South African Institute of Race Relations NPC

Submission to the Minister of Human Settlements

regarding the

DRAFT PREVENTION OF ILLEGAL EVICTION FROM

AND UNLAWFUL OCCUPATION OF LAND AMENDMENT BILL OF 2026

15 June 2026

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1 INTRODUCTION

On 15 April 2026 the Minister of Human Settlements ("the Minister") invited interested persons to submit public comments on the Draft Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill of 2026 ("the Bill") by 15 June 2026.

This submission on the Bill is made by the South African Institute of Race Relations NPC ("the IRR"), a non-profit organisation formed in 1929 to oppose racial discrimination and promote racial goodwill. Its current objects are to promote democracy, human rights, development, and reconciliation among the peoples of South Africa.

2 INADEQUATE PUBLIC PARTICIPATION

Public participation in the legislative process is a vital aspect of South Africa's democracy, as the Constitutional Court has repeatedly reaffirmed in judgments spanning many years. These include *Matatiele Municipality and others* v *President of the Republic of South Africa and others*, *Doctors for Life International* v *Speaker of the National Assembly and others*, *Land Access Movement of South Africa and others* v *Chairperson of the National Council of Provinces and others*, and *Mogale and others* v *Speaker of the National Assembly and others.*[1]

In the *New Clicks* case in the Constitutional Court, Mr Justice Albie Sachs noted that there were many ways in which public participation could be facilitated. He added: "What matters is that…a reasonable opportunity is offered to members of the public and all interested parties to "*know about the issues* and to *have an adequate* say". This passage was quoted with approval in *Doctors for Life*, the *Land Access* case, and in the *Mogale* judgment striking down the Traditional and Khoi-San Leadership Act of 2019.[2]

2.1 No socio-economic impact report

To help the public "know about the issues", as the *New Clicks* ruling and other judgments require, the Minister should have provided a comprehensive evaluation of the Bill and its likely socio-economic impact. A report of this kind is also what is needed under the government's own *Guidelines for the Socio-Economic Impact Assessment System (SEIAS)*.

The *Guidelines* were developed by the Department of Planning, Monitoring and Evaluation in May 2015 and took effect in September that year. The aim of the SEIA system is to ensure that "the full costs of regulations and especially the impact on the economy" are fully understood before new rules are introduced.[3] According to the *Guidelines*, the SEIA system must be applied at various stages in the policy process. Once new rules have been proposed, "an initial assessment" must be conducted to identify different "options for addressing the problem" and making "a rough evaluation" of their respective costs and benefits. Thereafter, "appropriate

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[1] [2006] ZACC 12; 2007 (1) BCLR 47 (CC); 2006 (6) SA 416 (CC); 2016] ZACC 22; [2023] ZACC 14.

[2] Section 59(1), Constitution of the Republic of South Africa, 1996; *Minister for Health and another* v *New Clicks South Africa (Pty) Ltd and others*, [2005] ZACC 14, at para. 630, emphasis supplied by the IRR; *Doctors for Life*, at para. 145; *Land Access* judgment, at para. 59; *Mogale* judgment, at para. 34.

[3] Department of Planning, Monitoring and Evaluation, "Socio-Economic Impact Assessment System (SEIAS), Revised Impact Assessment: National Health Insurance Bill," 26 June 2019 (2019 SEIAS Assessment); *SEIAS Guidelines*, p. 3, May 2015.

consultation" is needed, along with "a continual review of the impact assessment as the proposals evolve."[4]

A "final impact assessment" must then be developed that "provides a detailed evaluation of the likely effects of the [proposed law] in terms of implementation and compliance costs as well as the anticipated outcome." When a bill is published "for public comment and consultation with stakeholders," this final assessment must be attached to it. A particularly important need is to "identify when the burdens of change loom so large that they could lead to excessive costs to society, for instance through disinvestment by business or a loss of skills to emigration."[5]

The Bill poses risks of precisely this kind, for it is likely to deter fixed investment, limit economic growth and worsen unemployment. It will also further undermine property rights and other important constitutional guarantees. Yet no proper SEIA assessment has been made available to help the public develop an informed understanding of the harmful economic and constitutional ramifications of the Bill.

2.2 Poor compliance with the National Policy Development Framework

The Minister is also expected to comply with the *National Policy Development Framework* ("the *Framework*"). This was approved by the Cabinet in December 2020 and is intended to help give effect to the *National Development Plan: Vision 2030*.

The *Framework* seeks to improve policy development by "ensuring meaningful participation" and "inculcating a culture of evidence-based policy making."[6] In a section dedicated to "Stakeholder Engagement in Policy Making," the *Framework* states: "Chapter 10 of the Constitution prescribes that people's needs must be responded to, and the public must be encouraged to participate in policy making. Therefore, the involvement of the public in policy making is a constitutional obligation that government institutions must respect and institutionalise." [7]

The *Framework* goes on to list some of the key requirements for proper public participation. "Consultation with stakeholders should commence as early as possible," it says. All relevant stakeholders should be identified, including "those who will benefit when problems are addressed" and "those who will bear the cost of implementation of the proposed intervention." Policy makers must also identify and counter all "barriers to active participation" and ensure that "consultation is infused in all aspects of the policy making cycle."[8]

According to the *Framework*, adequate thought must be given to "which policy solutions would best achieve the public policy objective" and "how best" the proposed policy solution can be implemented. Policy makers must "inform and engage stakeholders" on "the nature and magnitude of a policy issue," along with its likely "impacts and risks." These assessments must be "informed by the best available evidence, data, and knowledge."[9]

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[4] *SEIAS Guidelines* p. 7.
[5] *SEIAS Guidelines*, p. 11.
[6] National Policy Development Framework, 2020, p. 3.
[7] Ibid, p. 19.
[8] Ibid, pp. 19 – 20.
[9] Ibid, p. 20.

In addition, policy makers must be willing to adjust their proposals in the light of the feedback provided. "Policy makers must not impose their preconceived ideas…and pre-empt the outcome of the policy consultation process. They need to be willing to be persuaded and acknowledge the input of stakeholders with a view to creating a win-win policy outcome." They must also avoid any impression that "the consultation process is staged, managed, cosmetic, token, and a mere compliance issue." Instead, they must "strive to produce an outcome based on bargaining, negotiation, and compromise."[10]

The *Framework*, with its emphasis on negotiation and compromise in the best interests of the country, is also being ignored. Instead, what the *Framework* expressly rejects – a "tick-box" approach to consultation – is evident as regards the Bill.

