

REPUBLIC OF SOUTH AFRICA

**PREVENTION OF ILLEGAL
EVICTION FROM AND UNLAWFUL
OCCUPATION OF LAND
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 46847 of
2 September 2022)
(The English text is the official text of the Bill)*

(Ms EL POWELL, MP)

[B 6—2023]

ISBN 978-1-4850-0859-0

No. of copies printed150

- (a) the unlawful occupier’s financial means, health, and previous living arrangements;
 - (b) the intention of the unlawful occupation;
 - (c) the rights and needs of [the] any affected elderly persons, children[,] or disabled persons; and 5
 - (d) the rights and needs of any affected households headed by women.”; and
- (b) by the addition after subsection (12) of the following subsection:
- “(13) A court that grants an eviction order after considering whether land has been made available or can reasonably be made available by a municipality having jurisdiction, or other organ of state, or another land owner for the relocation of the unlawful occupier, as contemplated in subsection (7)—
- (a) may make an order, if such municipality or other organ of state or another land owner is joined to the proceedings, that sets as a condition to the order for eviction that such alternative accommodation or land must be made available to the unlawful occupier; and 15
 - (b) must, where reasonable to do so and if the alternative accommodation or land contemplated in paragraph (a) is only made available temporarily, stipulate the period for which such alternative accommodation or land must be made available to the unlawful occupier by the municipality or any other organ of state or another land owner.”. 20

Amendment of section 6 of Act 19 of 1998

- 3.** Section 6 of the principal Act is hereby amended— 25
- (a) by the substitution for subsection (3) of the following subsection:
 - “(3) In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to—
 - (a) the circumstances, **[under which] including the intention, of the unlawful occupier when he or she occupied the land and erected the building or structure;** 30
 - (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 within the area of the municipality’s jurisdiction; and 35
 - (d) the resources of the municipality or any organ of state.”; and
 - (b) by the insertion after subsection (3) of the following subsection:
 - “(3A) A court that grants an order for eviction after considering whether it is just and equitable to grant an order for eviction, may make an order that alternative accommodation or land must be made available by the organ of state instituting proceedings, and where reasonable to do so, if such alternative accommodation or land is only made available temporarily, must stipulate the period for which the alternative accommodation or land must be made available.”. 40

Short title and commencement

4. This Act is called the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Act, 2023, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND AMENDMENT BILL, 2023

1. INTRODUCTION

- 1.1 The issue of orchestrated and unlawful land occupation has become a crisis across South Africa, placing immense financial and logistical burdens on all major metropolitan municipalities. The announcement of the National State of Disaster during the Covid pandemic, and the concomitant moratorium placed on evictions, also led to a sharp spike in unlawful occupation of land across South Africa. Furthermore, in addition to the costs incurred to safeguard land, municipalities frequently need to provide additional basic services to newly occupied land parcels that have not been provisioned for in statutory budgets and planning processes.
- 1.2 The unlawful occupation of land leads to severe dysfunctionality in cities, including the obstruction of sewerage infrastructure, safety hazards due to illegal electricity connections, and violations to planning and environmental legislation. The shortage of amenities like clinics and schools close to unlawfully occupied land parcels further places additional pressure on municipalities.
- 1.3 Currently, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998) (“the principal Act”), provides a rigid set of requirements that need to be complied with in order for a person to be lawfully evicted, despite the unlawful occupant’s intentions or circumstances during such unlawful occupation. This has led to lengthy delays in the removal of unlawful occupiers, which comes at a great cost to the property owners.
- 1.4 In order for South Africa to create inclusive and well managed cities, the endemic of unlawful land occupation must be urgently addressed. Therefore, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2023 (“the Bill”), seeks to limit the application of the principal Act in certain instances to prevent those unlawful occupiers, who have entered upon a property in bad faith, from using the principal Act as a defence or a delay tactic in moving off the property at the cost of the owner of the property. Additionally, further amendments in the Bill now seek to criminalise the incitement by any person to unlawfully occupy land, regardless of whether such is done for monetary benefit.

2. OBJECTS OF THE BILL

- 2.1 The purpose of the Bill is to amend the principal Act by providing punitive measures for not only those who incite or promote unlawful occupations of land for the exchange of a consideration or fee, but also for those who incite or promote unlawful occupations without receiving such an exchange.
- 2.2 The Bill further provides explicit criteria that must be considered by a court during court proceedings before granting an order for eviction.
- 2.3 The Bill also empowers courts to make an order related to alternative accommodation, and requires the courts to include in their eviction orders the period for which alternative accommodation or land would need to be provided for an unlawful occupier by a municipality, organ of state or another sphere of government.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 amends section 3 of the principal Act. This clause amends two subsections: Firstly, it amends subsection (1), by providing that no person may incite, arrange or organise for a person to occupy land without the consent of

the owner or person in charge of that land, without the need, as is currently provided, to seek monetary compensation. Secondly, subsection (2) is also amended to increase the term of imprisonment for the contravention of subsection (1) from two years to five years.

- 3.2 Clause 2 amends section 4(6) of the principal Act by including other relevant circumstances that a court must take into consideration when granting an order for eviction if it is of the opinion that it is just and equitable to do so. Clause 2 also inserts a new subsection (13) in section 4 which provides that a court may make an order against a joined municipality, land owner or organ of state to provide alternative accommodation or land and where reasonable to do so, if such accommodation or land is only temporary, the order can stipulate the length of time such accommodation or land must be made available.
- 3.3 Clause 3 amends section 6(3) of the principal Act to provide that in deciding whether it is just and equitable to grant an order for eviction, the court must have regard to the intentions of the unlawful occupier when he or she occupied the land. It will thus be up to the court, upon hearing evidence whether a person truly requires alternative accommodation and ought not to be evicted or whether the unlawful occupier has in bad faith, and unlawfully, occupied a property or land for gain. Clause 3 further inserts a new subsection (3A) in section 6 to provide that where an organ of state institutes eviction proceedings, a court may order that the organ of state must provide alternative accommodation or land, and where reasonable to do so, if such accommodation or land is only made available temporarily, a court may make an order stipulating the length of period such accommodation or land must be made available.
- 3.4 Clause 4 provides for the short title and commencement.

4. DEPARTMENTS/BODIES CONSULTED

The following stakeholders were consulted—

- 4.1 Chief Legal Directors – Metropolitan Municipality and Province;
- 4.2 private sector law firms specialising in eviction;
- 4.3 various Local Government Councilors;
- 4.4 various Members of Parliament; and
- 4.5 various Members of Provincial Legislatures.

5. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill could result in additional costs to the State with regards to the amendment proposed by clause 2 and 3. Further costs to the State may arise considering that not only will a municipality have to be consulted to provide alternative accommodation to an unlawful occupier, but also any other organ of state which has jurisdiction.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Member proposes that the Bill should be classified as a section 76 Bill, as the content of the Bill in a substantial manner¹ falls within the functional area of “housing”, which is listed as an area of concurrent national and provincial legislative competence in Schedule 4 to the Constitution. Section 76(3) of the Constitution provides that “A Bill must be dealt with in accordance with the

1. In terms of *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC), the “substantial measure” test requires that the provisions of a Bill be considered in relation to their area of impact.—see paragraphs 71–72 of the judgment.

procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 . . .”; and

- 6.2 The Member proposes that the Bill must be referred to the National House of Traditional and Khoi-San Leaders in terms of 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as it may contain provisions directly affecting traditional or Khoi-San communities or may contain provisions pertaining to customary law or customs of traditional or Khoi-San communities.

Printed by Creda Communications

ISBN 978-1-4850-0859-0