

BACK TO BASICS

TOWARDS A SAFER TOMORROW



RURAL DEVELOPMENT AND LAND REFORM: SECTION 23 OF THE EXTENSION OF SECURITY OF TENURE AMENDMENT BILL AND CRIMINAL CASES INSTITUTED UNDER THIS ACT

23 November 2016

#CrimeMustFall

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1. Introduction

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- The eviction of persons is regulated by law.
- The following legislation regulates different situations:
 - The Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) (ESTA);
 - The Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);
 - The Trespass Act, 1959 (Act No. 6 of 1959);
 - Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998) (PIE); &
 - Rental Housing Act, 1999 (Act No. 50 of 1999).

Introduction (2)



- The South African Police Service (SAPS) respects the rights entrenched in section 26 of the Constitution of the Republic of South Africa, 1996, placing an obligation on Organs of State and others regarding the right of access to adequate housing, the taking of reasonable legislative and other measures, within available resources, to achieve the progressive realisation of this right and that no one may be evicted from their home or have their home demolished, without an order of court made after considering all the relevant circumstances.
- Both unlawful occupation of and illegal eviction from land infringe upon basic constitutional human rights as entrenched in the Constitution.
- Government should therefore deal with the Constitutional rights of both occupiers and landowners in a careful and balanced manner.



- If 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 occupier except on the authority of an eviction order of a competent court.

2. Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997)

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- 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.
- The following persons are not occupiers:
 - 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.
 - A person earning more than the prescribed gross income (currently R 5000.00)
- Section 9(1) of ESTA provides that an occupier may be evicted only in terms of an order of court issued under this Act.
- Section 23(1) provides that it is an offence to evict an occupier, except on the authority of an order of a competent court. **(Land owner commits an offence if he/she evicts an occupier without court order).**

3. Role of the South African Police Service

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South African Police Service's Responsibility (1)



- If ESTA, PIEA, LTA or the Rental Housing Act is applicable, the land owner must approach a court for an order of eviction.
- SAPS members **may not assist** land owners to “evict” or remove so-called “illegal occupiers”.
- 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.

South African Police Service's Responsibility (2)



- 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 (e.g. 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 perform law and order, as well as protection service.
- The sheriff may request assistance (protection) from the SAPS with the execution of a court order where that sheriff expects resistance
- 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.

South African Police Service's Responsibility (3)



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- The SAPS in partnership with the community, metropolitan police services and other agencies devise effective methods to promote public safety as well as reassuring the community that they are protected.
- To ensure this, the SAPS must play a pro-active role in attempting to identify and diffuse any possible conflict before it escalates to violence.
- This is done by communicating with the public, organisers and participants.
- The mandate of the SAPS, as set out in section 205(3) of the Constitution of the Republic of South Africa is, inter alia, to maintain public order, protect and secure the inhabitants of South Africa, to uphold and enforce the law and to prevent and investigate crime.
- Public Order Policing Units may in terms of National Instruction 4/2014 be deployed to combat serious and violent crime includes stabilizing outbreaks of public violence at incidents of (and the combating of) serious and violent crime and dealing with any occurrences of crowd gathering during the management of incidents to protect persons and property.



- The SAPS must ascertain whether any of the following offences had been committed (and if so, investigate such offence):
 - Common law offences: assault, murder, malicious damage to property, etc.;
 - Trespassing- Section 1(1) of the Trespassing Act;
 - Payment for orchestrating unlawful occupation- section 3 of PIEA;
 - Eviction of occupiers without a court order; &
 - Unlawfully lock out a tenant or to unlawfully shut off the utilities of the rental housing property.

4. Statistical reports on criminal charges

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Land Invasion Cases: 1 April 2015 To 31 October 2016 (1)



PROVINCE	NUMBER OF CASES	COURT	INVESTIGATION	NUMBER OF SUSPECTS ARRESTED	GUILTY	NOT GUILTY	UN-DETECTED	WITH-DRAWN/ NOLLE	SENIOR PUBLIC PROSECUTOR
EASTERN CAPE	0	0	0	0	0	0	0	0	0
FREE STATE	6	1	0	38	0	0	1	3	1
GAUTENG	42	2	5	37	1	0	22	12	0
KWAZULU-NATAL	3	0	0	6	1	0	0	2	0
LIMPOPO	3	0	1	19	0	0	0	2	0
MPUMALANGA	0	0	0	0	0	0	0	0	0
NORTHERN CAPE	4	1	3	4	0	0	0	0	0
NORTH WEST	2	0	2	25	0	0	0	0	0
WESTERN CAPE	11	1	2	13	0	0	5	3	0
TOTAL	71	5	13	142	2	0	28	22	1

