

NATIONAL INSTRUCTION 7 OF 2017 TRESPASSING, UNLAWFUL OCCUPATION OF LAND AND EVICTIONS

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1. Background

- (1) The mandate of the South African Police Service, as set out in section 205(3) of the Constitution of the Republic of South Africa, 1996, is, *inter alia*, to prevent, combat and investigate crime, to maintain public order, protect and secure the inhabitants of South Africa and to uphold and enforce the law.

- (2) Legislation was enacted to give effect to potentially competing Constitutional property and tenure rights as are envisaged in sections 25(2) and (3), and sections 25(6), (7) and (8), and 26(2) and (3) of the Constitution of the Republic of South Africa, 1996. The State and all its organs must, in accordance section 7 of the Constitution, respect, protect, promote and fulfil these rights. These statutes include the following:
 - (a) Trespass Act, 1959 (Act No. 6 of 1959)("Trespass Act);
 - (b) Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998);
 - (c) Extension of Security of Tenure Act, 1997 (Act No.62 of 1997);
 - (d) Land Reform Act, 1996 (Act No. 3 of 1996); and
 - (e) Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).

- (3) The practical application of the Constitutional and statutory rights pertaining to ownership, tenure and other rights to land pose certain challenges where *members* of SAPS are more than often confronted with complicated factual situations in the field of its operations. The situations are often charged with emotions as result of the tension between the respective competing rights. Occupation of land by *unlawful occupiers* which is against the wishes of the owner of such property, is an issue often precipitated by socio-economic, socio-

historic or socio-political factors.

- (4) As such, the *SAPS* may be involved in matters of land invasions or *evictions* and must guard against overzealous or unlawful intervention. The *SAPS* 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.
- (5) Land owners and occupiers must be requested to report incidents of land invasions and illegal *evictions* to their local police stations. In the absence of proper police response the Station Commander, District Commissioner or Operational Coordination or the Office of the Provincial Commissioner should be contacted to ensure that the matter is attended to.

2. Purpose

The purpose of this National Instruction is to provide guidance to *members* of the *SAPS* in respect of their roles and responsibilities during incidents of trespassing, land invasions or *evictions*, to ensure that *members* act within the perimeters of all applicable Legislation.

3. Regulatory Framework

This Instruction is informed by *inter alia* the following:

- (a) Constitution of the Republic of South Africa, 1996;
- (b) Extension of Security Tenure Act, 1997 (Act No. 62 of 1997);
- (c) Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);
- (d) Magistrates Court Act, 1944 (Act No. 32 of 1944);
- (e) Prevention of Illegal Eviction from and Unlawful Occupation of Land

- Act, 1998 (Act No. 19 of 1998);
- (f) Rental Housing Act, 1999 (Act No. 50 of 1999);
 - (g) Rules regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa (GNR.740 of 23 August 2010);
 - (h) Sheriffs Act, 1986 (Act No 90 of 1986); and
 - (i) Trespass Act, 1959 (Act No. 6 of 1959).

4. Definitions

In this Instruction, unless the context otherwise indicates, —

- (a) “*arrest*” means to, in accordance with Chapter 5 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), take a suspect (during or after the commission of an offence) into custody to ensure his or her attendance in court where he or she stands accused of committing of such offence;
- (b) “*court*” means any division of the High Court or a magistrates court;
- (c) “*ESTA*” means the Extension of Security Tenure Act, 1997 (Act No 62 of 1997);
- (d) “*evict*” means to lawfully and in accordance with a court order granted in civil proceedings by competent court, expel someone together with their personal belongings from land, a place, premises or property in terms of the law (or a court order), and “*eviction*” has a corresponding meaning (Our courts have expressed in a number of judgments the challenge of dealing with this definition, for instance the cutting of the electricity would not amount to an eviction. However, the cutting of the electricity that powers the water pump to grant access to water, would amount to an eviction. To deprive the occupier of use of

land which he or she previously had, such as gardening, would also amount to an eviction.);

