



FW de Klerk
FOUNDATION

THE FW DE KLERK FOUNDATION
Upholding South Africa's National Accord

To: The Portfolio Committee on Human Settlements
For attention: Ms Emma Powell
Per email legislation@da.org.za
RE: Prevention of Illegal Eviction from Unlawful Occupation of Land Amendment Bill 2023
Date: 25 April 2023 (**Deadline for comments: Tuesday, 25 April 2023**)

INTRODUCTION

Dear Honourable MP Powell,

1. We refer to your invitation for written submissions on the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2023 ("the Bill"), submitted to Parliament and referred to the Portfolio Committee on Human Settlements.
2. The FW de Klerk Foundation ("the Foundation") is a non-profit organisation dedicated to upholding the Constitution of the Republic of South Africa, 1996 ("the Constitution").
3. To this end, the Foundation seeks to promote the Constitution and the values, rights and principles enshrined in the Constitution; to monitor developments including legislation and policy that may affect the Constitution or those values, rights and principles; to inform people and organisations of their constitutional rights and to assist them in claiming their rights. The Foundation does so in the interest of everyone in South Africa.
4. As such, the Foundation welcomes the opportunity to make concise submissions to the Committee on the Bill.
5. We trust that our submission will assist the Committee in its deliberations regarding the Bill. We are also available to make a verbal submission if required.

LEGAL FRAMEWORK

6. Section 25(1) of the Constitution states peremptorily that "No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property."
7. Section 25(5) requires the State "take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis."
8. Section 26 of the Constitution states:
 - (1) Everyone has the right to have access to adequate housing.

- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
 - (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
9. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“the PIE Act”), provides a rigid set of requirements that need to be complied with in order for a person to be lawfully evicted despite the unlawful occupant’s intentions or circumstances during such unlawful occupation. This has led to lengthy delays in the removal of unlawful occupiers, which comes at a great cost to the rights of property owners and undermines section 25 of the Constitution.
10. According to the Western Cape High Court’s ruling on 15 July 2022 concerning the City of Cape Town’s eviction of Bulelani Qolani, owners might be deemed to have lost control of their land once an illegal occupier has gone beyond “merely putting pegs in the ground.” The owner would then require a court order to evict the occupier under the PIE Act.
11. The Bill seeks to restrict the PIE Act to prevent unlawful occupiers who have entered upon a property in bad faith, from using the PIE Act as a defence or delay tactic at the cost of the owner of the property.
12. In [Malema v Afriforum NPC](#) 2023, the court reinforced and relied on an earlier Constitutional Court judgment which emphasised the unconstitutionality of incitement to trespass on private property and the serious criminal nature of any incitement to endanger private property owners or the right to private property.
13. In line with this judgment, clause 1 of the Bill seeks to criminalise the incitement of illegal land invasions regardless of whether or not financial exchanges occurred- as currently required by the PIE Act- by amending section 3 of the PIE Act with the following:
- (1) No person may—
 - (a) incite, arrange or organise for a person to occupy land without the consent of the owner or person in charge of that land; or
 - (b) 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 or person in charge of that land.
14. Clause 2(b) of the Bill seeks to amend section 4 of the PIE Act by adding the following:
- (13) A court that grants an eviction order after considering whether land has been made available or can reasonably be made available by a municipality having jurisdiction, or other organ of state, or another land owner for the relocation of the unlawful occupier, as contemplated in subsection (7)—
 - (a) may make an order, if such municipality or other organ of state or another land owner is joined to the proceedings, that sets as a condition to the order for eviction that such alternative accommodation or land must be made available to the unlawful occupier; and



FW de Klerk
FOUNDATION

THE FW DE KLERK FOUNDATION

Upholding South Africa's National Accord

(b) must, where reasonable to do so and if the alternative accommodation or land contemplated in paragraph (a) is only made available temporarily, stipulate the period for which such alternative accommodation or land must be made available to the unlawful occupier by the municipality or any other organ of state or another land owner.”

15. Clause 3(a) of the Bill seeks to amend section 6(3) of the PIE Act as follows:

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

(c) the availability to the unlawful occupier of suitable alternative accommodation or land within the area of the municipality's jurisdiction; and

(d) the resources of the municipality or any organ of state.

16. We submit, that given it is the State in terms of sections 25 and 26 of the Constitution who bears the burden of “enabl[ing] citizens to gain access to land” and to “achieve the progressive realisation” of the right to housing, clause 2(b) and clause 3(a) of the Bill will strengthen private property rights by-

a. delineating a clear period within which dispossession may take place;

b. that a landowner is engaged through joinder to the proceedings; and

c. that only where the State's resources are inadequate, should any variation or dispossession of a land owner's private property rights be contemplated, subject to reasonable and just compensation.

THE FOUNDATION'S VIEWS ON THE BILL

Within this clear legal framework, the Foundation would like to express the following views on the Bill:

17. Secure property rights for *all* South Africans is a core right that is internationally recognised; that is a requirement for free and prosperous societies; and that is essential for the empowerment and the realisation of the potential of citizens.

18. The Foundation acknowledges the prevalence of homelessness in South Africa, with “5654 homeless adults and children”, 1559 of whom live on the street, according to Social Development Minister Lindiwe Zulu as of January 2022. We firmly believe that everyone has the right to adequate housing but that this is a responsibility of the State and should not be achieved at the cost of secure private property rights. Where dispossession is unavoidable there must be reasonable engagement with the property owner and just and equitable compensation must be paid in accordance with section 25 of the Constitution.

19. To this end, the Foundation firmly opposes any legislation aimed at curtailing the rights of property owners- including the Expropriation Bill and the Unlawful Entering on Premises Bill. Both of these bills would have significant negative impacts on property rights - with serious consequences for agricultural production, food security, and future domestic and foreign investment.

20. We submit clauses 1, 2(b) and 3(a) of the Amendment Bill will strike a balance between protecting private property rights and addressing the need for adequate housing - whilst ensuring that illegal occupants are prevented from arbitrarily depriving anyone of their property.

21. We believe that the highlighted portions of the Bill will safeguard property rights in South Africa against the threat of illegal occupation, so that the rule of law, as enshrined in the foundational values of the Constitution, is upheld.

REMEDIES

22. For the abovementioned reasons the Foundation supports the adoption of clauses 1, 2(b) and 3(a) of the Bill into sections 3, 4 and 6 of the PIE Act.

23. We propose that no legislation should be considered that would have the effect of arbitrarily depriving anyone, directly or indirectly, of their property – and that all questions affecting property should be dealt with strictly in accordance with section 25 of the Constitution and the rule of law.

Kind Regards,

Tyla Dallas

Manager: Constitutional programmes

FW de Klerk Foundation

Email: tyla@fwdeklerk.org