2.3 A "tick-box" approach already evident

Though the Bill is likely to have many negative consequences, the Minister has nevertheless adopted a "tick-box" approach to public consultation. This has denied South Africans the comprehensive information they require to "know about" the relevant issues and then have "an adequate say" on the proposed changes.

Instead of acknowledging the dangers implicit in the Bill, moreover, the Minister made various misleading statements about it in her call for public comments. She asserted, for example, that the Bill would help "restore balance" to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 ("the PIE Act"). She also indicated that the Bill would:

- "protect property rights, support municipalities, safeguard vulnerable communities, and strengthen public confidence in our legal system;" and
- "create a more stable and predictable environment for investment and growth." [11]

These claims are inaccurate, as more fully explained below. In addition, the Memorandum on the Objects of the Bill is equally misleading in implying that the Bill will:

- lead to increased "infrastructure investment;"
- help "address poverty and unemployment;"
- "stimulate collaboration between government and the private sector to attain economic growth and job creation;"
- help build up "investor confidence and infrastructure investment;"
- "address poverty and unemployment;" and
- so help counter "the unlawful occupation of land and buildings."[12]

[10] Ibid.
[11] Media statement by the Minister of Human Settlements, Thembi Simelane, MP, on the release of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill for public comments, 16 April 2026.
[12] Memorandum on the Objects of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill.

The Memorandum on the Objects of the Bill also asserts that "the estimated cost for the implementation of the amendments the State (sic) (once enacted) is R1.3 billion".[13] No explanation is provided as to how this estimate of likely costs to the government was reached.

These invalid and unexplained assertions underscore why the Bill should have been accompanied by a comprehensive SEIA report, fully setting out its likely costs and negative consequences. This assessment should also have been "informed by the best available evidence, data, and knowledge," as the *Framework* requires. Instead, the public has been misled by the assertions made, when it should have been helped to "know about the issues" raised by the Bill so that it could "have an adequate say" on it, as the Constitution requires.

3 THE CONTENT OF THE BILL

The most important – and most problematic – clauses in the Bil are set out below. New proposed wording is underlined, while proposed deletions are marked in **[bold]**.

3.1 Definitions

"***alternative accommodation***" means temporary accommodation provided by the owner, organ of state or person in charge that prevents persons from being rendered homeless by an eviction order and that is reasonable in the circumstances, taking into account minimum standard as prescribed in the National Housing Code - 2009, location, and availability of land and resources;"

Comment: This definition indicates that the "alternative accommodation" required will always be temporary. Yet the proposed section 4(13) makes it clear that the courts are to have a choice as to whether "alternative accommodation" is to be temporary or not. This confusing wording infringes the doctrine against vagueness of laws. It is also in conflict with Section 1(c) of the Constitution, which identifies "the supremacy of the rule of law" as a founding value of South Africa's democracy.

"'***land***' includes a portion of land and buildings or structures on such portion of land."

Comment: *The Bill puts the focus on both "a portion of land" and any buildings or structures on it. It omits the PIE Act's definition of "building or structure'' as "including any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter." This extends the application of the PIE Act to land not being used for residential purposes, as the Memorandum on the Bill confirms.[14] However, vacant or non-residential farming, mining, or municipal land does not fall within the ambit of Section 26(3) of the Constitution, which seeks to protect people from being "evicted from their home...without an order of court."[15] Hence, where vacant or non-residential land is unlawfully invaded, there should be no constraint on ending the arbitrary deprivation which the owner suffers – and which is contrary to Section 25(1) of the Constitution.[16]*

[13] Ibid.

[14] Clause 3.1 (b), Memorandum on the Objects of the Bill.

[15] Clause 3.1(b) and (c), Memorandum on the Objects of the Bill; Section 26(3), Constitution of the Republic of South Africa, 1996.

[16] City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (CC) [2011] ZACC 33. https://www.saflii.org/za/cases/ZACC/2011/33.html.

"'***evict***' means to deprive a person of occupation of **[a building or structure, or the land on which such building or structure is erected,]** land against his or her will."

Comment: *This proposed change further confirms that the occupation need not be of residential buildings or structures, whether in the form of shacks, formal houses, or blocks of flats. Again, the effect will be to inhibit evictions from vacant, farming, mining, municipal or other land, regardless of whether it is being used by the unlawful occupiers for residential purposes. This too is at odds with Section 26(3), which protects people from being "evicted from their homes" without a prior court order.*[17]

3.2 Prohibition of....certain acts

Under a new Section 3(1)(b), "no person may... incite, arrange, organise or permit any person to occupy land without the consent of the owner, organ of state or person in charge of that land."

Comment: *This new section is intended to prohibit incitement to occupy land in circumstances where no money or other consideration is exchanged*[18] *or, presumably, where any such exchange cannot be proved.*

Under a revised section 3(2), "Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding R2 000 000.00 or to imprisonment not exceeding two years, or to both such fine and such imprisonment**[.]**, as the court may decide after considering the manner and nature of the unlawful occupation and the value of the portion of land occupied."

Comment: *The capping of the fine that may be imposed on those inciting land invasions limits judicial discretion and may result in a penalty that is too low in all the circumstances. Other draft bills, such as the Mineral Resources Development Bill of 2025, propose much greater penalties for significantly less serious offences. This suggests that the Minister is not sufficiently serious about halting land invasions – or about protecting the property rights that are vital in attracting fresh investment and increasing growth and employment rates.*

Under a revised section 3(3), a court which convicts a person of inciting or organising a land invasion may order that "any money or any assets acquired with such money" that have been seized may be forfeited and "must be paid— *(a)* to the person or persons from whom the money, assets or other consideration was received."

Comment: *The meaning of this new wording is confusing as regards assets acquired with the money in question. If, for example, the inciter used cash payments obtained over time to buy a luxury car, the person from whom that asset was "received" is the car dealer.*

Under a revised section 3(3)(b), "where **[such]** the person or persons contemplated in paragraph *(a)* cannot be positively identified," the forfeited money or proceeds from the sale of the assets in issue must be paid "into the National Revenue Fund or, where the land is administered or controlled by a municipality, into the relevant municipal operating account."

