

**PROVINCIAL GOVERNMENT OF THE
WESTERN CAPE**

**DEPARTMENT OF HOUSING
DIRECTORATE : HOUSING SETTLEMENT**

CAPE TOWN

**UNLAWFUL OCCUPATION OF
LAND**

**GENERAL NOTES AND COMMENTS ON UNLAWFUL
OCCUPATION OF LAND/LAND INVASIONS AND ORDERLY
SETTLEMENT, WITH REFERENCE TO THE PREVENTION OF
ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION
OF LAND ACT 19 OF 1998 [PIE ACT] AND OTHER RELATED
LEGISLATION**

MARCH 2003

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IMPORTANT NOTICE

THIS IS A GENERAL BACKGROUND AND INFORMATION DOCUMENT AND DOES NOT CONSTITUTE LEGAL OPINION. EACH INDIVIDUAL CASE OF UNLAWFUL OCCUPATION OF LAND AND PROPOSED EVICTION MUST BE EVALUATED ACCORDING TO THE APPLICABLE CIRCUMSTANCES AND FACTS. IT IS RECOMMENDED THAT PROFESSIONAL LEGAL ADVICE BE OBTAINED BEFORE PROCEEDING WITH ANY ACTION IN TERMS OF PIE.

THE LAW BY NATURE IS NOT STATIC AND CHANGES OVER TIME. NEW DEVELOPMENTS REGARDING PIE AND RELEVANT CASE LAW SHOULD BE INCORPORATED INTO THESE NOTES AS THEY ARISE.

THE CONTRIBUTORS

The compilation of this document has been made possible by the enthusiastic participation of many people – each with experience in addressing issues related to urbanisation, housing, land invasions, informal settlements and relevant legislation. Most of them have written and/or edited sections of the document. The contributions, in whatever form, of the following people are therefore gratefully acknowledged :-

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CHAPTER 1

INTRODUCTION

- 1.1 It needs to be emphasised that this document's *raison d'être* is by no means an attempt to re-introduce influx control, nor is it a negation or "back-peddalling" on the extremely important obligation of section 26 of our Constitution 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. **Neither** does this document in any manner, by implication or otherwise, promote the acceptance and nurturing of the unlawfull occupation of land or the rewarding there-of by allowing it to dictate housing delivery priorities. A balanced pro-active and, where necessary, a rapid reactive approach in dealing with the matter is suggested.
- 1.2 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.
- 1.3 Unfortunately, legislation dealing with unlawful occupation of land and evictions namely, The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (**PIE**) is difficult to interpret and costly and time consuming to implement. It was thus deemed necessary to compile these notes in an effort to share some experiences and ideas on the implementation of PIE.
- 1.4 In an attempt to assist Municipalities to deal with the unlawful occupation of land/squatting, this document refers, *inter alia*, to latest legislation and applicable case law. Also referred to is a few examples of pro-active measures Municipalities should consider in dealing with the problem of unlawful occupation of land.
- 1.5 Orderly management of urbanization and development requires Municipalities to adopt a wider approach than only the reactive management of unlawful occupation of land/squatting. PIE provides for reactive measures in dealing with "after the fact" unlawful occupation of land/squatting (have already occurred). Without an appropriate and effective pro-active urbanisation and settlement policy the large housing and services shortages will become unmanageable due to the ever increasing competition for housing.

CHAPTER 2

SETTLEMENT MANAGEMENT IN PERSPECTIVE

ORDERLY MANAGEMENT OF URBANISATION : WHY IS IT NECESSARY ?

2.1 Unlawful occupation of land/squatting takes place because of various reasons, such as :-

- Poverty and unemployment;
- Past policies that prevented people from obtaining housing in urban areas;
- Shortage of legally obtainable housing alternatives;
- Faster urbanisation and natural growth than the development of housing in urban areas;
- “Jumping the queue”, hoping to be helped to housing sooner;
- Shortage of developed land in the vicinity of job opportunities;
- Intra-urban migration to better-located land;
- Encouragement of unlawful land occupations for political and financial gain;
- The perception of unfair housing allocation;
- The unlawful sub-letting and vacating of dwellings, leaving sub-tenants in occupation; and
- The illegal selling of land before the expiry of the applicable sales restrictions.

2.2 The White Paper on South African Land Policy – Department of Land Affairs – in which the vision and implementation strategy of South Africa’s land policy is set out, was published in April 1997. Relating to land invasions the following statement is made on page 28 :-

“Landlessness and land invasions are a stark reality in South Africa. Delays in the release of land and slow delivery of housing programmes have exacerbated the problem, as have unrealistic expectations and a lack of information, particularly with the time it takes to transfer land. This has led to urban land invasions and subsequent evictions by local and provincial authorities and ongoing legal disputes. Some community groups who have been involved in planning land and housing developments on identified land have found their development brought to a halt by land invaders.”

Various National Government policy documents have made it clear that land invasions pose a great threat to stability and development and that the unlawful occupation of land must be discouraged at all costs. (White Paper on SA Land Policy – par. 4.8.1 on page 47; The

Development Facilitation Act 67 of 1995, section 3(1)(a); etc).

AVAILABLE PRO-ACTIVE POLICIES AND LEGISLATION

2.3 The various policy and legislative initiatives dealing with pro-active development, housing and the identification of land for affordable housing measures, include the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution), the Development Facilitation Act, 67 of 1995 and the Housing Act, Act 107 of 1997.

2.3.1 The right to have access to adequate housing is set out in section 26 of the Constitution. This section forms part of the socio-economic rights contained in the Bill of Rights and reads as follows : -

- “(1) everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) 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. No legislation may permit arbitrary eviction.”

2.3.2 Section 25 of the Constitution confirms the rights of property owners. The relevant parts of section 25 of the Constitution read as follows : -

- 25(1) No-one may be deprived of property except in terms of laws of general application, and no law may permit arbitrary deprivation of property.
- 25(2) Property may be expropriated only in terms of law of general application - ...”

2.3.3 Section 153 of the Constitution refers to the developmental duties of Municipalities. In terms of these duties, priority should be given to the community's basic needs. Since access to housing is a basic community need, section 153 of the Constitution interacts with the unlawful occupation and land invasion question.

2.3.4 The Provincial Government of the Western Cape is presently

drafting its own Urbanisation Policy and Strategy Framework. The above mentioned report is still in draft form and is soon to be published as a Green Paper for comment. The Green Paper will address questions such as spatial planning, proposed patterns of urban settlement, organisational tools for managing urbanisation and the unlawful occupation of land/land invasions. The Green Paper will also deal with the various elements of an urbanisation policy, such as the biophysical, environmental, economy and housing aspects.

