



CENTRE ON HOUSING RIGHTS AND EVICTIONS

Centre on Housing Rights & Evictions
Geneva, Switzerland
<http://www.cohre.org>

Holding Your Ground

Resisting Evictions in South Africa

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errors of fact or judgment rest with the writer, the editors and with COHRE.

1. Evictions

The Freedom Charter states that ‘South Africa belongs to all who live in it.’ Yet each year many thousands of people are evicted in cities and in rural areas across the country.

Evictions, in cities and in rural areas, are often carried out violently. People are often hurt by the police or private security officers while trying to oppose evictions.

People who are evicted often have their property lost, stolen or damaged during evictions. This can happen when shacks are knocked down while people’s things are still inside, when the police or private security officers steal from people or when people’s things are dumped in the street.

When people lose birth certificates, ID books, school uniforms and medicine and medical prescriptions in evictions they often struggle to keep their access to government support and services.

People who are left homeless after an eviction often have to sleep in the bush, under bridges or in dark corners in the streets. Many people have been attacked, robbed and raped in these dangerous places. These places can be especially dangerous for women, children and older people.

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When people have to move in with family and friends after an eviction this can sometimes cause tensions. When a whole community that has been evicted has to seek refuge in another community this can also eventually lead to problems.

When people are moved far from where they were living the costs of getting to work, to school and to clinics and hospitals can become a big problem. Sometimes people even have to stop working and to stop attending school as well as clinics and hospitals.

When communities are broken up in evictions people often struggle to live without the support of their friends and neighbours.

When people are moved away from their ancestor's graves it can be very difficult and sometimes impossible for them to tend the graves.

Many people are left depressed after evictions and find it difficult to motivate themselves to start building their lives again.

Many people feel that evictions take their dignity. All of the poor people's organisations interviewed for this booklet believe that there should be no forced evictions in a democratic society and are fighting to stop evictions in the cities and on the farms. COHRE supports the call for an immediate end to evictions in South Africa.

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2. Evictions & the Law

In South Africa the law gives all South African citizens some protection against evictions but it also gives some rights to property owners. You can use the law to defend yourself against eviction but property owners can also use it to attack you. Once you have decided to oppose an eviction you will need to learn all that you can about the law.

2.1 The Constitution

Section 25 of the Bill of Rights in the Constitution says that:

- The state must 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.
- A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

This means that:

1. The government must work to ensure that there is equal and fair access to land.
2. The government must work to ensure that where the law does not give people a strong right to the land

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because of discrimination against black people under apartheid and colonialism the government must work to give people a strong right to the land or, if this is not possible, to give them proper compensation.

Section 26 of the Bill of Rights in the Constitution says that:

- Everyone has the right to have access to adequate housing.
- The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- 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 evictions.

This means that:

1. Access to decent housing fit for human beings is a right for every citizen of South Africa and that the government must work as hard as it can to provide decent housing to all its citizens.
2. You can not be evicted from your home or have your home demolished, even if it is a shack, unless this has been ordered by a court and unless that court has thought carefully about how this will affect you and your family.

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2.2 The Extension of Security of Tenure Act (ESTA)

ESTA applies to everyone who has received permission from a landowner or their representative to live on a farm (or an area classified as a farm by the government) and who earns less than R5 000 per month.

ESTA makes it illegal for anyone, including private landowners and the government, to evict a person who has been given permission to live in a farm without a court order. You cannot be legally evicted if you earn less than R 5000 per month, have lived on the farm for more than ten years *and* are over 60 years old or if you are unable to work for the landowner due to poor health, injury or disability.

However if you meet these conditions you will lose your right to not be legally evicted if:

1. You intentionally and unlawfully harm someone living on the land.
2. You intentionally damage the property of the farmer.
3. You have threatened other people on the land.
4. You have assisted other people to set up home on the land without the permission of the landowner.
5. You have broken the relationship with the landowner beyond repair by, for example, assaulting the landowner.

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If you are not protected against eviction because you have lived on the land for less than 10 years, are under the age of 60, earn more than R 5000 per month or have violated any of the conditions listed above then you can only be evicted by an order of the court.