Comment: *This wording maintains and extends the perverse incentives created by the PIE Act. When the relevant funds that have been forfeited are paid into the National Revenue Fund or*

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18 Para 3.2, Memorandum on the Objects of the Bill.

into a municipal bank account, the government effectively benefits from the lawless land invasions it has long encouraged or failed to prevent. By contrast, the owners of hijacked properties are not entitled to any forfeited assets, regardless of how great their losses might be.

3.3 Eviction of unlawful occupiers

Under a new Section 4(2A), the relevant provincial department of human settlements as well as the relevant municipality, "and any other organ of state having an interest in the proceedings, must join or be joined as a party" in any proceedings for the eviction of unlawful occupiers.

Comment*: This provision may be useful in the context of ordinary eviction proceedings, but the equivalent rule will have negative effects in the context of urgent ones, as set out below. Moreover, the need to join "any" other organ of state "with an interest in the proceedings" casts the net extremely widely. This could inhibit quick progress with evictions – and hence with the return of invaded land to its owners or lawful occupants.*

Sub-section 4(7) is to be deleted. It currently reads: **[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…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.]**

Comment*: According to the Memorandum on the Objects of the Bill, this deletion is required to uphold the principle of equality before the law. This makes little sense. Under the existing PIE Act, all unlawful occupiers who have established homes on hijacked land or buildings have essentially the same legal protection – that they cannot be evicted without a prior court order, as required by Section 26(3) of the Constitution. This complies with the principle of equality before the law. That the relief granted to lawful occupiers may differ based on relevant factors – including the period of their occupation – does not infringe this principle. There is thus no good reason to delete this clause.*

There are, however, sound practical reasons to retain it. Its deletion will allow illegal occupants to claim alternative accommodation as soon as they have invaded the land or buildings in issue. That this right accrues immediately will encourage yet more land occupations. This will further undermine property rights, making it harder to attract the new investment needed to expand the economy and generate more jobs (see Ramifications of the Bill*, below)*.

A new sub-section 4(10) provides: "*(a)* A court that orders the eviction of any person in terms of this section may make any order that it considers just and equitable under the circumstances, including an order for— (i) the retention or the demolition and removal of improvements or structures on the land; (ii) the retention, tending or harvesting of any standing crop; and (iii) the payment of compensation for any improvement, structure, materials or standing crops obtained by one party from the other.

(*b*) In making an order in terms of paragraph *(a)*, the court must have regard to all relevant factors, including— (i) whether the improvements were made, the structures erected or the crops planted with the consent of the owner, organ of state or person in charge; (ii) whether the improvements, structures or crops are necessary or useful to the party required to pay compensation for such improvements, structures or crops; (iii) the consequences and the fairness of the terms and conditions of any agreement between the parties relating to liability, or the exclusion of liability, for compensation or the determination of compensation; (iv) the hardship caused to each party; and (v) the circumstances contemplated in subsection (6).

(c) If a court makes an order for eviction, which includes an order for compensation, the order for eviction may not be executed unless the compensation has been paid or guaranteed to the satisfaction of the court."

Comment: Here, the Bill empowers the courts, in ordering evictions, to instruct the owners of invaded land or buildings to provide compensation to unlawful occupiers for any structures they have erected or standing crops they have planted which remain on the invaded property. In addition, the authorised eviction may not proceed until the specified compensation has been paid. That owners who have suffered major losses because of land invasions may also be instructed to compensate unlawful occupiers for structures erected without their consent and which have little or no value to them is likely to add insult to injury.

A new section 4(13) provides: "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, other organ of state or another landowner for the relocation of the unlawful occupier, as contemplated in subsection (6)— *(a)* may make an order, if such municipality, other organ of state or another landowner 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 *(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, other organ of state or another landowner."

Comment: The wording used here conflicts with the definition of "alternative accommodation" in section 1. That definition, as earlier noted, defines such accommodation as "temporary". By contrast, sub-sections 4(13)(a) and (b) state that municipalities, organs of state and "other landowners" may be ordered to provide alternative accommodation – and that this obligation will be for a temporary period only if the court considers this "reasonable."

This contradiction in the wording of the Bill makes for considerable confusion. As earlier pointed out, this infringes the doctrine against vagueness of laws and is in breach of the rule of law.

Sub-section 4(13)(b) goes on to state that, if the court agrees that alternative accommodation may be temporary, it must set out the period for which it is required. This period could be six or 12 months, for example, or it could be significantly longer. In practice, finding temporary accommodation for such periods will be difficult to achieve, given the extent of the housing shortage and the costs involved.

The Bill also prohibits the implementation of eviction orders until alternative accommodation, whether permanent or temporary, has been provided. Contrary to the reassurances provided by the Minister, the Bill thus fails to "restore balance" or provide an effective remedy against escalating land invasions.

A new section 4(14) states: "If the court determines that the occupier is an unlawful occupier, as defined in this Act, the court may choose to grant an eviction order without requiring the municipality or any organ of state to provide alternative accommodation or land."

Comment: The Memorandum on the Objects of the Bill makes no comment on this change. It is notable, however, that the Bill confines this substantial benefit to municipalities and other organs of state. No such advantage is to apply to private landowners.

Researchers at the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand have criticised this proposed provision for infringing the right of "access" to adequate housing in Section 26 of the Constitution.[19] Yet Section 26 makes it clear that the obligation to achieve the "progressive realisation" of this right rests on the state and not on private owners. In addition, the state's obligation is tempered by the injunction for it to act "reasonably" and within the limits of its "available resources." With public debt in South Africa standing at close to 80% of GDP, the government has limited resources available to it. Hence, sub-section 4(14) is consistent with sub-section 26(2), rather than in breach of it.

The problem lies rather in the fact that the Bill makes no provision for private landowners to be similarly spared the burden of providing alternative accommodation. Private land owners should not be burdened with such costly obligations – and especially not when organs of state could be exempted from them. This differential treatment does indeed infringe the principle of equality before the law. It is also inconsistent with Section 26(2) of the Constitution, which places the burden of incrementally providing access to housing on the state and not on private persons.

