



STANDARD OPERATIONAL PROCEDURE ON LAND INVASIONS AND EVICTIONS.

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STANDARD OPERATIONAL PROCEDURE ON LAND INVASIONS AND EVICTIONS.

1. Background

- 1.1 The South African Police Service is mandated by Section 205(3) of the Constitution of the Republic of South Africa, 1996, which determines that the main functions of the service are inter alia to maintain public order, and to uphold and enforce the law.
- 1.2 Both state land (land under the control of a national or provincial government or municipality) and privately-owned land can be invaded unlawfully.
- 1.3 Government has a constitutional duty to ensure, where required and with available resources, that all citizens can enjoy their basic rights to access to land and to housing. Where a large scale invasion occurs, government has a similar duty to assist private landowners to protect their land. The Bill of Rights stated in Chapter 2 of the Constitution, Section 17 of the Republic of South Africa, enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. The Service respects and aims to protect promote and fulfil the rights in the Bill of Rights.
- 1.4 As such, the Service may be involved in matters of land invasions or evictions and must guard against overzealous or unlawful intervention. The Service is at risk not only regarding civil claims resulting from injury to persons or damage to property where members are involved, but also negative publicity and loss of public confidence.

2. Purpose

- 2.1 The Standard Operational Procedure (SOP) is to provide effective guidance to members of the Service in regard to their roles and responsibilities during incidents of land invasions or evictions, to ensure that members act within the ambit of all applicable Legislation.

3. Definitions

In this instruction, unless the content otherwise indicates-

- 3.1 "*Constitution*" means the Constitution of the Republic of South Africa, 1996
- 3.2 "*Call Taker*" refers to an employee or member of the service who deals with members of the public who reports an incident. The call taker must report the particulars of the complaint on a SAPS 297 or CAS/ICDMS system. The call

- taker must be declared to deal with receiving and recording incidence reported;
- 3.3 "*Demonstration*" includes any demonstration by one or more persons, but not more than 15 persons, against any person, cause, action or failure to take action.
 - 3.4 "*ESTA*" Extension of Security Tenure Act, 1977 (Act No 62 of 1997).
 - 3.5 "*First Responder*" means the first official who responds to and arrives at the scene of a spontaneous gathering (such an official may be from Visible Policing, POP unit or other law-enforcement agency).
 - 3.6 "*Foreign National*" means an individual who is not a citizen of the Republic of South Africa, but who is present and / or residing in South Africa (including an undocumented foreigner suspected of contravening the Immigration Act);
 - 3.7 "*Gathering*" means an assembly, concourse or procession of more than (15) fifteen persons in or on any public road or any other public place or premises wholly or partly open to the air, as defined in section 1 of the Act.
 - 3.8 "*Land Invasion*" means illegal occupation of land, with intention of establishing dwellings".
 - 3.9 "*member*" refers to a member of the South African Police Service appointed in terms of the South African Police Act 1995 (Act No 68 of 1995).
 - 3.10 "*eviction order*" means an order issued by a *court* that compels someone to leave vacant land, place, premises or property.
 - 3.11 "*Occupier*" for the purpose of ESTA (Extension of Security Tenure Act, 1977 Act No 62 of 1997), is a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, excluding a person using the land in question mainly for industrial, mining, commercial or commercial farming purpose, but including a person who works the land for himself or herself and only employs a member(s) of his or her family.
 - 3.12 "*unlawful occupier*" means a person who occupies and *resides* on land without the express or tacit consent of the owner or person in charge.
 - 3.13 "*POP*" means the specialized Policing unit, trained to manage and control *crowds* or persons engaged in a gathering or demonstration with a view to restore public order. (This includes managing pre-planned and spontaneous assemblies, *gatherings* and *demonstrations* whether of a peaceful or unrest nature.)
 - 3.14. "*Public Order*" means State of tranquillity and security that is needed in society and that should be pursued by the state in order to ensure the constitutional rights and benefits thus harmonic development of society;

- 3.15 *"Responsible Officer"* means a person designated as responsible officer by the local authority and includes any person deemed to be a responsible officer as contemplated in section 2(4) or 3(4) of the Act.
- 3.16 *"The Act"* means the regulation of gatherings Act, 1993 (Act No. 205 of 1993).
- 3.17 *"Trespassers"* means any person who enters land without the permission of the owner.
- 3.18 *"Land expropriation"* means the act of a government in taking privately owned property, ostensibly to be used for purposes designed to benefit the overall public.