In order for you to be legally evicted the following steps must be followed:

1. You must receive a notice of eviction, in a language that you understand, two months before the date of the court hearing.
2. The landowner must have paid you all outstanding wages.
3. The Department of Land Affairs must submit a report on the proposed eviction to the court.
4. The court must consider whether or not you have alternative accommodation.
5. The court must consider how the eviction will affect your other rights and those of your family (such as the right to education, health care, work etc)

You should also know that:

1. Courts usually do grant an eviction order when there is a plan for decent alternative accommodation and they usually refuse to grant an eviction order when there is no plan for decent alternative accommodation.

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2. If the government or a private landlord is trying to evict you without a court order you can go to court and ask the judge to interdict them against evicting you. Poor people's organisations have often done this successfully.
3. If you have been evicted without a court order you can lay criminal charges against who ever evicted you even if it was the police or a private security company hired by the government

2.3 The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (The PIE Act)

The PIE Act applies to everyone who occupies land without 'the express or tacit consent of the owner or the person in charge'. This includes people who occupied land lawfully at some point in the past but who no longer have the consent of the owner to occupy the land in question, as well as to people who took occupation of land unlawfully in the first place. The PIE Act makes it illegal for anyone, including the government and private landlords, to evict an unlawful occupier, unless the eviction is authorised by an order of the court and complies with a number of procedural requirements. The government, private landlords, the police, local councillors and ward committees and even some legal aid clinics often tell unlawful occupiers that they have no rights and must by law accept eviction. This is not true. Even if you are an unlawful occupier any attempt to evict you is illegal unless:

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1. There is a court order stating that you must be evicted.
2. You were advised of the court hearing at which the evictor asked the judge to grant the eviction at least 14 days in advance. This notice must be in a language that you can understand, it must state the reasons for your eviction and it must tell you that you have the right to request legal aid.
3. The court has carefully considered the rights and needs of certain vulnerable groups of unlawful occupiers, including the elderly, children, women-headed households and the disabled.
4. If you have occupied the land or building for longer than six months then the court must make sure that the landlord or government has provided an alternative place to which you can be moved after the eviction. That alternative place must not disrupt your life too much.

You should also know that:

1. Courts usually do grant an eviction order when there is a plan for decent alternative accommodation and they usually refuse to grant an eviction order when there is no plan for decent alternative accommodation. You have every right to argue that alternative accommodation that is far from where you are currently living is not acceptable. Right now there is a big debate in South Africa as to whether

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transit camps (also called temporary relocation areas, decant areas, *amatins* or government shacks) should count as decent alternative accommodation. Some judges accept that they should count but all of the poor people's organisations and housing rights professional interviewed for this booklet strongly disagreed. The struggle over this question is still to be resolved.

3. If the government or a private landlord is trying to evict you without a court order you can go to court and ask the judge to interdict them against evicting you. Poor people's organisations have often done this successfully.
4. If your shack has been demolished without a court order you can ask your lawyers to insist that the judge orders the people who destroyed your shack to rebuild it for you.
5. If your shack has been demolished without a court order you can lay criminal charges against who ever demolished your shack even if it was the police or a private security company hired by the government.

2.4 The Rental Housing Act

The Rental Housing Act applies to anyone who rents a flat or house from a landlord irrespective if the lease is written or verbal. It is unlawful to evict a tenant without a court order.

Your landlord can seek your eviction if:

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1. Your lease had a fixed concluding date which has now been reached.
2. You have not paid your rent.
3. You are a nuisance to the neighbours.
4. You have deliberately damaged the house or flat.
5. You have not stuck to any conditions that you agreed on in the lease.

If you have a written lease the notice period for a termination of the lease should be stated in the lease. If you do not have a written lease then the notice period should be the same as the interval at which you pay rent. So if you pay rent each week then you must get one week's notice, if you pay rent each month then you must get one month's notice.

You should also know that:

1. It is illegal for the landlord to lock you out of the property.
2. It is illegal for the landlord to take your possessions to cover rent that you owe if this has not been ordered by a court.
3. An eviction notice must be in writing, properly dated and signed by your landlord or his or her agent.
4. If you are faced with an unfair eviction you can lodge a complaint with the Rental Housing Tribunal or you can approach the courts for help.
5. If you refuse to accept the eviction and do not leave the flat or the house when asked to by the landlord he or she, or people working for them, cannot force

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you out. The landlord must then go to court to seek an eviction order.

6. Courts will usually find for the tenants if:
 - You have paid your rent but the landlord is claiming that you are behind with your rent.
 - The landlord has failed to keep the flat or house in a good condition and you have repaired it yourself and then deducted that cost from your rental payments.
7. The Rental Housing Act protects the rights of all tenants to join community organisations or social movements that can protect and advance their interests. Your landlord has no right to discriminate against you because you are a member of a community organisation or social movement.