3.4 Urgent proceedings for eviction

A new section 5(1)(bA) requires a court, in deciding whether to grant an urgent interim eviction order, to take into account whether "it is just and equitable to grant the order, taking into consideration the circumstances of the unlawful occupation, including the pace, scale and frequency of such occupation."

A new section 5(2A) states: "Any of the organs of state contemplated in subsection (2)*(b)* [ie, the relevant provincial department of human settlements) and *(c)* [ie, the relevant municipality] and any other organ of state having an interest in the proceedings, must join or be joined as a party in such proceedings."

Comment: *Here, the changes proposed by the Bill are both positive and negative. On the positive side, subsection 5(1)(bA) empowers the courts to consider a new factor – the "pace, scale and frequency" of unlawful occupations – which could facilitate urgent interim evictions. On the other hand, under the new section 5(2A), an owner seeking a speedy interim order will be obliged to join the relevant municipality, the relevant provincial housing department, and any other organ of state "with an interest" in the matter in the court proceedings. In practice, municipalities and other state entities joined in this way are sure to demand the postponement of urgent court hearings for two to three weeks, so that they can collect relevant information.*

The main effect of this new wording will be to give unlawful occupiers more time to consolidate their occupation and turn new structures or other buildings into their homes. Once this shift has

[19] Lee-Anne Gaertner, Thutho Gabaphethe, Lulama Madyaka and Robert Krause, "Draft Bill on evictions puts tenants at risk," Ground Up, 10 June 2026. https://groundup.org.za/article/draft-bill-on-evictions-puts-renters-at-risk/.

occurred, urgent evictions will no longer be available. Instead, owners will have to wait for court dates in the normal way. They will also then have to fulfil all the onerous requirements set out in the amended PIE legislation.

3.5 Eviction at the instance of organs of state

Changes to section 6(1) allow an organ of state to "institute proceedings for the eviction of an unlawful occupier from land which **[falls within its area of jurisdiction...]** it administers or controls."

Changes to section 6(3) remove the criteria which currently apply, instead stating "In deciding whether it is just and equitable to grant an order for eviction...in terms of subsection (1), section 4(6) applies, with the necessary changes."

A new section 6(7) states: "Section 4(10) applies, with the necessary changes, whenever an order for eviction in terms of this section is made."

Comment: The change in section 6(1) seems relatively insignificant. The incorporation of the new section 4(6) means that state entities seeking to evict will have to persuade a court that "it is just and equitable to do so, after considering all relevant circumstances, including— (a) the circumstances under which the unlawful occupier occupied the land; (b) the period of occupation; (c) the availability to the unlawful occupier of suitable alternative accommodation or land; and (d) the rights and needs of the elderly, children, persons with disability and households headed by women."

Though the period of occupation is relevant here, state entities clearly will be affected by the removal of the current requirement for a six-month period of occupation before the obligation to provide alternative accommodation kicks in.

Section 4(10) is also incorporated, which means that the requirements for the payment of compensation for structures, standing crops and the like left in place will also apply to state entities. Again, this could increase the costs of securing an eviction, while implementation will be delayed until all compensation has been paid.

There are anomalies in which proposed changes are included and which are left out. For example, though sections 4(6) and 4(10) are effectively incorporated into section 6, sub-sections 4(13) and 4(14) are not. Yet sub-section 4(13) expressly includes an option for temporary alternative accommodation, while sub-section (14) says that municipalities and other state entities may be excused from having to provide alternative accommodation at all. That these sub-sections have been excluded here raises doubts as to whether either the temporary option, or the exemption from any obligation to provide alternative accommodation, is to be available to state entities acting under Section 6. These omissions suggest, rather, that state entities will always have to provide permanent alternative accommodation.

The overall wording of the Bill is thus thoroughly confusing. It starts by defining alternative accommodation as temporary accommodation, which prime facie suggests that such accommodation need never be permanent. But then, in sub-section 4(13), it requires a specific order before temporary accommodation may apply. It then also fails to incorporate sub-section 4(13) into Section 6, even though it does incorporate sub-sections 4(6) and 4(10).

In addition, as earlier noted, the amended section 6 makes no reference to 4(14). This is the sub-section allowing the courts to "choose to grant an eviction order without requiring the *municipality or any organ of state to provide alternative accommodation or land." That this part of section 4 is not incorporated in section 6 – whereas other parts of section 4 are – creates further confusion. On the one hand, section 4(14) gives all organs of state the benefits of this discretion. On the other hand, section 6 – which deals expressly with evictions at the instance of organs of state – does not.*

3.6 Mediation

An amended sub-section 7(2) provides: "If the municipality in whose area of jurisdiction the land in question is situated is the owner, organ of state or person in charge of the land in question, the member of the Executive Council [MEC] designated by the Premier of the province...**[may]** must... 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."

Comment: *Two changes are relevant here. First, mediation is made mandatory, rather than optional. Second, it must be pursued not only where the relevant municipality is the owner of the land in question, but also where it is the "person in charge." This greatly increases the scope for compulsory mediation.*

This will effectively prevent municipalities, such as the City of Cape Town, from resorting to counter-spoliation to help counter organised invasions of land set aside for new housing developments. These invasions allow unlawful occupiers to jump the housing queue and have caused great harm to thousands of people on the City's lengthy waiting list.

Counter-spoliation is a common law remedy which allows people to take back their property while the process of dispossessing them is still under way. However, as the Supreme Court of Appeal (SCA) stressed in a 2024 judgment, a municipality seeking to invoke this right "must do so instanter *within a narrow window period, during which counter-spoliation is legally permissible. The window closes and the recovery is no longer* instanter *when the despoiler's possession of the land is perfected."*[20]

This "perfection" occurs as soon as structures are erected in whole or in part, even if they have not yet been occupied. Once this stage in a land invasion has been reached, the SCA adds, any attempt to remove building materials infringes the constitutional guarantee of privacy, which includes people's right "not to have...their possessions seized."[21]

This SCA judgment made counter-spoliation a far less effective remedy against land invasions, but did not exclude it altogether. Now, however, the Bill seeks to bar it indirectly by requiring mandatory mediation in many instances. The time needed for this process will prevent municipalities from acting instanter *(immediately) and before unlawful occupiers have been able to start building structures.*

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[20] City of Cape Town v South African Human Rights Commission and Others (1337/2022; 368/2023) [2024] ZASCA 110; 2024 (5) SA 368 (SCA) (10 July 2024).https://www.saflii.org/za/cases/ZASCA/2024/110.html.

