased once apartheid unraveled from 1990 onwards. People are attracted to the area because of favorable employment prospects.

Site 5 was renamed **Masiphumelele (i.e. Masi)** by its residents. Its isiXhosa meaning is, "We will succeed" (literally "Let us succeed"). The occupied residential surface of Masi has remained essentially static since its formal establishment, despite its population having trebled in the last 20 years.

In 1990, about 8000 people lived in the area, mostly in shacks. By 2005, over 26000 people lived here. From 2009 access to housing subsidies led to brick houses being built. This displaced many who lived in informal structures who then moved into the 'wetland', which opened up the area for new arrivals. Subsequently, those in formal houses rent out shacks in their yards to so-called backyarders, opening up a strong new rental sector. Single family houses have become the space for 5 and more families. 'Back-yarding' is preferred living space, especially by those who have been the victims of 'wetland' fires. Needless to say 'back-yarding' does not come with flush toilets and water and electricity is 'hooked' on to the main house' facilities.

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<sup>1</sup> The on-going cost of starter kits when fires could be avoided, the purchase of 2 pieces of land for Masi housing the City now seeks to get rid of, the expense of an inappropriate road (R27m), the move of the fire station (R25m), are examples.

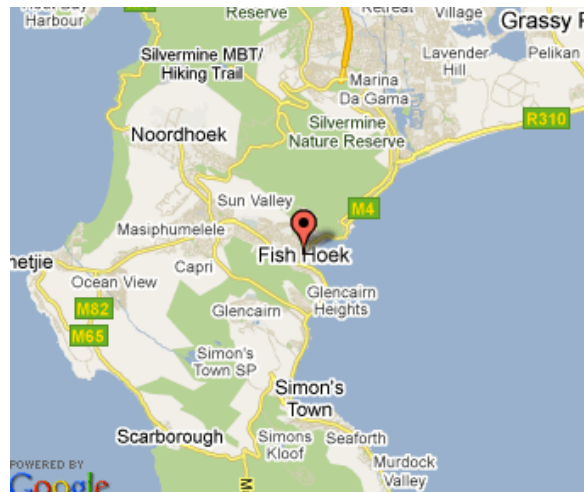
A 2010 survey conducted as part of a Ph.D project put the figure for Masi residents at 38,000 plus.

Unreliable 2011 census figures 'counted' 21,904 people in 6744 households at 3.2 persons per household. The stats also claim 95% coverage with flush toilets, 99% access to electricity. The calculation of 3.2 people per household is only credible for those households surveyed and not for the large number of those in the informal areas likely to have been missed by the census. The stated service levels are even less credible when taking the 'wetland' area into account<sup>2</sup>.

For 2016 it is reasonable to work on a figure of at least 40,000 people living in Masi, 15,000 of whom live in the 'wetland'.

The majority are people from the Eastern Cape in search of work, but Masi is also home to migrants from other parts of Africa.

Masi's living space is less than 2 square kilometers in extent. Designed with prevailing apartheid attitudes and motivated by control over its residents, Masi had only one access road, Pokela Road. More than two decades have passed since the fall of apartheid, and only after protests over many years, the building of a second access road (Houmoed Road) is under construction.



Domestic work, jobs in the hospitality sector and an array of small industries are the main sources of income. The security guard industry and local Government are also notable job providers. There is a growing and diverse retail and service industry inside Masi itself. They have however not been able to break through the glass ceiling to sell or operate in surrounding areas.

In 2008 a series of protests swept through South Africa. Foreigners were also displaced from Masiphumelele. Several days after immigrant-owned shops were looted and foreigners attacked, Masiphumelele residents publicly apologized and asked them to return. In recent times, protests have been against drug dealers and the failure of the police to effectively deal with this scourge.

Masi has a primary and secondary school. The volatile social climate has contributed to school students staging their own protests and marches.

After years of requests and protests, a temporary and inadequate Police Station (mobile vehicle) was finally located in Masi at the end of 2015. Bear in mind that half of the Fish Hoek/Kommetjie/Noordhoek area's population lives in Masi.