- (e) “*eviction order*” means an order issued by a court that compels someone to leave vacant land, a place, premises or property and that authorises an eviction in the event that such land is not vacated voluntarily;
- (f) “*land claim*” means a land claim that was duly lodged in accordance with section 16 of the *LTA* and section 10 of the *Restitution Act*;
- (g) “*LTA*” means the Land Reform (Labour Tenants) Act, 1996 (Act No 3 of 1996);
- (h) “*member*” means a member appointed in terms of the South African Police Service Act, 1995 (Act 68 of 1995);
- (i) “*occupier*” means a person who resides on land with the permission or consent of the owner. The consent does not have to be expressed (in writing or orally), but may also be given tacitly in accordance with the provisions of sections 3(4) and 3(5) of *ESTA*;
- (j) “*PIEA*” means the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No 19 of 1998);
- (k) “*reside*” means that a person has his place of abode or dwells permanently at a particular place;
- (l) “*Restitution Act*” means the Restitution of Land Rights Act, 1994 (Act No 22 of 1994);
- (m) “*SAPS*” means the South African Police Service;

- (n) “*sheriff*” means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No 90 of 1986), and a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively;
- (o) “*Trespass Act*” means the Trespass Act, 1959 (Act No 6 of 1959); and
- (p) “*unlawful occupier*” means a person who occupies and *resides* on land without the express or tacit consent of the owner or person in charge.

5. Different legal positions

(1) Lawful Occupiers

A lawful *occupier* is a person who *resides* on land with the permission of the owner of the land. There are two distinctive categories of persons identified in the legislation:

(a) Occupier regulated by ESTA

- (i) An occupier in terms of ESTA is a person living (residing) on farm land with the owner’s consent. This consent does not have to be express (in writing or orally) but may also be given tacitly in accordance with and after the expiry of the periods referred to in section 3(4) and 3(5) of ESTA. An example of express consent is where an occupier resides on the land after asking the owner permission. An example of tacit consent would be the case where a person lives on a farm with the full knowledge of the owner for longer than the periods as prescribed in section 3(4) and 3(5) of ESTA. If the owner does not take steps to evict that occupier within the prescribed periods, the

owner will by operation of be regarded to have given gave tacit consent through his or her conduct. An occupier in terms of *ESTA* is sometimes referred to as a “farm dweller”.

- (ii) A person earning more than the prescribed gross income (currently R 13 625.00) is not regarded as an *occupier* in terms of *ESTA*.
- (iii) *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, recognized as townships or urban land. *ESTA* refers to the owner at the time of the relevant act, and extends the concept to the holder of mineral rights.
- (iv) 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. An eviction order granted by the Magistrate’s Court can only be carried into effect after such order was confirmed on automatic review by the Land Claims Court.
- (v) The effect of this provision is that *members* and commanders must note the fact that Magistrates Court Orders for eviction in terms of *ESTA* can only be executed once it has been reviewed by the Land Claims Court and the Land Claims Court has endorsed the Order. Attorneys

and the Sheriff are sometimes unaware of this provision or Attorneys act in an unethical manner by instructing the Sheriff to execute the Order without endorsement by the Land Claims Court.

(b) Labour tenant regulated by the LTA

- (i) A labour tenant is a person —
- who is residing or has the right to reside on a farm;
 - who has or has had the right to use cropping or grazing land on the farm, referred to in the first bullet, or another farm of the owner, and
 - in consideration of such right provides or has provided labour to the owner or lessee; and
 - whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm

A person claiming to be a labour tenant must meet all three the abovementioned requirements to qualify as a labour tenant.

- (ii) 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.

- (iii) A farm worker, who gets paid for his or her work mainly in

cash as opposed to the value of any cropping and grazing rights, 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*.

- (iv) A labour tenant may only be evicted in terms of an order of the Land Claims Court.

- (v) Persons claiming to be labour tenants are not excluded from invoking rights in terms of *ESTA* in the event where the status of a person claiming to be a labour tenant cannot be verified.

(2) Unlawful Occupiers

- (a) 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*.

- (b) The rights of an *unlawful occupier* are protected by the *PIEA*. This category of *occupiers* will mostly be what is commonly known as “squatters”.

- (c) 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. It is a factual question how long he or she was *residing*

there, to be best dealt with by the relevant *court*. A person in the process of erecting a building or structure and not inhabiting the building or structure is not *residing* on such land.

- (d) *Unlawful occupiers* may only be evicted in terms of an order of the Magistrate's Court or High Court.
- (e) 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.
- (f) Where the *PIEA* refers to "consent", it means express or tacit (in accordance with the provisions of sections 3(4) and 3(5) of *ESTA*) consent of the owner of the land (or the person in charge) to the occupation by the *occupier* of the land in question.
- (g) Sections 3(4) and 3(5) of *ESTA* provides as follows
 - (3) *For the purposes of this Act, consent to a person to reside on land shall be effective regardless of whether the occupier, owner or person in charge has to obtain some other official authority required by law for such residence.*
 - (4) *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."*

- (h) If persons start occupying property and the owner or person in charge allows this occupation unhindered, it may be construed as tacit consent, subject to the provisions of sections 3(4) and 3(5) of *ESTA*.
- (i) Where *PIEA* refers to “owner”, it means the *registered* owner of land, including an organ of state. Where *PIEA* refers to the “person in charge”, it means the person who has the necessary legal authority to give permission to a person to enter or reside upon the land in question.