[21] City of Cape Town v South African Human Rights Commission and Others (1337/2022; 368/2023) [2024] ZASCA 110; 2024 (5) SA 368 (SCA) (10 July 2024).https://www.saflii.org/za/cases/ZASCA/2024/110.html.

4 FURTHER AMENDMENTS THAT SHOULD HAVE BEEN MADE

The Bill is also flawed in that it makes no attempt to amend some particularly damaging clauses in the existing PIE Act and which – if the statute is to be retained at all – would benefit from constructive changes.

4.1 Transferring the costs of eviction proceedings to private owners

The existing sub-section 6(5) provides: "If an organ of state gives the owner or person in charge of land notice in terms of subsection 6(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)."

<u>Comment</u>: As earlier noted, Section 6 deals with "evictions at the instance of organs of state." Under this sub-section, a municipality may require the owner of, say, a hijacked building to institute eviction proceedings within a specified period of time. If the owner fails to do so – perhaps because it lacks the funds to litigate or doubts the prospects of success – the municipality can proceed with the case in any event. If it so requests, the court can then order the owner to pay the costs of the proceedings.

Effectively, the municipality is spared from having to pay the legal costs of seeking an eviction order its own dysfunctionality may have helped facilitate. This clause needs to be deleted.

4.2 Lopsided rules regarding private prosecutions

The existing sub-section 8(1) provides: "No person may evict an unlawful occupier except on the authority of an order of a competent court."

The existing sub-section 8(4) provides: "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."

The existing sub-section 8(5) provides: "(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."

Comment: *Under these clauses of the PIE Act, owners who evict unlawful occupiers without a prior court order – say, by terminating their illegal municipal electricity connections, which is likely to be seen as a "constructive" eviction – are vulnerable to private prosecution in unusually broad circumstances.*

In general, those wanting to bring private prosecutions must obtain a nolle prosequi *(Latin for having no wish to prosecute) certificate from the National Prosecuting Authority (NPA), which confirms that the NPA has no intention to proceed. They must also provide security for the costs of the private prosecution. The PIE Act dispenses with these requirements, making it much easier for activist civil society organisations to mount private prosecutions on behalf of aggrieved unlawful occupiers.*

By contrast, if such a private prosecution fails, those accused will be able to recover some of their extensive legal costs only if they can prove that the prosecution was vexatious. In practice, this is extremely difficult to do. Owners will thus have to shoulder the legal costs of defending themselves against a failed private prosecution, which could add significantly to the financial losses resulting from the land invasion.

Moreover, if the private prosecution succeeds, owners found guilty of "constructive" eviction could be sentenced to fines higher than R2 million (the maximum the Bill proposes for those inciting land invasions) and/or to prison terms. These clauses add significantly to what the Minister has identified as an "imbalance" in the PIE Act and should be deleted.

4.3 An overly broad definition of "unlawful occupier"

The PIE Act defines an "unlawful occupier" as "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." (Under the PIE Act, this definition does not include farm residents protected by the Extension of Security of Tenure Act [ESTA] of 1997 or those protected by the Interim Protection of Informal Land Rights Act of 1996. Under the Bill, this second exclusion is to be deleted and replaced by the exclusion of labour tenants, as defined in the Land Reform (Labour Tenants) Act of 1996.)

After the PIE Act came into force, various courts were called upon to decide whether its broad definition of unlawful occupier included people whose occupation had initially been lawful – such as tenants whose leases had ended and former home owners/mortgagors who had defaulted on their bonds and whose houses had thus been sold in execution – but who were now unlawfully "holding over" and refusing to vacate in keeping with the agreements they had previously made.

In 2002, in the case of *Ndlovu v Ngcobo; Bekker and Another v Jika*, the SCA concluded that the definition in the Act was wide enough to include all unlawful occupiers who currently lacked the owners' consent for their occupation, even if this occupation was previously authorised.[22] The SCA ruling means that landlords and financial institutions cannot simply rely on the common

[22] *Ndlovu* v *Ngcobo*, *Bekker and Another* v *Jika* [2002] ZASCA 87.

law remedy of *rei vindicatio* (a claim for the return of property to its owner) which would generally allow summary ejectment. Instead, they must comply with the PIE Act's procedural and substantive requirements for eviction.

The SCA ruling has increased the risks of renting residential property or funding home purchases through mortgages. Not surprisingly, this has in turn reduced the supply of rental and other accommodation and pushed up costs. As Renier Kriek, MD of Sentinel Homes, has noted, "making eviction increasingly difficult may actually reduce access to housing rather than improve it."[23]

Mr Kriek points out that, when "landlords and investors face excessive legal risk recovering properties after lease defaults or expired occupation rights," the market responds by requiring higher deposits, higher rentals and stricter tenant screening – and by reducing access to housing credit. Increased risk thus results in "fewer affordable rental units and less investment into low-income housing supply." These are the "predictable" consequences of "law [that] makes it too risky, slow or expensive to recover property," he cautions. PIE protections have thus worsened "a severe affordability crisis at the lower end of the housing market" for more than two decades.[24]

The current wide definition in PIE leaves the courts with little choice but to interpret the statute to include those holding over. Yet the purpose of the PIE Act is quite different. It is to prevent the summary eviction of "squatters" in the way the National Party government used to do before it repealed influx control in the 1980s and introduced other reforms. In 2002, a bill to amend the PIE Act thus proposed that the definition of unlawful occupier be changed to exclude former tenants and other individuals holding over in dwellings they no longer have the owner's consent to occupy. Since this measure was not enacted in the end, equivalent wording should now be included in the Bill.[25]

4.4 Other essential amendments needing to be made

If the PIE Act is to be retained, the first imperative is to recognise that property owners, and especially private property owners, have too few ways to defend their property against invasion and illegal occupation – and also too few ways to end invasion and illegal occupation after it has occurred.

