

Evictions in South Africa during 2014

An analytical narrative

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Introduction

The South Africa Constitution and pertinent legislative frameworks recognise the right of access to housing. This right extends to people who live in informal settlements, where they erect shacks and other structures. These people also include persons that take occupation of places/settlements 'illegally,' although they are not expected to resort to illegal means in exercising their right. Due to a lack of access to housing people often erect shacks or other structures on land for which they do not have legal occupation. Such persons occupy lands belonging to private persons or entities, government and local municipalities. As a result, South Africa continues to witness cases and incidents of forced evictions whereby persons who are in illegal occupation of land are forcefully removed from it. In addition, people are evicted for reasons to do with urban development and planning.

South Africa witnessed a number of eviction incidents during 2014. There were also court challenges, applications and decisions relating to evictions. This paper is a narrative of the summary of the research conducted by the author on behalf of the Socio-Economic Rights Project (SERP) of the Community Law Centre at the University of Western Cape on the status of evictions in 2014. It looked into a number of eviction incidents and court cases that took place during 2014. The narrative first outlines the conceptual legal framework that is applicable in the context of evictions in South Africa. Thereafter, it discusses particular eviction incidents that occurred or that were prevented. It also analyses the court cases and applications relating to evictions that were litigated in 2014. Lastly, it makes observations, draws out the findings and suggests possible recommendations.

Conceptual legal framework on evictions in South Africa

The study looked at evictions of individuals from premises that they occupied illegally. The applicable law is set out in the South Africa Constitution, 1996, and in a number of pertinent pieces of legislation. The Constitution is applicable in any eviction. The Prevention of Illegal Eviction from

and Unlawful Occupation of Land Act, Act 19 of 1998 (hereafter PIE) is applicable in the context of illegal occupations. The pertinent legal framework addresses rights and duties of owners of private property, the state and the individuals facing an eviction. The law requires that the rights of owners of premises must be balanced against rights of occupiers, who should not be left homeless by evictions. In this regard, South Africa's Constitution protects the right to property by prohibiting deprivation of property or its use except as per the law of general application in section 25. On the other hand, in section 26(3) the Constitution also protects individuals from being evicted from their homes or having their homes demolished without a court order made after considering all the circumstances.

In addition, South Africa has put in place legislation that provides safeguards in evicting people who occupy premises illegally. PIE gives effect to the contents of section 26(3) of the Constitution by providing a comprehensive description of the circumstances in which illegal occupiers may be evicted by a court order. The Act requires a court deciding an eviction application to take into consideration a number of factors.

Thus there are a number of guidelines informing the court in its quest to determine whether an eviction is just and equitable. That decision must be made after considering all pertinent circumstances. The courts must further consider the length of time the occupiers have been in occupation, the availability of alternative accommodation (to be provided by the state where occupiers are unable to find their own accommodation), and whether the occupiers fall within groups defined as vulnerable – the elderly, child- or female-headed households and persons with disabilities.

The applicable law is also discussed in a number of court decisions emanating from the Constitutional Court and other courts. Any illegal occupiers who are threatened by eviction or by demolition are guaranteed constitutional protection against this, without a court order issued after considering all the circumstances. It is thus relevant to look at some of the eviction incidents that occurred in 2014 and make critical observations thereon in the light of the conceptual framework discussed in this section.

Eviction incidents in 2014

The Marikana informal settlement, Philippi East: 7–8 January 2014

The eviction was from private land owned by Mrs Irish Fischer. It was carried out by the Anti-Land Invasion Unit (ALIU),

which demolished 47 shacks. The eviction gave rise to a number of court applications for interdict by Mrs Fischer, the City of Cape Town and the occupants (shack dwellers).

Cato Crest evictions – Madlala Village, Lamontville:
13 February 2014

The lands involved belonged to the eThekweni Municipality. The evictions were carried out pursuant to a court order obtained by the KwaZulu-Natal MEC for Human Settlements and Public Works around 28 March 2013. The shack dwellers challenged the order's interpretation and the matter went all the way to the Constitutional Court. Nonetheless, the evictions continued while the matter was still in court.

