



# STANDARD OPERATIONAL PROCEDURE ON FIRST RESPONDER TO PUBLIC VIOLENCE

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# STANDARD OPERATIONAL PROCEDURE ON FIRST RESPONDER TO PUBLIC VIOLENCE.

## 1. Background

- 1.1 The South African Police Service is mandated by Section 205(3) of the Constitution of the Republic of South Africa, 1996, which determines that the main functions of the service are inter alia to maintain public order, and to uphold and enforce the law.
- 1.2 The mandate implies that the SAPS must ensure that public order is maintained during public gatherings and secondly by intelligence driven crime prevention operations.
- 1.3 The Bill of Rights stated in Chapter 2 of the Constitution, Section 17 of the Republic of South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. The Service respects and aims to protect promote and fulfil the rights in the Bill of Rights.

## 2. Purpose

- 2.1 The Standard Operational Procedure (SOP) is to provide effective guidance to the first responders in order to effectively deal and manage incidents of protest action, attacks on foreign nationals, land invasions and evictions.

## 3 Definitions

In this Instruction, unless the content otherwise indicates-

- 3.1. “*Constitution*” means the Constitution of the Republic of South Africa, 1996
- 3.2. “*Call Taker*” refers to an employee or member of the service who deals with members of the public who reports an incident. The call taker must report the particulars of the complaint on a SAPS 297 or CAS/ICDMS system. The call taker must be declared to deal with receiving and recording incidence reported;

- 3.3. *“Demonstration”* includes any demonstration by one or more persons, but not more than 15 persons, against any person, cause, action or failure to take action.
- 3.4. *“ESTA”* Extension of Security Tenure Act, 1977 (Act No 62 of 1997).
- 3.5. *“First Responder”* means the first official who responds to and arrives at the scene of a spontaneous gathering (such an official may be from Visible Policing, POP unit or other law-enforcement agency).
- 3.6. *“Foreign National”* means an individual who is not a citizen of the Republic of South Africa, but who is present and / or residing in South Africa ( including an undocumented foreigner suspected of contravening the Immigration Act);
- 3.7. *“Gathering”* means an assembly, concourse or procession of more than (15) fifteen persons in or on any public road or any other public place or premises wholly or partly open to the air, as defined in section 1 of the Act.
- 3.8. *“Land Invasion”* means illegal occupation of land, with intention of establishing dwellings”.
- 3.9. *“member”* refers to a member of the South African Police Service appointed in terms of the South African Police Act 1995 (Act No 68 of 1995).
- 3.10. *“OCT”* means Operational Commander Training;
- 3.11. *“Occupier”* for the purpose of ESTA (Extension of Security Tenure Act, 1977 Act No 62 of 1997), is a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, excluding a person using the land in question mainly for industrial, mining, commercial or commercial farming purpose, but including a person who works the land for himself or herself and only employs a member(s) of his or her family.
- 3.12. *“Operational Commander”* means an operational officer or member who is responsible for the operational execution and coordination of an operation, and who has been designated in writing;

- 3.13. *“POP”* means the specialized Public Order Police unit, trained to manage and control *crowds* or persons engaged in a gathering or demonstration with a view to restore public order. (This includes managing pre-planned and spontaneous assemblies, *gatherings* and *demonstrations* whether of a peaceful or unrest nature.)
- 3.14. *“Public Order”* means State of tranquillity and security that is needed in society and that should be pursued by the state in order to ensure the constitutional rights and benefits thus harmonic development of society;
- 3.15. *“Responsible Officer”* means a person designated as responsible officer by the local authority and includes any person deemed to be a responsible officer as contemplated in section 2(4) or 3(4) of the Act.
- 3.16. *“The Act”* means the regulation of gatherings Act, 1993 (Act No. 205 of 1993).
- 3.17. *“Trespassers”* means any person who enters land without the permission of the owner.

#### **4. Legal Framework**

- 4.1. National Instruction 4 of 2014: Public Order Police: Crowd Management;
- 4.2. National Instruction 1 of 2016: Use of Force;
- 4.3. Constitution of the Republic of South Africa 1996- Section 17;
- 4.4. Section 39 of the Criminal Procedure Act 51 of 1977- Manner and effect of arrest read together with section 35 (1) of the Constitution;
- 4.5. Section 23 of the Criminal Procedure Act 51 of 1977 search of arrested person and seizure of articles;
- 4.6. Section 49 of the Criminal Procedure Act 51 of 1977 the use of force in effecting an arrest;
- 4.7. The Diplomatic Immunities and Privileges Act 2001 (Act No.37 of 2001);
- 4.8. The South African Police Act, 1995 (Act No 68 of 1995);
- 4.9. The immigration Act 2002 (Act No.13 of 2002);

- 4.10. The Extension of Security Tenure Act, 1997 (Act No 62 of 1997);
- 4.11. The Land Reform (Labour Tenants) Act, 1996 (Act No 3 of 1996);
- 4.12. Regulation of Gathering Act, 1993 (Act No.205 of 1993);
- 4.13. Section 40 of the Criminal Procedure Act (Act 51 of 1977);
- 4.14. National Instruction 1 of 2015 on Crime Scene Management.

