



For attention: Ms Lisa Masilo
Email: PIE.AmendmentBill@dhs.gov.za

15 June 2026

Dear Hon Simelane

The Helen Suzman Foundation is a Non-Profit Organisation that advocates for constitutional democracy and human rights in South Africa. We attach our written submission in response to the invitation for comments on the [Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2026](#).

Should you have any queries, it would be appreciated if you could contact me at the following email address: naseema@hsf.org.za

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Naseema', enclosed in a light blue circular stamp.

Naseema Fakir
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1. Introduction

- 1.1. The Helen Suzman Foundation (HSF) is an organisation that promotes constitutional democracy, the rule of law, and human rights. HSF welcomes the opportunity to comment on the Draft Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2026 (the Bill).
- 1.2. Few matters evoke such strong emotional responses as those involving the balancing of the rights of property owners with the rights of illegal occupiers of land or housing. In a history where violent land seizures have left scars on collective memory, this topic contributes to polarising attitudes. Our Constitution through section 26 guarantees the rights of everyone to have access to adequate housing, whilst stipulating that no one may be evicted from their home or have their home demolished without an order of court. Since 1998, these provisions have been bolstered by the introduction of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the Act).
- 1.3. Since the enactment of PIE, the courts, and particularly the Constitutional Court, have developed a substantial body of jurisprudence intended to ensure that eviction proceedings from either private or publicly owned land are conducted in a manner that is just and equitable.¹ This jurisprudence has clarified a number of important constitutional principles, including the

¹ *Occupiers of 51 Olivia Road & Others v City of Johannesburg & Others* Case CCT 24/07 [2008]. This matter emphasised the need for meaningful engagement between the municipality and those it seeks to evict even in instances where such eviction is to ensure the health and safety of the affected community. It also held that evictions in these circumstances still require the City to consider the availability of suitable accommodation prior to rendering affected peoples homeless. *President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd and Others* CCT 20/04. In this matter, amongst others, the Court found that it was unreasonable for a private entity such as Modderklip to be forced to bare the burden which is on the state of providing the occupiers with accommodation. By failing to provide an appropriate mechanism to give effect to the eviction order, the state violated the right of Modderklip Boerdery to access to courts read with the principle of the rule of law as guaranteed in section 1 of the Constitution. *Port Elizabeth Municipality v Various Occupiers* Case CCT 53/03. The Court held that municipalities must show equal accountability to occupiers and landowners. It held that municipalities, unlike private landowners have particular duties in terms of section 26 of the Constitution. These duties have a bearing on considerations of whether it is "just and equitable" to make an eviction. In this particular case the court held it was not "just and equitable" to evict the occupiers given the length of occupation of the land, the fact that no steps had been taken to address the problem before launching the application, and that the land was not needed for immediate use by anyone. This case can be weighed against a more recent case in the Western Cape High Court where the court did rule in favour of eviction on the part of the municipality. In *City of Cape Town v Various occupiers and Another* [2024] ZAWCHC 173, the Court ruled in the City's favour for following the PIE Act for finding it has meaningfully engaged with the affected occupiers and for having offered alternative accommodation that was still in the City's periphery. In the matter of *City of Johannesburg v Blue Moonlight Properties and others* [2011] ZACC 33, the Court held that in determining whether eviction will be just and equitable all relevant circumstances must be taken into account and the availability of alternative housing is one of the circumstances. The Court found the City is obliged to provide temporary accommodation even where it is a private landlord that is entitled to the eviction. It found the City's housing policy is unconstitutional in that it excluded people evicted by a private landowner from its temporary housing programme.

obligation on municipalities to provide temporary alternative accommodation where an eviction would result in homelessness, and the importance of meaningful engagement between affected parties.²