3.1 Evictions in South Africa

3.1 Rural Evictions

Evictions happen in rural areas all over South Africa. People are evicted by individual farmers as well as big companies.

In the first ten years after apartheid just under a million people were evicted from farms. Only 1% of those evictions were carried out in terms of the law.

Most evictions happen when:

- a farmer wishes to sell his or her farm

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- farms are sold for big developments like factory farming, game parks, other kinds of tourism businesses and so on.
- farmers shift to a type of farming, like game farming or forestry, that doesn't need lots of full time workers
- farm workers become too old or too sick to work

3.2 Urban Evictions

Evictions happen in cities all over South Africa. People are evicted by private landowners and by government from inner city flats, bond houses, rented flats and houses and from shacks.

In some municipalities most evictions are carried out lawfully. In other municipalities almost all evictions are unlawful. Some municipalities have changed their ways after they have been interdicted against unlawful evictions in the courts. Others continue to act unlawfully even after they have been interdicted. The eThekweni and Erkhulenui Municipalities seem to be the worst.

Most evictions happen when:

- people cannot pay their rent or their bonds
- a private landlord or the government wants to evict people in order to redevelop a building or area for richer people or business

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- wealthy residents of an area, or the government, want to remove poor people from an area
- people organise new occupations of land or buildings
- people try to formalise their shacks on their own
- a whole shack settlement is demolished when only some people are moved to RDP houses
- the government claims (rightly or wrongly)

4. Resisting Evictions

4.1 Dealing with the initial shock

Ashraf Cassiem from the Western Cape Anti-Eviction Campaign has probably dealt with more evictions than anyone else in post-apartheid South Africa. He gives the following advice:

1. Take a deep breath and take a decision not to give in to stress.
2. Do not act spontaneously.
3. Affirm with yourself and your family that you will fight the eviction.
4. Let your friends and neighbours know about the eviction. Do not let shame silence you. Letting everyone know will slow things down and reduce stress.
5. Call a public meeting about the eviction or join a movement that is willing to fight the eviction with you.

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6. Inform yourself about the law by talking to people who know the law.
7. Identify the kind of eviction that you face and the defences that are available to you. Investigate everything that you can on your own.
8. Look for a lawyer but don't be too quick to give your case to the first lawyer that you find. Make sure that the lawyer listens to you and that you can trust him or her. If you cannot find a good lawyer you can start to engage with the legal process on your own.

4.2 Being Aware of the Legal Process

Almost all rural evictions are illegal and in fact criminal. In some cities most evictions are illegal but in others active social movements have forced government and big business to follow the law.

If the eviction that you are facing is being undertaken according to the law it will follow these steps.

1. You will receive a threat (written or oral) that indicates the intention to evict you.
2. An application for an eviction will be served on you. It will give you the court date on which the application will be heard.
3. The court proceedings will take place.
4. An eviction order will be issued.
5. The sheriff, the police or private security will come and evict you from your home.

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If these steps are not followed the attempt to evict you is unlawful. Often a local councillor or landowner will come with the police and use official sounding language but remember that no matter how official the language sounds no eviction is legal if there is no court order. You have the right to resist an unlawful eviction but it is unlikely that the police will respect this right.

But even if the correct legal steps are followed you can still try to delay or stop the eviction at any point. It is in your interests to delay the process for as long as you can because that gives you more time to mobilise and to find support. It also puts more pressure on the people trying to evict you.

Remember that if you can create enough pressure outside of the legal process you can stop the eviction or force a negotiation at any point before the eviction happens.

If you receive a threat the first thing to do is check the standing of the person that has made the threat to see if they really do have some right to the land or building where you are living. You should make it clear from the beginning that you will fight the eviction all the way. Most private landowners and landlords cannot afford expensive legal battles and will seek to negotiate if you can hold out for long enough. There are many cases where such negotiations have succeeded.

If you receive an application for an eviction you can turn up at the court on your own and ask for a delay so that you can

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find a lawyer. The judge will probably tell you to go to the Legal Aid Board. If you come back next time with a letter from the Legal Aid Board stating that they cannot represent you then you may be able to secure a further delay. Remember that every delay will cost a private landowner or landlord a lot of money and that you can use all kinds of technicalities to delay the process. However if it is the government that is evicting you they will not be worried about the cost of the eviction.