Land Invasion Cases: 1 April 2015 To 31 October 2016 (2)



Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
Free State	Viljoenskroon 139/05/2016	Land Invasion - Iris 858287	Gatherings Act	0	False
	Tumahole 114/05/2016	Land Invasion – EFF	Trespassing	1	Withdrawn
	Zamdela CAS 198-10-2016	Land invasion - Community invaded land that Belongs to Metsimaholo Municipality.	Offences In Terms Of The Regulation Of Gatherings Act	9	First Appearance: 2016-10-17
	Theunissen 265/05/2016	Land Invasion	Trespassing	0	Undetected
	Marquard 41/04/2016	Land invasion - 250 community members barricaded the road with burning tyres and stones complaining about demarcation of stands	Public Violence	3	Withdrawn in court
	Hoopstad 03/02/2016	EFF members gathered at Korea wanting to occupy land illegally they threw stones at Police	Trespassing	25	Booked out to The Director of Public Prosecution

Land Invasion Cases: 1 April 2015 To 31 October 2016

(3)



Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
Gauteng	Tsakane CAS 483/4/2015	Community members were erecting illegal structures on the land	Public Violence	0	Withdrawn
	Honeydew CAS 272/4/2015	Community members threw stones and damaged Police vehicles when they tried to block evictions by the Sheriff	Public Violence	1	Withdrawn
	Edenpark CAS 90/12/2015	Land Invasion – Community members invaded municipal land	Public violence	7	Provisionally withdrawn
	Sebokeng CAS 593/11/2015	Land Invasion – Community members invaded land and RDP houses	Public violence	0	Undetected
	Dawn Park CAS 231/09/2015	Land Invasion – Community members invaded saying they want their land back	Public violence	0	Undetected

Land Invasion Cases: 1 April 2015 To 31 October 2016



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Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
Gauteng	Dawn Park CAS 66/10/2015	Land Invasion – Community members invaded saying they want their land back	Public violence	0	Undetected
	Dawn Park CAS 73/10/2015	Land Invasion – Community members invaded saying they want their land back	Public violence	0	Undetected
	Daveyton CAS 101/05/2015	Land invasion – people barricaded the road with burning tyres wanting to invade land	Public violence	12	Withdrawn
	Ekgangala CAS 38/05/2015	Land Invasion – Community members complained about their shacks being demolished by Council	Public violence	0	Withdrawn
	Soshanguve CAS 415/12/2015	Land Invasion – Community members invaded municipality land	Public violence	0	Withdrawn
	Akasia CAS 184/10/2015	Land Invasion – Community members invaded municipality land	Public violence	0	False
	Hammanskraal CAS 324/09/2015	Land Invasion – Community members barricaded the road complaining about demolition of their shacks	Public violence	0	Undetected
	Temba CAS 206/01/2016	Land Invasion – Community members barricaded the road complaining about Metro Police demolishing their shacks	Public violence	0	Undetected
	Temba CAS 229/01/2016	Land Invasion – Community members barricaded the road complaining about Metro Police demolishing their shacks	Public violence	2	Withdrawn

Land Invasion Cases: 1 April 2015 To 31 October 2016



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Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
Gauteng	Mabopane CAS 211/8/2016 2016-08-22 18:00	Land Invasion – members of the community invaded land at Sun valley Mabopane	Offences in terms of the Regulation of Gatherings Act	0	Undetected
	Mamelodi East CAS 379/08/2016	Land Invasion – Nellmapius residents wanted to invade the RDP house in the area and they started barricading the road with stones.	Public violence	0	Undetected
	Orange Farm CAS 798/08/2016	Land Invasion - At Sebokeng, a group of people were invading an open field in Ext. 1, Orange Farm. They had planted poles to erect shacks	Gatherings Act	0	Undetected
	Florida CAS 678/08/2016 CAS 690/08/2016	Land Invasion - At Florida, the Community illegally occupied vacant Flats, in Fleurhof. They were removed from the flats by Police	Trespassing Public Violence	0	Undetected
	Mamelodi East CAS 379/08/2016	Land Invasion – Nellmapius residents wanted to invade RDP houses in the area and they started barricading the road with stones.	Public violence	0	Undetected
	Diepsloot CAS 574/05/2016	Land Invasion - Iris 858663	Public violence	3	Withdrawn
	Hammanskraal CAS 285/05/2016	Land Invasion - Iris 857702	Public Violence	4	Remanded to 2016-11-10