Lwandle/Nomzamo evictions, Cape Town: 1–2 June 2014

The evictions were from land privately owned by the South Africa National Roads Agency Limited (Sanral) that had been earmarked for rerouting the N2 national road. The evictions were done pursuant to a court order obtained by Sanral. However, an inquiry by national government found that Sanral did not use an eviction order.

General Johannesburg evictions: pending by 9–10 June 2014

Over 1 000 occupiers of several inner city Johannesburg buildings faced eviction. The City of Johannesburg suspended 30 evictions pending the creation of an eviction model that conformed to the requirements of the law

Zandspruit and Honeydew, Johannesburg: 7–9 July 2014

These were evictions from townhouses that formed a building complex and the removal of shacks and structures erected on the land. The Honeydew land belonged to a private entity. Owners used the Red Ants to carry out the evictions.

Erf 149, Philippi East, Cape Town: 10–11 August 2014

The evictions were carried out by the ALIU following the City of Cape Town's own criteria for the demolitions of 'un-completed' or 'vacant' dwellings.

Sisonke Village, Durban: 30 September 2014

The ALIU evicted about 30 families.

Nellmapius, east of Pretoria: 9 November 2014

The eviction incident stemmed from 'land grab' practices by people tired of waiting for RDP houses, who erected structures on the land.

Botshabelo section, Alexander, Johannesburg:
14 November 2014

The evictions involved the removal of people who had moved into flats that were part of a municipal housing project and which had been vacant for two years.

Malemaville evictions, Pretoria: 25 November 2014

The City had a court order to demolish buildings/shacks that had been built as part of the 'land grab' tactic (explained above).

Lenasia evictions: 'on an ongoing basis'

These were evictions and demolitions carried out by Department of Local Government in the Gauteng Province, on an 'on-going basis'. They were attributed to the illegal sale of government land to the community.

General evictions in eThekweni municipality

These comprised a series of 'routine' evictions. They stemmed from a practice by illegal invaders who erected shacks at a faster rate than the eThekweni Municipality could demolish them. In addition, newcomers to eThekweni were also occupying land earmarked for low-cost housing for local people who had waited for many years, and also had to be evicted.

Eviction cases and applications in 2014

Rustenburg Local Municipality v Mdango and Others:
30 May 2014

This case related to the eviction of people from an area in Rustenburg. The residents invaded RDP houses in Seraleng Township that were meant for allocation to applicants approved by the municipality. The Supreme Court reiterated that an eviction order should only be granted after pertinent parties have been heard. These include the MEC for Human Settlements, who should provide information on alternative suitable accommodation; and the municipality, which should indicate steps taken to provide alternative accommodation before the eviction.

Zulu and 389 Others v eThekweni Municipality and Others:
6 June 2014

The case hinged on the interdict used for the Durban evictions listed above which was obtained by MEC for Human Settlements and Public Works on 28 March 2013. The Court observed that the order was meant to prevent illegal occupations from that date onwards so it could not be used to remove people who took occupation before then. The Constitutional Court referred the matter back to the High Court.

Rand Leases Properties v Occupiers of Vogelstruisfontein and Others: 22 August 2014

The case relates to an intention to evict over 200 people who lived on private land in the Marie Louise informal settlement. The High Court issued an order requiring the City and the occupiers to carry out 'meaningful engagement' on the eviction and alternative accommodation plans, during which the parties agreed that the Court should issue a 'consent' order for the City to relocate the residents to a Rugby Club Site and provide them with basic services.

De Clerq and Others v Occupiers of Plot 38 Meringspark and Others: 8 October 2014

This was an eviction application by private farm owners. The High Court issued a structural order postponing the eviction application until 9 February 2015 and required City to set up a steering Committee to look into and carry out an engage process on a relocation plan and site.

Fischer and City of Cape Town v Ramahlele and 46 Others:
27 Nov 2014

This case emanated from evictions carried out by the ALIU at Marikana informal settlement on Mrs Irish Fischer's land in Philippi. Mrs Fischer had obtained an order restraining occupations and there was a huge likelihood that the interdict could be used to evict the occupants. On their part, the occupants applied for an order against evictions. The Court ruled that people who were already in occupation by 27 November 2014 could not be evicted; only those who came after that date would be affected.