- 1.4. HSF recognises the challenges faced by municipalities, landowners, and communities in addressing unlawful occupation and the provision of alternative accommodation. However, HSF is concerned that several provisions of the Bill may have the effect of limiting judicial discretion, creating uncertainty regarding the constitutional obligations of organs of state, and undermining protections that have been recognised through longstanding constitutional jurisprudence.
- 1.5. As such, HSF submits that the Bill raises significant constitutional and practical concerns including:
 - 1.5.1. Attempting to alter the framework governing the provision of alternative accommodation in a manner that appears inconsistent with the obligations placed on the state under section 26 of the Constitution;
 - 1.5.2. Limiting the ability of courts to exercise their discretion when determining whether an eviction would be just and equitable;
 - 1.5.3. Introducing provisions that may undermine established jurisprudence concerning the rights of unlawful occupiers facing homelessness; and
 - 1.5.4. Creating uncertainty regarding the respective responsibilities of municipalities, landowners, and other organs of state in eviction proceedings.
- 1.6. If the Bill is to proceed, HSF submits that a number of provisions must be amended to ensure consistency with the Constitution and the framework developed by the courts.

2. Definitions

2.1. Objectives

- 2.1.1. The Memorandum on the Objects of the Bill (Memorandum) states that one of the objectives of the Bill is that it “seeks to relieve municipalities of the huge financial burden of providing alternative accommodation”.³ It further states that amendments to the existing definitions are intended to reduce the number of court orders requiring the provision of alternative accommodation.⁴

² Occupiers of 51 Olivia Road & Others v City of Johannesburg & Others Case CCT 24/07 [2008].

³ Page 19.

⁴ Pages 20 and 21.

2.1.2. HSF is concerned that this objective may not be consistent with the constitutional obligations imposed on the state under section 26 of the Constitution.⁵ The courts have repeatedly recognised that the provision of temporary alternative accommodation, where necessary to prevent homelessness, forms part of the state's constitutional responsibilities.

2.1.3. As outlined in the court cases highlighted above, our Courts have consistently ruled that section 26 of the Constitution places a responsibility on the state to provide adequate housing and legislating to avoid that responsibility in relation to occupiers facing homelessness will not, in our view, pass constitutional muster.

2.2. "Alternative Accommodation"

2.2.1. HSF welcomes the introduction of minimum standards for alternative accommodation. The inclusion of such standards may assist in promoting consistency and certainty in the implementation of eviction orders.

2.2.2. However, the proposed definition appears to extend responsibility for the provision of alternative accommodation to owners and persons in charge of land. This approach is difficult to reconcile with the constitutional framework developed by the courts, which places responsibility for the progressive realisation of the right of access to adequate housing on the state.⁶

2.2.3. HSF therefore submits that references to an "owner" and "person in charge" should be removed from this particular proposed definition.

2.2.4. HSF further notes that the proposed definition relies on standards purportedly contained in the National Housing Code, 2009. However, these standards are not plainly stated.⁷ If minimum standards are to form part of the legislative framework, they should be clearly set out in the Bill rather than incorporated by reference to a document that is not easily accessible to members of the public.

⁵ Section 26 deals with the Right to Housing. It states that "(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."

⁶ Please see cases discussed in footnote 1, in particular *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19 and *Dladla and Another v City of Johannesburg and Others* (CCT124/16) [2017] ZACC 42.

⁷ Please see <https://www.dhs.gov.za/National-Housing-Code>. This is the website where the Code can be found, but a simple reading thereof makes it unclear as to what minimum standards should be deduced from the Code to apply to "alternative accommodation".

2.3. "Evict" and "Land"

2.3.1. The Memorandum of Objects explains that the proposed amendments are intended to ensure that the Act applies not only to buildings and structures, but also to vacant land.⁸

2.3.2. HSF submits that there is no need to amend the definition of "land" in order to achieve this objective. The desired outcome could be achieved by inserting the words "vacant land" into the existing definition of "evict".

2.4. "Person in Charge"

2.4.1. HSF is concerned by the proposed amendment to the definition of "person in charge".

2.4.2. The proposed amendment appears to extend the concept of a "person in charge" to organs of state that merely administer land or provide services in relation to that land. In HSF's view, this risks conflating administrative responsibilities with the legal authority to grant or withhold consent to occupy land.