4. Scope of Application

This SOP is applicable to all operational members of the service who may serve as first responders to a call of land invasion.

5. Legal and Regulatory Framework

- 5.1 Constitution of the Republic of South Africa 1996- Section 17;
- 5.2 Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998(Act No. 19 of 1998)
- 5.3 Trespass Act, 1959 (Act No. 6 of 1959)
- 5.4 Section 39 of the Criminal Procedure Act 51 of 1977- Manner and effect of arrest read together with section 35 (1) of the Constitution
- 5.5 Section 23 of the Criminal Procedure Act 51 of 1977 search of arrested person and seizure of articles;
- 5.6 Section 49 of the Criminal Procedure Act 51 of 1977 the use of force in effecting an arrest;
- 5.7 The Diplomatic Immunities and Privileges Act 2001 (Act No.37 of 2001);
- 5.8 The South African Police Act, 1995 (Act No 68 of 1995);
- 5.9 The immigration Act 2002 (Act No.13 of 2002);
- 5.10 The Extension of Security Tenure Act, 1997 (Act No 62 of 1997);
- 5.11 The Land Reform (Labour Tenants) Act, 1996 (Act No 3 of 1996);
- 5.12 Regulation of Gathering Act, 1993 (Act No.205 of 1993);
- 5.13 Section 40 of the Criminal Procedure Act (Act 51 of 1977);
- 5.14 Sheriffs Act, 1986(Act No 90of 1986).

- 6. Role of the operational commanders**
- 6.1 Station Commanders, as well as operational commanders, must ensure that members are conversant with the provisions of legislation in regard to trespassing and unlawful occupation of property, including the rights of all involved parties, in order to ensure that members follow the correct procedures when confronted with situations of such nature.
- 6.2 A police member will most likely come into contact with the above-mentioned issues, if
- (a) A property owner lodges a complaint at the Community Service Centre of the police station that his or her land was illegally trespassed on, occupied or invaded by a person or persons; or
 - (b) An occupier complains of an unlawful eviction.
- 6.3 Whenever an owner or a person in charge of vacant land, place, premises or property approaches the Service to lay a charge of trespass in terms of the Trespass Act, the members must ascertain whether the rights of the person against whom the charge is laid are not protected by other legislation, eg the ESTA, LTA or PIEA.
- 6.4 If it is clear that the person against whom the complaint lodged does not reside on the land or the property and that the person is not an occupier, the police member attending to the complaint must deal with the matter according to the normal procedures for trespassing.
- 6.5 However, when the person "trespassing" is an occupier, that person enjoys the protection of the LTA, ESTA or PIEA and the police member should immediately advise the complainant to obtain legal advice or consult an attorney in order to obtain an eviction order in terms of the applicable legislation. No person may evict an unlawful occupier except on the authority of an eviction order of a competent court.
- 6.6 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.
- 7. Responsibilities of members of the Service**
- 7.1 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.
- 7.2 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 Service will be requested to assist the sheriff to enforce law and order, as well as protection service.
- 7.3 The sheriff may request assistance from the Service with the execution of a court order where that sheriff expects resistance. In practice, the following process should be followed:
- (a) The sheriff applies in writing to the Station Commander. The applications must.
 - (i) Provide the date of execution of the court order;
 - (ii) Be accompanied by a copy of the court order;
 - (iii) Provide a brief description of the nature and extent of the assistance; and
 - (iv) State reasons why assistance is needed and in the case of expected resistance, information available to the sheriff.
- 7.4 The Station Commander must consider the application and decide whether assistance may be given in the light of:
- (i) The necessity demonstrated by the Sheriff;
 - (ii) The available resources; and
 - (iii) Threat assessment reports from Crime Intelligence; and
 - (iv) 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).
- 7.5 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.
- 7.6 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.
- 7.7 Members of the Service 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 Service, 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).

