



Province of the
EASTERN CAPE
COOPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS

LAND INVASION POLICY FRAMEWORK
(2024)

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The Land Invasion Policy Framework was developed with an aim of supporting and guiding municipalities in the Eastern Cape Province with the processes of how to effectively handle matters relating to land invasions. The policy framework explicitly provides mechanism and measures to secure and protect municipal, state land and state-owned properties from illegal occupation. The policy framework further outlined a step-by-step court process to be followed when addressing land invasion matters.

Clear roles and responsibilities are provided for various stakeholders involved in the management of land invasion. Ultimately guidance provided through this policy framework will contribute to the effective and efficient land use management and land administration within municipal areas.

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TABLE OF CONTENT

1. DEFINITIONS	4
2. INTRODUCTION AND BACKGROUND.....	6
3. PURPOSE AND OBJECTIVES	6
4. LEGISLATIVE MANDATE	7
5. PRE-EMPTIVE STRATEGY TO CURB LAND INVASIONS	8
5.1 Identification and prevention	8
5.2 Communication.....	8
5.3. ACTIONS TO SAFEGUARD PROPERTIES.....	9
5.3.1 Actions to safeguard municipal properties.....	9
6. COURT PROCESS FOR ADDRESSING LAND INVASION	10
6.1 Lodging of eviction application	10
6.2. Notices of Court Proceedings.....	10
6.3. Granting of eviction order by the Court.....	11
7. IMPLEMENTATION OF THE POLICY	13
7.1 Establishment of Municipal Anti-Land Invasion Committee (MALIC).....	13
7.2 Duties of Municipal Anti-Land Invasion Committee (MALIC).....	13
8. Roles and responsibilities of Municipal Units or departments which will assist in dealing with land invasion.	14
8.1 Roles of Law Enforcement / Community Safety Department/Unit	14
8.2 Role of the departments responsible for Spatial Planning /Human Settlement and land administration .	14
8.3 The role of Legal Service Department/Unit.....	15
8.4 The Role of South African Police Services.....	15
9. The involvement and the role of Sector Departments (COGTA, DALRRD and DPW &I) in addressing land invasion.	17
9.1The role of Department of Cooperative Governance and Traditional Affairs (COGTA).....	17
9.2 The role of Department of Rural Development and Agrarian Reform (DRDAR) and DALRRD.....	17
9.3 The role of Department of Public Works (DPW& I).....	17
9.4 The role of local municipalities.....	17
10. CONCLUSION	17

1. DEFINITIONS

	DEFINITIONS
An unlawful occupier	A person or individual who occupies land without consent of the owner or person in charge, or without any other right in law to occupy such land.
Authorized informal settlement	Any informal settlement which is recognized by the Municipality as an authorized informal settlement, and which is regarded as the transit camp to house landless people who will be ultimately relocated to a formally established township.
Consent	The expression or implied consent of the owner or person in charge to occupation of land by resident of a shack irrespective of whether such consent was given in writing or otherwise.
Court	An institution responsible for administering justice and resolving legal conflicts. It is a place where trials are conducted, and judicial decisions are made.
Eviction	The permanent removal, in accordance with the provisions of a court order, of a person with his or her personal property from occupation of a shack or the land on which the shack is constructed. This includes the demolition and removal from the land of any building materials used to construct the shack.
Informal settlement	One or more unauthorised structures (shacks) constructed on land, with or without the consent of the owner of the land or the person in charge of the land.
Land or buildings	Any land or building within the area of jurisdiction of the Municipality, irrespective of whether such land or building belongs to the National Government, the Provincial Government, the Municipality or a private individual, company, or other legal entity.
Land invasion	The illegal occupation of any land or any settlement or occupation of any number of people on land without consent of the owner of the land or the person in charge of the land or building, or without any other right in law to settle on or occupy such land or building.
Municipality	A municipality, established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorized agent, or any employee acting

	in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent, or employee.
The Landowner	The registered owner of land, irrespective of whether such owner is the National Government, the Provincial Government, the Municipality or a private individual, company, or other legal entity.
Official	Any person who is employed or is contracted by the municipality or government.
Person in charge	In relation to land, means a person who has the legal authority to give permission to another person to enter or reside on that portion of land.
Shack	Any temporary shelter, building, hut, tent, dwelling or similar structure which does not comply with the provisions of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), which is primarily used for residential purposes.