2.4.3. The rights and responsibilities associated with ownership or lawful control of property should not be equated with the administrative functions performed by municipalities or other organs of state. The mere fact that an organ of state provides services in relation to land does not necessarily justify extending to it the powers associated with being a "person in charge" for purposes of PIE.

2.4.4. HSF therefore submits that the existing definition should be retained.

3. Amendment of Section 3

3.1. HSF notes the proposed insertion of a maximum fine of R2 million in section 3(2).

3.2. HSF submits that the Department of Justice and Constitutional Development should be consulted on this amendment to ensure that the proposed fine aligns with the existing framework governing fines and periods of imprisonment.

3.3. HSF further does not support the proposed amendment to section 3(3)(b), which would allow monies seized under the Act to be paid to a municipality by whom the land is administered or controlled.

3.4. The Public Finance Management Act, 1999, establishes a framework governing the collection and allocation of public funds. Section 13(3) provides that

⁸ Page 21.

legislation excluding monies from payment into the National Revenue Fund may only be introduced after consultation with, and approval by, the Minister of Finance on the reasonableness of the exclusion. consented to the exclusion.

- 3.5. HSF sees no indication in the Memorandum of the Bill that this requirement has been satisfied.
- 3.6. More fundamentally, HSF is not persuaded that municipalities should be the direct beneficiaries of monies recovered under this provision. The administration and allocation of public funds should ordinarily occur through established national financial mechanisms to ensure accountability, oversight, and consistency.⁹
- 3.7. HSF therefore submits that:
 - 3.7.1. The Department of Justice and Constitutional Development should be consulted regarding the proposed fine and imprisonment framework; and
 - 3.7.2. Monies recovered under section 3 should be paid into the National Revenue Fund to be distributed and administered by National Treasury.

4. Amendment of Section 4

- 4.1. Compulsory Joinder
 - 4.1.1. HSF welcomes the proposed requirement for the early involvement of relevant organs of state in eviction proceedings. This approach is broadly consistent with the emphasis placed by the courts on meaningful engagement.
 - 4.1.2. HSF also supports the compulsory joinder of the relevant provincial department responsible for human settlements and the relevant municipality.
 - 4.1.3. However, HSF is concerned by the inclusion of the phrase "any other organ of state having an interest in the proceedings" under section 4(2A).
 - 4.1.4. The provision creates uncertainty regarding which organs of state must be joined and how a litigant is expected to identify them. As the provision contemplates compulsory joinder, clarity is required to ensure that litigants are able to comply with their obligations and that proceedings are not delayed by uncertainty regarding the identity of potentially interested parties.

⁹ <https://witness.co.za/news/kzn/2024/08/28/ag-report-poor-management-wasted-funds-plague-sa-municipalities/>; <https://mfma-2024.agsareports.co.za/pages/performance-reports>.

- 4.1.5. HSF therefore submits that the reference to “any other organ of state having an interest in the proceedings” should be deleted.
- 4.2. Proposed Amendments to Sections 4(6) and 4(7)
 - 4.2.1. HSF is deeply concerned by and strongly objects the proposed substitution of subsection 4(6) and the deletion of subsection 4(7).
 - 4.2.2. The Memorandum suggests that these amendments are intended to address the burden placed on municipalities by court orders requiring the provision of alternative accommodation. However, the courts have consistently recognised that the provision of temporary alternative accommodation where an eviction would result in homelessness forms part of the state's constitutional obligations under section 26 of the Constitution.¹⁰
 - 4.2.3. In HSF's view, the proposed amendments risk diminishing a safeguard that has become a central feature of the constitutional framework governing eviction proceedings.
 - 4.2.4. The legal reasoning provided in paragraph 3.8 of Memorandum in support of these amendments are, with due respect, incorrect in our view. It is an attempt to hide the real reasons behind the proposed amendments, namely “to relieve municipalities of the huge financial burden of providing alternative accommodation” as declared in the opening sentences of the Memorandum itself.
 - 4.2.5. HSF therefore submits that sections 4(6) and 4(7) should remain unchanged.
- 4.3. Section 4(10)(c)
 - 4.3.1. The proposed section 4(10)(c) makes the execution of an eviction order conditional upon the payment of compensation where compensation has also been ordered by a court.
 - 4.3.2. HSF is concerned that this provision may have the consequence of delaying the execution of otherwise valid eviction orders. A party that has successfully obtained an eviction order could be prevented from enforcing that order until compensation has been paid.
 - 4.3.3. The enforcement of compensation orders is already governed by established principles of civil procedure. HSF is not persuaded that the execution of an eviction order should be linked to the satisfaction of a compensation award in the manner contemplated by the Bill.