- 2.4 It is commonsensical that Municipalities be pro-active in dealing with the challenges of urbanisation. Each Municipality should in effect provide for a rapid land release programme/managed land settlement project for their Municipal area. Timeous provision should therefore be made by identifying and developing enough land for affordable housing and also identifying and developing land with rudimentary services, as "reception areas" where the homeless can settle as an alternative to the unlawful occupation of land/land invasions. These programmes should form an integral part of the Municipality's Integrated Development Plan (IDP) or frameworks (IDF) and spatial plans. This is required by legislation such as the Transitional Local Government Act 209 of 1993 and the Local Government: Municipal Systems Act 32 of 2000. Municipalities should also investigate all informal settlements and decide which can be upgraded [*in-situ*] and which must be relocated. Programmes must be established to identify alternative land for the relocation of such groups. The upgrading of tenure and services of informal areas that have been identified for upgrading must also be undertaken.
- 2.5 Land identified for housing development purposes should be well located in relation to work opportunities and historical inadequacies, as a preventative measure against further unlawful land occupations. Land for affordable housing should be distributed throughout the Metropolitan and Municipal areas, so that poverty is not concentrated in large areas without the opportunity for better economical prospects.

PRACTICAL NOTES ON PREVENTING UNLAWFUL OCCUPATION OF LAND AND CONTAINING GROWTH OF INFORMAL SETTLEMENTS

2.6 By taking a few basic measures, unlawful occupation of land can be contained with reasonable effectiveness. The following preventative measures, although not exhaustive, are recommended for effective containment.

2.6.1 Identification and prevention

- Build a database of existing informal settlements in your area.
- Such a database should contain information on at least the number of people, their identities and age of the inhabitants of each settlement;
- Mark and number each structure that is on the database;
- Do not allow unauthorized extensions to existing structures, since this encourages the unseen growth of informal settlements. It might also be a good idea to take photographs of the structures to properly identify it as far as future extensions are concerned;
- Identify land (not only municipal land but all land in the jurisdiction of the municipality) that is likely to be invaded, as well as the details of ownership;
- Fence off land that is likely to be invaded;
- Erect signage to warn prospective invaders; and
- Lighting should be considered, if feasible.

2.6.2 Communication

- Establish a working relationship with the representatives of the particular community/ies to assist with curbing the growth of the informal settlement. If no leadership structure exists in an area, facilitate the democratic establishment of one;
- Sensitize all officials in the municipality (i.e. health, law enforcement, housing, engineering, community facilities, etc.) to monitor, note and report incidents of invasions/unlawful occupation;
- Appoint a single person as lodging point for unlawful occupation and eviction complaints. This person should also be responsible to initiate the appropriate action;
- Inform both the community and officials about the proper procedure and contact persons in the lodging of an unlawful occupation/eviction complaint;
- Inform all landowners about their rights and responsibilities as far as the protection of their properties is concerned; and

- Procure and maintain a working relationship with the SAPS to insure swift action against invaders.
- SAPS will not generally evict unlawful occupiers but will assist with ensuring the safety of officials and occupiers and to maintain law and order.

2.6.3 Action

Municipalities may only take “physical on site” action against unlawful land occupiers if the Municipality has the authority to act. Action against unlawful occupation may only be instigated by the owner of the property or by the Municipality if the Municipality has the consent of the landowner to act. The following action may be taken : -

- Lay a charge, or encourage the owner to lay a charge, of trespassing at the SAPS, conveying details of the property and the (municipality’s and/ owner’s) capacity to act;
- Confront invaders with the instruction to vacate the property voluntarily;
- If unlawful land occupiers do not voluntarily vacate the property, dismantle all incomplete or uninhabited structures; and
- Do not destroy materials from the dismantled structures. Compile an inventory thereof instead, and store materials off site.

2.6.4 Agreements with major land owners

- Procure agreements with major landowners that do not have effective control over their properties, e. g. WCHDB and Provincial properties, Propnet, Telkom, Roads, Public Works etc.;
- These agreements may empower Municipalities to act speedily against invaders, with the financial assistance of the landowner.

ROLES OF VARIOUS SPHERES OF GOVERNMENT IN ORDERLY SETTLEMENT MANAGEMENT

2.7 Section 41 of the Constitution provides for the concept of co-operative government. In the context of settlement management, this implies that the various spheres of government have to co-operate with each other in dealing with the problem of unlawful occupation of land/land invasions. The legislative framework governing the

responsibilities and functions relating to settlement management can be summarised as follows : -

2.7.1 The Constitution Act 108 Of 1996

- (a) Section 26
The state (meaning the National, Provincial and Local Governments) has the responsibility to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right to have access to adequate housing.
- (b) Schedule 4 Part A
The National and Provincial Governments have concurrent legislative competence on the functional area of housing.
- (c) Section 152(1)
This section lists the objects of local government to be, *inter alia*:
 - “(a)
 - (b) To ensure the provision of services to communities in a sustainable manner;
 - (c) To promote social and economic development;
 - (d) To promote a safe and healthy environment; and
 - (e)”
- (d) Section 153
This section says that a Municipality must structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, in order to promote the social and economic development of the community, and participate in national and provincial development programmes.

2.7.2 The Housing Act 107 of 1997

- (a) Section 3
This section provides for the macro responsibilities of the National Government as far as housing is concerned, *inter alia*, the determination of policy, setting of housing delivery goals, monitoring of performance, strengthening of the provincial and municipal capacity, etc.

- (b) Section 7
This section instructs the Provincial Government, through the provincial Minister for Housing and after consultation with organisations representing Municipalities, to do everything in its power to promote and facilitate the provision of adequate housing in its Province within the framework of national housing policy.
- (c) Section 9
This section instructs every municipality, as part of the municipality's process of integrated development planning, to take all reasonable and necessary steps within the framework of national and provincial legislation and policy, to ensure that its inhabitants have access to housing and related services **on a progressive basis.**

2.7.3 Local Government: Municipal Systems Act 32 of 2000

Section 23(1)

Municipalities must undertake developmental orientated planning (popularly referred to as the IDP's) to ensure that they :-

- (a) Strive to achieve the objects of local government as set out in section 152 of the Constitution;
- (b) Give effect to their developmental duties as required by section 153 of the Constitution; and
- (c) Together with other organs of state, contribute to the progressive realisation of fundamental rights, as for example, housing.

2.7.4 The Irene Grootboom Constitutional Court Case 2001 : Applicability

Having due regard to the content of preceding sub-paragraphs of paragraph 2.7 it is strongly suggested, in fact we believe it is a must, that all political office bearers and officials of/in organs of state responsible for, or dealing with urbanisation, land and housing issues should read and study the full judgement of the constitutional court in the Irene Grootboom case - Government of Republic of South Africa and others v Grootboom and Others 2001 (1) SA 426 (CC). It is very relevant !

