



Submission to the Minister of Human Settlements regarding the Draft Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill of 2026

SYNOPSIS

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

The Minister has failed to comply with the Socio-Economic Impact Assessment (SEIA) Guidelines adopted by the government in 2015. Under these guidelines, the Minister should have provided “a detailed evaluation of the likely effects of [the Bill] in terms of implementation and compliance costs as well as the anticipated outcome.” Moreover, this SEIA report should have accompanied the Bill when it was gazetted for public comment.

The Minister has also failed to comply with the National Policy Development Framework of 2020. This requires policy makers to inform stakeholders of “the nature and magnitude of a policy issue” and its likely “impacts and risks”. These assessments must be based on “the best available evidence, data, and knowledge.”

Instead of complying with these obligations, the Minister has inaccurately claimed that the Bill will “protect property rights” and “create a more stable and predictable environment for investment and growth.” The Memorandum on the Objects of the Bill is equally misleading in suggesting that the Bill will help to build up “investor confidence and infrastructure investment,” thereby “addressing poverty and unemployment” and countering “the unlawful occupation of land and buildings.”

False assertions of this kind cannot help the public to “know about the issues” raised by the Bill and then to “have an adequate say on it,” as the Constitution requires. The Bill is thus as procedurally unconstitutional as various other statutes the Constitutional Court has struck down for similar failures in the public consultation process.

3 Background to the Bill

Illegal land invasions have accelerated over the past five years. Vacant municipal land intended for housing development remains a major target, but suburban properties in Upper Houghton in

Johannesburg have now been invaded too. The hijacking of inner-city buildings, long evident in Johannesburg, has spread to Durban and elsewhere. Valuable farmland on the outskirts of towns has been seized and swiftly populated with shacks. The buffer zones that mines are legally required to maintain to protect residential areas from environmental damage have also been invaded, with major shack settlements erected on them overnight.

These large-scale and well-organised land invasions have been facilitated by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 (“the PIE Act”). This prohibits the eviction of unlawful occupiers without prior court orders, which are generally time-consuming and costly to obtain. In addition, the PIE Act commonly inhibits the courts from ordering evictions unless municipalities or other landowners provide unlawful occupiers with “suitable alternative accommodation.”

Criminal syndicates and other organised groups are increasingly using the PIE Act to seize land or buildings and pack them full of unlawful occupiers, from whom rent and other payments are then extracted. Often the organisers illegally reconnect seized properties to municipal electricity and water supplies, racking up enormous bills which generally remain unpaid.

The Minister claims to be countering such abuses via the Bill. The measure has some positive features, which she has applauded and played up. However, even these positive amendments have negative aspects. They are also far outweighed by damaging new clauses that will encourage yet more lawlessness, further erode the property rights of all South Africans and damage the economy.

4 The Content of the Bill

4.1 *Positive changes with negative aspects*

First, the Bill introduces major fines “not exceeding” R2 million – along with prison terms of up to 2 years – for those convicted of “inciting, arranging or organising” land invasions. These are substantial penalties. They also make it easier to target organisers who incite land invasions but cannot be shown to have received or solicited money or other considerations.

On the other hand, the existing Act sets no limit on the fines that could be imposed, whereas the Bill caps these at R2 million. By contrast, various other statutes and pending bills provide for much harsher penalties: up to ten years in jail and/or a maximum fine of 10 percent of annual turnover. This indicates that the protection of property rights is not a governmental priority.

Second, the Bill slightly strengthens existing provisions that seek to remove the profit motive. To this end, it states that, when organisers are convicted, the courts “must” order the forfeiture not only of the money they have received but also of any assets they might have acquired with that money. Money and assets so forfeited “must” be repaid to the unlawful occupiers or, if they cannot be “positively identified,” transferred either to the National Revenue Fund or (in a new provision) to the relevant municipality.

Forfeiture of this kind may help identifiable unlawful occupiers recover some of what they have paid to those orchestrating land invasions. In practice, however, tracking relevant cash or other assets will often be difficult to achieve. In addition, when property so forfeited is paid into the National Revenue Fund or a municipal bank account, the government will benefit from lawlessness 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.

4.2 Negative changes depicted as positive

First, the Bill defines “alternative accommodation” as “temporary accommodation...that is reasonable in the circumstances.” This suggests that alternative accommodation will always be temporary. Confusingly, however, sub-section 4(13) of the Bill states 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 so specifies. In addition, the period in issue could be six or 12 months, for example, or significantly longer. Finding temporary accommodation for such periods could be difficult to achieve, given the extent of the housing shortage and the costs involved.

A new sub-section 4(14) adds that the courts “may choose” to issue eviction orders without requiring the provision of alternative accommodation. However, it limits this option – and the substantial benefits it will bring – to municipalities and other organs of state. No such advantage will apply to private landowners.