## **5. Role of the first responder**

5.1. The first responder at the scene may be in all likelihood both be a member from the local SAPS, or even Metro Police and must first seek to preserve the peace and protect the community.

### **5.2. The following steps must be followed by the first responder:**

#### **5.2.1 Step 1: If the gathering is a peaceful and unarmed gathering:**

- (1) Contact the dispatcher and provide the situation report;
- (2) Identify the leader;
- (3) Obtain full information on leader;
- (4) Provide the exact place of the incident of public violence;
- (5) Estimated number of participants;
- (6) Establish the crowd in terms of (sex and age);
- (7) Determine the mood of the crowd;
- (8) Determine the reason for action.

#### **5.2.2. Step 2: If the gathering becomes violent:**

- 1. Step1 above must be followed:
- 2. Determine if crime has been committed, established a safe walk area;
- 3. First responder must always be cautious about the safety and health hazards;
- 4. Establish if anyone is injured;

- 5 Identify possible witnesses;
- 6 Identify possible dangerous weapons;
7. Determine whether the responsible persons are still on the scene;
- 8 Records facts and events properly in his/her pocket book (diary)
- 9 Ensure that the crime scene remain under police protection at all times;
- 10 Notify the dispatcher activated the specialised unit (POP);

### **5.2.3 Step 3**

1. First responder must not withdraw the scene is handed over to the Operational Commander who will take over.
2. Wait for *POP* members to arrive with the relevant equipment.
3. After handing over the scene to the Operational Commander, the first responder must not withdraw until permission was obtained from the Operational Commander.

## **6. If the use of force is unavoidable:**

- 6.1. The purpose of offensive action must be to de-escalate conflict with the minimum force to accomplish the goal and therefore the success of the actions will be measured by the results of the operation in terms of loss of life, injuries to people, damage to property and cost;
- 6.2. The degree of force must be proportional to the seriousness of the situation and the threat posed in terms of the situational appropriateness;
- 6.3. It must be reasonable in the circumstances;
- 6.4. The minimum force must be used to accomplish the goal; and objective;
- 6.5. If the participants are going to be dispersed, make sure that they have enough escape routes in order to try and avoid serious injuries or possible deaths as a result of a stampede;

- 6.6. If dispersion is unavoidable, an attempt must be made to disperse the participants in a direction of a positive attraction point (an area where participants would most likely be willing to move to); and
- 6.7. Always implement gradual police response.

## **7. The use of Specific Equipment during Violent Protests**

- 7.1. Approved rubber rounds may only be used as defensive measure to disperse crowd in extreme circumstances, if less forceful methods have proven ineffective.
- 7.2. The following shotgun rounds are regarded as standard ammunition and in use by Police Service in terms of Division: Supply Chain Management circular with reference number 19/5/1 dated 2014-02-10:
  - Round, Shotgun, 12 Gauge Double ball (M9A1) and
  - Grenade, Rifle, CS, Anti-Riot with 12 Gauge.
- 7.3. Pepper spray (or capsicum) is prohibited, unless the relevant commander has issued a specific instruction to do so. (pepper spray may not be used in confined spaces or stadiums where it could lead to a stampede);
- 7.4. Firearms and sharp ammunition including, birdshot (fine lead pellets) and buckshot are prohibited. Teargas (CS) may be used only by POP members on command of the *Operational Commander* in situation that allow for its use, but never in stadium or confined spaces that could lead to a stampede.
- 7.5. Containing the operational area is essential to prevent violence spreading, innocent persons becoming victims of violence or outside elements joining the violent protest.
- 7.6. Only members who are trained on crowd management and who are declared competent to use shotguns are allowed to use shotguns at Visible Policing environment.