2. INTRODUCTION AND BACKGROUND

In terms of Section 154 of the Constitution of South Africa, the Department has a legislative mandate to provide support and strengthen the capacity of municipalities to effectively manage their own affairs, to diligently exercise their powers and to efficiently perform their functions, and furthermore to track and monitor performance.

As a mechanism of providing accelerated support to municipalities, the Department has developed a standard framework, for all municipalities, that will assist in handling land invasions matters. The development of a land invasion policy is influenced by, amongst other reasons, the prevalent cases of illegal occupation of land particularly in municipalities due to an influx of inhabitants that migrate to urban areas to seek job opportunities.

The inability of government to provide adequate housing and security of tenure is one of the motivating factors that further exacerbates the illegal occupation of vacant land in municipalities. As a result of illegal occupation of land, municipalities are unable to implementing systematic and orderly development which leads to haphazard developments, huge service delivery backlogs and community service delivery protests.

3. PURPOSE AND OBJECTIVES

The purpose of the Land Invasion Policy Framework is to provide guidance to the municipalities on how to effectively handle matters related to illegal occupation of land. The main objectives of the Provincial Land Invasion Framework are as follows:

- To provide municipalities with a structured methodology of handling cases of illegal occupation of land.
- To institute mechanism and measures to secure and protect municipal land or state-owned properties from illegal occupation.
- To assist municipalities in raising awareness to communities with regards to the negative effects of unlawful occupation of land and unauthorized building of structures in unplanned, and unsurveyed portions of land.

- To identify key stakeholders that will assist in providing a sustainable solution in curbing future land invasion cases.
- To identify roles and responsibilities of various stakeholders involved in the management of land invasion.

4. LEGISLATIVE MANDATE

Matters related to invasion of land / illegal occupation of land are regulated by the following legislation:

- The Constitution of the RSA, 1996
- Interim Protection of Informal Land Rights Act 31 of 1996
- Extension of Security of Tenure Act, 62 of 1997
- The Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (PIE Act)
- National Building Regulations and Building Standards Act 103 of 1977

Legislative Frameworks Applicable	
The Constitution of the RSA, 1996	Section 26(1) of Bill of rights stipulates that everyone has a right to access adequate housing. Section 26(3) state that no one may be evicted, or their home being demolished without an order from court after considering all relevant circumstances.
Interim Protection of Informal Land Rights Act 31 of 1996	Provides for protection of informal land rights
Extension of Security of Tenure Act, 62 of 1997	Regulates the eviction of vulnerable occupiers while it recognises the rights of the landowner to apply to court for eviction orders in the appropriate circumstances.
The Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (PIE Act)	Provides for prohibition of the unlawful eviction and procedures that needs to be followed when evicting unlawful occupiers.

5. PRE-EMPTIVE STRATEGY TO CURB LAND INVASIONS

5.1 Identification and prevention

Municipalities should:

- Develop a land audit report to identify pieces of land that the municipality owns to assist in developing mechanisms to protect land earmarked for development and dispose unutilized land.
- Develop and maintain a database of existing informal settlements within the municipal area.
- The database should contain detailed information, at the very least include, the number of people, their identities, gender, and age of dwellers in each settlement.
- Allocate unique numbers for each structure that has been captured on the database.
- Curb unauthorized extensions to existing structures, as this promotes unmanageable expansion of informal settlements.
- It is also critical to capture and maintain ground photography of structures to properly identify growth direction of informal settlements.
- Utilize remote platforms such as Google Earth and GIS to analyze areas of illegal occupation.
- Identify vacant land and its use that is likely to be invaded, as well as the details of ownership.
- Where possible fence off municipal or government land that is prone to land invasion.
- Erect signage to warn prospective invaders.
- Mast lighting, in strategic nodes, should be considered where feasible.
- Municipalities should make land available for integrated human settlement through leasing, and disposal.

5.2 Communication

Municipalities should:

- Establish and maintain working relations with the ward committee members in all wards to obtain buy-in and to use ward committees as champions in controlling further growth of informal settlements.
- Educate and empower relevant municipal officials (e.g., law enforcement, building inspectors, housing, engineering, community development officials) to monitor, capture, report and follow up on all incidents of land invasion / unlawful occupation of land.