CHAPTER 3

BACKGROUND TO PIE

- 3.1. Previous legislation on unlawful land occupation has over the years been more problematic than helpful. Various writers have criticised the predecessor of PIE, i. e. the Prevention of Illegal Squatting Act, Act 51 of 1952, and it has been typecast as part of the previous government's apartheid and influx control measures and reflecting that government's crisis management style. Instead of being the long term planning instrument that was needed, the said Act has been experienced as promoting homelessness, causing hardship to millions and bringing our legal system into further disrepute.
- 3.2. With the acceptance of the new Constitution, various provisions of the said Prevention of Illegal Squatting Act were Constitutionally challengeable. The Prevention of Illegal Squatting Act was consequently repealed by PIE in June 1998.
- 3.3 According to the long title of PIE, the purpose of the Act is on the one hand to provide for the prohibition of illegal eviction and on the other to provide procedures for the eviction of unlawful occupiers. The purpose of PIE is therefore to protect both the occupier and the landowner.

CHAPTER 4

GUIDE TO PIE

FREQUENTLY ASKED QUESTIONS

The reader will be guided through the provisions of PIE by answers to the following frequently asked questions : -

1. How can land invasions be prevented ?
2. What are the aims of PIE ?
3. What is the scope of PIE ?
4. When is PIE applicable ?
5. Is PIE relevant in all cases of unlawful occupation of land or are there instances where the PIE will not be applicable, for instance in cases of breach of contract ?
6. Who or which entity has *locus standi* to act under PIE ?
7. Which options are available for the eviction of unlawful occupants ?
8. Is an attorney necessary if a court has to be approached ?
9. What requirements have to be met in each of the scenarios set out in question 7 above ?
 - 9.1 When PIE is not applicable;
 - 9.2 Section 4 of PIE proceedings -
 - What is the prescribed content of the notice of proceedings ?
 - Are there specific grounds for eviction ?
 - What are the further requirements of section 4 of PIE ?
 - When will the court, with regard to section 4 proceedings, grant an eviction order ?
 - What must an eviction order contain ?
 - Is it possible to amend eviction orders ?
 - How are the relevant documents to be served ?
 - 9.3 Section 5 proceedings: Does PIE provide for urgent eviction applications ?
 - 9.4 Section 6 proceedings: Would it be possible for the local authority to act in instances where it is not the relevant landowner ?
10. Is there provision for mediation proceedings ?
11. Approximately how long would the procedure take ?
12. When would it be necessary to allocate alternative land ?
13. How should the land be made available, if relevant ?
14. Are the old "transit areas" still relevant and what happens to them ?

15. What alternatives are there to identifying transit areas ?
16. What offences does PIE provide for ?
17. Does PIE provide for the issuing of regulations ?
18. Does PIE repeal any other legislation ?
19. What is the court's attitude to the granting of eviction orders ?
20. What is the local authority's responsibility when the owner of land brings eviction proceedings and serves notice on them as required in terms of PIE ?

ANSWERS TO THE QUESTIONS

1. How can land invasions be prevented ?

- (a) Having a pro-active approach (see Chapter 2) will prevent/minimize land invasions.
- (b) However, if people are in the process of occupying land and/or houses but have not settled, or are pegging out land and the municipality is unable to control the unlawful land invasion, an urgent interdict should immediately be sought to stop the invasion process. Any person occupying the relevant land and/or houses or erecting structures, after the granting of the interdict, will be in contempt of court.
- (c) If some people were in occupation prior to the issuing of the interdict, an eviction order will be necessary. The interdict will also be effective in stemming the flow of unlawful occupiers.

1. What are the aims of PIE ?

The aim of PIE is : -

“To provide for the prohibition of unlawful eviction; to provide for procedures for the eviction of unlawful occupiers; and to repeal the Prevention of Illegal Squatting Act, 1951, and other obsolete laws; and to provide for matters incidental thereto”.

3. What is the scope of PIE ?

- (a) PIE has national applicability and applies to all land within the Republic of South Africa. The definition of land includes buildings and structures. PIE can therefore be used in relation to both urban and rural land. To determine the scope of PIE one should have regard to whether or not the occupier occupied in terms of consent given by the owner or person in charge of the land, either express or implied, or whether the

alleged occupier has any other right in law to do so. If not, PIE is applicable.

- (b) PIE also only relates to evicting someone from his/her home, therefore if you want to remove structures and persons who are utilising the property as business premises, for example, the PIE is not applicable.

4. When Is PIE Applicable ?

- (a) As referred to in paragraph 3(b) above, PIE usually applies in cases of the unlawful occupation of land or buildings.
- (b) In the case **Paarl Municipality and the Occupiers of houses situated at certain erven, Mbkwani, Paarl**, Case No 8937/2000 in the High Court of South Africa, Cape of Good Hope Provincial Division, the judge stated that on a proper construction of PIE, the word 'land' is used interchangeably with the words 'building' and 'structure'. PIE is therefore relevant in cases of unlawful occupation of vacant land as well as improved land with structures or dwellings thereon, provided the occupation occurred without the consent of the person who has authorisation to give such consent.
- (c) Other recent cases have concurred with this statement.
- (d) In recent case law, judges have made it clear that PIE does not relate to occupiers, who, when they occupied, did so with some form of consent or right in law. Therefore, if the occupier originally had a contractual right to occupy the property, such as a lease or deed of sale or had the consent of the owner or person in charge, PIE is not applicable. The owner would merely have to show that the contractual right had been terminated or the consent to occupy withdrawn. The owner would therefore not have to comply with the onerous provisions of PIE.
- (e) HOWEVER, the above position has recently changed dramatically. In a recent judgement of the Supreme Court of Appeal in August 2002 in the matter between **Ndlovu v Ngcobo**, Case No 240/2001, and **Bekker and Bosch v Jika**, Case No 136/2002, (which binds all the Magistrate and High Courts), it was ruled that PIE also applies to ex-tenants, ex-owners and ex-mortgagors, who occupy properties after termination of the contracts or agreements with the creditor. Accordingly, once contracts expire or are terminated due to breach thereof or consent is withdrawn, a landowner have to

comply with the onerous, costly and time-consuming procedures of PIE to secure an eviction. This judgement impacts on all contracts for the lease or sale of properties utilised as a home which have been terminated, have expired or where consent has been withdrawn.

- (f) In order for PIE to apply, one has to determine whether the occupants (squatters) fall within the ambit of the definition of “unlawful occupier”. The definition of unlawful occupier in PIE reads as follows : -

“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 a person who is an occupier in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA), and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act 31 of 1996.”

