



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 730

16

April
April

2026

No. 54526

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5845



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE:

THE GOVERNMENT PRINTING WORKS WILL NOT BE HELD RESPONSIBLE FOR ANY ERRORS THAT MIGHT OCCUR DUE TO THE SUBMISSION OF INCOMPLETE / INCORRECT / ILLEGIBLE COPY.

No FUTURE QUERIES WILL BE HANDLED IN CONNECTION WITH THE ABOVE.

Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
GENERAL NOTICES • ALGEMENE KENNISGEWINGS			
Human Settlements, Department of / Menslike Nedersettings, Departement van			
3896	Housing Act No.107 of 1997 as amended: Request for comments on the Draft Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2026.....	54526	3

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF HUMAN SETTLEMENTS**NOTICE 3896 OF 2026****REQUEST FOR COMMENTS ON THE DRAFT PREVENTION OF
ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND
AMENDMENT BILL, 2026**

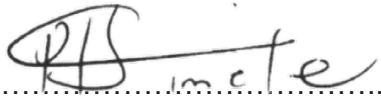
1. I, Thembisile Simelane, acting in my capacity as Minister of Human Settlements, in terms of sections 2, 3(1), and 3(2)(f) and (g), and 4 (j) of the Housing Act No.107 of 1997 as amended, hereby gives notice of the publication of the draft Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2026, and request written public comments.

2. The comments on Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2026 may be submitted via:
 - 2.1 **Email:** PIE.AmendmentBill@dhs.gov.za
 - 2.2 **Hand:** delivered at 240 Justice Mohammed, Sunnyside Pretoria,0001, For attention: Ms Lisa Masilo
 - 2.3 **Post:** The Director- Department of Human Settlements, Private Bag X644, Pretoria

3. Comments should be submitted not later than 60 days after publication of this notice.

4. For further information contact:
 - 4.1 Mr. Paul Masemola: Chief Director Legal Services on 066 475 9260.
 - 4.2 Ms. Judgemore Tshikomba: Senior Legal Admin Officer on 071 385 8693

5. The Department will publish a schedule of consultations to engage with stakeholders in public venues.

A handwritten signature in black ink, appearing to read 'T.P. Simelane', written over a horizontal dotted line.

MS T.P. SIMELANE (MP)

DATE: 15 APRIL 2026

1

REPUBLIC OF SOUTH AFRICA

**PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL
OCCUPATION OF LAND AMENDMENT BILL, 2026**

—————
*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill published in Government Gazette No.
(The English text is the official text of the Bill)*
—————

(MINISTER OF HUMAN SETTLEMENTS)

[B —2026]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, so as to insert and substitute certain definitions; to provide for the prohibition of certain acts and to create certain offences; to further regulate the granting of a court order for eviction; to amend the procedures for the eviction of unlawful occupiers; to delete any stipulated period of unlawful occupation to be considered by a court; to provide for mandatory joinder of relevant provincial department of human settlements, relevant municipality, or any other organ of state having interest in the proceedings; to provide for mandatory mediation by the member of the Executive Council for a province if the municipality is the owner of the land; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 19 of 1998

1. Section 1 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—
 - (a) by the insertion before the definition of “building or structure” of the following definition:

“**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.”;
 - (b) by the substitution for the definition of “evict” of the following definition:

“**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, and ‘eviction’ has a corresponding meaning;”;
 - (c) by the substitution for the definition of “land” of the following definition:

“ **land**’ includes a portion of land and buildings or structures on such portion of land;”;
 - (d) by the substitution for the definition of “Minister” of the following definition:

“ **Minister**’ means the Minister responsible for human settlements;”;
 - (e) by the substitution for the definition of “municipality” of the following definition:

“ ‘municipality’ means a municipality **[in terms of section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993)] contemplated in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)**”;

- (g) by the substitution for the definition of “person in charge” of the following definition:

“ ‘person in charge’ means a person who has or at the relevant time had legal authority to **[give permission to a person to enter or reside upon the] administer or control** the land in question”;

- (h) by the substitution for the definition of “unlawful occupier” of the following definition:

“ ‘unlawful occupier’ means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997), and excluding a person **[whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)] who is a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996)**”.

