

South African Police Service



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THE DEPUTY NATIONAL COMMISSIONER:
POLICING
DIE ADJUNK NASIONALE KOMMISSARIS:
POLISIËRING

PRETORIA

0001

- A. The National Head
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
- B. **ALL DIVISIONAL COMMISSIONERS**
- C. **ALL PROVINCIAL COMMISSIONERS**
- D. The Heads
CORPORATE COMMUNICATION
- E. All Heads
HEAD OFFICE
- F. All Section Heads
HEAD OFFICE
- G. All Commanders
SAPS ACADEMY AND TRAINING CENTRES
- H. **ALL DEPUTY NATIONAL COMMISSIONERS**
- I. The Chief of Staff
MINISTRY OF POLICE

CRIME: TRESPASSING, SQUATTING AND OTHER VIOLATIONS OF ACTS GOVERNING AND CONTROLLING LAND OWNERSHIP: THE ROLE AND RESPONSIBILITIES OF THE SOUTH AFRICAN POLICE SERVICE IN DEALING WITH EVICTION AND TRESPASS INCIDENTS

- C. 1. A need was identified to provide guidelines to all members of the South African Police Service (SAPS) in respect of their role and responsibilities during incidents of land invasions or evictions, to ensure that all members act within the perimeters of all applicable legislation.

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2. South African legislation protects the rights of owners and persons in charge of land, premises and buildings, as well as occupiers thereof under certain circumstances as prescribed by such legislation. A member of the Service may be requested to deal with a complaint that a person's land, premises or building is unlawfully occupied by another. Members must ensure that they strictly address complaints of this nature in accordance with this directive, as well as the applicable legislation.
3. Station Commanders, as well as operational commanders, must ensure that members are conversant with the provisions of legislation in regards of 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.
4. **Legal Framework**
 - 4.1 The following legislation is applicable to this directive:
 - 4.1.1 Extension of Security Tenure Act, 1997 (Act No 62 of 1997), referred to as the ESTA.
 - 4.1.2. Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No 19 of 1998), referred to as the PIE Act.
 - 4.1.3. Trespass Act, 1959 (Act No 6 of 1959), referred to as the Trespass Act.
5. **General Principles**
 - 5.1. 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 against, are not protected by other legislation, eg the ESTA or PIE Act.
 - 5.2. If the circumstances as regulated by the ESTA or PIE Act (as discussed below) exist, the member must 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.
 - 5.3. On the contrary, members must not misuse the mentioned legislation and these instructions to avoid complying with their responsibilities in accordance with the Trespass Act. Where applicable, members must not hesitate to take the necessary steps in accordance with the Trespass Act.
6. **Responsibilities of members of the Service**
 - 6.1. 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. In situations where there is sufficient

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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 perform a law and order, as well as protection service. 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.

- 6.2. If a member deals with or attends to a complaint of trespassing, the member must interview the complainant to determine whether an offence was committed and in accordance with which legislation, after which the following steps must be followed:

6.2.1. Offence in terms of the Trespass Act:

Steps	Action
1	Inform the complainant that he or she must be prepared to testify in court if a criminal case is opened.
2	Take a statement from the complainant and open a case docket.
3	If the trespasser is still on the premises, take the necessary steps, which in most instances will be to arrest him or her in accordance with the provisions of section 40 of the Criminal Procedure Act, 1977 (Act No 51 of 1977), in order to bring him or her before a court.
4	Full particulars regarding the incident and steps taken must be recorded in the member's Pocket Book and the Occurrence Book.

6.2.2. Offence in terms of the ESTA or the PIE Act:

Steps	Action
1	Advise the complainant to obtain legal advice or consult an attorney in order to obtain an eviction order in terms of the applicable legislation.
2	Make a Pocket Book and Occurrence Book entry that a complaint was received and provide reasons why the complaint was not accepted.
3	The complainant must sign in the Pocket Book of the member, certifying that the situation was explained to him or her and that he or she was advised by the member that other legal remedies must be utilised.

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7. Registering of Trespassing Cases against threatening Illegal Occupants

- 7.1. Members are often approached by land/property owners who want to open a case of trespassing against a person who has erected a structure on his or her land or who refuses to vacate structures on the land/premises. In these instances the ESTA or PIE Act will be applicable, as explained in this directive.
- 7.2. If, however, a person(s) enters upon land or a premises without the permission of the owner or person in charge of such premises and without any lawful right to be on such land or such premises, the owner or person in charge of such premises may lay a charge of trespassing against such person(s) if he or she has informed such person(s) to leave the premises and they refused.
- 7.3. If it is clear to the land owner or owner of the premises in question, that the persons who are trespassing on the land or premises, are doing so with the intention to erect structures which can be used for accommodation (shacks, etc.), he or she may still lay a charge at the police for trespassing if such structures have not been erected yet.
- 7.4. The SAPS may not refuse to register a case of trespassing when it is clear that there is no "occupation" yet on the land or premises. Even if the perpetrators are still in the process of erecting shacks or other structures, a case of trespassing can still be opened.
- 7.5. Once a structure has been erected and is ready for occupation, then the owner of the land/premises will have to approach the court to apply for a court order in terms of the existing legislation, to evict the occupants (Also see the court judgement below).

