

REPUBLIC OF SOUTH AFRICA

**PREVENTION OF ILLEGAL
EVICTIONS FROM AND
UNLAWFUL OCCUPATION OF
LAND BILL**

(As amended by the Portfolio Committee on Housing (National Assembly))

(MINISTER OF HOUSING)

[B 89B—97]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
VOORKOMING VAN ONWETTIGE
UITSETTING EN ONREGMATIGE
BESETTING VAN GROND**

(Soos gewysig deur die Portefeuljekomitee oor Behuising (Nasionale Vergadering))

(MINISTER VAN BEHUISING)

[W 89B—97]

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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.
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BILL

To provide for the prohibition of unlawful eviction; to provide for procedures 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.

PREAMBLE

WHEREAS no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property;

AND WHEREAS 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;

AND WHEREAS it is desirable that the law should regulate the eviction of unlawful occupiers from land in a fair manner, while recognising the right of land owners to apply to a court for an eviction order in appropriate circumstances;

AND WHEREAS special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognised that the needs of those groups should be considered;

BE IT THEREFORE 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 or shelter; (ii) 5
 - (ii) “consent” means the express or tacit consent, whether in writing or otherwise, of the owner or person in charge to the occupation by the occupier of the land in question; (x)
 - (iii) “court” means any division of the High Court or the magistrate’s court in whose area of jurisdiction the land in question is situated; (iv) 10

- (iv) “evict” means to deprive a person of occupation of a building or structure, or the land on which such building or structure is erected, against his or her will, and “eviction” has a corresponding meaning; (xi)
- (v) “land” includes a portion of land; (iii)
- (vi) “Minister” means the Minister designated by the State President; (v) 5
- (vii) “municipality” means a municipality in terms of section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (vi)
- (viii) “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); (ix)
- (ix) “owner” means the registered owner of land, including an organ of state; (i) 10
- (x) “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; (viii)
- (xi) “unlawful occupier” means 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 a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996). (vii) 15 20

Application of Act

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

Prohibition of receipt or solicitation of consideration in respect of unlawful occupation of land

3. (1) No person may 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 that land. 25

(2) Any person who contravenes a provision of subsection (1) is 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. 30

(3) The court which convicts any person of a contravention of this section, must order any money or other consideration received by that person which have been seized, to be forfeited, and the said money and the proceeds of such other consideration must be paid to the person or persons from whom the money or other consideration was received, and where such person or persons cannot be positively identified, into the National Revenue Fund. 35

(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 to the person or persons from whom the money or other consideration was received, and where such person or persons cannot be positively identified, into the National Revenue Fund, and such order has the effect of and may be executed against such person as if it were a civil judgment in favour of that person or persons from whom the money or other consideration was received or in favour of the State. 40 45

Eviction of unlawful occupiers

4. (1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.

(2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction. 50

(3) Subject to the provisions of subsection (2), the procedure for the serving of notices and filing of papers is as prescribed by the rules of the court in question.

(4) Subject to the provisions of subsection (2), if a court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of the court, service must be effected in the manner directed by the court: Provided that the court must consider the rights of the unlawful occupier to receive adequate notice and to defend the case. 5

(5) The notice of proceedings contemplated in subsection (2) must—

- (a) state that proceedings are being instituted in terms of subsection (1) for an order for the eviction of the unlawful occupier; 10
- (b) indicate on what date and at what time the court will hear the proceedings;
- (c) set out the grounds for the proposed eviction; and
- (d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid. 15

(6) If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women. 15

(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women. 20 25

(8) 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 must grant an order for the eviction of the unlawful occupier, and determine— 30

- (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and
- (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). 35

(9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question. 35

(10) 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. 40

(11) 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 must at all times be present during such eviction, demolition or removal.

(12) Any order for the eviction of an unlawful occupier or for the demolition or removal of buildings or structures in terms of this section is subject to the conditions deemed reasonable by the court, and the court may, on good cause shown, vary any condition for an eviction order. 45

Urgent proceedings for eviction

5. (1) Notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an unlawful occupier of that land pending the outcome of proceedings for a final order, and the court may grant such an order if it is satisfied that— 50

- (a) there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land; 55

- (b) the likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted; and
- (c) there is no other effective remedy available.
- (2) Before the hearing of the proceedings contemplated in subsection (1), the court must give written and effective notice of the intention of the owner or person in charge to obtain an order for eviction of the unlawful occupier to the unlawful occupier and the municipality in whose area of jurisdiction the land is situated. 5
- (3) The notice of proceedings contemplated in subsection (2) must—
- (a) state that proceedings will be instituted in terms of subsection (1) for an order for the eviction of the unlawful occupier; 10
- (b) indicate on what date and at what time the court will hear the proceedings;
- (c) set out the grounds for the proposed eviction; and
- (d) state that the unlawful occupier is entitled to appear before the court and defend the case and has the right to apply for legal aid. 15