Observations and conclusions

The narrative sought to paint a picture of the state of evictions in South Africa during 2014. A number of observations can be made regarding the legality and frequencies of the evictions. First, a majority of the evictions surveyed for the purposes of this study might not have been legal. For example, with regard to the Sanral Lwandle evictions: there was no court order authorising eviction and no alternative accommodation was provided. Second, the evictions were rather frequent. For example, according to SERI, evictions took place 'constantly' in Gauteng. In Cato Crest in eThekweni, whenever shacks were demolished the process of erecting new shacks would start again and by June 2014 similar evictions had taken place 12 times. Similarly, there were 'more than 24 evictions' in Sisonke Village, Durban by early 2014, whilst three major evictions took place in Cato Crest alone. There were 'between 10 and 20 evictions a month' in the inner city of Johannesburg. The study found that evictions occurred every month from January until November 2014.

The study also brought forth a number of findings. First, with regard to the numbers of people/families evicted, it was found that the Lwandle evictions displaced about 800 families whilst the Cato Crest eviction on 2 June resulted in the demolition of more than 100 shacks and the displacement of 300 people. The Zandspruit evictions saw 114 shacks being demolished and about 350 residents being removed. Other evictions involved the relocation of communities. The evictions thus affected many people and families. Furthermore, it was found that there were at least nine major evictions in Gauteng, five in Kwazulu-Natal and seven in the Western Cape. In addition, there were at least 16 major evictions from government-owned land and about eight from privately-owned land. In terms of the eviction agents used, in Gauteng the private security firm Red Ants were used, while in the Western Cape it was the ALIU and in KwaZulu-Natal the Land Invasion Control Unit.

A number of critical findings can also be extrapolated from the study. First, certain evictions were done 'through the back door', wherein state agencies and property owners tried to carry out evictions without obtaining eviction orders. Instead, they used an interdict aimed at preventing

(prospective) illegal occupations. Second, there were deliberate 'land-grab tactics', whereby people tired of waiting for land/housing allocations from the state deliberately took illegal occupation of land. Third, certain evictions disregarded people's plight and rights. For example, some evictions destroyed homes, shacks and personal property; others were carried out without sufficient notice being given to the occupiers; some were carried out during very cold winter weather and while children were sitting for examinations; and finally, some evictions took place while occupiers were at work. Fourth, there was violence and protests during evictions, causing death and injuries. Finally, there was an abuse of the duty of government relating to the provision of alternative accommodation: private landowners were able to carry out illegal evictions with no alternative accommodation being provided since, in terms of the law, government would be held accountable for the provision of such accommodation.

Therefore, although the Constitution and PIE provide protection against wrongful evictions, the events that occurred in 2014 suggest that such safeguards did not protect a majority of illegal occupiers from facing rights violations as well as illegal evictions. The occupants often had to rely on court orders in order to enjoy the protection afforded by PIE and the Constitution. Accordingly, in trying to explore the way forward for 2015 and beyond, a number of suggestions can be considered. First, there is a need to emphasise that state and private actors, especially municipalities, must follow the law when pursuing an eviction. Second, there is an urgent need to try and resolve the complicated and chaotic state of housing waiting lists, since it might be argued that frustration leads to illegal occupations as evidenced by the land-grab tactics. Third, measures should be taken to deal with the underlying issues of proper, adequate planning for informal settlements and for the opening up of land. Fourth, the issue of promoting the right to have access to adequate housing requires looking into.

Finally, emphasis should be placed on carrying out lawful or legal evictions, including ensuring meaningful engagement before an eviction. This can be achieved if, among other things, evictions are only carried out after obtaining an eviction order from the court. This is because the courts will only issue an eviction order if it is fair, just and equitable to effect an eviction. Indeed, South Africa has the required legal framework to put a stop to these unfortunate incidents. Thus the crucial step is to follow the applicable law.

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