8. Extension of Security of Tenure Act, 1997 (Act No. 62 OF 1997) – The ESTA

- 8.1. an "occupier" for the purposes of ESTA, 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 purposes, but including a person who works the land for himself or herself and only employs a member(s) of his or her family.
- 8.2. Section 4 provides that this Act applies to all land other than land in a township established as such in terms of any law, but including land within such township which has been designated for agricultural purposes by law or which has been approved in respect of a person who was an occupier immediately before the establishment of the township.
- 8.3. Right of residence of an occupier and termination of consent to reside on land:
 - 8.3.1. Section 3 states that consent to an occupier to reside on or use land shall only be terminated or withdrawn in accordance with section 8. Section 8 provides that an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to relevant factors like the fairness of a

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provision in an agreement on which the owner relies, the fairness of the procedure followed by the owner, etc.

- 8.3.2. Section 8(2) states that the right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in terms of the Labour Relations Act.
- 8.3.3. For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of one year, shall be presumed to have consent unless the contrary is proved, and, a person who has continuously and openly resided on land for a period of three years, shall be deemed to have done so with the knowledge of the owner or person in charge of land (section 3), excluding land held by the State.
- 8.3.4. The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner, for 10 years and has reached the age of 60 years, or is an employee or former employee of the owner or person in charge, and is unable to provide labour due to ill health, may not be terminated unless the occupier has committed a breach contemplated in section 10(1)(a), (b) or (c) (damage to property, intimidation of other occupiers, etc.).
- 8.3.5. On the death of such an occupier, the owner or person in charge of the land, must give 12 months' written notice to the spouse or dependant of such an occupier, to leave the land, unless such spouse or dependant has committed a breach contemplated in section 10(1).
- 8.3.6. It is clear that this Act mainly applies to land in rural areas and agricultural land, (farms, etc.). In most instances, occupiers in terms of this Act, are employees or former employees of a land owner, and their spouses and dependants, who have established a right of occupation in terms of the Act.
- 8.4. Rights and duties of an occupier:
 - 8.4.1. In terms of section 6, an occupier shall have the right to reside on land and use the land on which he or she resided and which he or she used on or after 4 February 1997, and to have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly.
 - 8.4.2. These rights include the right to security of tenure (occupancy) and to receive bona fide visitors at reasonable times for reasonable periods, subject to reasonable conditions by the owner of the land to protect property and prevent disruption of work on the land.
 - 8.4.3. An occupier shall also have the right to bury a deceased member of his or her family who, at the time of the person's death, was residing on the land on which the occupier is residing.

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- 8.4.4. An occupier may not unlawfully harm any other person occupying the land, cause material damage to the property of the owner, threaten or intimidate other lawful occupiers or assist unauthorised persons to establish new dwellings on the land in question.
- 8.4.5. Reasonable visitation of family graves on the land of an owner, must be allowed and family members of an occupier have the right to bury such occupier on the land on which he or she was residing at the time of his or her death.
- 8.4.6. Members should take note of these rights of occupiers in order to be able to advise a land owner that, for instance, the visitation of family graves will not amount to trespassing or another offence, unless the persons visiting the graves also commit other unlawful acts, for instance entering the buildings of the land owner without consent, damaging property, etc.
- 8.5. Eviction of occupiers:
- 8.5.1. Section 9(1) determines that an occupier may be evicted only in terms of an order of court issued under this Act. In terms of section 9(2), such a court order may be issued if
- the occupier's right of residence has been terminated in terms of section 8;
 - the occupier has not vacated the land within the period of notice given by the owner or person in charge of the premises;
 - the conditions for an eviction order in terms of section 10 or 11 have been complied with; and
 - 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.
- 8.5.2. Where eviction orders are granted, the court shall determine a date on which the occupier shall vacate the land and a date on which the eviction order may be carried out if the occupier has not vacated the land on such determined date.
- 8.5.3. In urgent cases, the land owner or person in charge may make an **urgent application** to court for the removal of an occupier pending the outcome of the proceedings for a final order, if, for instance, there is a real and imminent danger of substantial injury or damage to a person or property if the occupier is not immediately removed or if the owner will most likely suffer hardship that exceeds the hardship to the occupier, etc. (section 15).
- 8.5.4. In terms of section 14, an occupier who has been evicted contrary to the provisions of this Act, may approach the court for an order for restoration residence, payment of damages, repair or replacement of structures, etc.

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8.6. Role of the South African Police Service in relation to the ESTA:

- 8.6.1. When members receive complaints from either land owners (or persons in charge of land), or occupiers, in terms of the 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 this Act.
- 8.6.2. 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.
- 8.6.3. 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 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.
- 8.6.4. 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.

8.7. Offences:

- 8.7.1. 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 an "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).