- Appoint an official that will process all incidents of unlawful land occupation and eviction complaints, the official would also be responsible for initiating appropriate corrective actions.
- Conduct regular awareness campaigns to both the community and municipal officials around procedures responsible for handling matters related to unlawful land occupation and /or eviction complaint.
- Raise awareness to all land / property owners about their rights and responsibilities as far as the protection of their properties is concerned.

5.3. ACTIONS TO SAFEGUARD PROPERTIES

5.3.1 Actions to safeguard municipal properties.

- When invasions are reported, law enforcement officers and the appointed official must assess the situation to verify land that has been invaded.
- If land invasion cases are reported, there should be alerts to all parties including the offices of the Municipal Manager, Executive Mayor, Disaster Management Services, Law Enforcement Services and SAPS, etc.
- The Department responsible for Spatial Planning and Human Settlements should help to confirm the ownership of land that is being invaded to verify if it is municipal land or private owned land.
- The Law Enforcement Services should determine the number of illegal yet uncomplete and unoccupied structures and remove them immediately and take the material of the structures to the municipal storage yard.
- In cases where the land is owned by the municipality the building inspectors with the help of law enforcement officers must serve notices to all occupiers that are on the land without the permission of the municipality and legal steps will be taken against them.
- The law enforcement officers should instruct the invaders to vacate the property voluntarily.
- Officials/ staff members who address land invasion issues are required to state all the facts/information in affidavits that will be placed before the courts. Official may also be required to give expert evidence in courts.
- Municipal Officials/staff members must take photos of all illegal structures.
- Law enforcement officers would be required to monitor the invaded area or land to prevent further land invasions.

6. COURT PROCESS TO ADDRESS LAND INVASION

6.1 Lodging of eviction application

- The local municipality has locus standi to bring an eviction application, where the owner of the land, notwithstanding the municipality's request that they do so, has failed to evict unlawful occupants, and if such removal of unlawful occupants is in the public interest.
- The municipality must lay a charge as quickly as possible or encourage the owner of the land to lay a charge of trespassing at the nearest police station, conveying the details of the property.
- The first step to address further invasions is by obtaining a court interdict.
- The following information will be relevant to the eviction proceedings and should be provided to the court as soon as possible, which includes:
 - Full details of the persons bringing the application.
 - A full detail of events from the date and time when the unlawful occupiers were identified until the time that the affidavit will be signed. This should include reporting the incidents to the police, any engagements with the unlawful occupiers, any unlawful incidents or any harm suffered.
 - Details of any real and imminent danger, injury or damage to person or property that may arise; and
 - Details of any hardship the applicants will suffer if the eviction order is not granted as compared against the hardship that will be suffered by the unlawful occupiers if the order is granted.

6.2. Notices of Court Proceedings

- Section 4(1) of PIE Act state that the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.
- At least 14 days before the hearing of the proceedings as contemplated in Section 4(2) of PIE Act, the court must serve written and effective notice of the proceedings to the unlawful occupier.
- Section 4(3) of PIE Act states that subject to the provisions of subsection (2) as mentioned above, the procedure for serving notices and filing of papers is as prescribed by the rules of the court in question.

- Subject to the provisions of subsection (2) as mentioned above, if a court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of the court, service must be effected in the manner directed by the court and provided that the court must consider the rights of the unlawful occupier to receive adequate notice and to defend the case.
- The notice of proceedings contemplated in Section 4(2) of PIE Act must include the following:
 - State that proceedings are being instituted in terms of subsection (1) of the PIE Act for an order for the eviction of the unlawful occupier.
 - Indicate on what date and at what time the court will hear the proceedings.
 - Set out the grounds for the proposed eviction; and
 - State that the unlawful occupier is entitled to appear before the court; and
 - Defend the case and, where necessary, has the right to apply for legal aid.