Eviction at instance of organ of state

- 6. (1) An organ of state may institute proceedings for the eviction of an unlawful occupier from land which falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in a sale of execution pursuant to a mortgage, and the court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances, and if— 20
- (a) the consent of that organ of state is required for the erection of a building or structure on that land or for the occupation of the land, and the unlawful occupier is occupying a building or structure on that land without such consent having been obtained; or 25
- (b) it is in the public interest to grant such an order.
- (2) For the purposes of this section, “public interest” includes the interest of the health and safety of those occupying the land and the public in general.
- (3) In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to— 30
- (a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure;
- (b) the period the unlawful occupier and his or her family have resided on the land in question; and
- (c) the availability to the unlawful occupier of suitable alternative accommodation or land. 35
- (4) An organ of state contemplated in subsection (1) may, before instituting such proceedings, give not less than 14 days’ written notice to the owner or person in charge of the land to institute proceedings for the eviction of the unlawful occupier.
- (5) If an organ of state gives the owner or person in charge of land notice in terms of subsection (4) to institute proceedings for eviction, and the owner or person in charge fails to do so within the period stipulated in the notice, the court may, at the request of the organ of state, order the owner or person in charge of the land to pay the costs of the proceedings contemplated in subsection (1). 40
- (6) The procedures set out in section 4 apply, with the necessary changes, to any proceedings in terms of subsection (1). 45

Mediation

- 7. (1) If the municipality in whose area of jurisdiction the land in question is situated is not the owner of the land the municipality may, on the conditions that it may determine, appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the municipality may determine. 50
- (2) If the municipality in whose area of jurisdiction the land in question is situated is the owner of the land in question, the Director-General of the provincial administration of the province concerned, or his or her nominee, may, on the conditions that he or she may determine, appoint one or more persons with expertise in dispute resolution to 55

facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the said Director-General may determine.

(3) A party may request the municipality to appoint one or more persons in terms of subsections (1) and (2), for the purposes of those subsections. 5

(4) A person appointed in terms of subsection (1) or (2) who is not in the full-time service of the State may be paid the remuneration and allowances that may be determined by the body or official who appointed that person for services performed by him or her. 10

(5) All discussions, disclosures and submissions which take place or are made during the mediation process shall be privileged, unless the parties agree to the contrary.

Offences and private prosecutions

8. (1) No person may evict an unlawful occupier except on the authority of an order of a competent court. 15

(2) No person may wilfully obstruct or interfere with an official in the employ of the State or a mediator in the performance of his or her duties in terms of this Act.

(3) Any person who contravenes a provision of subsection (1) or (2) is 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. 20

(4) Any person whose rights or interests have been prejudiced by a contravention of subsection (1) has the right to institute a private prosecution of the alleged offender.

(5) The provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), apply to a private prosecution in terms of this Act: Provided that if—

(a) the person prosecuting privately does so through a person entitled to practice as an advocate or an attorney in the Republic; 25

(b) the person prosecuting privately has given written notice to the public prosecutor with jurisdiction that he or she intends to do so; and

(c) the public prosecutor has not within 28 days of receipt of such notice, stated in writing that he or she intends to prosecute the alleged offence, 30

then—

(i) the person prosecuting privately need not produce a certificate issued by the Attorney-General stating that he or she has refused to prosecute the accused;

(ii) the person prosecuting privately need not provide security for such action;

(iii) the accused is entitled to an order for costs against the person prosecuting privately if— 35

(aa) the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal; and

(bb) the court finds that such prosecution was unfounded or vexatious; and

(iv) the Attorney-General is barred from prosecuting except with the leave of the court concerned. 40

Jurisdiction of magistrate's court

9. Notwithstanding any provision of any other law, a magistrate's court has jurisdiction to issue any order, or instruction or to impose any penalty authorised by the provisions of this Act. 45

Transfer of powers, duties or functions

10. 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, 50

may be or must 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.

Repeal and amendment of laws, and savings

11. (1) The laws mentioned in Schedule I are hereby repealed to the extent indicated 5
in the third column thereof.

(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, 10
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.

(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 15
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.

Regulations

12. The Minister may make regulations in respect of any matter which is required to be prescribed by the Minister in terms of this Act or which is necessary or desirable in 20
order to achieve the objectives of this Act, and any such regulation may create offences and provide for penalties in respect thereof.

Short title

13. This Act is called the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act, 1998. 25

SCHEDULE I
LAWS REPEALED
(Section 11(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 11(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)**] Evictions from and Unlawful Occupation of Land Act, 1998, 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 ILLEGAL EVICTIONS FROM AND UNLAWFUL OCCUPATION OF LAND BILL

1. The principal objects of the Bill are to provide for the prohibition of unlawful eviction, 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, and to repeal the Prevention of Illegal Squatting Act, 1951.
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 the following main matters:
 - (a) The prohibition of receipt or solicitation of consideration in respect of the unlawful occupation of land;
 - (b) procedures for the eviction of unlawful occupiers of land;
 - (c) urgent proceedings for the eviction of any unlawful occupier pending the outcome of proceedings for a final order;
 - (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;
 - (e) mediation procedures;
 - (f) procedures for private prosecutions; and
 - (g) the criminalisation of unlawful evictions.
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.