- (g) In view of the above, the following definitions are also relevant, namely the definitions of “owner”, “person in charge”, “organ of state”, “consent” and “land”;
- (h) The **owner** is the registered owner of land and includes an organ of state;
- (i) An **organ of state** is an entity as defined in section 239 of the Constitution;
- (j) A **person in charge** is a person who has or at the relevant time, had legal authority to grant permission to enter or reside upon the relevant land. Land includes a portion of land. Permission can be express or tacit, in writing or otherwise;
- (k) The reference to ESTA [only applicable to occupiers who had the consent of the owner or person in charge to occupy the property when they occupied same] and the Interim Protection of Land Rights Act in the definition of “unlawful occupier” can broadly be discussed as follows : -
- (l) ESTA has national application, but is generally limited to rural land or land within towns and townships that is used for agricultural purposes (Section 2 of ESTA). The purpose of ESTA is to extend the security of tenure of persons living on land of which they are not the registered owners.

- (m) With regard to tacit consent, recent case law dealing with labour tenancy have decided the following questions that might be relevant to this issue. In **Labuschagne v Sibya and Sibya** (LCC28/98) Moloto J Land Claims Court – relating to the Land Reform (Labour Tenant) Act, 3 of 1996 found that, in order for the defence of tacit consent to be successful,

“...it had to be proven that the person who allegedly gave consent acted in such a way, or refrained from acting in a way, which manifested consent...”

Secondly, that the recipient's conduct or lack thereof was of such a nature that it indicated acceptance of the grant of tacit consent [38].

- (n) In **Atkinson v Van Wyk and Another** 1999 (1) SA 1080 (LCC) – a case dealing with ESTA , it was found that:

“...(T) he probability is that the plaintiff, as owner, would have been aware if a person occupied one of his employee's cottages with the consent of the employee. If he was aware of her occupation and did not object to it when the employment contract still subsisted, that would have been sufficient to constitute consent. Tacit consent is sufficient for purposes of the ESTA Act. If the second defendant did originally have tacit consent to reside on the farm, then even if it terminated with the termination of employment of the first defendant, the effect of the original consent, together with the fact that the second defendant continued to reside on the land, would have brought her under the provisions of section 3(2) of the ESTA Act.” (1084D-F).

- (o) Tacit consent, if proven in the specific circumstances, is therefore just as effective as a defence as express consent and would consequently disqualify a person as an unlawful occupant.

5. Is PIE relevant in all cases of unlawful occupation of land or are there instances where the act will not be applicable, for instance cases of breach of contract ?

- (a) A question that is becoming more and more relevant, is whether the breach of contract of a tenant under a lease agreement constitutes unlawful occupation for the purposes of

the Act or whether normal contractual remedies must be used in such cases.

The above question can be answered with reference to the preceding paragraph 4 and especially sub-paragraph 4(e) there-of.

6. Who or which entity has *locus standi* (a right of appearance in court) to apply for an eviction order under PIE ?

- (a) An owner always has *locus standi* to bring an application for eviction. An Organ of State is included in the definition of owner. A person in charge of land who, in terms of PIE is defined as a person who has, or at the relevant time had, legal authority to give permission to a person to enter or reside upon the land in question, is also authorized to bring such an application. For example, if the Province of the Western Cape is the owner of a property, but in terms of the ISLP project and the Land Management Agreements, the City of Cape Town is in charge of the property, the City of Cape Town will be able to bring an application for eviction in terms of PIE.
- (b) The local authority also has *locus standi* to bring an eviction application, where the owner of the land, notwithstanding the local authority's request that they do so, has failed to evict unlawful occupants, and if such removal of unlawful occupants is in the public interest.
- (c) For further clarification please refer to sub-paragraphs (g), (h), (i) and (j) of paragraph 4.

7. Which options are available for the eviction of unlawful occupants ?

- (a) A landowner (including the local authority), may bring an urgent application in terms of section 5 of PIE (if a proper case for urgency can be made out) or in the normal course, in terms of section 4 of PIE may be brought.
- (b) If PIE is not applicable, summons may be issued, stating that the plaintiff is the landowner and that the defendant is in unlawful occupation, having breached the contract or the consent for occupation has been withdrawn.
- (c) If the local authority is not the landowner but, is the person in charge of the land, the local authority may bring an action in terms of sections 4 or 5 of PIE, if applicable.

- (d) The local authority may give notice to a private owner to bring an action in terms of section 6 of PIE for eviction if it is in the public interest to bring an application and the relevant landowner refuses to do so.

8. Is an attorney necessary if a court has to be approached ?

- (a) Although it is possible to bring an application in terms of PIE without the assistance of an attorney, given the onerous nature of the requirements of PIE, it is recommended that an attorney with expertise in this field be briefed.
- (b) PIE is complex and subject to ever changing requirements due to different interpretations of PIE by the courts.

9. Which requirements have to be met in each of the scenarios set out in question 7 above ?

9.1 When PIE is not applicable

- (i) The common law provides for the institution of the *rei vindicatio*. The *rei vindicatio* is a real action, with the aim of restitution of the owner's property. The onus of proof is on the plaintiff. The plaintiff must prove the following : -
 - (a) That it, he or she is the owner of the property. In the case of immovable property, as for example land and buildings, the best proof of ownership is the title deed;
 - (b) The property is still in existence and can be identified;
 - (c) That the property is in the possession of the defendant.
- (ii) The common law principles of spoliation may also be relied upon. If the owner is in undisturbed possession of the property and someone unlawfully occupies it and attempts to erect a structure, the materials and possessions may be removed from the property in an act of counter-spoliation, provided that the dwellings erected have not yet been occupied.
- (iii) Although both spoliation and *rei vindicatio* orders, are

still available as common law remedies, these orders will probably not be granted if PIE is applicable. However, if PIE is not applicable (for example for premises that are not a home) either of these remedies, to restore free and undisturbed possession or ownership of the property, may be utilized. Alternatively, if PIE is not applicable, summons may be issued, stating that the plaintiff is the owner of the property and that the occupier is in unlawful occupation.

9.2 Section 4 of PIE proceedings

Written and effective notice has to be served on the defendant at least 14 days before the commencement of the eviction hearing. The municipality with the relevant jurisdiction must also receive notice. It should be noted that the municipality having jurisdiction over the area concerned must only receive notice if that municipality is not the owner of the property.

(a) What is the prescribed content of the notice of proceedings?

The notice has to : -

- State that proceedings are being instituted for an eviction order under section 4(1) of PIE;
- Indicate on what date and at what time the court will hear the proceedings;
- Set out the grounds for the eviction; and
- State that the defendant is entitled to appear before the court, defend the case and apply for legal aid.