6.3. Granting of eviction order by the Court

- In obtaining an eviction order via the court for the eviction of illegal occupants and removal of the occupied structures as contemplated in Section 4(8) of PIE Act, the Municipal lawyers should handle this if the court is satisfied that all the requirements of this section have been complied with and that no valid defense has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine:
 - A just and equitable date on which the unlawful occupier must vacate the land under the circumstances.
 - The date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph.
 - A just and equitable date contemplated in Section 4(9) of the PIE Act, the court must have regard to all relevant factors, including the period the unlawful occupier has resided on the land in question; and
 - Section 4 (10) of PIE Act states that the court which orders the eviction of any person in terms of this section, may make an order for the demolition and removal of the buildings or structures that were occupied by such person on the land in question.

The court may grant the eviction order in the following manner:

6.3.1 Land unlawful occupied within less than six months.

Section 4(6) of PIE Act states that if an unlawful occupier has occupied the land in question for less than six months from the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.

6.3.2 Land unlawful occupied more than six months.

Section 4(7) of PIE Act states that if an unlawful occupier has occupied the land in question for more than six months from the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, 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, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

6.4 Execution of eviction orders

- In terms of Section 4(11) of PIE Act, a court may, at the request of the sheriff, authorize any person to assist the sheriff to carry out an order for eviction, demolition, or removal subject to conditions determined by the court. Provided that the sheriff must always be present during such eviction, demolition, or removal.
- Section 4(12) of PIE Act states that any order for the eviction of an unlawful occupier or the demolition or removal of buildings or structures in terms of this section is subject to the conditions deemed reasonable by the court, and the court may, on good cause shown, vary any condition for an eviction order.

6.5 Contempt of court

If in this process new invaders (against whom the interdict is applicable) move onto such land, charges of “contempt of court” may be laid. South African Police Services will then be able to arrest the new invaders and vacant structures may then be removed.

6.6. Urgent proceedings of eviction

Section 5(1) of PIE Act states that notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an unlawful occupier of that land pending the outcome of proceedings for a final order, and the court may grant such an order if it is satisfied that:

- There is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land;
- There is likely hardship to the owner or any other affected person if an order for eviction is not granted, and if hardship to the owner exceeds the hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted; and
- If there is no other effective remedy available.

7. IMPLEMENTATION OF THE POLICY

7.1 Establishment of Municipal Anti-Land Invasion Committee (MALIC)

- The local municipality may, to prevent and control unlawful occupation of land within its municipal area, establish the Municipal Anti-Land Invasion Committee which may be chaired by the Political Representative.
- A MALIC must consist of—
 - Officials in the full-time service of the municipality.
 - Representatives appointed by the Municipal Council who are not municipal officials (public servants) who have knowledge and experience in spatial planning, human settlements, policing service, legal service, public or community service, environmental management, disaster, or the law related thereto.
 - Municipal councillors may and community representatives may form part of the MALIC.
 - Political Representatives, Community representatives, etc.

7.2 Duties of Municipal Anti-Land Invasion Committee (MALIC)

- Assist local municipality with legal issues in matters relating to land invasions and informal settlement.

- Help to distribute any information from the municipality to the residence of informal settlement areas.
- Assist the municipality if there are any surveys that needs to be done.
- Assist the municipality where community meetings need to be convened with people residing in informal areas or land that has been invaded.

8. Roles and responsibilities of Municipal Units or departments which will assist in dealing with land invasion.

8.1 Roles of Law Enforcement / Community Safety Department/Unit

- Law Enforcement Officers should always be available to assist the officers with the identification of illegal structures and any actions to follow.
- Law Enforcement / Manager Community Safety should compile first incidents report.
- Facilitate and supervise the removal of unoccupied structures as soon as possible preferably within twenty-four (24) hours of the structure/s being reported.
- Notify Community Safety of incidents for investigation and feedback.
- Coordinate feedback sessions between Directorates and Departments on illegal occupation and actions taken to rectify the situation.
- Ensure measures on safeguarding the demolishing contractor and all participating officials.
- Facilitate the removal of unauthorized structures upon municipal property, where a court order was issued by the Magistrate's Court.
- Make sure that confiscated material is safely stored and recorded.
- Familiarize him/herself with informal areas and areas where illegal occupation has been reported.
- Ensure written record keeping during land invasion operations.
- Ensure photographic evidence for record keeping and evidence gathering.