4.3 Using the law to defend yourself

4.3.1 Getting help from the police

In rural and urban areas most evictions are illegal and in fact criminal acts. In principle a person who is threatened with an illegal eviction should simply have to report it to the police and the police should then warn the people trying to carry out the eviction that their actions are illegal and criminal. They should then arrest those people if they try to go ahead with the eviction. This applies even if the evictors are government officials.

In most cases the police are either unaware of the laws that protect people against eviction or they are unwilling to implement those laws. However if you are threatened with an unlawful eviction it may still be useful to report it to the police. If necessary and if possible it may be useful to try and

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educate the police about the laws protecting people from evictions that are not supported by an order of the court.

However while researching this booklet COHRE only came across one incident in which the police had intervened to stop an unlawful eviction and that happened after a court order against the eviction followed by further pressure from lawyers and a powerful social movement. But COHRE heard many stories where the police had, sometimes acting violently, supported people carrying out unlawful evictions. In these cases the actions of the police were criminal.

If the police are acting in a criminal way you can, in principle, open a charge against them or lay a complaint with the Independent Complaints Directorate. However COHRE did not come across one incident in which the police had allowed poor people to open charges against them or one incident in which the Independent Complaints Directorate had taken a complaint seriously. However Abahlali baseMjondolo in Durban has had considerable success in educating the police to follow the law by marching on police stations, by making police criminality public knowledge and by getting court orders against the police.

If there is a good community organisation or social movement in your area they will know what the local police station is like and who, if anyone, you can speak to there.

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4.3.2 Getting help from lawyers

Lawyers can be very expensive and many lawyers will just drop your case if you cannot keep up with the payments. If you cannot afford a lawyer you can approach the Legal Aid Board, the Legal Resources Centre, a university Legal Aid Clinic, a *pro bono* lawyer at a big law firm or an NGO that supports people resisting evictions for help. At all of these places it is possible to get free legal support.

While there are some very good lawyers that specialise in fighting evictions some lawyers do not know about the law or are biased against the poor and towards the rich. COHRE came across many incidents where the Legal Aid Board has advised people to accept evictions that were clearly unlawful. COHRE also came across a number of cases where lawyers just saw their role as negotiating the terms of the eviction rather than opposing it. You may have to try and educate your lawyer about the law or to try a few lawyers before you find someone that is willing to help you. If there is a community organisation or social movement in your area they may have built up a good working relationship with a number of lawyers over time and may know where you can go for legal help.

If you can find a lawyer who is willing to help you then you will need to be sure that your lawyer explains everything to you very carefully and does not make any decisions about your future without your consent. Some lawyers operate in a

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very democratic and respectful way but others do not. You should be at every court appearance and you must make sure that your lawyer is at every court appearance. You must also make sure that you keep in regular contact with your lawyer and that you get copies of all papers and documents.

If a group of people are facing eviction together it is essential to form an organisation. It must have a written constitution which states that it has the right to provide collective legal representation to the members and it must have a democratically elected committee. Then your organisation can brief a lawyer or speak in court on behalf of all the members. However if you have made a tactical decision to slow the legal process down then it can be useful for each person to go to court as an individual.

If you are facing an illegal eviction you should be able to stop it by asking your lawyer to go the High Court and asking the judge to issue an interdict against the eviction. If you are facing a legal eviction you may still be able to contest the grounds for the eviction, the process that has been followed or the adequacy of the alternative accommodation that has been offered to you. In some cities the arguments given in support of evictions are becoming increasingly technical. For instance in Johannesburg shack dwellers are often told that they are being evicted because there is dolomite in the ground. Yet they may find that after they are evicted a shopping mall is built in the same area. When evictions are justified by these sorts of technical arguments it will often be

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necessary to find your own experts to evaluate and, if necessary, contest the technical arguments that are being used against you.

Some legal aid NGOs have money to access these sorts of skills and some social movements have relationships with technical experts who are willing to offer their skills for free.

4.3.3 Representing your self in court

Some judges are quite helpful when people want to represent themselves and some are quite hostile and may even have you removed from the court. But even when judges are helpful it is usually only possible to represent yourself during the initial stages of the legal process. If you want to speak for yourself in court then you should:

1. Investigate everything on your own as carefully as you can.
2. Get as much legal advice as you can. Identify who will speak for you.
3. Go to the court a few days before your hearing so that you can see how it all works. When the court room is empty you can try and walk around and practice speaking in the room. This can help you to feel comfortable there.
4. You should take as many of the people facing eviction as possible to the court on the day of the hearing.

