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TOWARDS A SAFER TOMORROW



**Illegal land evictions/invasions, conflict resolutions
and Labour Rights (Farm workers)**

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Section

1

Legal framework

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Regulatory Framework



- Extension of Security Tenure Act, 1997 (Act No. 62 of 1997) (ESTA);
- Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); (LTA);
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998) (PIEA);
- Trespass Act, 1959 (Act No. 6 of 1959);
- Magistrates Court Act, 1944 (Act No. 32 of 1944);
- Rules regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa (GNR.740 of 23 August 2010);
- Sheriffs Act, 1986 (Act No 90 of 1986);
- National Instruction 7 of 2017 : *Unlawful Occupation of Land and Evictions*;
- Basic Conditions of Employment Act No. 75 of 1997;
- Labour Relations Act;
- GNR.149 of 17 February 2006: Sectoral Determination 13: Farm Worker Sector, South Africa (*Government Gazette* No. 28518).

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Section

2

Illegal land invasions and evictions

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Extension of Security Tenure Act, 1997



- An occupier in terms of ESTA is a person living (residing) on land with the owner's consent. This consent does not have to be express (in writing or orally) but may also be given tacitly.
- Such occupier is regarded as a legal occupier
- ESTA protects the rights of the occupier, but does not protect persons who use the land for industrial, mining, commercial or commercial farming purposes and it does not apply in land proclaimed or recognized as townships.
- An Occupier occupying the land in terms of ESTA may only be evicted in terms of an order of the Magistrate's Court, Land Court or High Court.

Land Reform (Labour Tenants) Act, 1996



- A labour tenant is a person who resides on a farm and has the right to use the farm of the owner (or other land belonging to the owner) and who, in return, works for the owner (as did that person's parents or grandparents).
- The labour tenant may provide this labour through someone else – for example, the father is a labour tenant who uses the farm in return for his son or daughter working for the owner. A farm worker, who gets paid for his or her work mainly in cash, does not qualify as a labour tenant. Farm workers have to do the work themselves, which is another factor distinguishing them from labour tenants. The right of occupation of a labour tenant and his or her “associates” (family members, employees) is protected by the LTA.
- A labour tenant may only be evicted in terms of an order of the Land Claims Court.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998



- An unlawful occupier is someone who resides on land without the express or tacit permission of the owner.
- Occupiers who fall under the ESTA or LTA are not unlawful occupiers.
- The rights of an unlawful occupier are protected by the PIEA. This category of occupiers will mostly be what is commonly known as “squatters”.
- As soon as a building or structure has been erected on land and is inhabited by a person (the person has factual control of the building or structure), the person is considered to reside on such land.
- Where the PIEA refers to a “building or structure”, and includes a hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter
- A person in the process of erecting a building or structure and not inhabiting the building or structure is not residing on such land.
- Unlawful occupiers may only be evicted in terms of an order of the Magistrate’s Court or High Court.



Trespass Act, 1959

- A trespasser is someone who enters land without the permission of the owner.
- Section 1 of the Trespass Act, 1959 provides that any person who without the permission of the lawful occupier of any land or any building or part of a building; or of the owner or person in charge of any land or any building or part of a building that is not lawfully occupied by any person, enters or is upon such land or enters or is in such building or part of a building, will be guilty of an offence, unless he has lawful reason to enter or be upon such land or enter or be in such building or part of a building. A person who is entitled to be on land in terms of the ESTA or LTA is deemed to have lawful reason to enter and be upon such land.
- A court who finds a trespasser guilty of an offence in terms of section 1(1) of the Trespass Act, may order the summary removal of such a person from the land concerned.
- Trespassers must be arrested as soon as possible by members of the SAPS after a complaint of trespassing was lodged and must be brought before a court.
- The owner or person in charge of the property must lodge a formal complaint with the SAPS and provide an affidavit
- If it is clear that the illegal occupier have been residing on the property, the owner must be advised that the trespasser should be evicted by means of an order of *court*, but the case of trespassing must be registered, investigated and referred to the DPP (prosecutor) for decision.



