

Submission

to the

Department of Human Settlements

on

Draft Prevention of Illegal Eviction from and Unlawful Occupation of Land
Amendment Bill, 2026 as published in Government Gazette Notice No. 3896 of 2026

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1 Introduction and background

1. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill (“**the Amendment Bill**”) was first introduced in the National Assembly as a Private Member’s Bill by a member of the Democratic Alliance, namely Ms EL Powell, on 28 March 2023.

2. The long title of the Amendment Bill described its purpose, *inter alia*, as follows:

“To amend the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 so as to extend the offence to incite or promote orchestrated unlawful invasions to include instances where no payment was received or solicited. . .and to require courts to stipulate the period of time that alternative accommodation or land would need to be provided for an unlawful occupier. .”

3. The Amendment Bill lapsed on 21 May 2024 in terms of the National Assembly Rule 333(2) and was revived on 29 October 2024.

4. On 28 May 2025, the Human Settlements Portfolio Committee met to consider a motion of desirability of the Private Member’s Bill. At this meeting, Ms Powell indicated that the proposed amendments were prompted by “*municipal appeals for legislative reform to help manage growing incidents of unlawful land occupation*”.¹

¹ <https://pmg.org.za/committee-meeting/40805/>

5. Democratic Alliance (DA) Members supported the Bill and argued that “municipalities were struggling to deliver services due to the diversion of resources towards addressing unlawful occupations and emergency housing”.

6. Members from the African National Congress (ANC), Economic Freedom Fighters (EFF), uMkhonto weSizwe Party (MKP) and the National Coloured Congress (NCC) objected to the Bill’s framing and intent, stating that it failed to acknowledge the historical context of land dispossession and the structural causes of landlessness in South Africa. These Members also argued that certain portions of the Bill would criminalise vulnerable people rather than addressing housing backlogs and failures in land redistribution.

7. The Human Settlements Portfolio Committee elected not to vote on the motion of desirability at that stage.

8. On 29 October 2025, the Human Settlements Portfolio Committee met once more to discuss the Amendment Bill.² At this meeting, Members of the Portfolio Committee once again raised concerns regarding the Bill’s potential to criminalise poverty, and its implications for municipalities tasked with providing alternative accommodation. They questioned whether the Bill aligned with constitutional principles and the White Paper on Human Settlements. The members also generally agreed that the Department of Human Settlements was best placed to lead the legislative process to ensure comprehensive consultation and coherence with national policy.

² <https://pmg.org.za/committee-meeting/41900/>

9. On 16 April 2026, the Minister of Human Settlements, Ms Thembisile Simelane, published the Amendment Bill for public comment.

10. It is against this backdrop that this joint submission, in opposition to the Amendment Bill, is made on behalf of the following organisations:

10.1. Abahlali baseMjondolo

10.2. Centre for Applied Legal Studies

10.3. Ndifuna Ukwazi Law Centre

10.4. Socio-Economic Rights Institute

10.5. Isandla Institute

10.6. Reclaim The City

10.7. Rent Control Group

10.8. Solidarity Space

10.9. Housing Assembly

10.10. Indibano Yabahlali

10.11. Intlungu yasematyotyombeni

10.12. Development Action Group

10.13. International Labour Research and Information Group

10.14. Tshisimani Centre for Activist Education

11. This joint submission will firstly, provide a historical overview of evictions in the apartheid era; secondly, it will explore evictions and housing rights in the democratic,

constitutional dispensation, and finally, it will highlight the ways in which the Amendment Bill betrays the constitutional promise.

2 Historical overview of evictions in the apartheid era

12. In the 1930s and 1940s, there was rapid urbanisation in South Africa, which led to some racially-integrated peri-urban settlement that was a cause for concern for the colonial government. Accordingly, in the 1940s, the Smuts cabinet became increasingly preoccupied with “reconstruction”.³

13. The War Measure, 1940, which was enacted in 1944, enabled a magistrate to issue an order for the removal of people living on land or in buildings without the permission of the owner / lawful occupier and for the demolition of any buildings or structures that threatened the health and safety of the general public or the maintenance of peace and good order.

14. The War Measure was primarily used to stem the influx of black people who moved to cities in search of employment opportunities, and it was unsuccessful because with nowhere else to go, the evicted merely moved to other pieces of land nearby and waited for the process to begin again.

15. Accordingly, after the National Party won the election in 1948 to become the governing party in the Union of South Africa, the Group Areas Act, 1950 was

³ A Mabin “Comprehensive Segregation: The Origins of the Group Areas Act and Its Planning Apparatuses” (1992) 18 JSAS 413 - 414.

promulgated. The Prime Minister at that time, DF Malan, described the Group Areas Act as “the essence of apartheid”.⁴

16. The Group Areas Act led the era of widespread forced removals, and its two enforcement mechanisms were the Prevention of Illegal Squatting Act, 1951 (“**PISA**”) and the Natives Abolition of Passes and Coordination of Documents, 1952 which, respectively, prohibited “squatting” and required black people to carry passes containing their legal and residency statuses. Anyone residing or occupying land or premises in an area outside of his or her scheduled residential area, without justification or a permit, could be evicted.