Substitution of section 3 of Act 19 of 1998

2. The following section is hereby substituted for section 3 of the principal Act:

“**Prohibition of [receipt or solicitation of consideration in respect of**

unlawful occupation of land] certain acts

3 (1) No person may—

- (a) directly or indirectly receive or solicit payment of any money or other consideration as a fee or charge for arranging or organising or permitting a person to occupy land without the consent of the owner, organ of state or person in charge of that land[.]; or
- (b) 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.

(1A) The money or consideration contemplated in subsection (1)(a) includes, but is not limited to, membership fees of a scheme of unlawful occupiers, legal costs, administration costs, services, services connection fees, payment for any socio-economic infrastructure, or any assets acquired with such money: Provided that the reference to 'legal costs' shall not include money collected solely for the purposes of defraying legal costs associated with the opposition of proceedings for eviction.

(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.

(3) [The]Subject to such an order as the court may decide to be just and appropriate in the circumstances, a court which convicts any person of a contravention of [this section]subsection (1), must order any money or any

assets acquired with such money, or other consideration received by that person which have been seized, to be forfeited, and the said money and the proceeds of the sale of such assets or such other consideration **[may]must** be paid—

(a) to the person or persons from whom the money, assets or other consideration was received~~[,and];~~or

(b) where such person or persons cannot be positively identified, into the National Revenue Fund or, in the case where the land is administered or controlled by a municipality, into the relevant municipal operating account.

(4) **[If]**Subject to such an order as the court may decide to be just and appropriate in the circumstances, if any money has been received in contravention of subsection (1), but has not been seized or made available for purposes of confiscation, the court which convicts any person of a contravention of this section, [may]must order the amount proved to the satisfaction of the court to have been received by such person, and the proceeds of the sale of any assets or consideration received with such money to be paid—

(a) to the person or persons from whom the money or other consideration was received~~[, and];~~or

(b) where **[such]the** person or persons contemplated in paragraph (a) cannot be positively identified, into the National Revenue Fund or, where the land is administered or controlled by a municipality, into the relevant municipal operating account, and such order has the effect of and may be executed against such person as if it were a civil judgment in favour of that person or persons from whom the money or other consideration was

received or in favour of the State.”.

Amendment of section 4 of Act 19 of 1998

3. Section 4 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the owner, organ of state or person in charge must serve a written notice of the proceedings to—

- (a) the unlawful occupier;
- (b) the relevant provincial department of human settlements; and
- (c) the relevant municipality.”;

(b) by the insertion after subsection (2) of the following subsection:

“(2A) Any of the organs of state contemplated in subsection (2)(b) and (c), and any other organ of state having an interest in the proceedings, must join or be joined as a party in such proceedings.”;

(c) by the substitution for subsection (3) of the following subsection:

“(3) Subject to the provisions of [subsection] subsections (2) and (2A), the procedure for the serving of notices and filing of papers in terms of this section is as prescribed by the rules of the court in question.”;

(d) by the deletion in subsection (5) of the word “and” at the end of paragraph (c) and the insertion after that paragraph of the following paragraph:

“(cA) set out the relief sought; and”;

(e) by the substitution for subsection (6) of the following subsection:

“(6) 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 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.”;

(f) by the deletion of subsection (7);

(g) by the substitution for subsection (10) of the following subsection:

“(10) (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.”; and

(h) by the addition after subsection (12) of the following subsections:

“(13) A court that grants an eviction order after considering whether land has been made available or can reasonably be made available by a municipality having jurisdiction, 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.

(14) 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.”.