- Application of the interaction between the Trespass Act 6 of 1959 (“Trespass Act”) and the following legislation pertaining to tenure:
- The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“the PIE-act”),
- The Extension of Security of Tenure Act, Act 62 of 1997 (“ESTA”) and
- The Land Reform (Labour Tenants) Act, Act 3 of 1996 (“LTA”)

Trespass Act, 1959



- Section 1(1A) of the Trespass Act only exempts persons, who qualify and enjoy protection under ESTA, from the application Trespass Act.
- The contravention of the provisions of the Trespass Act is a crime
- Persons (lawful and unlawful occupiers) cannot be evicted without court orders, but unlawful occupation of land does not establish immunity from prosecution for Trespassing.
- There is a difference between prosecuting a person for a crime already committed and an order for the eviction of a person.

Trespass Act, 1959



- A recent challenge of the Trespass Act was unsuccessful in the matter of *Economic Freedom Fighters and Another v Minister of Justice and Correctional Services and Another 2021 (2) SA 1 (CC)*. The said Act is therefore enforceable.
- In the logical sequence of events a land invasion is preceded by trespassing. In this case, the Constitutional Court refused the Applicant's application for an order to declare that the Trespass Act does not apply to unlawful occupiers under the PIEA.

Dealing with land invasions



Member of the SAPS is notified of an invasion of land /Complaint is laid which seems to be related to land invasion, a member on duty in the Community SAPS Centre must —

- Act within the shortest possible period of time
- Ensure complaint is attended to and the situation on the land (at the crime scene) is assessed to determine if there is a threat of unlawful occupation
- Situation report to station commander / designated officer
- Trespassers refuse to leave the land or premises they must be arrested in order to stop them from continuing to commit the offence of trespassing.

Dealing with land invasions



The SAPS must investigate offences committed.

In all cases where members of the SAPS act during land invasions or illegal *evictions*, proper records must be kept for evidence purposes.

Even though the SAPS has a role to play in *evictions*, that role is limited to its mandate

If the circumstances are of such a nature that the incident results in public violence, the Provincial Head: Operational Response Services should be contacted to activate the responsible Public Order Unit, who are properly trained to deal with such incidents, to assist in dispersing disorderly crowds. If suspects are arrested in huge numbers proper record must be kept of the police official who arrested each suspect. The circumstances which resulted in the public violence must be clearly recorded. Each different offence will be dealt with and investigated according to its own criteria and requirements

If a specific person can be identified who is planning or instigating persons to invade a specific land an interdict may be obtained by the owner or occupier to prevent the invasion of the land.

The SAPS can only act against a respondent who is committing contempt of court and for this purpose the SAPS would require statements indicating that the respondent was in breach of the conditions as set out in the interdict. However, a warrant of arrest is required before such person may be arrested.

if information exists under oath that a person or persons are conspiring to invade land such person or persons may be arrested in terms of section 18(2)(a) of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956)

Eviction order



- Only a sheriff and persons authorised by a court to assist the sheriff may carry out an eviction order, provided that the sheriff must at all times be present during such eviction or actions authorised by the court (eg demolition and removal of buildings or structures), subject to the conditions as determined by the court.
- In situations where there is sufficient information to indicate that a sheriff and his or her employees may be exposed to injury, death or damage to property, members of the SAPS will be requested to assist the sheriff to enforce law and order, as well as protection service.
- Members of the SAPS may not participate in the eviction, but must render protection to the sheriff and his or her staff. A person, who wilfully obstructs or interferes with the duties of a sheriff or his or her assistants in the performance of their duties, is guilty of an offence. Where the sheriff and his or her staff exceeds his or her powers, assaults or otherwise act unlawful in the presence of members of the SAPS, he or she or the relevant member of his or her staff must be requested to refrain from such conduct or restrained (and a case be opened and investigated).

Sheriff and court order



- The sheriff may request assistance from the SAPS with the execution of a court order where that sheriff expects resistance. In practice, the following process should be followed:
- The sheriff applies in writing to the Station Commander. The applications must —
 - provide the date of execution of the court order;
 - be accompanied by a copy of the court order;
 - provide a brief description of the nature and extent of the assistance; and
 - state reasons why assistance is needed and in the case of expected resistance, information available to the sheriff.