17. The PISA also criminalised entering and remaining on land or in buildings without any lawful reason. Moreover – much like the Amendment Bill – the PISA prohibited the collection of fees or the exercise of authority with regard to the organisation of “illegal squatting”.

3 Evictions in the constitutional democracy era

18. It was in response to the above historical background that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (“**PIE Act**”) was enacted to give effect to the constitutional principle which prohibited arbitrary and unlawful evictions. It also served to repeal and replace the apartheid-era PISA.

⁴ M Festenstein & C Pickard-Cambridge Land and Race: South Africa’s Group Areas and Land Acts (1987) 6.

19. In this regard, section 26 (2) of the Constitution of the Republic of South Africa, 1996 (“**the Constitution**”) requires the state to take reasonable, legislative and other measures, within available resources, to achieve the progressive realisation of the right to access adequate housing. Section 26 (3) explicitly prohibits arbitrary evictions and directs courts to consider all relevant circumstances before granting an eviction order.

20. In terms of section 39 of the Constitution, a court must consider international law when interpreting the Bill of Rights.

21. Accordingly, with respect to international standards applicable to the right of access to adequate housing, South Africa is a party to and has ratified the International Convention on Economic, Social and Cultural Rights (“**ICESCR**”).

22. Article 11 of the ICESCR protects the right to housing as a component of the fundamental right of everyone to an adequate standard of living for themselves and their family.

23. State parties are obliged under Article 2(1) of the ICESCR to take steps utilising the maximum of their available resources, to progressively realise the rights recognized by the ICESCR, by all appropriate means, including the adoption of legislative measures.

24. The statements and general comments of the Committee on Economic, Social and Cultural Rights (“**CESCR**”) are also sources of non-binding but persuasive

international law, which have been regularly referred to in South Africa's leading cases on socio-economic rights.

25. CESCR General Comment 4 states that a number of factors must be taken into account in determining whether particular forms of shelter can be considered to constitute 'adequate housing' for the purposes of the ICESCR. These factors include legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

26. General Comment 7 of the CESCR deals with evictions in the context of the right to adequate housing. It confirms the obligation of states to provide adequate housing to persons who would be rendered homeless by evictions:

'Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.'

27. In *Grootboom*,⁵ the Constitutional Court dealt with the right to housing in the context of an eviction. The court emphasised the interconnectedness of rights, the importance of socio-economic rights, and the requirement for the state's positive conduct towards those living in poverty, affected by homelessness or staying in intolerable housing. In this regard, the Court stated that, "*the Constitution will be worth infinitely less than its paper if the reasonableness of state action concerned with*

⁵ *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169

housing is determined without regard to the fundamental constitutional value of human dignity”.⁶

28. In *Port Elizabeth Municipality*,⁷ the Court held that the PIE Act “not only repealed PISA but in a sense inverted it: squatting was decriminalized and the eviction process was made subject to a number of requirements” and thus “the first part of the title of the new law emphasises a shift in thrust from prevention of illegal squatting to prevention of illegal eviction”.⁸ The Court held further that “the former depersonalised processes that took no account of life circumstances of those being expelled were replaced by humanised procedures that focused on fairness to all”.⁹ The Court also expressed that, “it is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society as a whole is demeaned when state action intensifies rather than mitigates their marginalisation”.¹⁰

29. In *Blue Moonlight*,¹¹ the Constitutional Court expressed that section 26 of the Constitution highlighted the *transformative vision* of the Constitution.¹² The Court continued that “PIE was adopted with the manifest objective of overcoming past abuses like the displacement and relocation of people”.¹³ In this judgment, the Court clarified the breadth of the protection offered by the Constitution and the PIE Act by

⁶ Para 83.

⁷ *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC).

⁸ Para 12.

⁹ Para 13.

¹⁰ Para 18.

¹¹ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011).

¹² Para 35.

¹³ Para 36.

finding that a housing policy which excluded people evicted by a private landowner (as opposed to those evicted by the municipality) from the municipality's temporary housing programme was unconstitutional.¹⁴

30. In *Commando*,¹⁵ in finding that the City of Cape Town's policy of excluding emergency housing in the inner city was unconstitutional, the court expressed that the City should have foreseen in its planning that urban regeneration would lead to displacement and its conduct was unreasonable because it failed to mitigate the effects and consequences of gentrification on the most vulnerable.¹⁶ The Court went further and held that "*it is unconscionable that residents should now, in the new democracy, face the ignominy of apartheid-style displacement. . .*".¹⁷

4 Shortcomings of the Amendment Bill

31. In contrast to the above jurisprudence and the social justice objectives of the PIE Act, the stated objectives of the Amendment Bill are, *inter alia*, to "*seek to relieve municipalities of the huge financial burden in providing alternative accommodation*", to "*broaden the offences provision by prohibiting a person who... incites others to unlawfully occupy land*" and to "*give courts powers to stipulate a period of occupation in a temporary alternative accommodation facility*". In other words, broadly speaking, the Amendment Bill proposes to (1) provide alternative accommodation less frequently, (2) to limit the period of such alternative accommodation and (3) to

¹⁴ Para 97.