Masi has a well-functioning library, a clinic with limited resources, and also is home to a large number of NGO's (NPO's), mostly active in the health (HIV-Aids) and education sectors.

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<sup>2</sup> For information go to: [www.masicorp.org](http://www.masicorp.org)



The geo-demographics of the valley, from Fish Hoek to Noordhoek and Kommetjie, can be roughly broken down like this:

The Valley comprises about 40 square kilometers with a total population estimated at 80,000. If the valley were to be equally divided this would afford 500 sq. meters per resident on average. The reality is very different. Below figures are indicative and intended to show the extreme disparity between rich and poor:

- Masi: ca.1-2 square kilometers. With a population of ca. 40,000 there is 50 sq. meters p/p, (or 7x7 meters p/p) (91 sq. m p/p according to the 2011 census).

- Ocean View: 1.75 square kilometers. With a population of ca. 15,000 each person has 117 sq. meters p/p. (The 2011 census provides a figure of 13,559 for this area. Migration to this area is assumed to be low, compared to Masi)

- Affluent suburbs have ca. 36.25 square kilometers and with a population of 20,000 (maybe 25,000 because suburban development is booming!). Here density is 1,450 sq. m. p/p.

Masi's expansion is constrained in that it is an insular village in amongst middle and upper-middle-class suburbs. Race and class define Masi's socio-economic position. Less penetrable boundaries are: Kommetjie Road, the industrial park (Fish Eagle Park), Capri suburb, National Parks conservation areas and City-owned conservation areas.



**LOCALITY: MASIPHUMELELE PHASE 4, STAGE 1 AND ERF 1912**

Above map provides more detail but is obscure about Erf 5131. The Erf comprises all of Stage 1 and 2 and the sports field and the part now covered in Port Jackson bush. It also uses the term 'wetland', a term that is disputed as being a correct description. This City map does not identify the road reserve through the wetland.

Congestion due to population concentration is at an all-time high. Out of date data about Masi has resulted in the inadequate provision of the services required. In the informal parts there is a desperate shortage of communal taps, toilets and electricity access. Facilities are serviced in some areas but are poorly or un-serviced in others. Four discharge canals have not been cleared/unblocked by the City since 2004, according to an authoritative City source. These canals

are meant to discharge water into the so-called wetland but they are choked and all discharges remain stagnant in what are now open sewers amidst hundreds of homes. The lack of sufficient toilets has made these sewers a place for night soil also.

### **3. Context of the public health threat.**

Below are factors that pose a threat to public health.

#### **3.1. The fires in Masi:**

Frequent and devastating fires aggravate poverty and congested living conditions. Much speculation goes into what causes the fires. Suggestions that drug dealers avenge themselves when the community campaigns against their presence ring hollow. The more likely sources are unsafe cooking facilities, open fires, illegal electricity connections and improvised electricity distribution (from legal sources) inside the informal houses.

Fires have caused loss of life, loss of possessions and identity documents. The repeated fires and the constant fear of another fire whilst asleep or at work, impose a reality, those not living in Masi cannot begin to imagine. Trauma is a distinct condition with many people. The impact of starting a home anew creates an existential culture in which short-term planning replaces any hopes of a better future.

Herewith an incomplete but telling list of fires in Masi:

1. The earliest fire was recorded in 1978 when people lived here in defiance of apartheid policies.
2. In 2006 a fire swept through the area known as 'school site'. 400 homes burnt down, ca. 1200 people were left homeless. Of them 120 families continue to live in an area designated as 'temporary' and known as TRA. In response to the fire, a first private-public housing project came about, called "Amakhaya ngoku" (Homes now) and provided flats for 232 families. The 120 families who live in the TRA continue to wait for the Amakhaya ngoku housing project to be completed<sup>3</sup>.
3. There were large-scale fires in 2008 and 2010.
4. In May 2011 a fire destroyed 1000 homes and made 6000 people homeless. One person was killed.
5. In March 2012, a fire razed 365 homes to the ground, leaving 1500 people homeless. One person was killed.
6. Later in 2012, these same residents were affected by heavy flooding.
7. On 1 December 2013, some 50 homes burnt down, leaving 200 people homeless. Four people died in the fire.
8. On 23 May 2014, a fire razed 250 homes to the ground, leaving 1000 people homeless.
9. On 29 November 2015, a fire burnt 1000 homes to the ground and 4500 people lost everything. Two people died in the fire.
10. On 12 February 2016, a further 150 homes burnt down leaving 600 people homeless.
11. On 27 February 2016, a fire in a home killed a mentally disabled youngster, a death that could have been prevented had the social service better served the area.