Responsibilities of members of the SAPS



The Station Commander must consider the application and decide whether assistance may be given in the light of —

- the necessity demonstrated by the *Sheriff*;
- the available resources; and
- threat assessment reports from Crime Intelligence; and
- weather conditions, such a rain, extreme cold, etc. (the *sheriff* must be informed that should adverse weather conditions exist on the particular day that assistance is required, he or she should wait for conditions to improve before assistance can be provided).
- Where assistance is refused, full reasons must be provided and a copy of the refusal must be forwarded to the Office of the relevant Provincial Commissioner.
- If the Station Commander is in doubt concerning the legal position of an application, he or she may obtain legal advice from the relevant Provincial Legal Services.

Responsibilities of members of the SAPS



- The Station Commander must ensure that a written operational plan is drafted by the officer responsible for the operation and that full and proper records are kept of the event.
- Even if it is not expected that the assistance may involve the management of crowds, the planning principles contained in National Instruction 4 of 2014 with regards to crowd management, may be of some assistance in the planning phase.
- Evictions outside the applicable legislation are illegal and the legislation provide for criminal offences – section 8 (1) of PIEA and section 23(1) of ESTA provide that eviction without a court order is an offence. Complaints of illegal evictions by occupiers must be investigated.

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Section

3

Farm worker's rights

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Farm Workers



- In terms of Section 51 (1) of the Basic Conditions of Employment Act, No. 75 of 1997, the Minister of Labour, make a Sectoral Determination establishing conditions of employment for employees in the Farm Worker Sector of South Africa.
- The determination deals with the following:
 - Minimum wages;
 - Written particulars of employment
 - Hours of work
 - Leave
 - Prohibition of child labour and forced labour
 - Termination of employment

Farm Workers



- The SAPS has captured offences in terms of the various labour laws on CAS.
- The role of the SAPS is limited to offences committed and support of labour inspectors, where applicable.
- A MoU is in the processes of being finalised with the Department of Employment and Labour.

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4

Conflict resolution

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Conflict resolution: Land invasions



- Implement and enforce pro-active lawful measures that prevent and discourage land invasions vs costly and lengthy eviction proceedings.
- Section 25(1) of the Constitution —
 - Prohibits arbitrary deprivation of property; and
 - Laws that permit arbitrary deprivation of property.
- The mechanisms for the resolution of disputes include the legislative framework, as well as mechanisms and institutions such as the courts and an infrastructure created to facilitate the execution of court orders.
- Police to assist the complainants and to prevent the suspects from committing acts of criminality.
- Immediate response to cases of trespassing in order to stop land invasions.
- Partnership Policing / Community patrols

District Development Model



- The model is a practical Intergovernmental Relations (IGR) mechanism to enable all three spheres of government to work together, with communities and stakeholders, to plan, budget and implement in unison.
- In so doing the vexing service delivery challenges can also be turned into local level development opportunities, through localised procurement and job creation which “promotes and supports local businesses, and that involves communities.
- Foster a practical intergovernmental relations mechanism to plan, budget and implement jointly in order to provide a coherent government for the people in the Republic; (solve silo’s, duplication and fragmentation) maximise impact and align plans and resources at our disposal

Questions posed to the Office of the Chief State Law Advisor



- Should a case of trespassing be opened against every unlawful occupier (application of section 2(1) of the Trespass Act)? If so, may they be arrested for trespassing as they are continuing to commit such crime by being present on the property (land)?
- Should unlawful occupiers be arrested every time they enter the property to use the building or structure erected by them?
- May trespassing cases be opened where the illegal occupiers have resided unhindered on the property for a long period of time? Will this be regarded as tacit consent?
- Although buildings and structures may not be removed without a court order, may persons be removed from a property to prevent them from trespassing? Does this amount to eviction or preventing them from continuing to commit the crime of trespassing?

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THANK YOU

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