

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
PREVENTION OF UNLAWFUL
OCCUPATION OF LAND BILL**

[B 89—97]

(As agreed to by the Portfolio Committee on Housing (National Assembly))

[B 89A—97]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WETSONTWERP OP DIE
VOORKOMING VAN
ONREGMATIGE BESETTING
VAN GROND**

[W 89—97]

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

[W 89A—97]

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AMENDMENTS AGREED TO

PREVENTION OF UNLAWFUL OCCUPATION OF LAND BILL [B 89—97]

CLAUSE 1

1. On page 2, in line 6, after “dwelling” to insert “or shelter”.
2. On page 2, after line 6, to insert the following new definition:
 - (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;
3. On page 2, in line 7, after “means” to insert:

any division of the High Court or
4. On page 2, after line 8, to insert the following new definition:
 - (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;
5. On page 2, after line 9, to insert the following new definition:
 - (vi) “Minister” means the Minister designated by the State President;
6. On page 2, in line 20, to omit “permission” and to substitute “consent”.
7. On page 2, in line 22, after “1997” to insert:

, 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)

CLAUSE 3

1. On page 4, in line 3, to omit “shall” and to substitute “may”.
2. On page 4, in line 5, to omit the third “the” and to substitute “that”.
3. On page 4, in line 6, to omit “shall be” and to substitute “is”.
4. On page 4, in line 9, to omit “shall” and to substitute “must”.
5. On page 4, in line 10, after “consideration” to insert “received by that person”.
6. On page 4, in line 11, to omit “shall” and to substitute “must”.
7. On page 4, in line 11, after “paid” to insert:

to the person or persons from whom the money or other consideration was received, and where such person or persons cannot be positively identified,

8. On page 4, in line 16, after “paid” to insert:
to the person or persons from whom the money or other consideration was received, and where such person or persons cannot be positively identified,
9. On page 4, in line 18, after “judgment” to insert:
in favour of that person or persons from whom the money or other consideration was received or

CLAUSE 4

1. On page 4, in line 21, to omit “an application” and to substitute “proceedings”.
2. On page 4, from line 22, to omit “who has resided on that land for a period of not less than one year”.
3. On page 4, from line 24, to omit subsections (2) and (3).
4. On page 4, in line 31, to omit “application” and to substitute “proceedings”.
5. On page 4, in line 32, to omit “owner or person in charge” and to substitute “court”.
6. On page 4, in line 32, to omit “a copy of the notice of application” and to substitute:
written and effective notice of the proceedings
7. On page 4, in line 33, to omit “having jurisdiction” and to substitute:
in whose area of jurisdiction the land is situated
8. On page 4, in line 34, after “(5)” to insert:
Subject to the provisions of subsection (2),
9. On page 4, in line 36, after “(6)” to insert:
Subject to the provisions of subsection (2),
10. On page 4, in line 38, after “court” to insert:
: Provided that the court must consider the rights of the unlawful occupier to receive adequate notice and to defend the case
11. On page 4, in line 39, to omit “application” and to substitute “proceedings”.
12. On page 4, in line 39, to omit “shall” and to substitute “must”.
13. On page 4, in line 40, to omit “an application will be made” and to substitute “proceedings are being instituted”.
14. On page 4, in line 42, to omit “application” and to substitute “proceedings”.
15. On page 4, in line 44, after “court” to insert:
and defend the case and, where necessary, has the right to apply for legal aid

16. On page 4, from line 45, to omit subsection (8) and to substitute the following subsections:

(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.

(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.

17. On page 6, from line 22, to omit subsection (14).

CLAUSE 5

1. On page 6, from line 26, to omit subsections (1) and (2) and to substitute:

(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—

- (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;
- (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.

(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;
- (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.

CLAUSE 6

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses to follow Clause 5:

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—

- (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
- (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—

- (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.

(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).

(6) The procedures set out in section 4 apply, with the necessary changes, to any proceedings in terms of subsection (1).

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.

(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 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.

(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.

(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.

(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.

(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;
- (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,

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—
 - (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.

CLAUSE 7

1. On page 6, in line 49, to omit “inflict” and to substitute “impose”.

CLAUSE 8

1. On page 8, in line 6, to omit “shall” and to substitute “must”.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 9:

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 order to achieve the objectives of this Act and any such regulation may create offences and provide for penalties in respect thereof.

CLAUSE 10

1. On page 8, in lines 24 and 25, to omit “shall be called the Prevention of Unlawful Occupation of Land Act, 1997” and to substitute:

is called the Prevention of Illegal Evictions and Unlawful Occupation of Land Act, 1998

SCHEDULE II

1. On page 12, in the seventh line, to omit “Unlawful Occupation of Land Act, 1997” and to substitute:

Illegal Evictions from and Unlawful Occupation of Land Act, 1998

LONG TITLE

Long Title rejected.

1. That the following be a new Long Title:

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

1. On page 2, after the Long Title, to insert the following Preamble:

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;

2. On page 2, in line 1, after “IT” to insert “THEREFORE”.