The Bill should thus include clauses which, for example:

- require the payment of compensation to owners and lawful occupiers for all financial losses resulting from land invasions. This compensation should be payable by those inciting land invasions, by unlawful occupiers, and also by the South African Police Service (SAPS), whose task it is to protect people from illegal conduct. All three groups should be held jointly and severally liable for the payment of the compensation due. In practice, the burden of making payments will fall primarily on the SAPS, which should then be induced to do a better job of protecting land and buildings from invasion;

[23] Neale Petersen, "New PIE bill could deepen SA's housing crisis," Real Estate Investor, 18 May 2026. https://www.rei.co.za/blog-posts/new-pie-bill-could-deepen-sas-housing-crisis#:~.
[24] Ibid.
[25] Ibid.

- Suitable time constraints should also be introduced. For example, if a municipality takes longer than 30 days from the granting of an eviction order to make alternative accommodation available to unlawful occupiers, then the property owner should automatically be entitled to proceed with the eviction of the unlawful occupiers in any event. Activist organisations should then sue the municipality for damages. Such damages should go to unlawful occupiers who have been left without the alternative accommodation the municipality was obliged to provide;

- Private prosecutions on unusually generous terms should rather be directed at those who incite or assist in land invasions. Aggrieved land owners and lawful occupiers should be entitled to initiate private prosecutions without *nolle prosequi* certificates and without having to provide security for the costs of their prosecutions. If those prosecutions fail, they should also be protected from having to pay the accused's legal costs unless the accused can show that their actions were vexatious – rather than a legitimate attempt to penalise the guilty and discourage more land invasions;

- Where private or public prosecutions of those inciting land invasions succeed, any cash they have received or assets they have bought with such cash should be paid over to the affected owners or the lawful occupiers, rather than to unlawful occupiers or the state.

Various other amendments to address the imbalances in the PIE Act should also be introduced. The primary victims of unlawful occupations are the owners and lawful occupants whose land or buildings have been invaded. They suffer considerable harm – but are nevertheless treated as harshly as if they were the perpetrators of major offences.

5 ECONOMIC RAMIFICATIONS OF THE BILL

The full ramifications of the Bill cannot easily be identified in the absence of an accurate and comprehensive SEIA report. What is clear, however, is that the Bill does not bring "balance" to the PIE Act, as the Minister has claimed. Other assertions made by the Minister are also unfounded, for the Bill will *not*, as she has stated in a media release:

- "protect property rights,...
- safeguard vulnerable communities,
- strengthen public confidence in our legal system,...
- contribute meaningfully to the development of sustainable human settlements; or...
- create a more stable and predictable environment for investment and growth."[26]

Praise for the Bill in the Memorandum on its Objects is equally unfounded. Contrary to the claims in this document, the Bill has no realistic prospect of "stimulating collaboration between government and the private sector to attain economic growth and job creation."[27]

The Memorandum is correct in acknowledging that "when investor confidence is restored, infrastructure investment will grow," – and that such developments could help to "address [the] poverty and unemployment which contributes to the unlawful occupation of land and

[26] Media statement by the Minister of Human Settlements, Thembi Simelane, MP, on the release of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill for public comments, 16 April 2026..
[27] Memorandum on the Objects of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill.

buildings."[28] However, it is entirely mistaken in implying that the Bill will help to achieve these positive outcomes.

The Memorandum also makes the bald assertion that "the estimated cost" to the state of implementing the Bill will be "R1.3 billion."[29] It fails to explain how this sum was computed, making it difficult to assess its accuracy. What is clear, however, is that the Bill's direct implementation costs will be far outweighed by its negative effects on business confidence, fixed investment, economic growth and unemployment.

Business confidence in South Africa's economy has long been dismal and has recently declined still further. In the second quarter of 2026, the RMB/BER business confidence index fell by 8 points to 39 points. (The index varies on a scale of 0 to 100, where 0 indicates an extreme lack of confidence, 50 neutrality and 100 extreme confidence.)[30] This was a larger move than the index's normal quarter-to-quarter variation and signalled a significant shift in sentiment. Though the decline was driven mainly by rising international oil prices, it also underscored the many pressures confronting businesses in South Africa. The Bill is sure to exacerbate those pressures, whereas the key need is to reduce them.

The major threat to property rights in the Bill will further deter the fixed investment that South Africa so badly needs. Fixed investment – otherwise known as gross fixed capital formation – is defined as investment in fixed assets, such as buildings, machinery, and infrastructure. Investment of this kind expands the productive capacity of an economy. This makes it an essential foundation for growth, employment and upward mobility.

For the past decade or so, fixed investment in South Africa has languished at around 15% of GDP. In 2025, it dropped further to 13.7% of GDP. This is roughly half the global average of 26% and less than half the 30% goal set for South Africa by the National Development Plan in 2012. It is also far below average rate of fixed investment in sub-Saharan Africa – one of the fastest-growing regions in the world – which stands at 24%.[31]

The World Bank recently reported that a fixed investment rate of 15% puts South Africa on a par with war-torn Afghanistan. It also means, as *The Common Sense* publication reports, that a large portion of the capital current being invested in South Africa "is likely going merely to repair or replace existing, depreciating assets rather than building new, productive capabilities. Effectively, most money going into fixed investment in South Africa is for care and maintenance – maintaining existing roads rather than building new roads, for example."[32]

A much higher rate of fixed investment – at least the 24% being attained on average in sub-Saharan Africa – is essential if the country is to raise its growth rate substantially. This is a vital goal, for growth at 7% of GDP would see the economy double in size over ten years. By

[28] Ibid.
[29] Ibid, para. 5.
[30] https://tradingeconomics.com/south-africa/business-confidence.
[31] Economic Desk, "Afghanistan and South Africa Have Same Level of Fixed Investment," The Common Sense, 11 June 2026. https://www.thecommonsense.co.za/Economics%20%2526%20Policy/afghanistan-south-africa-have-same-level-fixed-investment; John Endres, "Stephen, we don't need to wait for history to judge Ramaphosa's reforms," Daily Friend, 8 June 2026. https://dailyfriend.co.za/2026/06/08/stephen-we-dont-need-to-wait-for-history-to-judge-ramaphosas-reforms/.
[32] [32] Economic Desk, "Afghanistan and South Africa Have Same Level of Fixed Investment," The Common Sense, 11 June 2026. https://www.thecommonsense.co.za/Economics%20%2526%20Policy/afghanistan-south-africa-have-same-level-fixed-investment.

contrast,if growth remains pegged at roughly 1.3% a year, it will take 54 years for the economy to double.