(b) Are there specific grounds for eviction ?

- (i) PIE does not provide a list of grounds for eviction. In light of the definition of “unlawful occupier” the absence of express or tacit permission would constitute a ground for eviction;
- (ii) It must be established that the applicant is the owner or person in charge of the land, that the defendant is an unlawful occupier as defined in PIE, that the unlawful occupier(s) have failed to vacate the land despite demands and that it is not just and equitable for the unlawful occupiers to remain in occupation.

- (iii) In addition, if the land has already been occupied for more than six months, the question of whether alternative accommodation can reasonably be made available, will have to be dealt with.
- (c) What are the further requirements under section 4 of PIE ?
- (i) The court will only grant an eviction order 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 children, the elderly, disabled persons and households headed by women.
 - (ii) If a ground for eviction exists, the Court may still find that it is unreasonable to evict persons in the specific circumstances. The mere existence of an eviction ground (absence of permission) does not automatically guarantee the granting of eviction orders.
 - (iii) The court considers all relevant circumstances to establish whether or not there is any right in law or consent for the occupier to reside and to determine the period over which the occupiers are to vacate. Case law has however made it clear that the owner or person in charge can only place before the court the circumstances within their knowledge. It is not sufficient to merely state that the applicant is the owner of the land that has been unlawfully occupied by the respondents. It is the duty of the plaintiff to bring the personal circumstances of the defendants to the attention of the court. The applicant must therefore make every effort to obtain these personal details.
 - (iv) Case law has also indicated that the relevant personal circumstances will not necessarily be considered by the court in order to refuse an eviction application, but rather to determine the conditions under which the respondents are to be evicted and the date of the eviction. In this regard, see **Ellis v Viljoen** (case cited above)

and **Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others**, 2000 (2) SA 67 (C).

- (v) If the land had been occupied for a period longer than 6 months, another factor that might be taken into account by the court (in order to decide whether eviction orders should be granted) is whether land has been made available or can reasonably be made available by a Municipality, another organ of state, or another landowner. There is again reference to the needs of the above-mentioned list of persons that have to be taken into account in the consideration of applications for evictions.
- (vi) The allocation of alternative land is not a prerequisite for the granting of eviction orders, it is just one of the factors that may be taken into account by the Court. It is furthermore not a deciding factor, but will only be considered if land occupation had been longer than six months.
- (vii) The reference to longer periods of occupation also reflects on tacit permission, namely the longer the persons have occupied the land, the more difficult it would be to rebut tacit consent.
- (viii) The court made it clear in **Port Elizabeth Municipality v Peoples Dialogue on Land Shelter & Another** (2001) (4) SA 759 (E) that it is not a prerequisite to the granting of an eviction order that alternative land be made available but, is merely an enquiry by the court. Many cases have stated that to make it a prerequisite would amount to expropriation of the land and that could not have been the intention of the Legislature.
- (ix) It is therefore vital for local authorities to include details of their housing policies and attempts to progressively realize the constitutional obligation of access to housing and land release programmes. This will show that if alternative accommodation were allocated to unlawful land occupiers outside these policies, it would

severely prejudice those that have lawfully applied for housing.

(x) In the well known **Government of the Republic of South Africa and Others v Grootboom and Others** 2001 (1) SA 46 (CC), the Court stated that legislative and other measures must be taken by Organs of State, within their available resources, to achieve a progressive realization of the right to access to housing. The Court also stated that land invasions are inimical to the systematic provision of adequate housing on a planned basis. The Courts are thus not always convinced that alternative accommodation should be provided.

(d) When will the court, with regard to section 4 of PIE proceedings, grant an eviction order ?

An eviction order may be granted when all of the following requirements have been met, namely : -

- (i) If the Respondents, despite numerous attempts and by showing good reason why identification is impossible, is unable to be identified, a special service order must be sought. In this order it is requested that service be provided in a manner outside of the rules of court. By, for example, placing copies of the notices on notice boards or by the sheriff reading the application out by loud hailer;
- (ii) Written and effective notice of the proceedings should be given. This has been interpreted by the courts to mean that notice must be given in English and in the language of the respondents. In the Province of the Western Cape, the language of the respondents will to a large degree be Xhosa or Afrikaans;
- (iii) Where possible, notice must be given to a person at the property who is older than 16 years of age or otherwise affixed to a structure if there is no one available over the age of 16;
- (iv) After the required fourteen days notice, unless

grounds have been made out for urgency;

- (v) It must be shown that there is no consent or right in law for the occupiers to remain on the land and that it is just and equitable to grant the order;
- (vi) If you have set out the local authority's policy for housing, the respondents would have to convince a court that they fell within such policy to be granted the property in question or alternative accommodation, unless, of course they showed that such policies fell short of your constitutional obligations;
- (viii) The correct notice with the prescribed contents and lawful service, the existence of a ground for eviction and whether the court deems an eviction order just and equitable in the specific circumstances. A court order will not be granted if a "valid defence" was upheld. The Act does not provide a list of valid defences. However, in light of the definition of unlawful occupier, the existence of tacit or express consent as well as a right in law to occupy would constitute a valid defence.

(e) What must be contained in an eviction order ?

- (i) From the order it must be clear that the occupier is to be evicted.
- (ii) The order must also have a date on which the occupier must vacate the land and a date on which an eviction order may be carried out if the unlawful occupier has not vacated the land in question. These dates have to be determined having regard to all relevant factors, including the period of occupation.
- (iii) Although not obligatory, the court order may also include provisions for the demolition and removal of buildings or structures.
- (iv) Eviction orders may also be conditional. In view of decisions relating to the Labour Tenant Act and ESTA, it is clear that the inclusion of dates in the eviction order is not a discretionary matter, but has to be complied with by the Court. If the court order

is not complete, the matter will be set aside.

- (v) It is important to include in the order provision that the materials and possessions of the respondents are removed by the sheriff of the court and placed under his safekeeping until the lawful owners claim it. If this is not done, the unlawful occupiers merely re-erect same on the property or on another property.
- (vi) It is also vital to include in the order that the sheriff can be assisted by the South African National Defence Force and the South African National Police Services. This is recommended especially in large scale invasions or invasions in volatile areas, as the sheriff of the court will not carry out an eviction order without assistance.

(f) Is it possible to amend eviction orders ?

On good cause the court may vary the conditions of eviction orders.

(g) How are the relevant documents to be served ?