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<sup>3</sup> For further information go to [www.amakhayangoku.co.za](http://www.amakhayangoku.co.za)

### 3.2. The Land issue.

Sections A to E informal housing penetrate into a so-called 'wetland', proclaimed under City jurisdiction. This penetration is happening because the City is unwilling to give access to land it bought for Masi's expansion elsewhere.

The appropriate status of this 'wetland' is the subject of dispute. Sanparks, on its maps, have removed the name 'wetland' and replaced it with 'reed beds', because the environmental status has long been compromised.

Further questions arise because at least 50% of this 'wetland' is zoned as 'road reserve' under City jurisdiction!

On the opposite side of this wetland is an upmarket, gated development known as Lake Michele, built into the same wetland. It is less than 150 meters from Masi houses in the 'wetland'. The houses of Lake Michele were built legally, yet the City describes Masi houses as illegal. In the former case suitable EIA's, RoD's and mitigation measures were put in place. Such measures come with a significant price tag, which is one reason the same is not done for Masi residents.

Other reasons this 'wetland' has been compromised is that it is the catchment area of water, from surrounding suburbs (including Chapman's View, still under construction). The impact on this 'wetland' is possibly the severest from Masi, due to its poor or absent sanitation infrastructure and the fact that Masi houses two-thirds of the valley's population.

Sewage and refuse have compromised this wetland for at least 15 years. The aerial photographs (above) partly show the impact. Here vegetation (mostly reeds and alien grass) is discolored due to human impact. Without doubt there is a secondary impact on the wetland beyond this area. Hundreds of residents will testify that they have a system of 'islands' through the reeds, which serves as the 'toilet' area.

There are three land issues that demand discussion in order to solve the problems identified:

