

REPUBLIC OF SOUTH AFRICA

PREVENTION OF UNLAWFUL OCCUPATION OF LAND BILL

(As introduced)

(MINISTER OF HOUSING)

[B 89—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE VOORKOMING VAN ONREGMATIGE BESETTING VAN GROND

(Soos ingedien)

(MINISTER VAN BEHUISING)

[W 89—97]

ISBN 0 621 27287 6

No. of copies printed 3 000

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
-
-

BILL

To provide for the eviction of unlawful occupiers; and to repeal the Prevention of Illegal Squatting Act, 1951, and other obsolete laws; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “building or structure” includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling; (ii) 5
 - (ii) “court” means the magistrate’s court in whose area of jurisdiction the land in question is situated; (iv)
 - (iii) “land” includes a portion of land; (iii)
 - (iv) “municipality” means a municipality in terms of section 10B of the Local 10 Government Transition Act, 1993 (Act No. 209 of 1993); (v)
 - (v) “organ of state” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (viii)
 - (vi) “owner” means the registered owner of land, including an organ of state; (i) 15
 - (vii) “person in charge” means a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question; (vii)
 - (viii) “unlawful occupier” means a person who occupies land without the express 20 or tacit permission of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997. (vi)

Application of Act

2. This Act shall apply in respect of all land throughout the Republic.

Prohibition of receipt or solicitation of consideration in regard to unlawful occupation of land

3. (1) No person shall directly or indirectly receive or solicit payment of any money or other consideration as a fee or charge for arranging or organising or permitting a person to occupy land without the consent of the owner or person in charge of the land. 5
- (2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years, or to both such fine and such imprisonment.
- (3) The court which convicts any person of a contravention of this section, shall order any money or other consideration which may have been seized to be forfeited, and the said money and the proceeds of such other consideration shall be paid into the National Revenue Fund. 10
- (4) If any money has been received in contravention of subsection (1) but has not been seized or made available for purposes of confiscation, the court which convicts any person of a contravention of this section, may order the amount proved to the satisfaction of the court to have been received by such person to be paid into the National Revenue Fund and such order shall have the effect of, and such order may be executed against such person as if it were a civil judgment in favour of the State. 15

Eviction of unlawful occupiers

4. (1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section shall apply to an application by an owner or person in charge of land for the eviction of an unlawful occupier who has resided on that land for a period of not less than one year. 20
- (2) Prior to making an application to court in terms of subsection (3) the owner or person in charge shall give an unlawful occupier written and effective notice, in a manner which is practicable under the circumstances, to remove his or her building or structure and to vacate the land within three days. 25
- (3) If an unlawful occupier fails to remove his or her building or structure and fails to vacate the land within the required period, the owner or person in charge may make application to a court for an order for the eviction of the unlawful occupier. 30
- (4) At least 14 days before the hearing of the application contemplated in subsection (3), the owner or person in charge shall serve a copy of the notice of application for eviction on the unlawful occupier and the municipality having jurisdiction.
- (5) The procedure for the serving of notices and filing of papers shall be as prescribed by the rules of the court. 35
- (6) If a court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of the court, service shall be effected in the manner directed by the court.
- (7) The notice of application contemplated in subsection (4) shall—
- (a) state that an application will be made in terms of subsection (3) for an order for the eviction of the unlawful occupier; 40
 - (b) indicate on what date and at what time the court will hear the application;
 - (c) set out the grounds for the proposed eviction; and
 - (d) state that the unlawful occupier is entitled to appear before the court.
- (8) A court hearing an application for an eviction order in terms of this section shall conduct an enquiry in order to determine whether— 45
- (a) the applicant is in fact the owner or person in charge of the land in question;
 - (b) the person against whom the eviction order is sought is in fact an unlawful occupier in terms of this Act;
 - (c) the owner or person in charge has reasonable grounds for requesting the eviction order; and 50
 - (d) if the application is for the eviction of 50 or more people—
 - (i) whether land has been made available by a municipality or another land owner for the relocation of the occupiers; or
 - (ii) whether land can reasonably be made available by the municipality which has jurisdiction in respect of the land occupied by the alleged unlawful occupiers. 55

(9) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it shall grant an order for the eviction of the unlawful occupier, and determine—

- (a) a just and equitable date on which the unlawful occupier shall vacate the land under the circumstances; and 5
- (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

(10) In determining a just and equitable date contemplated in subsection (9), the court shall have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question. 10

(11) The court which orders the eviction of any person in terms of this section may make an order for the demolition and removal of the buildings or structures that were occupied by such person on the land in question.

(12) A court may, at the request of the sheriff, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal subject to conditions determined by the court: Provided that the sheriff shall at all times be present during such eviction, demolition or removal. 15

(13) Any order for the eviction of an unlawful occupier or for the demolition or removal of buildings or structures in terms of this section shall be subject to the conditions deemed reasonable by the court, and the court may, on good cause shown, vary any condition for an eviction order. 20

(14) A court may give the instructions that are necessary to effect the relocation of the unlawful occupiers to alternative land referred to in subsection (8)(d), where the owner of such land has authorised occupation of the land.

Urgent proceedings for eviction 25

5. (1) Notwithstanding any other provision of this Act, the owner or person in charge of land may, pending the outcome of proceedings for a final order, make urgent application for the removal of any unlawful occupier from the land, and the court may grant an order for the removal of that person if it is satisfied that—

- (a) the unlawful occupier has occupied the land in question, without the express or tacit consent of the owner or person in charge; 30
- (b) there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith removed from the land;
- (c) there is no other effective remedy available; and 35
- (d) the likely hardship to the owner or any other person if an order for removal is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for removal is granted.