- 7.8 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.
- 7.9 In all cases where assistance is to be rendered, consideration must be given to request assistance from the relevant Public Order Policing Unit.
- 8. Dealing with land invasions**
- 8.1 If a member of the Service is notified of an invasion of land on a large scale, it is important to act within the shortest possible period of time. Land invasions are usually associated with the occupation of land by force or threats of force. Keeping in mind that if a person in the process of erecting a building or structure and not inhabiting the building or structure he or she is not residing on such land and therefore a case of trespassing may be made out.
- 8.2 The Station Commander must inform the Provincial Head: Operational Response Services and the Provincial Commissioner immediately if he or she becomes aware of an intention to invade land or of a land invasion, to immediately activate or place the relevant Provincial Public Order Policing Unit or National Intervention Unit on standby depending on the severity of the incident.
- 8.3 If a complainant informs a member that a person or persons have entered his or her land or premises without consent and are threatening to erect buildings or structures or they are in the process of erecting buildings or structures for habitation, the member must act immediately to ensure that the 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. If persons are found on the land or premises that are in the process of erecting buildings or structures for habitation or threatening to erect such buildings or structures, the member at the scene must inform them that they are trespassing and that they will be arrested if they do not leave the land or premises immediately. If the 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. If the trespassers have erected the building or structure on land and is inhabiting it (the person has factual control of the building or structure), the complainant must be informed that he or she will have to apply for an eviction order in terms of PIEA.
- 8.4 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 Service can only act against a

respondent who is committing contempt of court and for this purpose the Service 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.

- 8.5 In addition to the above, 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).

9. **Responsibilities during an unlawful land invasion**

Members must take note of the responsibilities of the following role-players:

(1) Owner of land

- (a) Both state-owned land and privately-owned land can be invaded unlawfully.
- (b) State-owned land is land that is under the control of the Departments of Rural Development and Land Reform or Public Works, provincial government or the municipality.
- (c) Depending on available resources, the state has a constitutional duty to ensure that all citizens can enjoy their basic rights to have access to land and to housing. In special circumstances, such as large-scale invasions, the state has a similar duty to assist private landowners to protect their land.
- (d) Where unlawful occupiers whose basic rights are not at risk need to be evicted, the government authority responsible for the state land concerned or the private land owner must, without delay, approach the court for an eviction order in terms of PIEA.
- (e) Individuals (including unlawful occupiers) who have no access to agricultural land can approach the Department of Land Affairs for assistance to find suitable agricultural land .
- (f) Individuals in need of housing can approach the local municipality or, if necessary, the provincial or national Department of Housing for assistance.

(2) Department of Rural Development and Land Reform

The Department of Rural Development and Land Reform must:

- (a) Approach the court for an order to evict unlawful occupiers of state land under its control as long as the basic rights of the unlawful occupiers are not in question;
- (b) Assist unlawful occupiers of any state or private land who need and have no agricultural land to obtain access to suitable agricultural land;
- (c) Assist other government authorities to find suitable alternative land for the unlawful occupiers in need of housing; and
- (d) If required and where special circumstances exist, assist private agricultural land owners whose land has been unlawfully invaded to relocate occupiers in need of agricultural land to suitable alternative land.

(3) The Service

- (a) Where a complaint is laid which seems to be related to land invasion, a member of the South African Police Service on duty in the Community Service Centre must:
 - (i) Advise the land owner to approach the court without delay for an eviction order in terms of the PIEA and inform the land owner that any delay may have an impact on the implementation of an eviction order - where private land has been unlawfully invaded and no special circumstances exist with regards to the vulnerability of the occupiers;
 - (ii) Advise the land owner to approach any office of the Department of Rural Development and Land Affairs for assistance - where private land has been unlawfully invaded and special circumstances exist regarding the vulnerability of the occupiers, eg a need for access to agricultural land exists; or
 - (iii) Advise the land owner to approach the area's local municipality or, if necessary, the provincial or national Department of Housing for assistance - where private land has been unlawfully invaded and special circumstances exist, eg a need for housing exists.
- (b) The Service must investigate offences committed.
- (c) In all cases where members of the Service act during land invasions or illegal evictions, proper records must be kept for evidence purposes.