- (i) PIE provides that the relevant documents have to be served in accordance with the rules of the Magistrate's Court, but that alternative serving procedures are possible. For example, if respondents refuse to identify themselves, or the applicant is unable to obtain the names of occupiers because of volatility, and a copy of the application can therefore not be served on identified person(s), it is possible to ask the court for a special service order.
- (ii) In the case of a special service order, the application will not be served on named persons, but on each and every adult occupant over the age of sixteen. If there are no adult occupants, the order may be served by affixing it to the entrance of the particular structure(s) and on notice boards. The sheriff must read the order out aloud by loud hailer.
- (iii) In all instances the reading out of the order and the copies of the order will have to be

in English and in the language of the respondents. Service of the process in circumstances where the respondents are identifiable takes place as follows : -

- (a) Service of process takes place when the process is formally delivered to an opposing litigant in accordance with the rules of the Magistrate Court. Rule 9 of the Magistrate Court rules makes provision for the following diverse methods of service : -
- personal service,
 - service upon an agent,
 - service at the residence or place of business of the defendant,
 - service at the defendant's place of employment,
 - service at the defendant's *domicilium citandi*,
 - service upon a body corporate,
 - service by registered post,
 - service upon state organs and state officials,
 - service by affixing a copy upon the defendant's door,
 - service upon a partnership, service upon curators, executors, guardians, etc,
 - service upon clubs, societies, etc and
 - service in terms of an order of court.
- (see Paterson Eckard's Principles of Civil Procedure in the Magistrates' Court (1996) pages 96-103).

9.3. Section 5 proceedings : Does PIE provide for urgent eviction applications ?

- (a) The question can be asked whether it would be possible for landowners to seek eviction orders without compliance with the two weeks' period required for notice. The answer is in the affirmative as both individuals and organs of state can make use of the urgent proceedings pending the outcome of proceedings for a final order as set out in section 5 of PIE. Such an order may be granted if the court is satisfied that : -
- there is real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not evicted;
 - the likely hardship to the owner if an order is not granted

exceeds the likely hardship to the unlawful occupier against whom the order is sought if an order for eviction is granted, and

- there is no other effective remedy available.
- (b) As in the case of a normal 14-day notice order, the hearing has to be preceded by a notice. Again written and effective notice of the owner's intention to obtain an order is required, but no time period is set out in section 5(2). The content of the notice is identical to that of a normal eviction notice (see question 8.2 (a) above).
- (c) There has to be a full application together with relevant translations thereof and it must still be served by the sheriff prior to the hearing of the matter, the only requirement that falls away is the fourteen day notice.
- (d) Financial considerations will usually not be seen as urgent. The unlawful occupation must be life threatening or severely prejudice the owner or person in charge or third parties.
- (e) Safety considerations will be grounds for urgency, as has been seen in a recent case relating to occupation of property under power lines in Langa where a fire had previously broken out. When people again attempted to occupy that land, the City of Cape Town successfully managed to get an interdict restraining them from occupying the land given the safety considerations and this was obtained on an urgent basis. Furthermore in the **Groengras Eiendomme (Pty) Ltd and Others v Elandsfontein Unlawful Occupants and Others** judgement referred to previously, the court also granted an eviction order in terms of section 5 of PIE. In this case there was a pipeline conveying flammable fuel, close to the soil surface. If this fuel was exposed to a spark or toxin leaks therefrom, it could cause fatalities or injuries to persons or property. There were also high voltage electric cables on the property, which if flash points occurred, could end in fatalities, injuries or damage to property.
- (f) In a recent judgement the City of Cape Town also obtained a High Court interdict interdicting the flow of people into the Hout Bay squatter camp as a matter of urgency based on the fact that further occupation would compound the existing health risks. Health risks are one of the important considerations in an urgent application or in any eviction application, if the land is not suitable for housing and does not have basic services thereon, there is a real risk of health problems.

9.4 Section 6 proceedings : Would it be possible for the Local Authority to act in instances where it is not the relevant landowner ?

In other words: can local authorities force landowners to comply with PIE ?

- (a) A local authority as an organ of state may institute eviction proceedings with regard to land situated in its area of jurisdiction. Such an order will be granted if it is just and equitable and after the court has considered all the relevant circumstances. This includes whether the occupant is in occupation of land or has erected a structure without the necessary consent or whether it is in the public interest to grant such an order (section 6(1) of PIE). "Public interest" includes the interest and safety of those occupying the land and the public in general.
- (b) Further considerations include the circumstances under which occupation took place and whether structures were erected, the period of occupation and the availability of suitable alternative accommodation or land.
- (c) In contrast to the case where private individuals seek eviction, the availability of alternative land or accommodation will normally be considered regardless of the period of occupation.
- (d) Where individuals apply for eviction orders, this aspect is only relevant if occupation had been longer than six months. Notice is again required, namely a period of not less than fourteen days before the hearing. It is interesting to note that written notice is required whereas "written and effective" notice is required regarding normal and urgent proceedings by private individuals.
- (e) In view of the responsibility of the Local Authorities regarding the enforcement of town planning and spatial planning measures, PIE provides that an organ of state can give an owner or person in charge notice to institute eviction proceedings.
- (f) The court can furthermore order the owner or person in

charge to pay for the said proceedings, at the request of the organ of state (section 6(5) of PIE). PIE therefore makes it possible that an organ of state can initiate eviction proceedings by itself against the unlawful occupiers or order the relevant owners to start the necessary proceedings. In the latter case the proceedings will still continue on the authority of the organ of state if the relevant owners have not reacted within the time period stipulated in the notice.

- (g) The organ of state does not have *locus standi* to apply for an eviction order if the unlawful occupier is a mortgagor and the land in question is sold in a sale of execution pursuant to a mortgage.
- (h) Section 6 proceedings however, is more onerous than section 4 proceedings, and should not be applied for lightly. There is a high possibility that alternative accommodation will be ordered, notwithstanding the fact that private land and not state land has been occupied.
- (i) Furthermore, although the owner of the land can be billed for the litigation, the State will obviously have to utilize its resources to first ensure that its own land is not occupied and that housing programmes commences thereon.
- (j) In some instances where an owner does not react favorably on a section 6 notice to bring an application for eviction, the local authority should consider the possibility of health risks, and serve a notice in terms of the Health Act on the owner of the land. The owner of the property will then have to provide basic services to the occupants, if the owner does not immediately apply for an eviction order.

10. Is there provision for mediation proceedings ?

- (a) Mediation is provided for, irrespective of whom the relevant landowner is (that is either an organ of state or a private individual) (section 7 of PIE). If the Local Authority in whose area the land is situated is not the land owner, it may, on the conditions that may be determined, appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties in an attempt to mediate and settle any dispute.