Land Invasion Cases: 1 April 2015 To 31 October 2016

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Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
Gauteng	Hammanskraal CAS 290/05/2016	Police vehicle damaged by protesters	Malicious Damage	0	Undetected
	Temba CAS 644/5/2016	Selling/giving people the land belonging to Tribal authority	Utilise Land For Purpose/Manner Other Than That Intended By Plan For Building As Approved	0	Nolle Prosequi
	Temba CAS 646/5/2016	Community Protest Action - Land Invasion - Iris 857702	1. Public Violence 2. Malicious Damage to Property 3. Murder 4. Theft General 5. Assault GBH	0	Investigation ongoing Provincial Comm. Gauteng Detectives
	Temba CAS 651/5/2016	A group of community members throw stones at passing vehicles	Malicious Damage	0	Undetected
	Elsburg CAS 342/05/2016	Land Invasion – Iris 858766	Contempt of Court	1	Remanded to 2016-10-11
	Temba CAS 652/5/2016	Land Invasion	Attempted murder	0	Undetected
	Bronkhorstspuit CAS 134/04/2016	500 community members tried to occupy the land belonging to private person	Trespassing	0	Undetected

Land Invasion Cases: 1 April 2015 To 31 October 2016



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Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
Gauteng	Temba CAS 660/5/2016	Community member hit with a crowbar by Red Ants	Assault GBH	0	Investigation ongoing Provincial Comm. Gauteng Detectives
	Temba CAS 679/05/2016	Land invasion	Public violence	1	Provisionally withdrawn
	Temba CAS 680/5/2016	Red Ants stole Vodacom Smart tablet	Theft general	0	Undetected
	Temba CAS 731/5/2016	Display tombstones damaged by protesters	Malicious Damage	0	Undetected
	Ivory Park 393/10/2016 2016-10-17 10:00	Land invasion – About 1000 community members barricaded the road with tyres complaining about police removing them from land	Public Violence		Withdrawn
	Ivory Park 534/10/2016 2016-10-19 19:00	Land invasion – About 1000 community members barricaded the road with tyres complaining about police removing them from land	Public Violence	0	Undetected
	Daveyton 356/09/2016 2016-09-27 13:00	Land invasion – Community members erected shacks illegally at Sabata street near Hercules	Public Violence	1	Withdrawn

Land Invasion Cases: 1 April 2015 To 31 October 2016



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Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
Gauteng	Daveyton CAS 356/09/2016 2016-09-27 13:00	Land invasion – Community members erected shacks illegally at Sabata street near Hercules	Public Violence	1	Withdrawn
	Daveyton CAS 202/10/2016 2016-10-17 10:30	Land invasion – Community members barricaded the road with tyres complaining about Police removing them from land	Public Violence	2	Withdrawn
	Mamelodi East CAS 182/7/2016	Land invasion	Public Violence	0	Investigation
	Cullinan CAS 45/06/2016	Land invasion - Iris 859607	Public Violence	2	Imprisonment: 2 Years of which 2 Years are Suspended for 5 Years
	Hammanskraal CAS 232/06/2016	Land Invasion/ Eviction	Public Violence	0	Undetected
	Tsakane CAS 43/04/2016	Community members of Palm Ridge barricaded the road with burning tyres and stones showing dissatisfaction about eviction order	Public violence	0	Undetected
	Mabopane CAS 282/01/2016	Land Invasion – Community members barricaded the road complaining about Red Ants demolishing their shacks	Public violence	0	Undetected