(3) Trespasser

- (a) A trespasser is someone who enters land without the permission of the owner.
- (b) Section 1 of the *Trespass Act*, 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.
- (c) A *court* who finds a trespasser guilty of an offence in terms of section 1(1) of the *Trespass Act*, 1959, may order the summary

removal of such a person from the land concerned.

- (d) Trespassers must be arrested as soon as possible by *members* of the *SAPS* after a complaint of trespassing was lodged (if the person is still on the relevant land) and must be brought before a *court*.
- (e) The owner or person in charge of the property must lodge a formal complaint with the *SAPS* and provide an affidavit with the following information clear for *members* to act:
 - (i) the capacity of the complainant (whether he or she is the owner, lawful *occupier* or person in charge of the property in question) (A *member* may not refuse to accept such a complaint on the basis that the complainant cannot immediately provide proof that he or she is the owner, person in charge of land or lawful occupier);
 - (ii) particulars of the suspect(s) who entered the property in question;
 - (iii) whether the owner, lawful *occupier* or person in charge gave permission to the suspect(s) to enter the property in question or not; and
 - (iv) whether the suspect(s) have any lawful reason for entering the property.
- (f) If the suspect leases the property or is an employee of the complainant or *bona fide* visitor to a lawful *occupier*, the suspect may have a lawful reason for his or her presence. *Members* must establish from the facts provided by the complainant whether the *Trespass Act*, *ESTA* or *LTA* is applicable in the

circumstances. A visitor of an unlawful occupier, do not have a lawful reason to be present on the property where the illegal occupier is residing.

- (g) If it is clear that the suspect(s) have been *residing* on the property, the owner must be advised that the trespasser should be evicted by means of an order of *court*.
- (h) 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. In such case, the occupier will not be evicted, but a case of trespassing may still be registered and investigated. 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.
- (i) A clear distinction must be made between *eviction* and *arrest* for trespassing. A person who entered land without the permission of the owner, person in charge of the land or lawful occupier (whether he or she is in the process of erecting a building or structure and completed the building or structure) may be arrested for trespassing.
- (j) In the logical sequence of events a land invasion is preceded by trespassing. In the matter of *Economic Freedom Fighters and Another v Minister of Justice and Correctional Services and Another 2021 (2) SA 1 (CC)*, 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*.

- (k) Only *ESTA* and *LTA* occupiers are exempted from evictions in terms of subsection 2(2) of the *Trespass Act*. An unlawful occupier mentioned in *PIEA* does therefore not enjoy statutory immunity from prosecution in terms of the *Trespass Act*. In the matter of *S v Koko 2006 (1) SACR 15 (C)*, the Western Cape High Court held that *PIEA* does not prevent the owner from proceeding with complaints of trespassing and that the two processes can be combined or can be dealt with in a parallel manner. *Members* are quick to respond to complainants that a trespass case cannot be opened in matters where *PIEA* finds application, this incorrect and must stop immediately.
- (l) 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. Otherwise an eviction order must be obtained from a Magistrates Court or High Court. The *SAPS* does not evict persons or remove structures erected, unless specifically ordered by a Court to do so.
- (m) It is important to immediately when the land owner, lawful occupier or person in charge thereof becomes aware of the trespassing to make a complaint with the *SAPS*.

6. Land claims

- (1) Land Claims are lodged against the State and not against individual private land owners.
- (2) Claimants in a land claim will not have any right to privately owned land up until the claim was settled and the claimed land was acquired by the State against payment of compensation as envisaged in section 25(2) and 3 of the Constitution.
- (3) Land Claims lodged in terms of the LTA are administered and processed by the National Department of Agriculture, Rural Development and Land Reform and the status of any claim can be verified with the nearest regional offices of the said department.
- (4) Land Claims lodged in accordance with the Restitution Act, are administered and processed by the Commission on Restitution of Land Rights and the status of any claim can be verified with the provincial offices of the Commission.
- (5) The existence of land claim against any land in accordance with the said legislation will not constitute a defense against a charge of trespassing, unless the claim was settled, the land was acquired or lawfully expropriated from a private land owner by the abovementioned state departments for and on behalf of the claimants and possession of such land, as result of the purchase or expropriation, was given to the claimants.