- (d) Even though the Service has a role to play in evictions, that role is limited to its mandate. It is clear that land invasions and evictions must be dealt with through proper court processes.
- (e) It is important to establish operational protocols to deal with requests for assistance, whether it is in the form of a criminal complaint by a property owner or an evictee or a request for assistance by the Sheriff.
- (f) 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.

10. Complaints in terms of the Rental Housing Act

- 10.1 The Rental Housing Act, 1999 provides for the Rental Housing Tribunal which is a statutory body which provides mechanisms to resolve disputes between land lords and tenants. A ruling by the Rental Housing Tribunal is regarded to be an order of the Magistrates' Court.
- 10.2 It is expected of every Station Commander to designate a member (preferably the Commander of Visible Policing at the station) to co-ordinate requests for assistance by the Rental Housing Tribunal.
- 10.3 Although it is an offence to unlawfully lock out a tenant or to unlawfully shut off the utilities of the rental housing property, members may not open such rental housing property or reconnect a utility.
- 10.4 The case must be registered in terms of National Instruction 3 of 2011: Registration of Case Dockets on the Crime Administration System (CAS) and investigated.
- 10.5 Where the landlord is known, he or she should be contacted and requested to open the property for the tenant or reconnect the utilities and be informed that he or she should refer the matter to the Rental Housing Tribunal for decision rather than taking the law into his or her own hands.

11. If the use of force is unavoidable

- 11.1 The purpose of offensive action must be to de-escalate conflict with the minimum force to accomplish the goal and therefore the success of the actions will be measured by the results of the operation in terms of loss of life, injuries to people, damage to property and cost;

- 11.2 The degree of force must be proportional to the seriousness of the situation and the threat posed in terms of the situational appropriateness;
 - 11.3 It must be reasonable in the circumstances;
 - 11.4 The minimum force must be used to accomplish the goal; and objective;
 - 11.5 If the participants are going to be dispersed, make sure that they have enough escape routes in order to try and avoid serious injuries or possible deaths as a result of a stampede;
 - 11.6 If dispersion is unavoidable, an attempt must be made to disperse the participants in a direction of a positive attraction point (an area where participants would most likely be willing to move to); and
 - 11.7 Always implement gradual police response.
- 12. Roles and Responsibility of members on Land Invasions and Evictions**
- 12.1 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. In situations where there is sufficient information to indicate that sheriff and his or her employees may be exposed to injury, death or damage to property, the first responder will be requested to assist the sheriff to perform law and order, as well as protection service. First responders 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.
 - 12.2 Section 9 (1) of Prevention of illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No 19 of 1998) referred as the PIE Act determines that an occupier may be evicted only in terms of an order of court issued under this Act. In terms section 9 (2), such a court order may be issued if:
 - 12.3 The occupier's right of residence has been terminated in terms of section 8;
 - 12.4 The occupier has not vacated the land within the period of notice given by the owner or the person in charge of premises;
 - 12.5 The conditions for evictions in terms of section 10 or 11 have been complied with;
 - 12.6 The owner or person in charge of the premises has, after the termination of the right of residence, given the occupier, the municipality in whose jurisdiction the land is situated and the head of the Provincial Department of Land Affairs, at least two calendar months' written notice of the intention to obtain an order for eviction.