Land Invasion Cases: 1 April 2015 To 31 October 2016

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Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
KwaZulu-Natal	Sydenham CAS 181/4/2015	150 protestors blocked the road by burning tyres due to the land invasion department demolishing their shacks	Public Violence	2	Guilty: Both accused Imprisonment: 3 months
	Marianhill CAS 373-09-2015	+ - 70 people gathered and erected + -30 illegal shacks on land not belonging to them	Public Violence	2	Withdrawn against both accused
	Dundee CAS 231/08/2015	Land Invasion People were busy erecting shacks on the land of 100 hectares. About 30 shacks were being illegal erected	Public Violence And M.I.To Property	2	Withdrawn against both accused
Limpopo	Bela-Bela CAS 140/4/2015	Community members were occupying land belonging to Rua Naga	Public Violence	2	Withdrawn
	Mahweleng CAS 276/02/2016	Land invasion	Illegal gathering	16	Withdrawn
	Groblersdal CAS 67/7/2016	Community protest land invasion	Public Violence	1	Provisionally withdrawn
North West	Brits CAS 207/4/2015	Police members were monitoring demolition of illegal structures when community started to protest	Public Violence	12	Investigation
	Phokeng CAS 108/06/2016	Land Invasion – Eviction - Iris 859664	Public Violence MITP	13	Withdrawn

Land Invasion Cases: 1 April 2015 To 31 October 2016 (10)



Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
Northern Cape	Kathu CAS 7/07/2015	Land Invasion – Municipality demolished illegally erected shacks	Public violence	0	Investigation ongoing
	Wrenchville CAS 7/9/2016	Land Invasion – Police shot a member of a community with a rubber bullet during land invasion	Assault GBH	0	Investigation ongoing IPID
	Wrenchville CAS 08/9/2016	Land Invasion – Police shot a member of a community with a rubber bullet during land invasion	Assault GBH	0	Investigation ongoing IPID
	Wrenchville CAS 9/9/2016	Land Invasion – Diamond Field community members barricaded the road with burning tyres complaining about the shacks that were demolished	Public violence	4	Remanded to 2016-11-15
Western Cape	Nyanga CAS 453/2/2016	100 people barricaded New Eizleben Road with burning tyres because they were unhappy about their structures that were broken down by Law Enforcement	Public Violence	0	Undetected
	Lingelethu-West CAS 523/4/2015	Community members were evicted from land belonging to Denel	Public Violence	0	Investigation
	Lingelethu-West CAS 526/4/2015	Community members were arrested after they were told of the court of illegal land invasion	Public Violence	2	Provisionally withdrawn
	Philippi East CAS 226/4/2015	Community members were trying to illegally occupy land near the railway	Public Violence	0	Undetected

Land Invasion Cases: 1 April 2015 To 31 October 2016 (11)



Province	Station and Case number	Type of Incident and IRIS Number	Offence	No of Arrests	Status
Western Cape	Elsies River CAS 469/08/2016 2016-08-24 11:40	Land invasion – Anti land invasion were demolishing illegal structures when community members started throwing stones at police vehicles	Public violence	1	Withdrawn
	Grabouw CAS 124/05/2016	Land Invasion - Iris 856769	Public Violence	9	Withdrawn
	Grabouw CAS 126/05/2016	Land Invasion - Iris 856769	Riotous Assembly Act	1	Withdrawn
	Grabouw CAS 135/05/2016	Land Invasion - Iris 856907	Malicious Damage to Property	0	Undetected
	Mfuleni CAS 499/10/2016	Land Invasion – Community invaded land at Hindle road	Public Violence	0	Under Investigation
	Harare CAS 834/05/2016	Land Invasion – Removal of Illegal shacks Iris 858928	Public Violence	0	Undetected
	Kwanongqaba CAS 381/04/2016	100 members of the community built illegal structures at Mosselbay	Regulation of Gatherings Act.205/1993 12(1) (A)	0	Undetected

5. Extension of Security of Tenure Amendment Bill

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- **The SAPS was not part of the consultative process.**
- **The Bill deals with:**
 - The rights of occupiers in terms of Extension of Security of Tenure Amendment; &
 - The requirements of obtaining a court order to evict persons.
- **The Bill does not impact on the duties of the SAPS.**

6. Conclusion

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- **From the statistics provided it is evident that the SAPS mostly deals with this issue through its Public Order Policing capability.**
- **The SAPS is committed to:**
 - Uphold the law;
 - Fulfil its mandate within the ambit of the law; &
 - Exercise the powers prescribed by the law.



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