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LAND REFORM

THE LAW ON LAND INVASION

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Land invasions have become an all too familiar fixture of our daily headlines. Images of occupiers against law enforcement and sometimes also affected or neighbouring communities opposed to the invasion often leave land owners nervous.

Both land under the control of national, provincial government or a municipality and privately-owned land are vulnerable to invasion. Section 25 of the Constitution of the Republic of South Africa, 1999 only protects a land owner from the arbitrary depravation of property and does not guarantee the absolute right to property. Government has a constitutional duty to ensure, where required and with available resources, that all citizens have access to housing. Where large-scale invasions occur, government has a similar duty to assist private landowners to protect their land.

A number of factures are responsible and aggravate the dire need for adequate housing and land, factors such as people wanting to be closer to economic opportunities, historical special planning and the slow progress in the implementation of land reform, restitution and distribution policies are but a few of the factors.

Section 25(1) of the Constitution states that "no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property" and consequently the occupation of another person's property would constitute an arbitrary depravation of one's property which is not permitted in terms of the Constitution. Whilst expropriation is a measure contemplated by the Constitution, property can only be expropriated by the State using the current Expropriation Act No. of 1975 and not by individuals. The Expropriation Act predates the Constitution however it can be implemented in a matter that is constitutional, fair and objective. The right not to be arbitrarily deprived of property is also read together against the constitutional obligation placed on the State in terms of section 25(5) of the Constitution which requires the State to take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

Property owners are permitted to approach the courts through the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 1998, commonly known as PIE, for an order evicting the unlawful occupiers from their property. PIE can afford property owners relief in urgent circumstances when faced with a large scale that can take place in a matter of days or hours. It must be emphasised though that in the absence of a court order, no person may evict another person from a property irrespective of whether the person is there lawfully or not. PIE applications can sometimes be lengthy and complicated to resolve as courts are often have to balance the rights of the occupiers to access to housing, who in most cases are likely to face homeless once evicted, against the rights of the property owner. During these applications the State is often called upon to indicate to the court the nature of assistance that can be provided to the occupiers in the form of a pre-existing housing programmes or the provision of temporary structures should the eviction order be granted. In some instances the State is able to offer some form of assistance to occupiers but that is not always the case due to limited resources, leaving the courts in a difficult position. Once a court order sanctioning the eviction is granted, the property owner would enlist the services of the Sheriff of the High Court to firstly notify the occupiers of the eviction and give them sufficient time within which to comply with the court order. Should the occupiers fail to comply with the court order, the Sheriff would then need to evict the occupiers from the property.

Land owners can take proactive steps to guard against invasions by for erecting fences around vacant land or secure the services of a private security service provider to monitor and guard against invasions, however these options may not be feasible for vast tracts of land and may be costly.

Land invasions are undoubtedly unconstitutional, however it cannot be ignored that these invasions are symptomatic of an acute need for adequate housing near economic opportunities, insufficient service delivery and the failure to implement prevailing land distribution and land reform policies. It is therefore important for the State to take decisive measures to prioritise the provision of adequate housing to those in need to curb the need for people to take the law into their own hands.



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