- (6) The private land owner and claimant must provide proof of ownership to resolve the matter, should criminal charges be brought for trespassing.

7. Practical guidance for operational commanders and members

- (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.
- (2) A *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*.
- (3) Whenever an owner or a person in charge of vacant land, place, premises or property approaches the *SAPS* 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, e.g. the *ESTA* or *LTA*.
- (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 *member* attending to the complaint must deal with the matter according to the normal procedures for trespassing.

- (5) However, when the person “trespassing” is an *occupier*, that person enjoys the protection of the *LTA* or *ESTA* and the *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) This does not preclude the owner or person in charge of the property to make a complaint of trespassing. A case docket must be registered and investigated.
- (7) *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. The discretion to arrest or not to arrest in these circumstances remains a challenge, as a contravention of section 23(1) of *ESTA* normally is committed in the presence of a *member* and in terms of section 23(3) of *ESTA*, the penalty applicable to such a contravention falls within the ambit of Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (8) A *member*, even though authorised by law, should normally refrain from arresting a person if the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act, 1977, unless the person continues to commit the offence in his or her presence. If a *member* is satisfied that the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act, 1977, the

member must open a docket and refer it to the public prosecutor for the public prosecutor to have a summons issued. The summons may then be served on the person. Pocket Book and Occurrence Book entries must be made in all these instances.

- (9) The *SAPS* is often cited in court orders to provide assistance to applicants or the Sheriff in the execution of a court order whereby unidentified persons are being interdicted from entering private property and prevented from erecting and occupying structures on such private land, even though the *SAPS* was not a respondent in such matters. Where the persons do enter the property and then have ample time to erect a structure and the applicant alleges that the structure is not yet occupied and requests the *SAPS* to proceed with assisting them to remove the persons and break down the structures. The *SAPS* is under no obligation to provide such assistance. Consideration should be given in these circumstances to open a case of contempt of court subject to the availability of the evidence, such as proof of service of the order and the failure to comply with the order.

8. Dealing with land invasions

- (1) If a *member* of the *SAPS* 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 and such persons may be arrested.

- (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.
- (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.
- (4) 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*. He or she may still register a case of trespassing in such an event.
- (5) 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.

- (6) 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 of members of the SAPS in relation to evictions

- (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* (e.g. demolition and removal of buildings or structures), subject to the conditions as determined by the *court*.
- (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 *SAPS* will be requested to assist the *sheriff* to enforce law and order, as well as protection service.
- (3) 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:

- (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*.
 - (b) 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).
 - (c) 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.
 - (d) 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.
- (4) 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).

- (5) 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.
- (6) In all cases where assistance is to be rendered, consideration must be given to request assistance from the relevant Public Order Policing Unit.

10. 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 Agriculture Rural Development and Land Reform 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 Agriculture Rural Development and Land Reform
- The Department of Agriculture 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 SAPS
- (a) Where a complaint is made which seems to be related to land invasion, a *member* of the SAPS on duty in the Community Service Centre must —
 - (i) act in terms of paragraph 8 of this National Instruction;
 - (ii) 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*;
 - (iii) advise the land owner to approach any office of the Department of Agriculture Rural Development and Land Reform for assistance - where private land has been unlawfully invaded and special circumstances exist regarding the vulnerability of the *occupiers*, e.g. a need for access to agricultural land exists; and
 - (iv) 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, e.g. a need for housing exists.

- (b) The *SAPS* must investigate offences committed.
- (c) In all cases where *members* of the *SAPS* act during land invasions or illegal *evictions*, proper records must be kept for evidence purposes.
- (d) Even though the *SAPS* 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.

11. Complaints in terms of the Rental Housing Act

- (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.

- (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.
- (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.
- (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.
- (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.

12. Implementation and review

- (1) Every Provincial Commissioner must monitor compliance and where a *member* acted in contravention of the National Instruction and ensure that the commander of the *member* institutes disciplinary steps and criminal charges, where applicable, against the *member*.

- (2) The Divisional Commissioner: Visible Policing and Operations may issue Standard Operating Procedures regarding any aspect relating to the National Instruction and may develop and implement measures to monitor and evaluate compliance with the National Instruction.
- (3) This National Instruction must be reviewed at least every three (3) years from the date of its approval.