## **8. Roles and Responsibility of First Responders on Land Invasions and Evictions.**

- 8.1 Only a sheriff and persons authorised by a court to assist the sheriff may carry out an eviction order, provided that the sheriff must at all times be present during such eviction or actions authorised by the court. In situations where there is sufficient information to indicate that sheriff and his or her employees may be exposed to injury, death or damage to property, the first responder will be requested to assist the sheriff to perform law and order, as well as protection service. First responders may not participate in the eviction, but must render protection to the sheriff and his or her staff. A person, who wilfully obstructs or interferes with the duties of a sheriff or his or her assistants in the performance of their duties, is guilty of an offence.
- 8.2 Section 9 (1) of Prevention of illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No 19 of 1998) referred as the PIE Act determines that an occupier may be evicted only in terms of an order of court issued under this Act. In terms section 9 (2), such a court order may be issued if:
- 8.2.1 The occupier's right of residence has been terminated in terms of section 8;
  - 8.2.2 The occupier has not vacated the land within the period of notice given by the owner or the person in charge of premises;
  - 8.2.3 The conditions for evictions in terms of section 10 or 11 have been complied with;
  - 8.2.4 The owner or person in charge of the premises has, after the termination of the right of residence, given the occupier, the municipality in whose jurisdiction the land is situated and the head of the Provincial Department of Land Affairs, at least two calendar months' written notice of the intention to obtain an order for eviction.
- 8.3 Where eviction orders are granted, the court shall determine a date on which the occupier shall vacate the land on such determined date.

## **9. Role and responsibility of the First Responder in relation to Extension of Security Tenure Act, 1997 (Act No 62 of 1997), referred to as ESTA**

- 9.1 When members receives complaints from either land owners (or persons in charge of land), or occupiers, in terms of ESTA, they should be wary not to become involved in negotiations between the land owner and occupier which

may create certain expectations that the SAPS have powers which they do not have in terms of the Act.

- 9.2 Members may not assist land owners to “evict” or remove so-called “illegal occupiers” or employees or family members of employees, from the land of a land owner. The SAPS only have a mandate to prevent and investigate crime and to maintain law and order.
- 9.3 The land owner must be informed of the provisions of the Act if he or she approaches the SAPS to request the removal of an occupier/employee, etc. who is residing on his land. Even if the right of resident of such person has been terminated, according to the land owner he/she cannot approach the SAPS to lay a charge of “trespassing”. The land owner must still approach a court for an order of eviction.
- 9.4 If an occupier commits an offence in the land of the complainant, or against the complainant or his/her family, for instance damage to property, assault, theft, etc, members must investigate such complaints and register the relevant criminal charges against the occupier in question. The occupier may not be removed from the land in question, unless it is as a result of a lawful arrest for an offence that warrants his or her arrest.
- 9.5 Section 23 (1) determines that it is an offence to evict an occupier, except on the authority of an order of a competent court. A case may be registered against a land owner who is alleged to have contravened section 23 (1), but due to the fact that it must be established through investigation whether the complainant is indeed the “occupier” as required for the purposes of this Act, or whether the land owner has indeed evicted the person without a court order, no arrest should be effected against the land owner in question, unless exceptional circumstances exists (for instance imminent threat of assault of the occupier).

## **10. The Prevention of Illegal Eviction from and Unlawful Occupation of Land, 1998 (Act No.19 of 1998) - The PIE Act**

- 10.1 The PIE Act provides for the procedures for the eviction of unlawful occupiers on all land, in urban and rural areas, whether owned by the State or private person or institution.
- 10.2 An “Unlawful occupier” for the purposes of this Act, is 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 an occupier for the purposes of the ESTA.

**11. Eviction of unlawful occupiers:**

- 11.1 In terms of section 8 (1) of the Prevention of Illegal Eviction from an Unlawful Occupation of Land, 1998 (Act No. 19 of 1998), no person may evict an unlawful occupier except on the authority of an order of a competent court.
- 11.2 Section 4 sets out the procedure for application for a court order for eviction of unlawful occupiers, including the service of notice upon unlawful occupiers which notice must state that proceedings have been instituted for an order for eviction and indicate the hearing date and the grounds for the proposed eviction.
- 11.3 The court must grant an order for eviction if it is satisfied that no valid defence has been raised by the unlawful occupier and determine in such order the date on which the eviction order may be carried out. If the unlawful occupier has not vacated the land on a date determined in the court order, the court may order the demolition or the destruction of buildings or structures that were occupied by such person.
- 11.4 The eviction order must be executed by the sheriff and the court may authorise any person to assist the sheriff to carry out the eviction of the unlawful occupier(s) and the demolition and removal of structures.
- 11.5 Urgent proceedings for the eviction of unlawful occupiers may be instituted and the court will grant an interim eviction order, pending the outcome of the proceedings for a final order, if there is an eminent danger of substantial injury or damage to a person or property by the unlawful occupier(s) or the likely hardship to the land owner or other person exceeds the likely hardship to the unlawful occupier(s) if the urgent order is not granted.