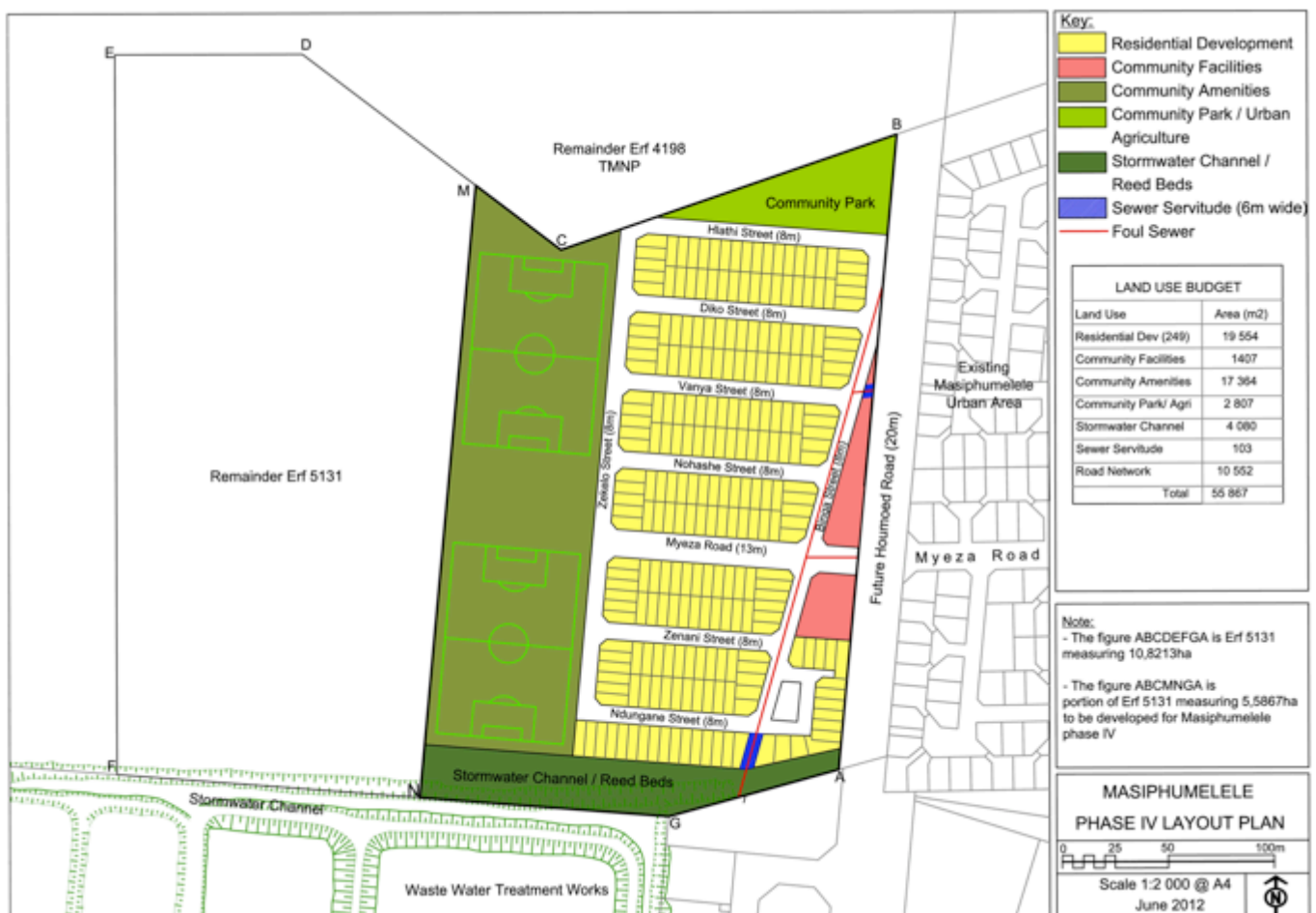
1. Can the 'wetland' that Masi residents encroach be salvaged and managed properly? To do so should involve building a sustainable set of 'waterfront' gap houses as a buffer between unregulated housing and the wetland. This requires political will and drive. It also involves dealing with that part of the 'wetland' zoned as 'road reserve'
2. Below is a description of issues pertaining to Erf 5131. Part of its western edge, 5.32 hectares, was bought for Masi housing. Subject to the revocation of its RoD, it would serve as land that can most easily and quickly be made suitable to relieve the social pressure on Masi.
3. The City of Cape Town bought 5.4 hectares of Solole (a former game farm) in 2014 (the other part being bought by Sanparks). The City bought the land explicitly for 'gap' housing for the upwardly mobile of Masi and wider population. The City's appetite for this has suddenly waned. The City now plans to build a fire station here (estimated cost is R25 million). (The implication is that Masi fires will continue and the City will continue to deal with symptoms rather than the causes of fires). A sound case can be made for a 'gap' suburb on 'Solole farm' land, and once again relieve pressure on Masi.

### 3.3. Instructive: Reasons why gridlock has led to people being moved around like pawns on a chessboard.

1. Two and half blocks of prospective housing (Phase 4) cannot be built because victims of the 2006 fire (120 families) live here. Their prospects to be properly housed look dim for

reasons described below. (The 2.5 blocks are marked in yellow, which extends from Myeza Street southward. The 2006 fire victim's area is known as TRA (Temporary Residential Area).

2. The 'School Site' where the flats for the above 120 families are meant to be built, is occupied by 70-odd dwellings with some 350 people, who state that they will only move on condition they know the land they are sent to is not water-logged in winter, and that they know where they are to move to. Because they have work in the Southern Peninsula, they are averse to be moved to places like Delft.
3. The TRA residents have themselves been moved to the current site in 2014, from another temporary site 400 meters north of where they are now. They did so voluntarily to make way for part A (Phase 4). Part B cannot be built because there is no plan for the TRA. This development has been in the making for the past 12 years.
4. On the above map, 228 houses are to be built (Phase 4) in the area marked in yellow, north of Myeza Street. The initial plan to build 324 is compromised because of the 120 families on the TRA site.
5. The other 2006 fire victims today live in 232 Amakhaya Ngoku flats. Attempts to transfer the flats to the City administration, so they can be effectively managed, have failed to date.
6. Because the remaining 120 Flats cannot be built, millions of Rands in overseas donor money has been forfeited and has to be returned to donors.