¹⁵ *Charnell Commando and Others v City of Cape Town and Another* (CCT 49/23) [2024] ZACC 27; 2025 (3) BCLR 243 (CC); 2025 (3) SA 1 (CC) (20 December 2024)

¹⁶ Para 103.

¹⁷ Para 111.

criminalise those who organise around shared struggles of landlessness and homelessness.

Proposed amendment: substitution of section 3 of the PIE Act

32. It is noteworthy that the proposed amendment creates a statutory offence of inciting, arranging, organising or permitting any person to occupy land without consent in circumstances where the underlying conduct, namely, “occupation without consent” is not a crime under the PIE Act. Instead, the PIE Act defines “unlawful occupiers” and regulates eviction procedures. The proposed provision effectively creates an offence (incitement) linked to conduct that is not clearly criminalised under the same statute.

33. In essence, the proposed amendment amounts to the criminalisation of community leaders and activists who are directly or indirectly involved in the struggle against homelessness and landlessness. This is an unjustified infringement on communities and land activists’ constitutionally protected rights to freedom of expression and the right to protest around land and housing rights.

34. There is an extensive history in this country and abroad of the occupation of space as a protest and activist tool (including in anti-apartheid struggle, civil rights, labour rights, and environmental justice). Historically, in South Africa, land occupations were utilised in the broader struggle against land dispossession of black people under apartheid and colonialism. In the United States, the sit-ins of segregated businesses were a tactic of the civil rights struggle against Jim Crow in the Southern states. In Argentina, factory occupations of businesses in the 1990s were organised as

companies sought to pass the costs of the economic crisis to the workforce through withholding salaries, closures and retrenchments.¹⁸

35. The proposed amendment not only criminalises legitimate forms of activism, but it also regards them as deserving of the most punitive outcomes in the form of either a custodial sentence or an excessive fine, which is also tied to the value of the land and is inherently problematic.

36. This criminalisation is especially inhumane at a time in which the housing backlog is growing while the budget for housing is being cut, and the annual delivery of housing is in steep decline, for example, from 75 000 units in 2019 to 25 000 units in 2023.¹⁹ Furthermore, the continued inability of the state to meet its own targets on housing provision, as illustrated in the 2026/27 budget speech where only 23 027 of the targeted 37 779 were built in the previous financial year. All this is in significant contrast to earlier commitments in terms of the National Development Plan to eliminate housing backlogs by building at least 200 000 housing units per year towards 2030.

37. As discussed above, the Constitutional Court has, on several occasions, adopted a purposive reading of socio-economic rights centred on the need for the Constitution to be corrective, just, and especially responsive to the injustices of the past – and this proposed amendment is an unreasonable departure from our historical context and constitutional jurisprudence on housing and eviction.

¹⁸ (A Tauss 'Revisiting Argentina's recuperated factories – reflections on over a decade of workers' control (2014) 27 *Desaffios* 118-125

¹⁹ <https://www.up.ac.za/school-of-public-management-and-administration/news/south-africas-low-cost-housing-model-broken-study-suggests-how-fix-it>)

Proposed amendment: amendment of section 4 of the PIE Act

38. The proposed amendment suggests that courts have regard to the “circumstances under which the unlawful occupier occupied the land” and the “period of occupation” when considering whether it is just and equitable to grant an eviction order. These factors are ahistorical and, in many respects, constitute a return to PISA-inspired bans on “squatting”.

39. The proposed amendment further requires courts (in peremptory language) to “*stipulate the period for which such alternative accommodation or land must be made available*”. This is patently illogical as the temporary emergency accommodation must remain available until such time that the vulnerable people are either able to afford paid accommodation or until such time that the state fulfils its constitutional obligation to provide access to adequate housing to such vulnerable people. This right is subject to progressive realization and therefore it is illogical and irrational to require courts to stipulate that the temporary emergency accommodation lapse after a certain time period, as the need might continue to exist.

40. Moreover, the proposed amendment also proposes that, where a court has determined that the occupier is an “unlawful occupier”, the court grant an eviction order without requiring the municipality or other organ of state to provide alternative accommodation or land. This is patently unconstitutional and flies in the face of settled jurisprudence as outlined above. The right to the provision of alternative accommodation is not limited to “lawful” occupiers but applies when an occupier would

be rendered homeless by an eviction. This is a question of result and not of conduct. Drawing a distinction between “lawful” and “unlawful” occupiers is irrational and unreasonable.

41. Moreover, this distinction is, in essence, tantamount to unfair discrimination on the basis of class as it unfairly excludes poor people who are more likely to be “unlawful” occupiers from the protections afforded by the PIE Act.

5 Conclusion

42. The Amendment Bill appears to prioritise fiscal considerations over the achievement of substantive equality and the protection of fundamental rights and constitutional promises.

43. The Amendment Bill also appears to regard vulnerable people as obnoxious social nuisances deserving to be met with as little assistance as possible and as much punishment as possible.

44. It is our collective view that this Amendment Bill is regressive. It is an echo from the past and it should have no place in our hard-won constitutional democracy.