**12. Role of the First Responder in relation to the PIE Act**

- 12.1 When a complaint is laid by a landowner or person in charge of the land that persons are unlawfully occupying the land in question, a police official must determine whether any structure have been erected which are occupied or meant for occupation by the alleged unlawful occupiers. If structures have been erected and the provisions of ESTA is not applicable (in other words, the alleged perpetrators are not the employees or other persons who has a right of occupation on the land), the complainant must be informed of the provision of the PIE Act, namely the he/she must approach a court for an eviction order for the unlawful occupiers. This also applies to land owned by the State.
- 12.2 When the alleged perpetrators have entered upon land without permission, but no structures have been erected yet for occupation, a case of trespassing can be registered against the perpetrators, even if they are still in the process of erecting structures.
- 12.3 Police officials should act immediately when a complaint is made that persons have entered upon land with the alleged intention of erecting structures to occupy the land in question.

**13. Attacks on foreign nationals**

- 13.1 The rights of all foreign nationals with or without residence permits are protected by the Constitution, and the police have a responsibility and obligation to uphold and protect such rights.
- 13.2 Particularly, the right not to be dealt with in an inhumane or degrading manner, and to protect them from physical harm.
- 13.3 All SAPS members ~~and POP in particular,~~ must be aware of this and not disregard mentioned obligation when dealing with such individuals.
- 13.4 The following directives may provide some guidance to police members, as first responders, if or when dealing with an undocumented foreign national, who may have been attacked.
- SO (General) 341: Arrest and treatment of an arrested person until such a person is handed over to the Community Service Centre.

SO (General) 361: Handling of persons in custody of the Service from their arrival at the police station.

SO (General) 362: Custody Register (SAPS 14).

- (1) The Immigration Act, 2002 (Act No. 13 of 2002) places obligations on members of the Service when dealing with undocumented persons (illegal foreign nationals or illegal foreigner meaning a foreigner who is in the Republic in contravention of this Act);
- (2) A member who performs his or her duties in terms of the Immigration Act, must;
  - (i) follow an approach which is conducive to conciliation and problem solving,
  - (ii) avoid a confrontational approach, and
  - (iii) take action without delay.
- (3) Detention of undocumented persons, Section 34(1) of the Act provides as follows:

“Without the need for a warrant, an Immigration Officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at a place determined by the Director-General, provided that the foreigner concerned;

  - (i) shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of this Act;
  - (ii) may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner;
  - (iii) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible,

- practicable and available in a language that he or she understands;
- (iv) may not be held in detention for longer than 30 calendar days without a warrant of a Court which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days; and
  - (v) shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights.”
- (4) Arrest of undocumented person. See National Instruction 5 of 2014  
The principles as set out in Standing Order (General) 341 must be applied when arresting an undocumented person. The Department of Home Affairs is responsible to repatriate or deport an undocumented person, a member of the Service may not on own accord perform such repatriation or deportation.
- (5) Further relevant information
- (i) An Asylum Seeker  
He or she is a person who has fled his or her country of origin and is seeking recognition and protection as a refugee in the Republic of South Africa, and whose application is still under consideration. In case of a negative decision on his application, he has to leave the country voluntarily or will be deported.
  - (i) A Refugee  
He or she is a person who has been granted asylum status and protection in terms of the section 24 of Refugee Act No 130 of 1998. Under the 1951 United Nations Convention, a refugee can be a “convention refugee” who has left his home country and has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or a membership in a particular social group. Under the same convention, a refugee can also be a person “in need of protection” whose removal to his home country would subject him personally to a danger of

torture or to a risk to his life or a risk of cruel and unusual treatment or punishment.

#### **14. Conclusion:**

14.1 The first responder arriving first at the public gathering must perform duties that will control the public demonstration peacefully. Any police officer can be put into the position of first responding officer to public gathering.

However the officer who responds first must ensure his/her personal safety.

14.2 When a complaint of trespassing is received, the member must first attempt to determine whether the ESTA or PIE Act is relevant, namely whether the complaint relates to a person who is occupying the land/premises in question and whether such person has/had a right of occupation, whether he/she is an employee of the land owner, etc.

14.3 If it is clear that the alleged perpetrator is either an "occupant" for the purposes of the ESTA or an "illegal occupier" for the purposes of the PIE Act, the complainant should be informed that he/she is required to apply for an eviction order in terms of the relevant Act and that a charge of trespassing cannot be registered.

14.4 The complainant should also be advised that he/she may not remove/demolish any structures of an occupier and that the SAPS may not assist with removing any such structures.

14.5 If the complainant informs a member that a person(s) have entered his/her land/premises without consent, a case of trespassing should be registered.

14.6 If the trespassers refuse to leave the land/premises, they may be arrested in order to stop them from continuing to commit the offence of trespassing (this will also prevent illegal occupation of land).