Amendment of section 5 of Act 19 of 1998

4. Section 5 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b) and the insertion after paragraph (b) of the following paragraph:

“(bA) 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; and”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Before the hearing of the proceedings contemplated in subsection (1), the owner, organ of state or person in charge must give written notice of such proceedings to—

(a) the unlawful occupier;

(b) the relevant provincial department of human settlements; and

(c) the relevant municipality.”;

- (c) by the insertion after subsection (2) of the following subsections:

“(2A) Any of the organs of state contemplated in subsection (2)(b) and (c), and any other organ of state having an interest in the proceedings, must join or be joined as a party in such proceedings.

(2B) Subject to subsections (2) and (2A), the procedure for the serving of notices and filling of papers in terms of this section is as prescribed by the rules of the court in question.

(2C) If a court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided for in the rules of the court, service must be effected in the manner directed by the court: Provided that the court must consider the rights of the unlawful occupier to receive adequate notice and to defend the case.”; and

- (d) by the deletion in subsection (3) of the word “and” at the end of paragraph (c) and the insertion after paragraph (c) of the following paragraph:

“(cA) set out the relief sought; and”.

Amendment of section 6 of Act 19 of 1998

5. Section 6 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(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]it administers or controls, 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—”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) In deciding whether it is just and equitable to grant an order for eviction[, **the court must have regard to—**

- (a) **the circumstances under which 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] in terms of subsection (1).**
section 4(6) applies, with the necessary changes.”; and

(c) by the addition after subsection (6) of the following subsection:

“(7) Section 4(10) applies, with the necessary changes, whenever an order for eviction in terms of this section is made.”.

Amendment of section 7 of Act 19 of 1998

6. Section 7 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) If the municipality in whose area of jurisdiction

the land in question is situated, is not the owner, organ of state or person in charge 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.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) 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 designated by the Premier of the province concerned, or his or her nominee, **[may] must**, 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 member of the Executive Council may determine.”.

Substitution of long title to Act 19 of 1998

7. The following long title is hereby substituted for the long title to the principal Act:

“ACT

To provide for the prohibition of unlawful eviction; to provide for procedures for the eviction of unlawful occupiers; to list certain acts as prohibited and to create offences relating to such prohibited acts; to provide for the maximum amount for a fine imposed for being found guilty of a prohibited act; to provide courts with criteria for consideration when determining an appropriate order for eviction; to provide for mandatory joinder of relevant provincial department of human settlements, relevant municipality, or any other organ of state having interest in the proceedings; to provide for mandatory mediation if a municipality is the owner of land; to afford unlawful occupiers equal treatment and protection of the law; and to provide for matters incidental thereto.”

Short title

8. This Act is called the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Act, 2026.

140226nb

MEMORANDUM ON THE OBJECTS OF THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND AMENDMENT BILL, 2026**1. PURPOSE OF BILL**

- 1.1 The Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2026 (the "Bill"), seeks to amend the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998) (the "Act"). The Act came into effect on 5 June 1998. The objectives of the Act are to provide for the prohibition of unlawful eviction, and to put in place fair procedures for the eviction of unlawful occupiers who occupy land without the permission of the owner, organ of state or the person in charge of such land.
- 1.2. Since the commencement of the Act, the country has been experiencing high numbers of unlawful occupations of land and buildings with a new trend of high-rise building hijacking in cities, which takes advantage of vulnerable groups and presents health, safety, security, and life-threatening hazards. The problem creates a huge financial burden on the municipality to provide alternative accommodation to everyone facing imminent eviction. Owners of land, developers and investors do not feel protected by the justice system, which impacts negatively on investment.
- 1.3 Since the inception of the Act, various interpretations by courts and implementation problems have been identified. The Bill seeks to address these issues.