- (b) The parties may at any stage appoint other persons to facilitate the proceedings.
- (c) If the Local Authority is the relevant landowner, the member of the Executive Council designated by the Premier (or nominee) may, on the conditions it may determine, appoint one or more persons with expertise in dispute resolution to facilitate the process. Such a person may also be substituted.
- (d) Experience has shown that mediation is inappropriate where there is not a firm issue to mediate. If for example, the State is not prepared to donate land outside of its policy but the respondents are demanding same, it is unlikely that mediation will be successful.
- (e) However, if the question is merely mediating the eviction time framework, mediation might be appropriate. Mediation is however in many instances, also a costly and time consuming process.

11. Approximately how long would the whole procedure take ?

- (a) Eviction applications brought in the Magistrate's Court are sometimes granted speedily.
- (b) However, given the fact that respondents are entitled to apply for legal aid, respondents normally ask for a period of grace in which legal representation may be obtained and court papers filed. The normal time periods for an application of this nature is therefore usually extended and may take up to a year to complete.
- (c) Obtaining the help of the South African Defence Force and South African Police Services to assist the sheriff in the actual eviction, if the respondents fail to evict, takes an inordinate amount of time. This time consuming process is especially problematic in a large scale invasion or an invasion in a volatile area.
- (d) Recent decisions has also stated that the normal court period allowed for the filing of papers by the respondents, which in the Magistrate's Court would be ten days and in the High Court would be fifteen days must first lapse. Only after the lapse of the normal court period may the fourteen days notice be served and the matter be set down for hearing.

- (e) Depending on the availability of dates for hearing an application can take up to a year to be successfully dealt with. If undefended, these applications can be granted in the Magistrate's Court within a month and in the High Court within a few months.

12. When would it be necessary for the allocation of alternative land ?

- (a) A distinction has to be drawn between applications by private individuals as landowners and applications at the instance of organs of state.
- (b) In the case of private individuals (it can also include the Local Authority) seeking an eviction order under section 4 of PIE, the matter of alternative land is only one factor that may be considered by the court in the decision whether an order should be granted or not. The question of alternative land will only be considered if the land had been occupied for a period longer than six months.
- (c) If the occupation has been over a shorter period of time than 6 months, alternative land is not an issue.
- (d) If the application is at the instance of an organ of state in accordance with section 6 of PIE, the matter of suitable alternative land for the occupants is always a factor to be considered.
- (e) It will be considered within the context of each case whether the granting of an eviction order is just and equitable in the circumstances.
- (f) In case of a section 6 of PIE application, the duration of the unlawful occupation is irrelevant.
- (g) In the **Port Elizabeth municipality and Paarl municipality matters** referred to above, the court made it clear that the absence of alternative accommodation is not a bar to the granting of an eviction order, even if the people have been there for longer than six months. If it were a bar to an eviction order, this would amount to expropriation of the land from the landowner, which the courts stated was not the intention of the Act.
- (h) In the **Paarl municipality matter**, the court considered the fact that the municipality had, since being notified of the

unlawful occupation, attempted to settle the matter by way of negotiations. Although when the Municipality instituted action, the occupation has been effective for longer than six months, the court considered the occupation to have been for less than six months, because of the attempts to settle the matter. The court therefore did not consider the question of alternative accommodation.

13. How should alternative land be made available, if relevant ?

- (a) Alternative accommodation or alternative land for occupation will be an issue if an organ of state wants to apply for an eviction order in accordance with section 6 of PIE.
- (b) There are various options available for designating alternative land. Land can be designated in terms of Chapter I or II of the Less Formal Township Establishment Act, 1991 (Act 113 of 1991), (LeFTEA). Land can also be rezoned in terms of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), (LUPO).
- (c) The aim of LeFTEA is to provide for shortened procedures for the designation, provision and development of land, the establishment of townships and for less formal forms of residential settlement. Chapter I of the LeFTEA is specifically aimed at providing shortened procedures for less formal settlement, while Chapter II deals with less formal township establishment.
- (d) Land may be designated for purposes of Chapter 1 of LeFTEA, when the relevant authority is satisfied that persons have an urgent need to obtain land on which to settle in an informal manner. In terms of Chapter II of LeFTEA, if the demand for housing in the area justifies township establishment in terms of this Chapter. The designation takes place at Provincial level.
- (e) The rezoning of land in terms of LUPO may in certain cases be advisable, because rezoning could in most cases be dealt with at local level.

14. Are the “old transit areas” still relevant and what happens to them ?

- (a) PIE does not specifically provide for transit areas. However, a reference to such areas is found in section 11 of PIE, dealing with the repeal of legislation.

- (b) In terms of section 11(4) all transit areas declared under section 6 of the Prevention of Illegal Squatting Act should continue to exist until the relevant local authority abolishes the Act.
- (c) Section 6(3) of the now repealed Prevention of Illegal Squatting Act authorised a local authority “to declare a portion of land to be a transit area for the temporary settlement of homeless persons...” and to “abolish such transit area”. The application of normal town planning measures and building requirements were specifically excluded in these areas in terms of section 6(9) of said legislation. It was also possible for local authorities to issue by-laws pertaining to such areas.
- (d) In view of the fact that accommodation had to be temporary, transit areas were usually the first stage of a forced removal. The scenario that usually accompanied removals might be the reason why a similar provision was not included in PIE.
- (e) Another criticism against transit areas was that they sometimes existed for many years, because no permanent alternatives were made available.

15. What alternatives are there to identifying transit areas ?

- (a) As stated above PIE does not provide for the establishment of any new transit areas, but only for the continuation of those areas already demarcated in terms of the now repealed Prevention of Illegal Squatting Act.
- (b) Despite the negative experiences connected to transit areas, it was at least one instrument the Local Authorities had in order to provide alternative accommodation, albeit temporary. As the identification and development of permanent housing areas takes time, alternative options to unlawful occupation of land/land invasions will have to be identified.
- (c) One such option would be to provide temporary, rudimentary serviced erven that can be used on a rollover basis.
- (d) Other options would be to provide longer-term Rapid Land Release – cum – Managed Land Settlement Areas, where rudimentary services are also made available. Care should be taken that the same problems of the former transit areas do not take hold in these areas.

16. What are the offences provided for in PIE ?

PIE makes provision for the following offences namely : -

- (a) A person who directly or indirectly receives or solicits payment of any money or other consideration as a fee or charge for arranging or organising or permitting a person to occupy land without the permission of the land owner, is guilty of an offence and liable on conviction to a fine or imprisonment to a maximum of two years or both a fine and imprisonment (section 3 of PIE).
- (b) Section 8 of PIE provides for two possible offences, namely the eviction of occupiers from land other than on the authority of an order of a competent court and the wilful obstruction or interference with officials in the employ of the state during the performance of his or her duties. In both these instances persons are liable on conviction to a fine or imprisonment not exceeding two years or both.
- (c) There is no provision in PIE that declares unlawful occupation of land an offence. This is indeed far removed from the criminality of occupation that formed the basis of previous legislation. Whereas the Prevention of Illegal Squatting Act was characterised by an abundance of offences, the limited number of offences in PIE is remarkable.
- (d) Experience has shown that, many land invasions occur due to persons or organisations receiving payment for pegging out plots, which are then sold. In order to stop land invasions, it is important to set a precedent of taking firm action and laying criminal charges, if necessary, against persons who conduct such criminal activities.