- 12.7 Where eviction orders are granted, the court shall determine a date on which the occupier shall vacate the land on such determined date.
- 13. Role and responsibility of members in relation to Extension of Security Tenure Act (ESTA), 1997 (Act No 62 of 1997)**
- 13.1 When members receives complaints from either land owners (or persons in charge of land), or occupiers, in terms of ESTA, they should be wary not to become involved in negotiations between the land owner and occupier which may create certain expectations that the SAPS have powers which they do not have in terms of the Act.
- 13.2 Members may not assist land owners to "evict" or remove so-called "illegal occupiers" or employees or family members of employees, from the land of a land owner. The SAPS only have a mandate to prevent and investigate crime and to maintain law and order.
- 13.3 The land owner must be informed of the provisions of the Act if he or she approaches the SAPS to request the removal of an occupier/employee, etc. who is residing on his land. Even if the right of (10) residence of such person has been terminated, according to the land owner he/she cannot approach the SAPS to lay a charge of "trespassing". The land owner must still approach a court for an order of eviction.
- 13.4 If an occupier commits an offence on the land of the complainant, or against the complainant or his/her family, for instance damage to property, assault, theft, etc, members must investigate such complaints and register the relevant criminal charges against the occupier in question. The occupier may not be removed from the land in question, unless it is as a result of a lawful arrest for an offence that warrants his or her arrest.
- 13.5 Section 23 (1) determines that it is an offence to evict an occupier, except on the authority of an order of a competent court. A case may be registered against a land owner who is alleged to have contravened section 23 (1), but due to the fact that it must be established through investigation whether the complainant is indeed the "occupier" as required for the purposes of this Act, or whether the land owner has indeed evicted the person without a court order, no arrest should be effected against the land owner in question, unless exceptional circumstances exists (for instance imminent threat of assault of the occupier).

- 14. The Prevention of Illegal Eviction from and Unlawful Occupation of Land, 1998 (Act No.19 of 1998) - The PIE Act**
 - 14.1 The PIE Act provides for the procedures for the eviction of unlawful occupiers on all land, in urban and rural areas, whether owned by the State or private person or institution.
 - 14.2 An "Unlawful occupier" for the purposes of this Act, is 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 an occupier for the purposes of the ESTA.
- 15. Eviction of unlawful occupiers**
 - 15.1 In terms of section 8 (1) of the Prevention of Illegal Eviction from an Unlawful Occupation of Land, 1998 (Act No. 19 of 1998), no person may evict an unlawful occupier except on the authority of an order of a competent court.
 - 15.2 Section 4 sets out the procedure for application for a court order for eviction of unlawful occupiers, including the service of notice upon unlawful occupiers which notice must state that proceedings have been instituted for an order for eviction and indicate the hearing date and the grounds for the proposed eviction.
 - 15.3 The court must grant an order for eviction if it is satisfied that no valid defence has been raised by the unlawful occupier and determine in such order the date on which the eviction order may be carried out. If the unlawful occupier has not vacated the land on a date determined in the court order, the court may order the demolition or the destruction of buildings or structures that were occupied by such person.
 - 15.4 The eviction order must be executed by the sheriff and the court may authorise any person to assist the sheriff to carry out the eviction of the unlawful occupier(s) and the demolition and removal of structures.
 - 15.5 Urgent proceedings for the eviction of unlawful occupiers may be instituted and the court will grant an interim eviction order, pending the outcome of the proceedings for a final order, if there is an eminent danger of substantial injury or damage to a person or property by the unlawful occupier(s) or the likely hardship to the land owner or other person exceeds the likely hardship to the unlawful occupier(s) if the urgent order is not granted.
- 16. Role of members in relation to the PIE Act**
 - 16.1 When a complaint is laid by a landowner or person in charge of the land that persons are unlawfully occupying the land in question, a police official must determine whether any structure have been erected which are occupied or meant for occupation by the alleged unlawful occupiers. If structures have

been erected and the provisions of ESTA is not applicable (in other words, the alleged perpetrators are not the employees or other persons who has a right of occupation on the land), the complainant must be informed of the provision of the PIE Act, namely the he/she must approach a court for an eviction order for the unlawful occupiers. This also applies to land owned by the State.

- 16.2 When the alleged perpetrators have entered upon land without permission, but no structures have been erected yet for occupation, a case of trespassing can be registered against the perpetrators, even if they are still in the process of erecting structures.
- 16.3 Police officials should act immediately when a complaint is made that persons have entered upon land with the alleged intention of erecting structures to occupy the land in question.
- (i) Follow an approach which is conducive to conciliation and problem solving,
 - (ii) Avoid a confrontational approach, and
 - (iii) Take action without delay.

17. Review of the SOP

The SOP must be reviewed after three years of its implementation, unless earlier reviewal is necessitated by:

- (a) Legislative change

A SOP change decided by the National Commissioner resulting in conflict with existing procedures; or a change in circumstances which require early review of the SOP.

Should the SOP expire without a revised version being issued, it remain in force until a revised version is issued.