2. OBJECTS OF BILL

- 2.1 The Bill seeks to relieve municipalities of the huge financial burden in providing alternative accommodation by enhancing current definitions and inserting new definitions to provide clarity and minimum standards in line with the National Housing Code of 2009 (Volume 4 Emergency Housing Programme); to broaden the offences provision by prohibiting a person who, without receiving money or other considerations,

incites others to unlawfully occupy land, and to prescribe a maximum fine in respect of such offence; to give courts wider powers to determine the appropriate penalties to deter the behaviour of unlawful occupation; to eliminate the differentiation of unlawful occupiers by deleting references to time periods for illegal occupation, as envisaged in sections 4(6), and 4(7) of the Act; to add a new requirement for courts to consider the pace, scale and frequency of unlawful occupation in the area in question; to introduce a mandatory joinder of the relevant provincial department of human settlements, relevant municipality or any other organ of state having an interest in the proceedings; provide all unlawful occupiers with equal treatment and protection of the Act; to introduce mandatory mediation by the Member of the Executive Council in the respective provinces, in cases where a municipality is the owner of land, to ensure fairness and reduce long court processes; and to give courts powers to stipulate a period of occupation in a temporary alternative accommodation facility.

2.2 In addition, to address economic transformation, the Bill seeks to stimulate collaboration between government and the private sector to attain economic growth and job creation. When investor confidence is restored, infrastructure investment will grow, resulting in addressing poverty and unemployment, which contribute to the unlawful occupation of land and buildings.

2.3 The Bill seeks to prioritise the needs and rights of vulnerable groups by providing them with alternative accommodation to protect them from imminent evictions.

3. SUMMARY OF PROVISIONS OF BILL

3.1 Clause 1 of the Bill seeks to amend section 1 of the Act which deals with the definitions. The Bill seeks to enhance the current definitions and insert new definitions to enhance the protection of the rights of unlawful occupiers and reduce the number of orders on

provision of alternative accommodation. Clause 1 seeks to amend section 1 of the Act by—

- (a) inserting a definition for “alternative accommodation”, to specify the norms and standards of the alternative accommodation and that it is temporary in nature with the primary purpose of providing shelter to vulnerable evictees. Currently, people tend to stay for long, which creates an ongoing burden for municipalities to provide services;
- (b) amending the definition of “evict” by deleting references to “building” and “structure”, to clear the confusion that the Act applies only where there is unlawful occupation of a building or structure and to cover for instances where there is mere occupation of land without a building or structure;
- (c) amending the definition of “land” to expand the meaning by including buildings or structures on land. Many buildings, particularly high-rise buildings, have been and continue to be occupied unlawfully, often at the instance of non-owners who then collect rent from the unlawful occupants;
- (d) amending the definition of “Minister” to align it with the responsibility of human settlements;
- (e) amending the definition of “municipality” to align the Act with the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- (f) amending the definition of “person in charge”, to include an organ of state which administers or controls land and may not be the owner;
- (g) amending the definition of “unlawful occupier” so as to exclude persons to whom the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), applies, whilst simultaneously including persons to whom the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996), applies.

3.2 Clause 2 of the Bill seeks to amend section 3 of the Act, which deals with the prohibition of the receipt or solicitation of any consideration in respect of unlawful

occupation. Section 3(1) of the Act created an offence when a person receives money or solicit payment of any money or other consideration as fee, or charge for arranging or organising or permitting a person to occupy land without the consent of the owner or person in charge of land. The Bill seeks to create a second offence by including a person who does so without taking money or other considerations. The amendment will deter the behaviour of people who incite, arrange, organise or permit others to unlawfully occupy land.

- 3.3 The amendment to section 3 further prescribes a maximum fine and further gives courts wider powers to determine an appropriate penalty after considering the manner and nature of unlawful occupation and the value of the portion of land, building or structure occupied.
- 3.4 Section 3(3) and (4) currently provides that money or other considerations received by a person in contravention of section 3 must, upon conviction of such person, be repaid to the person from whom it was received, or if the person cannot be positively identified, into the National Revenue Fund. In this regard, two issues have been identified and are addressed in the proposed amendments. Firstly, the reference to money or other consideration is not wide enough and should also include any assets acquired with such money. Secondly, it is deemed necessary that, where land is administered or controlled by a municipality, any money should rather be paid into the municipal operating account and not the National Revenue Fund.
- 3.5 Clause 3 of the Bill seeks to amend section 4 of the Act to align the provisions pertaining to the giving of notice regarding eviction proceedings and the content of a court order for eviction, with the corresponding provisions of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997), and the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).