The above map is on the western edge of Masi, showing Erf 5131:

7. The pink triangular slice of land has become the home of part of the 29 November 2015 fire victims. The City erected these emergency shacks for part of those who were accommodated in the community hall after the fire. The shacks are 3x3 meters, badly built on subsiding rubble and in various instances have no windows. A less than one-



meter wide corridor separates two rows of wall-to-wall shacks. No plans for their future have been announced, but current conditions are untenable.



8. The triangle referred to as 'Community Park' was a site of rubble but has recently been levelled. This site is to accommodate some of the families living on the pink oblong shaped space. They have to make way for "a bus stop". It involves the removal of at least 10 shacks. The remaining space of the Community Park, the City says, will be for the remaining people who have now been living in the community hall for more than three months, when the fire displaced them.
9. The sports fields (marked with lines for soccer matches) are a welcome facility, but are wrongly located. They should be on the western (left) side of what is referred to as Remainder of Erf 5131. Here they would have been a suitable 'buffer' to the adjacent Sanparks land.
10. The City considered a preferable and empathetic design for Erf 5131 in 2006. Its objective was to integrate the purchased land into Masi. Regrettably, the City rejected the plan. This would have been an environmentally sound and safe alternative that triples the current Phase 4 housing development area. See the diagram at end of paper. (Note how the aerial photo, on to which the plan is placed, compares with the aerial photos at the top of this submission. Density of population now bears no comparison to 2006)
11. The area referred to as Remainder of Erf 5131<sup>4</sup> could relieve pressure on the areas where a chess game of moving people between parcels of land is currently taking place. Instead, the City seeks to return the western part of this Erf (more than 5 hectares) to Sanparks; land the City bought from Sanparks in 2004, to accommodate Masi expansion. This land is currently zoned 'environmental' but people with detailed knowledge of it state that it has long been a site for dumping rubble and excavation of sand from it. It is currently covered by invasive Port Jackson bush. Erf 5131 is one suitable area to relieve the pressure for housing in Masi, whether for informal homes, or future formal housing.
12. 'Remainder of Erf 4198' is Table Mountain National Park Land (Sanparks) and rezoning it for Masi expansion is not an easy option.
13. The unmarked oblong at the top right corner of the map is part of Section E of the 'wetland'. To its right are 'wetland' housing sections D, C, B and A. Over 50% of this area has burnt down (some of it twice) in the past three years.
14. The yet-to-be-completed 600 meter long Houmoed Road comes with a price tag of R27m. This is considered excessive in light of it not linking or leading to another road network. At the end of it is to be a mere roundabout.

#### 4. The health hazard in the 'wetland' section of Masi.

<sup>4</sup> The whole of Erf 5131 the City bought for R1.5m in 2004 is 11.4 hectares.

#### 4.1. A violation of the Bill of Rights:

Public health in Masi is not a new problem but goes back for more than ten years despite being known by the City.

This is a situation of gross neglect and failure to ensure access to rights as granted in our Bill of Rights:

**Section 10.** “Human dignity. Everyone has inherent dignity and the right to have their dignity respected and protected.”

**Section 24.** Environment. Everyone has the right-

- (a) To an environment that is not harmful to their health or well-being; and
- (b) To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
  - (i) prevent pollution and ecological degradation;

We remind the City of Cape Town that the objects of local government are:

- (a) To provide democratic and accountable government for local communities;
- (b) To ensure the provision of services to communities in a sustainable manner;
- (c) To promote social and economic development;
- (d) To promote a safe and healthy environment; and
- (e) To encourage the involvement of communities and community organisations in the matters of local government.

#### 4.2. A violation of the 2005 Children’s Act:

The Masi situation reflects failures in regard to the protection of children's rights. We note:

**Chapter 1 of the Children’s Act** (Act 38 of 2005) interprets the care of children to include provision of:

“... living conditions that are conducive to the child’s health, well-being and development;”

The City, not only parents, has a duty of care in this regard!