17. Does PIE provide for the making of regulations ?

Section 12 of PIE provides for the promulgation of regulations by the National Minister of Housing in respect of any matter that is necessary or desirable in order to achieve the purposes of the Act. No such regulations have been formulated as yet.

18. Does PIE repeal any other legislation ?

All previous illegal occupation legislation has been repealed by PIE. Other legal measures repealed by the commencement of PIE are the Abolition of Influx Control Act, 1986, (Act 68 of 1986), the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991) and

certain sections of the Less Formal Township Establishment Act, 1991, (Act 113 of 1991).

19. What is the court's attitude to the granting of eviction orders ?

- (a) The courts, have recently been at pains to point out that land invasions cannot be tolerated. As stated above, in the **Grootboom** matter the court stated that land invasions were contrary to the systematic provision of housing.
- (b) The judge in the matter of the **City of Cape Town and Another v The Occupiers of Erf 4832 Phillippi**, Case No. 5746 and 5747 2000 (C), stated that the only difference between those who lawfully applied for housing and the unlawful occupiers, were that one had conducted themselves lawfully and the others unlawfully. Both were in need of housing. The judge further stated that to condone land invasions would be to allow the law of the jungle to prevail rather than the rule of law. This could not be permitted.
- (c) In the matter of **Provincial Housing Development Board Western Cape v The Occupiers of Erven in Delft South, Cape Town** Case No. 9206/98 the judge made it clear that it is a relevant circumstance to be taken into consideration, if the occupation by land invaders, prejudiced other applicants for housing or housing projects.
- (d) In the **Paarl Municipality** matter, referred to previously, the court stated that although housing delivery was slow by anybody's standards, this was not a justification for anyone taking the law into their own hands. The court stated that if disgruntled citizens were to follow their example, the country would soon be plunged into chaos. It is sad that land invaders consider themselves more deserving of housing than those that lawfully wait for same.
- (e) The same court also stated that to insist on alternative accommodation before an eviction order could be granted, would throw the notion of land distribution into disarray and people without recourse to law would merely occupy state land with the full knowledge that no adverse consequences would result. On the contrary, they would be handsomely rewarded, as they would be given alternative accommodation, whether or not they were on a waiting list for the allocation of houses.

20. What is the local authority's responsibility when the owner of land brings eviction proceedings and serves notice of them as required in terms of PIE ?

The responsibility of the municipality receiving notice is to intervene if the municipality has anything relevant to add on the question of alternative accommodation or housing of the respondents. If, the municipality cannot offer alternative accommodation or mediate, there is no need for them to intervene.

CHAPTER 5

THE TRESPASS ACT, 1959, (Act 6 of 1959)

- 5.1 This Act has not been repealed and can therefore, in theory, be relied on to lay criminal charges of trespassing. The police will, however, have to conduct an investigation, which will take some time and it is unlikely to determine whether or not the accused are in unlawful occupation. If the period of occupation because of the time consuming criminal investigation then exceeds six months, not only will the number of occupants increase, but the question of alternative accommodation and any request for provision of services will have to be dealt with.
- 5.2 The attitude of the South Africa National Police Services has, in any event, been that unlawful occupation of land is a civil matter that must be dealt with in terms of PIE and not the Trespass Act.
- 5.3 It can certainly be argued that the Trespass Act is in conflict with the Constitution and PIE. Because the latter two acts were promulgated after the Trespass Act, these acts should be followed insofar as they are consistent with the Trespass Act.
- 5.4 Interestingly enough however, there is no case law relating to the Trespass Act and this apparent conflict between the various legislative enactments. This will thus still have to be brought before the courts for them to grapple with the interpretation of the various acts of Parliament.

CHAPTER 6

CONCLUSION

As stated before in this document, both Municipalities and private landowners find it very difficult to deal with unlawful occupation of land/land invasions in terms of PIE. In order to assist Municipalities, the following procedure is recommended when faced with the problem of unlawful occupation of land/land invasions:

- 6.1 The best approach is to restrain possible unlawful occupants from gaining possession of land. Although it is very difficult to realise in practice, peaceful, non-violent methods (e.g. negotiations) should be employed to prohibit occupation. Other precautionary measures could include fencing off the property and posting guards to prevent unlawful occupation from happening. The landowner and Local Authority can also try to contain the invasion by peaceful methods. Furthermore, the employment of rapid response units that can demolish structures in the process of being erected and asking people to move when they are in the process of occupying, would also prevent the consequences of a land invasion. Urgent interdicts would have a similar effect, either to stop the land invasion or to quell the flow thereof.
- 6.2 As soon as possession has been taken of a site by the erection of structures, occupants of structures cannot be removed without implementing the provisions of PIE. The landowner and Local Authority must therefore act as quickly as possible the moment they are informed of the occupation. A twofold approach is proposed namely : -
 - 6.2.1 Lodging an application for an eviction order under PIE; and
 - 6.2.2 Simultaneously embarking on peaceful negotiations with the occupants.
- 6.3 Although a removal from the land would be impossible without the implementation of PIE, good relations and communication with the occupants will benefit the process. For example, when the court grants the eviction order, occupants might be ready and willing to move to the alternative land allocated for them. Good relations and communication will therefore greatly expedite the matter.
- 6.4 A detailed and up-to-date record of the occupation should also be kept. The following details ought to be included in the record : -

- The date of occupation,
- The number of families and individuals,
- The number of structures or shacks, names of occupants (if possible to obtain), etc; and
- Photographs can also supplement the information.

6.5 In light of the provisions of PIE that provide for an eviction order only after consideration of all the circumstances, the information in the record will be very useful at the hearing. In terms of section 6 of PIE, the duration of occupation is especially relevant, and is an aspect that must be recorded.

6.6 It is vital that the above information is obtained as soon as possible in order to expedite the actions and procedures as suggested earlier in the notes. This will ensure that the question of alternative accommodation does not arise if the proceedings are instituted before the six months occupation time period. A properly kept record will also set out all the relevant circumstances for the court. These should be conveyed to your attorney as a matter of urgency as any delay in obtaining these details will frustrate the granting of an interdict or eviction application and further complicate the situation.

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