(2) The provisions of section 4 shall, with the necessary changes, apply to an order contemplated in subsection (1). 40

Obstruction of police or other authorised person

6. Any person who hinders or obstructs any police officer or other person acting under the authority of an instruction or order issued by a court in terms of section 4 or 5 when carrying out such instruction or order, shall be guilty of an offence and on conviction liable to a fine, or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment. 45

Jurisdiction of magistrate's court

7. Notwithstanding any provision of any other law, a magistrate's court shall have jurisdiction to issue any order, or instruction or to inflict any penalty authorised by the provisions of this Act. 50

Transfer of powers, duties or functions

8. The President may by proclamation in the *Gazette*, either generally or in respect of such area or in such circumstances as may be specified in the proclamation, provide that any power, duty or function which in terms of this Act is permitted or required to be exercised, carried out or performed by any authority or person mentioned in the Act, may be or shall be, as the case may be, exercised, carried out or performed by such authority or person, including a person in the service of such authority or an organ of State, as may be specified in the proclamation. 5

Repeal and amendment of laws, and savings

9. (1) The laws mentioned in Schedule I are hereby repealed to the extent indicated in the third column thereof. 10

(2) The Extension of Security of Tenure Act, 1997, is hereby amended to the extent indicated in Schedule II.

(3) Any law in force in those parts of the Republic which formerly constituted the national territories of the entities known as Transkei, Bophuthatswana, Venda, Ciskei, Gazankulu, KaNgwane, KwaZulu, KwaNdebele, Lebowa and QwaQwa, is hereby repealed to the extent that such law is inconsistent with or deals with any matter dealt with by this Act. 15

(4) Notwithstanding subsection (1), any transit area declared in terms of section 6 of the Prevention of Illegal Squatting Act, 1951 (Act No. 52 of 1951), and all by-laws relating to such transit area, shall continue to exist as if that Act has not been repealed, until such transit area is abolished by the relevant local authority. 20

Short title

10. This Act shall be called the Prevention of Unlawful Occupation of Land Act, 1997. 25

SCHEDULE I
LAWS REPEALED
(Section 10(1))

No. and year of law	Short title	Extent of repeal
Act No. 52 of 1951	Prevention of Illegal Squatting Act, 1951	The whole
Act No. 24 of 1952	Prevention of Illegal Squatting Amendment Act, 1952	The whole
Act No. 62 of 1955	General Law Amendment Act, 1955	Section 30
Act No. 76 of 1963	Black Laws Amendment Act, 1963	Section 12
Act No. 92 of 1976	Prevention of Illegal Squatting Amendment Act, 1976	The whole
Act No. 72 of 1977	Prevention of Illegal Squatting Amendment Act, 1977	The whole
Act No. 33 of 1980	Prevention of Illegal Squatting Amendment Act, 1980	The whole
Act No. 68 of 1986	Abolition of Influx Control Act, 1986	Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15
Act No. 104 of 1988	Prevention of Illegal Squatting Amendment Act, 1988	The whole
Act No. 80 of 1990	Prevention of Illegal Squatting Amendment Act, 1990	The whole
Act No. 108 of 1991	Abolition of Racially Based Land Measures Act, 1991	Sections 20 and 21
Act No. 113 of 1991	Less Formal Township Establishment Act, 1991	Section 31, and that part of the Schedule amending the Prevention of Illegal Squatting Act, 1951
Act No. 134 of 1992	Provincial and Local Authority Affairs Amendment Act, 1992	Section 1
Act No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996	Sections 3 and 4

SCHEDULE II

LAWS AMENDED

(Section 10(2))

1. Section 29 of the Extension of Security of Tenure Act, 1997, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The provisions of the Prevention of **[Illegal Squatting Act, 1951 (Act No. 52 of 1951)]** Unlawful Occupation of Land Act, 1997, shall not apply to an occupier in respect of land which he or she is entitled to occupy or use in terms of this Act.”.

MEMORANDUM ON THE OBJECTS OF THE PREVENTION OF UNLAWFUL OCCUPATION OF LAND BILL, 1997

1. The principal object of the Bill is to provide for fair procedures for the eviction of unlawful occupiers who occupy land without the permission of the owner or the person in charge of such land.
2. The Bill was originally drafted with the intention of amending the Prevention of Illegal Squatting Act, 1951 (Act No. 52 of 1951), and as a joint venture with the Department of Land Affairs would have been included in the Extension of Security of Tenure Bill, 1997. After consultation with, *inter alia*, the State Law Advisers, it was decided to draft two separate bills.
3. The Bill provides for four main matters:
 - (a) The prohibition of receipt or solicitation of consideration in respect of the unlawful occupation of land;
 - (b) a procedure for the eviction of unlawful occupiers who have resided on land for at least one year;
 - (c) urgent proceedings for the eviction of any unlawful occupier pending the outcome of proceedings for a final order; and
 - (d) the continued existence of transit areas declared in terms of section 6 of the Prevention of Illegal Squatting Act, 1951, until such transit areas are abolished by the relevant local authorities.
4. Legislation which is contrary to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), or the aims of the Bill, are repealed.
5. The Bill shall apply in respect of all land throughout the Republic.
6. This Bill has been drafted in consultation with the Department of Land Affairs as it complements that Department's Extension of Security of Tenure Bill, 1997, and it is envisioned that the Bill shall, in the near future, be administered by the Minister responsible for Land Affairs.
7. In the opinion of the Department of Housing and the State Law Advisers this Bill should be dealt with in terms of section 75 of the Constitution.