**The UN Convention on the Rights of the Child** (ratified by South Africa in 1996) and to which local law must be aligned, states in **Article 24**:

“2. State Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, **taking into consideration the dangers and risks of environmental pollution**”.

#### 4.3. As regards the physical conditions we assert:

1. The area has four storm water open drains. The canals drain approximately 75% of Masi storm water (which possibly accounts for 10% of the surrounding area’s total storm water). With several more years of drought anticipated, rain water is not a source to rely on to clear the drains in the summer months.
2. The maps on page 2 identify two of the four drains, flowing in a northerly direction into the ‘wetland’. They separate residential sections C, D and E. Two more drains are east of aerial photo and go through Sections B and C.

3. The 'wetland' (reed beds and road reserve) to the north make for a very shallow water table. In winter, the water of the area rises and pushes up into inhabited areas. Occupants are currently collecting soil in buckets from other areas to elevate the inside of their shacks to keep water and moisture at bay. They also tell of strewing cement dust on their floors to create a hard surface. Such procedure gets repeated when the moisture penetrates once again through their floor covering.
4. The four canals are filled with effluent of various origins. In places the effluent 'bubbles' and the stench throughout the area is persistent. Residents access clean water through communal taps, often standing in queues to wait their turn. This water is for cooking and washing. The used water is tossed into the canals. Due to the desperate shortage of toilets, anecdotal evidence is that night soil is also tossed into the canals. This is because access to toilets 'at peak hour' in the mornings is intolerable. (See toilet figures below).



5. The poor servicing of sections of the communal toilets exacerbate the sanitation problem.
6. The 'wetland' area north of the area where shacks are built, people tell, serves as a toilet area. People speak of a trail of islands in the area that provides wide access throughout.
7. The inadequate numbers of toilets, and locating them accessibly to people, lies at the heart of the problem. Officially, the City aspires to one toilet per five homes (estimated at 25 people) in informal settlement areas. The reality is very different. The City Council disputes the 2011 census figures that stated 2110 shacks (10,550 occupants). Using aerial photos, a later survey identifies 2775 shacks (13,875 occupants). New aerial surveys will need to take account of the large increase in double-storey shacks.

Expansion now happens in two ways: new areas are explored in the reed beds ('wetland') while there is also the growing phenomenon of double-story shacks.

For the 'wetland' area from Sections A to E (790 meters from east to west), we are working on a figure of at least 15,000 people currently living or returning to the area after the November 2015 fire.

This area is serviced by 146 toilets, 110 of them on the western edge of Section E.



For those living at the far end it, it is a 800 meter walk through narrow pathways to get to the toilets, or accessing the remaining 36 toilets that are poorly serviced (several that are out of service, for prolonged periods).

On the assumption that the City aspires to 25 people per toilet, there would need to be 600 toilets for a population of 15,000. This would only be tolerable if toilets were evenly located across the area.

103 persons per toilet! That is the present reality! Until and unless the City commissions appropriate research, we demand that the above figures are closest to the reality. The City calculations of residents in the informal settlement are wrong!

We can make our point no better than through a series of photographs that were taken in early March 2016. Please see attached.

## **5. The Masi plea.**

**Masi residents want to speak and testify about their physical conditions, anxieties, fears, threats and the violent conduct of the anti-invasion unit. In sum, they claim access to adequate land, housing and sanitation, as safeguarded by the Constitution of our Bill of Rights.**

Residents from the 'wetland' area want to explain the impact the fires have had on the lives. They also raise their voices against the City who supply 'starter packs' (poles and corrugated iron) and have, since the November fire, torn down (or partly torn down) some of the re-built shacks on three separate occasions. The City says, either the shacks re-built are "too big" or that they encroach on land they consider illegal to build on. But people lived here before, often 15 years and longer, but the City has now shrunk the land they live on.

**The residents of Masi appeal to the South African Human Rights Commission. Masi's plea has been ignored by the City of Cape Town administration. We beseech you to take up our call!**

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The plan for the whole of Erf 5131 the City rejected.