- 3.6 Section 4(2) of the Act provides that “*the court must serve written and effective notice*”. Serving a notice is clearly not a function of the court and it is proposed to amend the section accordingly.
- 3.7 The amendment to section 4 of the Act seeks to provide that the relevant municipality, relevant provincial department of human settlements, and any other organ of state having an interest in the proceedings must join or be joined as a party in such proceedings that must be served with notice, and the relief sought.
- 3.8 In respect of eviction proceedings before a court, section 4(6) and 4(7) provides for different periods (less than six months and more than six months) of occupation of land by unlawful occupiers and different considerations to be made by courts when issuing eviction orders. The principle of law of general application requires that the law must apply equally and not be directed at specific individuals. The amendment to clause 4 seeks to remove different considerations or any stipulation of time periods for unlawful occupation under section 4(6) and 4(7) of the Act to also comply with section 9 of the Constitution, which provides that “*everyone is equal before the law and has the right to equal protection and benefit of the law*”.
- 3.9 The amendment to subsection 4(10) seeks to grant a discretion to a court when granting an eviction order that it deems just and equitable to consider under the circumstances, including an order for the retention or the demolition and removal of improvements or structures on the land; the payment of compensation for any improvement, structure, materials or standing crop obtained by one party from the other; and whether the improvements, structures or crops are necessary or useful to the party required to pay compensation for such improvements, structures or crops.

- 3.10 The insertion of a new section 4(13) seeks to give courts a discretion to make an order for the provision of alternative accommodation and to indicate if it is temporary and the period thereof.
- 3.11 Clause 4 seeks to amend section 5 of the Act, which deals with urgent proceedings for eviction,—
- (a) to align its provisions regarding the serving of notice with those contained in section 4 of the Act; and
 - (b) to add to the conditions that a court must take into account before granting an order and the condition that a court may only grant an order, if it is satisfied that it is just and equitable to grant the order, taking into consideration the pace, scale and frequency of the unlawful occupation [proposed section 5(1)(bA)].
- 3.12 Clause 5 of the Bill seeks to amend section 4 of the Act accordingly by providing equal treatment and protection of the Act to unlawful occupiers.
- 3.13 In respect of mediation, the Bill seeks to introduce the mandatory appointment of a mediator by the Member of the Executive Council in the respective provinces, in an eviction proceeding where the municipality is the owner or person in charge, or organ of state.

4. DEPARTMENT/ BODIES/ PERSONS CONSULTED

4.1 The Bill was developed in close consultation with the South African Local Government Association ("SALGA").

4.2 The Department has also leveraged on the Policy on Prevention of Illegal Eviction from and Unlawful Occupation of Land that was extensively consulted. During these processes, the Department has held numerous consultations with provincial human settlements departments, municipalities, SALGA, the Department of Rural Development and Land Reform and various NGOs.

5. FINANCIAL IMPLICATIONS FOR STATE

The estimated cost for the implementation of the amendments the State (once enacted) is R1,3 billion.

6. PARLIAMENTARY PROCEDURE

6.1 Section 44 of the Constitution deals with the national legislative authority. Section 44(1) of the Constitution provides that the national legislative authority is vested in Parliament. The National Assembly has the power to amend the Constitution, to pass legislation regarding any matter, including a matter listed in Schedule 4 to the Constitution but excluding, subject to section 44(2) of the Constitution, a matter listed in Schedule 5 to the Constitution.

6.2 The National Council of Provinces ("NCOP") has the power to participate in the amendment of the Constitution, to pass legislation in accordance with section 76 of the Constitution and to consider, in accordance with section 75 of the Constitution, any other legislation passed by the National Assembly.