In addition, under the current PIE Act, the obligation to provide alternative accommodation kicks in only where an unlawful occupation has lasted for six months or more. The Bill will repeal this time limit. This will allow illegal occupants to claim alternative accommodation as soon as they have taken occupation of either land or buildings.

Second, the Bill empowers the courts, in ordering evictions, to instruct owners to provide compensation to unlawful occupiers for structures they have erected or standing crops they have planted. Moreover, 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 have to compensate unlawful occupiers for structures erected without their consent and which have little or no value to them will add insult to injury.

Third, it will become more difficult to obtain urgent interim court orders for the eviction of unlawful occupiers pending final judgments. Here, the changes made by the Bill are mixed. On the one hand, the Bill 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, an owner seeking a speedy interim order will be obliged to join the relevant municipality (and any other state entity with an interest in the matter) in the court proceedings. In practice, municipalities and other organs of state joined in this way will demand the postponement of urgent court hearings for two to three weeks so they can collect relevant information.

The main effect of this amendment will be to give unlawful occupiers the time they need to turn their structures into homes. Once this shift has occurred, urgent evictions will no longer be available. Instead, owners will have to wait for court dates in the normal way and then meet all the onerous requirements set out in the PIE Act and the Bill.

Fourth, the Bill compels municipalities that own or control invaded land to “attempt to mediate and settle any dispute.” Effectively, this will prevent them from resorting to counter-spoliation. 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 *instantly* within a narrow window period, during which counter-spoliation is legally permissible. The window closes and the recovery is no

longer *instantly* when the despoiler's possession of the land is perfected." This perfection occurs as soon as the building of structures begins. Once this stage has been reached, adds the SCA, any attempt to remove building materials infringes the constitutional guarantee of privacy, which includes people's right "not to have...their possessions seized."

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. The time needed for this process will prevent municipalities from acting *instantly* and before unlawful occupiers have been able to start building structures.

5 Ramifications of the Bill

5.1 Negative economic ramifications

The Bill poses a major additional threat to property rights. This will further deter the fixed investment in buildings, machinery, and infrastructure that South Africa so badly needs to increase the productive capacity of the economy and provide the essential foundation for faster growth.

Fixed investment in South Africa has languished at around 15% of GDP for some ten years. 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%.

A much higher rate of fixed investment – at least the 24% evident elsewhere in sub-Saharan Africa – is essential to raise the growth rate substantially. Increasing growth is also a vital objective, for sustained growth at 7% of GDP would see the economy double in size in ten years. By contrast, if growth remains at roughly 1.3% a year, it will take 54 years for the economy to double.

Unless growth accelerates, it will also be impossible to reduce unemployment. Currently, the joblessness rate stands at 32.7% on the official definition and at 43.7% on the expanded one (which includes those too discouraged to keep seeking work). These are among the highest unemployment rates in the world.

The government's most important objectives should be to strengthen business confidence and attract the fixed investment vital to increased growth and reduced unemployment. Instead, the Bill will make these goals even more unattainable.

5.2 An increased impetus to lawlessness

The Bill gives short shrift to the roughly 11.9 million families – almost all of them black – that own formal houses, as well as the many more households with informal title to customary plots. Already, the great majority of these individuals cannot the afford costly court cases needed to obtain eviction orders under the PIE Act. The Bill will further curtail their options, leaving most with no legal remedy against the organised land invasions it will encourage.

That the Act's definition of "unlawful occupier" is wide enough to include former tenants who hold over and refuse to vacate makes the problem even worse. A 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 evicting the former tenant for many years.

Under this severely unbalanced Bill, land and housing could increasingly pass to those most willing to act unlawfully – and sometimes also forcefully – against owners and lawful occupiers. Inevitably, the poor will suffer the most from the further descent into lawlessness that the Bill will promote.

6 *The unconstitutionality of the Bill*

The Bill's lopsided 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.

The Court went on to say that "a property owner cannot be expected to provide free housing for the homeless on its property for an indefinite period." In practice, however, this is precisely the situation which the PIE Act has created. The Bill will make this problem even worse by explicitly barring authorised evictions from proceeding until alternative accommodation has been provided and any compensation found owing has been paid either to unlawful occupiers or to the government. In the latter situation, the state will benefit from the harm it has helped cause to its citizens, which will further erode the rule of law.

The Bill also undermines the dignity of law-abiding home owners by depriving them of any effective legal remedy against land invasions. In addition, it infringes the principle of equality before the law by proposing that state entities – but not private owners – be excused from having to provide alternative accommodation. Moreover, several poorly worded clauses in the Bill breach the doctrine against vagueness of laws.

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. The Act should thus also be repealed.