Current economic growth rates are also generally below the rates at which the population is expanding. With population growth exceeding economic expansion, average GDP per capita has been declining for some ten years. Most South Africans are thus becoming poorer every year.

Moreover, if South Africa could substantially increase its fixed investment and growth rates, it could start countering its enormous unemployment crisis. The joblessness rate currently stands at 32.7%, which is one of the highest rates in the world. On an expanded definition, which takes account of those too discouraged to keep looking for jobs, the unemployment rate is worse still, at an even more disturbing 43.7%. Among young people aged 15 to 24, the official rate is 61%, while the expanded rate is close to 70%. On current trends, most young South Africans are most unlikely ever to find jobs and start earning their own incomes.

The key imperatives are thus to strengthen business confidence, attract far more fixed investment, raise the economic growth rate and bring down unemployment. The Bill will not help achieve any of these vital goals. Instead, by further eroding property rights, it will worsen the current vicious cycle in which low business confidence and limited fixed investment keep economic growth down to about 1.3% – and unemployment up at 44% in general, on an expanded measure.

6 UNCONSTITUTIONALITY OF THE BILL

6.1 Inconsistency with property rights

The Bill's skewed provisions will encourage further land invasions, which are clearly unconstitutional. As the Constitutional Court confirmed in the *Blue Moonlight* case in 2011, "unlawful occupation results in a deprivation of property under section 25(1)" of the Constitution.[33]

In the *Blue Moonlight* case, the private property owner had been aware of the presence of the unlawful occupants before it bought the building it wanted to develop. According to the court, this meant it had to be "somewhat patient" while the City of Johannesburg provided the unlawful occupants with alternative accommodation.[34] By implication, thus, different considerations will apply where land is invaded only after it has been bought.

The Court also went on to say: "Of course a property owner cannot be expected to provide free housing for the homeless on its property for an indefinite period."[35] In practice, however, this is precisely the situation which the PIE Act has created and which the Bill will now make worse by barring an authorised eviction from proceeding until alternative accommodation has been provided and any compensation found owing to the unlawful occupants has been paid. The Bill also creates the risk that municipalities and other state entities – which have tax and other revenues to draw on – will be excused from having to provide alternative accommodation, whereas no such exception will be allowed to private owners.

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[33] City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (CC) [2011] ZACC 33, at para. 37. https://www.saflii.org/za/cases/ZACC/2011/33.html.

[34] City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (CC) [2011] ZACC 33, at paras 37, 40. https://www.saflii.org/za/cases/ZACC/2011/33.html.

[35] Ibid, para. 40.

Both the PIE Act and the unbalanced provisions of the Bill ignore the potential risks to millions of black South Africans who have acquired ownership of both homes and land over the past 50 or 40 years. Recent statistics show that, in 2023, close on 11.9 million households owned homes, of whom more than 9.6 million were black, while close on 1.2 million were so-called "coloureds" or Indians.[36]

Under the PIE legislation, all these property owners could be arbitrarily deprived of the use of these vital assets through unlawful land occupations. These occupations will in practice drag on for years, while owners first struggle to obtain court orders for eviction – and dysfunctional municipalities and other state entities thereafter battle to provide the unlawful occupants with alternative accommodation. The longer these damaging rules remain in place, the more they will exacerbate apartheid-era injustices. Far from helping to ameliorate those wrongs, as the PIE Act (supposedly) intends, they will subject millions of South Africans to additional injustices.

That the definition of "unlawful occupier" is wide enough to include tenants and former owners who hold over and refuse to vacate makes the problem even worse. A first-time home owner trying to pay off a bond by letting out a backyard flat could find herself without the agreed rental income, without the use of the flat, and without any realistic possibility of lawfully evicting the defaulting tenant for many years (while a cash-strapped municipality tries to provide that tenant with suitable alternative accommodation).

In addition, a first-time home owner who bought a foreclosed house in good faith might find the former owner holding over and refusing to vacate, thereby depriving him and his family of the benefits of his significant investment. As knowledge spreads of the abuses that the PIE Act encourages – and which the Bill will further promote – these risks will grow ever greater.

Moreover, the PIE Act has already encouraged the unscrupulous to invade municipal land set aside for the provision of housing, or to take over RDP/BNG houses that are close to completion and have already been allocated to others. Yet, in the *Blue Moonlight* case, the Constitutional Court stressed that "'queue jumping' must not be permitted." The Court also emphasised that "opportunists should not be enabled to gain preference over those who have been waiting for housing, patiently, according to legally prescribed procedures."[37] Far from helping to resolve this problem, the Bill will provide additional incentives for unlawful occupiers to jump the housing queue. This will greatly harm the millions of people who have registered on the national housing waiting list and are, indeed, waiting patiently to receive the homes they have been promised.

Another major problem is that the great majority of home-owing families confronting illegal occupations cannot afford the costly court cases the PIE Act demands. Under the Bill, moreover, the proposed new rules will further curtail their options. This could leave most of them with no legal remedy at all against the organised land invasions the Bill will further encourage.

Under these severely unbalanced rules, land and housing could increasingly pass to those most willing to use force against existing owners and lawful occupiers. The poor, as ever, will suffer the most from this situation – and from the further descent into lawlessness that the Bill will encourage.

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[36] CRA, Socio-Economic Survey of South Africa, 2025, p. 343.

[37] City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another, para. 93.

6.2 Inconsistency with other guaranteed rights

6.2.1 The right of access to court

Section 34 of the Constitution guarantees everyone "the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court." Formally, the PIE Act and the Bill do not deprive owners and lawful occupiers of the benefits of this right. In practice, however, these laws leave them with nothing but the bare husk of that right.

If they cannot afford the heavy costs of litigation, they have no lawful basis on which to secure the eviction of unlawful occupiers. Even if they obtain court orders for eviction, they must thereafter wait for many months, if not many years, before cash-strapped and increasingly dysfunctional municipalities or other organs of state manage to provide the alternative accommodation required. There is no real "access to court" in these circumstances – and especially not when a court order for eviction cannot in practice be implemented for years after this remedy has been ordered.