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5. When your time to speak comes you must clearly identify yourself. You should state that you are not a lawyer but that you are representing a community organisation.
6. It is important to take your place in the court room firmly. You should hold onto the microphone, look the judge square in the eye and speak clearly. If you find that you are intimidated then look into the microphone.
7. Take three copies of each document that you will need. One for the judge, one for the lawyer representing the other side and one for your self.

4.3.4 Slowing down the legal process

Because the legal process is so expensive and time consuming slowing it down as much as possible can often help to force the people that want to evict you to negotiate with you. Slowing down the legal process can also be a useful tactic when you need time to find a lawyer or to mobilise the community.

There are various things that you can do to slow down the process. For instance you can:

1. Go to court without a lawyer on the first date and tell the judge that you cannot afford a lawyer.
2. If the judge tells you to go to the Legal Aid Board and the Legal Aid Board do not offer you committed support you can ask them to write a letter saying

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that they are not willing to take your instructions. You can then return to court on the next date with that letter and get another delay.

3. If people are willing to be arrested for contempt of court it is also possible to slow the process down by protesting in court.
4. When a judge orders an eviction some social movements arrange for the people who will be evicted to swap houses. Then when the sheriff comes the eviction order will be for the wrong people. This can force the evictors to go through a whole new legal process.
5. When people are evicted from their homes some social movements put them back in their homes. If you do this you must be willing to risk a trespassing charge.

4.4 Opposing evictions with popular resistance

Popular resistance has often stopped both lawful and unlawful evictions. Popular resistance can take the form of marches, pickets, road blockades, press statements and appeals to NGOs, church leaders, trade unions and social movements for support.

If you wish to take this route along side a legal process or instead of a legal process you must be sure to build as much unity as possible in your community. It is essential that men and women are included in this unity on an equal basis.

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If you build or join a democratic organisation your struggle will be much stronger as everyone will be included in its decision making.

Although the police and local councillors and ward committees may not know or accept this you have a right to organise protests against any eviction. If you are unsure of the rules governing the right to protest you can get more information from community organisations and social movements or the Freedom of Expression Institute in Johannesburg.

Although the police and local councillors and ward committees may not know or accept this you have a right to resist an unlawful eviction. However once a court has ordered your eviction resistance will be seen as contempt of court.

Communities facing evictions have had good and bad experiences from people and organisations that offer to support them. For this reason it is always a good idea to share experiences with other people in or near to your community who have faced evictions. This will help you to get a good understanding of which people and organisations have a good track record of supporting communities facing eviction.

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Remember

Remember that many people and communities have faced evictions and won. They are still in their houses and on their land. If there is enough will there is always a chance that an eviction can be stopped.

Remember that you do not have to choose one strategy in your fight against evictions. You can use different strategies at the same time.

Remember that you will always be stronger if you are not alone. Your chances of successfully resisting an eviction will be much stronger if you can join or form a community organisation or social movement.

Remember that a community organisation or social movement will always be stronger if it is democratic and includes women and men on the basis of equality.

Remember that many useful networks have been built up in the struggle against evictions. You can tap into these networks if you contact people with experience in resisting evictions. These networks may be able to help you to get legal support, support from church leaders, support from NGOs, access to sympathetic journalists and solidarity from other people also resisting evictions.

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Useful Contact Numbers

Cape Town & the Western Cape

Abahlali baseMjondolo: 073 256 2036

Legal Resources Centre: 021 481 3000

Western Cape Anti-Eviction Campaign: 076 186 1408

Durban & KwaZulu-Natal

Abahlali baseMjondolo: 031 269 1822

Legal Resources Centre: 031 301 7572

Rural Network: 072 279 2634

University of KwaZulu-Natal Law Clinic: 031 260 8059

Johannesburg & Gauteng:

Anti-Privatisation Forum: 011 333-8334

Denys Reitz *pro bono* unit: 011 685 8964

Freedom of Expression Institute: 011 403 8403/4

Landless People's Movement: 082 337 4515

Legal Resources Centre: 011 836 9831

Webber Wentzel *pro bono* unit: 011 530 5539

Wits Law Clinic: 011 717 8562