8.2 Role of the departments responsible for Spatial Planning /Human Settlement and land administration

- Coordinate the activities of the Community Liaison officers and ensure that any illegal occupation or erection of structures is reported to the Manager: Law Enforcement and Manager: Community Safety.
- Evaluate reports from Law Enforcement /Community Safety.

- In coordination with the Law Enforcement /Community Safety must provide necessary information to Legal Services Department to follow due processes for evictions and interdicts/court orders.
- Assist the Legal Services Department in the collection of any evidence and information to be presented for any court matter or application.
- Compile an action plan and advise on steps to be taken to manage and control informal settlements and prevent any illegal land invasions and the building of any new structures.
- Manage the informal settlement database and ensure that updates are done biannually.
- Ensure that the necessary formalization plans are in place for all informal settlements in the implementation of informal settlement upgrading programmes.

8.3 The role of Legal Service Department/Unit

- Upon the instruction of the Municipal Manager, obtain respective court interdicts pertaining to the various scenarios regarding illegal land occupation.
- Handle all legal matters related to the land invasion.
- Upon instruction of the Municipal Manager, handle all legal related matters, demolition of illegal structures and removal of illegal occupiers or squatters.
- Assist and advise on all legal matters in terms of land invasions.
- Receive, collate, and coordinate all evidence and information to be presented for any court matter or application.
- Assist with the compilation and advice on notices to private and state landowners to protect their properties and put certain measures in place.
- Establish and maintain relationships with the courts.
- Inform the MM /Mayor / Ward Councillor of an interdict or court order that was obtained for the demolishing of structures or re allocating of any persons.
- Receive and distribute court interdicts to all relevant departments and role-players.
- Receive and distribute agreements between the Municipality and landowners and all relevant departments or role-players.

8.4 The Role of South African Police Services

- A Member of the South African Police Services (SAPS) should be notified of any incidents of land invasions.

- A member on duty in the Community SAPS Centre must act within the shortest possible period and ensure that the situation on the land is assessed to determine if there is a threat of unlawful occupation and submit the situation report to station commander.
- In cases where members of the SAPS act during land invasions or illegal evictions, proper records must be kept for evidence purposes.
- Even though the SAPS has a role to play in evictions, their role is limited. If the circumstances of the incident results in public violence, the Provincial Head: Operational Response Services should be contacted to ensure the involvement of 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.
- If a specific person is identified who is planning or instigating people 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.
- In situations where the sheriff must execute the eviction order and where there is sufficient information to indicate that a sheriff may be exposed to danger or damage to property, members of the SAPS will be requested to assist the sheriff to enforce law and order, as well as provide protection service.
- Members of the SAPS may not participate in the eviction but must render protection to the sheriff.
- The sheriff may request assistance from the SAPS with the execution of a court order where the sheriff expects resistance. The sheriff should apply in writing to the station commander and the application must -
 - Provide the date of execution of the court order and be accompanied by a copy of the court order,
 - Provide a brief description of the nature and extent of the assistance; and
 - State reasons why assistance is needed and in the case of expected resistance, information available to the sheriff.

9. The involvement and the role of Sector Departments (COGTA, DALRRD and DPW &I) in addressing land invasions.

9.1 The role of Department of Cooperative Governance and Traditional Affairs (COGTA)

- To provide support and guidance to municipalities on policy formulation which entails processes to be undertaken to address land invasions and land management.

9.2 The role of Department of Rural Development and Agrarian Reform (DRDAR) and DALRRD

- To assist and resolve land invasion cases in the areas where land is vested to the department.

9.3 The role of Department of Public Works (DPW & I)

- To assist and resolve land invasion cases in the areas where land is vested to the department

9.4 The role of local municipalities

- Municipalities should develop land invasion Bylaws through the support of District Municipalities, COGTA and SALGA to curb the spread of land invasion in their municipal areas.
- Municipalities should implement the land invasion Bylaws and mobilise necessary Departments required for implementation.
- Municipalities should create awareness and promote relationship with relevant and affected parties or Sector Departments to prevent and address land invasions.

10. CONCLUSION

The Land Invasion Policy Framework will assist municipalities to address land invasion matters in their municipal areas of jurisdiction. The framework has explicitly provided the necessary procedures that needs to be followed to prevent and to resolve land invasion cases. The policy framework further outlined the relevant role players that have a significant role in addressing land invasion matters.