6.2.2 The supremacy of the rule of law

Section 1(c) of the Constitution identifies the "supremacy of the rule of law" as a founding value of South Africa's democracy. The PIE Act – now to be made worse by the Bill – contradicts this in many ways. First, it grants special privileges to unlawful occupiers that it denies to owners and lawful occupants, which infringes the principle of equality before the law. Second, it encourages land invasions, thereby promoting lawlessness and a return to the principle – entirely at odds with the rule of law – that "might makes right." Third, the Bill, in particular, is so vaguely worded that, if adopted in its present form, it is sure to be interpreted differently at different times by different officials. Wording that is so confusing contradicts the doctrine against vagueness of laws, which is also intrinsic to the rule of law.

6.2.3 The dignity of the individual

Both the PIE Act and the Bill put all their emphasis on upholding the dignity of unlawful occupiers. They have little, if any, regard for the dignity of displaced owners and lawful occupiers.

Proponents of the Bill seem intent on pretending that PIE is still needed to further the original purpose of the 1998 Act. This, in the words of the Constitutional Court in the *Blue Moonlight* case, was to "overcome past abuses like the displacement and relocation of people."[38] They overlook the fact that the PIE Act – soon to be made worse by the Bill – now threatens the ownership rights of some 11.9 million families, most of them black. By undermining property rights, the Act also inhibits fixed investment, curtails economic growth and worsens the unemployment crisis. This too undermines the dignity of millions of jobless individuals by keeping them mired in poverty and dependent on the state for social grants and other forms of welfare. By contrast, what most South Africans have wanted the most for all the years since the Constitution took effect was to have the dignity that comes from employment and earned income.

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[38] Ibid, para. 36.

6.3 Inconsistency with the right to adequate public participation

The Constitutional Court has repeatedly stressed the importance of proper public participation in the legislative process. At minimum, this means that the public must be adequately informed about the issues raised by a bill, so that they can then "have an adequate say" on its terms. So important is this right that the Court has frequently struck down statues adopted without proper public participation.

The Minister nevertheless omitted to append a comprehensive socio-economic assessment (SEIA) report to the Bill when she gazetted it public comment. She also omitted to comply with the National Policy Development Framework, which emphasises the need for comprehensive consultation – and to base assessments of proposed new rules on the best available evidence, as earlier described. Instead, she herself made various misleading claims about the benefits of the Bill, which the Memorandum on the Objects of the Bill then echoed. To cite but one example, the Memorandum claims that the Bill will "create a more stable and predictable environment for investment and growth," when it should instead have acknowledged its evident dangers.

Public participation has thus been entirely inadequate. The Bill thus deserves to be struck down for this reason too.

7 THE WAY FORWARD

The Bill is both unconstitutional and unwise. It conflicts with guaranteed rights as well as the supremacy of the rule of law. It has many damaging economic ramifications, as earlier outlined. It goes well beyond what Section 26(3) of the Constitution requires in protecting people against eviction from their homes without a prior court order. It is also inconsistent with the right of "access" to housing in Section 26(2), which calls for "progressive" realisation based on measures that are "reasonable" and fall within the state's "available resources."

Overall, the Bill is so at odds with the Constitution – and also with what the economy requires – that it should simply be scrapped.

Scrapping the Bill is not enough, however, to solve the deeper problem. The PIE Act is also unconstitutional, for essentially the same reasons, and has long had many damaging consequences. One of its negative impacts, generally brushed aside by the government and other commentators, has been to reduce the supply of affordable housing available to low-income households to rent or buy. The Act should thus be repealed, not tightened up in the many ways the Bill proposes.

To overcome the housing crisis – and help take away the impetus to illegal land invasions – the government must stop undermining property rights under the PIE Act (and also under many other laws). Instead, it should recognise that secure property rights are vital in attracting fixed investment; that fixed investment is essential in expanding the productive capacity of the economy and enabling economic growth; that rapid economic growth is the key to overcoming unemployment; and that the generation of millions more jobs is the only effective and sustainable way to lift people out of poverty and homelessness.

Growth at 7% of GDP would double the size of South Africa's economy within ten years. If growth remains at some 1.3%, it will take more than half a century (54 years) to achieve that doubling. Achieving much faster growth – at minimum, the 5.4% growth rate by 2030 urged by the National Development Plan – must thus be the government's over-arching priority.

The PIE Act and the Bill get in the way of that. The original purpose of the PIE Act – to stop evictions reminiscent of those carried out in the apartheid era – has not applied for decades now. Instead, the PIE Act is increasingly being abused by unscrupulous and venal inciters of illegal land invasions.

The government is well aware of this abuse and of the costs it generates. In her media statement inviting comments on the Bill, the Minister said: "This intervention comes at a time when we are witnessing a growing number of unlawful land and building occupations across the country. When they occur, these incidents place a significant financial and administrative burden on us as government as well as the private sector."[39]

The Minister went on to claim that the Bill would "empower municipalities, state entities, and private property owners to respond more decisively to illegal occupations and evictions." It would also strengthen their ability, she said, "to address individuals and organised groups who are responsible for orchestrating these invasions."[40]

These assertions are untrue. The Minister's statement nevertheless confirms that the government is well aware of the PIE problem, even though it declines to recognise its full extent. Instead of pretending that the Bill provides an effective solution, the Minister should recognise that the fundamental flaws in the PIE Act cannot be overcome via small amendments – and particularly not by a Bill with rules even more damaging than the existing ones.

The correct course of action is clear. Once the Minister has abandoned the Bill, she should bring before Parliament a simple new bill with a single purpose – to repeal the PIE Act in its entirety. At the same time, the Government of National Unity should urgently embrace all the policy reforms that are required (and which the IRR has described in its *Blueprint for Growth* papers) to protect property rights and increase investment, growth and employment. These reforms will be far more effective than increasingly coercive state interventions in putting South Africa on the path to upward mobility and expanding prosperity for all.

South African Institute of Race Relations NPC **15 June 2026**

[39] Media statement by the Minister of Human Settlements, Thembi Simelane, MP, on the release of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill for public comments, 16 April 2026.
[40] Ibid.