9. The Prevention of Illegal Eviction from and Unlawful Occupation of Land, 1998 (Act NO. 19 OF 1998) – The PIE Act

- 9.1. The PIE Act provides for procedures for the eviction of unlawful occupiers on all land, in urban and rural areas, whether owned by the State or a private person or institution.
- 9.2. 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.

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9.3. Eviction of unlawful occupiers:

- 9.3.1. In terms of section 8(1), no person may evict an unlawful occupier except on the authority of an order of a competent court.
- 9.3.2. 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.
- 9.3.3. 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 destruction of buildings or structures that were occupied by such person.
- 9.3.4. 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 or removal of structures.
- 9.3.5. Urgent proceedings for the eviction of unlawful occupiers may be instituted and the court will grant an interim eviction order, pending the outcome of proceedings for a final order, if there is an imminent 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.

9.4. Period of occupation by an unlawful occupier:

- 9.4.1. If an unlawful occupier has occupied the land in question for less than six (6) months at the time when proceedings for an eviction order are initiated, the court does not have to consider whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner, for the relocation of the unlawful occupier. When an unlawful occupier has occupied land for more than six (months), the court must consider alternative accommodation for relocation of the unlawful occupier (except when land is sold in execution pursuant to a mortgage).
- 9.4.2. In all instances, the court must consider other relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by woman.

9.5. Offences:

- 9.5.1. Apart from the offence mentioned above (evicting an unlawful occupier without a court order), the Act also creates the following offences:

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- Section 3(1) determines that no person may receive or solicit payment of money or any other consideration for arranging or organising or permitting a person to occupy land without the consent of the land owner or person in charge of the land. Contravention of this section is an offence in terms of section 3(3). Note that a charge of fraud or corruption, depending on the circumstances, may also be opened together with this offence.
- Section 8(2) states that no person may wilfully obstruct or interfere with an official in the employment of the State in the performance of his or her duties in terms of this Act. This will include the sheriff (and his or her appointed assistants) who executes the eviction order, and, where a court order instructs the SAPS to assist with the eviction, it will include police officials who act in terms of the court order.

9.6. Role of the SAPS in relation to the PIE Act:

- 9.6.1. When a complaint is laid by a land owner or person in charge of land that persons are unlawfully occupying the land in question, a police official must determine whether any structures 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 employees or other persons who has a right of occupation on the land), the complainant must be informed of the provisions of the PIE Act, namely that he or she must approach a court for an eviction order for the unlawful occupiers. This also applies to land owned by the State.
- 9.6.2. 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.
- 9.6.3. It is clear that 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. If time is wasted in attending to the scene, it will allow the perpetrators time to erect structures, in which instance it will not amount to mere trespassing any longer.

9. CONCLUSION

In light of the above, the following basic guidelines can be highlighted, but each case has to be assessed on its own merits:

- 9.1. When a complainant lays a complaint of trespassing, the member must first attempt to determine whether the ESTA or PIE Act is relevant, namely whether the complaint relates to a person who is occupying the land/premises in question and whether such person has/had a right of occupation, whether he/she is an employee of the land owner, etc.

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- 9.2. If it is clear that the alleged perpetrator is either an "occupant" for the purposes of the ESTA or an "illegal occupier" for the purposes of the PIE Act, the complainant **should** be informed that he/she is required to apply for an eviction order in terms of the relevant Act and that a charge of trespassing cannot be registered.
- 9.3. The complainant should also be advised that he/she may not remove/demolish any structures of an occupier and that the SAPS may not assist with removing any such structures.
- 9.4. If the complainant informs a member that a person(s) have entered his/her land/premises without consent, a case of trespassing should be registered.
- 9.5. If the complainant informs a member that persons who have entered his/her land/premises without consent, are threatening to erect structures or they are in the process of erecting structures for occupation, the member should act immediately to obtain assistance from other members and go to the scene as soon possible in order to assess the situation and determine whether there is a threat of unlawful occupation.
- 9.6. If persons are found on the land/premises who are in the process of erecting structures or who are threatening to erect structures, they should be informed that they are trespassing and that they will be arrested if they do not leave the land/premises immediately.
- 9.7. If the trespassers refuse to leave the land/premises, they may be arrested in order to stop them from continuing to commit the offence of trespassing (This will also prevent illegal occupation of the land).
- 9.8. If the trespassers have completed structures on the land/premises of the complainant when the SAPS arrive at the scene, the complainant will have to apply for an eviction order in terms of the PIE Act, in light of the provisions of the Fisher-judgement referred to above.
10. In all cases where assistance is to be rendered, consideration must be given to request assistance from the relevant Provincial Public Order Policing or National Intervention Units.
11. This letter must be distributed to the lowest level.

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A, B, D-I 1. Copy for your information.

A handwritten signature in black ink, appearing to be 'SF MASEMOLA', is written over a circular stamp or seal.

**LIEUTENANT GENERAL
DEPUTY NATIONAL COMMISSIONER: POLICING
SF MASEMOLA**

Date: 2017 -03- 3 0