6.3 The Constitution distinguishes between four categories of Bills as follows:

- (a) Bills amending the Constitution (section 74);
- (b) ordinary Bills not affecting the provinces (section 75);
- (c) ordinary Bills affecting the provinces (section 76); and
- (d) money Bills (section 77).

6.4 Sections 74, 75, 76 and 77 require Parliament, firstly, to classify a Bill submitted to it, in order to determine which procedure should be followed in enacting the Bill. Section 76(1) of the Constitution provides that “[w]hen the National Assembly passes a Bill referred to in subsections (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the procedure set out in that provision”. Section 76(3) of the Constitution, in turn, provides that “a Bill must be dealt with in accordance with the procedure established by either subsection (1) or (2) if it falls within a functional area listed in Schedule 4...”.

6.5 In summary, a Bill will be considered as a section 76 Bill—

- if it provides for legislation mentioned in paragraphs (a) to (f) of section 76(3) of the Constitution;
- if it provides for legislation envisaged in section 44(2), 220(3) or Chapter 13 of the Constitution; or
- if its provisions in a substantial measure fall within a functional area of concurrent national and provincial legislative competence listed in Schedule 4 to the Constitution.

6.6 In ***Tongoane and Others v Minister of Agriculture and Land Affairs and Others*** (11678/2006) [2009] ZAGPPHC 127; 2010 (8) BCLR 838 (GNP) (30 October 2009) (“*Tongoane judgment*”), the Constitutional Court confirmed and endorsed the test for tagging that was formulated in ***Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill*** (CCT12/99) [1999] ZACC 15; 2000 (1) SA 732

(CC); 2000 (1) BCLR 1 (CC) (11 November 1999), where Ngcobo CJ held as follows, at paragraph 56:

"[56] ...[T]he heading of section 76, namely, "Ordinary Bills affecting provinces" provides "a strong textual indication that section 76(3) must be understood as requiring that **any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.**" (Our emphasis.)

6.7 The Constitutional Court further, at paragraph 58, held as follows:

"[58] ...What matters for the purposes of tagging is **not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill 'in substantial measure fall within a functional area listed in Schedule 4'.**" (Our emphasis.)

6.8 The Constitutional Court also held that the tagging test focusses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 to the Constitution, and not on whether any of the provisions of the Bill are incidental to the substance of the Bill. The following paragraphs from the *Tongoane judgment* are also important:

"[60] The test for tagging must be informed by its purpose. **Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter.** Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how the Bill should be considered by

the provinces and in the NCOP, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. **The more it affects the interests, concerns, and capacities of the provinces, the more say the provinces should have on its content.**

...

[64] The purpose of tagging is therefore to determine the nature and extent of the input of provinces on the contents of legislation affecting them. Indeed, **all the legislation mentioned in section 76(3) is legislation that substantially affects the interests of provinces.**

...

[71] On the other hand, **the “substantial measure” test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces.** This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.

[72] To summarise: **any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76....Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.”** (Our emphasis.)

- 6.9 As indicated in the judgment, “*any Bill whose provisions in substantial measure*” fall within a function listed in Schedule 4 to the Constitution must be classified as a section 76 Bill. The question that needs to be asked therefore is whether the provisions of the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution, or whether the Bill provides for legislation envisaged in section 76(3)(a) to (f) of the Constitution.
- 6.10 In order to determine this, focus should be on all the provisions of the Bill to establish the extent to which they substantially affect functional areas listed in Schedule 4 and not on whether any of its provisions are incidental to its substance. It is thus necessary to examine all the provisions of the Bill in its entirety determine the extent to which they substantially affect any of the matters listed in Schedule 4.
- 6.11 What must be stressed is that the judgment went on to state that, “*the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not, in substantial measure, affect the provinces.*” Therefore, a Bill which does not deal with a functional area listed in Schedule 4 or Schedule 5 to the Constitution must be considered in accordance with the procedure set out in section 75 of the Constitution.
- 6.12 In the light of the above, it must be noted that prevention of illegal eviction from and unlawful occupation of land is not listed specifically in schedule 4 or 5 of the Constitution. Section 26 of the Constitution deals with housing and, to the extent it is relevant, provides as follows:

“(3) No one may be evicted from their homes, or have their home demolished, without an order of Court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”

6.13 The most significant point, other than a consideration of the purpose of the Bill, is that, in terms of section 44(1)(a)(ii) of the Constitution, the national legislative authority has concurrent competence with a provincial legislative authority within a functional area listed in Schedule 4. Matters relating to “**housing**” are listed in Schedule 4 to the Constitution and, at first glance, it would appear that the Bill should be tagged as a section 76 Bill, since the subject matter may be considered as “*housing*” especially since section 26(3) refers to eviction from a person’s home.

6.14 According to the Collins English Dictionary, the term “housing” is defined as follows:

- “1. (a) houses or dwellings collectively;
(b) (as modifier) ⇒ a housing problem;
2. **the act of providing with accommodation.**”

6.15 The Housing Act, 1997 (Act No. 107 of 1997) refers to the objectives of government housing in the preamble and states as follows:

“**WHEREAS** in terms of section 26 of the Constitution of the Republic of South Africa 1996, everyone has the right to have access to adequate housing, and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS the Parliament of the Republic of South Africa recognises that— housing, as adequate shelter, fulfils a basic human need; housing is both a product and a process; housing is a product of human endeavour and enterprise; housing is a vital part of integrated developmental planning; housing is a key sector of the national economy; housing is vital to the socio-economic well-being of the nation”.

6.16 Therefore, it appears that an ancillary obligation of housing is to provide for adequate housing or the act of “providing with” accommodation, which is linked to the eviction process and the obligations that the Act attempts to achieve when evicting illegal occupants.

6.17 Previously, before being enacted as the Act, the Bill was tagged as a section 75 Bill. In order to correctly tag this Bill, we must consider its impact on the provinces, if any. The more it affects the interests, concerns and capacities of the provinces, the more inputs the provinces should have in its content. If we consider the current amendments, the amendments do not drastically change the current position in respect of the application of the Act. An example is the notification of the parties: Currently, the Act states that the court must notify the parties and it will be amended to state that the owner of the land will provide notice. However, the amendments attempt to place firm obligations on municipalities when carrying out their functions. It is common cause that the provinces will be responsible for the financial matters associated with the implementation of the Act. The compulsory mediation process, which must be managed and implemented by the municipalities, will also affect the provinces financially. Depending on the gravity of these financial concerns, the amendment to the Act may indeed affect the provinces substantially.

6.18 The role of the municipalities in the Act is often phrased or drafted in discretionary terms and the amendments seek to, in some instances, change this.

6.19 We acknowledge that the constitutional role of the provinces is to legislate on matters that substantially affect them, informed by the substantial measure test and the test for tagging, as confirmed in the *Tongoane judgment*. We considered every provision of the Bill, focusing on the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affect them. In our view, in its current format, the Bill may probably have a

substantial impact on the provinces since it creates a detailed administrative process that may lead to financial implications for the provinces. We therefore suggest that the Bill be tagged in terms of section 76 of the Constitution.

7. REFERRAL OF BILL TO NATIONAL HOUSE OF TRADITIONAL AND KHOI-SAN LEADERS

7.1 Section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), provides for the referral of Bills to the National House of Traditional and Khoi-San Leaders ("National House"), and states as follows:

“Referral of Bills to National House

39. (1) (a) Any Parliamentary Bill—

- (i) which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or
- (ii) pertaining to any matter referred to in section 154(2) of the Constitution,

must, in the case of a Bill contemplated in subparagraph (i) and **may**, in the case of a Bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.” (Our emphasis.)

7.2 It is our view that the Bill does not contain provisions pertaining to traditional or Khoi-San communities or to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution and, therefore, there is no need to refer the Bill to the National House for comments.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065