¹⁰ See cases discussed in footnote 1.

- 4.3.4. HSF therefore submits that section 4(10)(c) should be deleted.
- 4.4. Proposed Sections 4(13) and 4(14)
- 4.4.1. HSF is concerned that the proposed sections 4(13) and 4(14) may undermine constitutional principles that have been developed through the courts' interpretation of section 26 of the Constitution.
- 4.4.2. The courts have consistently recognised that where an eviction would result in homelessness, the state bears responsibility for providing temporary alternative accommodation.¹¹ This principle forms part of the broader constitutional framework mandating municipalities to take reasonable legislative and other steps to achieve progressive realisation of the right to adequate housing and has informed the development of eviction jurisprudence over many years.
- 4.4.3. Additionally, Section 4(13)(b) would require courts to determine the period for which temporary alternative accommodation should be occupied.
- 4.4.4. HSF submits that a court cannot be put in this position as it does not have the constitutional mandate for the realisation of the right to adequate housing- this duty lies squarely with the state.
- 4.4.5. This activity of determining how long a person should remain in temporary alternative accommodation requires information concerning housing programmes, resource allocation, and long-term accommodation planning. These are matters that fall within the expertise and responsibilities of the state rather than the judiciary.
- 4.4.6. HSF is further concerned that section 4(14) may be interpreted as permitting courts to grant eviction orders without requiring consideration of whether alternative accommodation should be provided where homelessness may result.
- 4.4.7. Such an approach reverts to the Apartheid era where people could be evicted with no regard to the risk of homelessness. This provision flies in the face of the guarantee of the core rights of human dignity and equality.
- 4.4.8. HSF therefore submits that the proposed sections 4(13) and 4(14) should be removed from the Bill.

¹¹ *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* (CCT 22/08) [2009] ZACC 16.

5. Amendment of Section 5

- 5.1. HSF's concerns regarding the proposed section 5(2A) mirror those raised in relation to section 4(2A).
- 5.2. HSF therefore submits that the reference to "any other organ of state having an interest in the proceedings" should be deleted.

6. Amendment of Section 6

- 6.1. HSF is concerned by the proposed new section 6(3), which raises constitutional arguments akin to the proposed subsection 4(6).
- 6.2. The new proposed subsection appears to circumvent the established legal precedents set by the Constitutional Court to ascertain the availability of suitable alternative accommodation before granting an eviction order that would render the illegal occupier homeless. In this instance a court must have regard to the criteria set out in section 6(3) of the Act in exercising its judicial discretion as to whether or not to grant the eviction order.
- 6.3. HSF therefore submits that the existing section 6(3) should be retained and that the proposed amendment should be removed from the Bill.
- 6.4. Further, the proposed section 6(7) seeks to apply the provisions of section 4(10) to proceedings under section 6.
- 6.5. HSF has already expressed its concerns regarding section 4(10)(c). For the reasons set out above, HSF submits that the proposed application of those provisions to section 6 proceedings is similarly inappropriate and should be reconsidered.

7. Amendment of Section 7

- 7.1. HSF welcomes the proposed amendment to section 7(2), which would make mediation mandatory in instances where the municipality is the owner of the land in question.
- 7.2. The proposal is consistent with the approach adopted by the courts, which have repeatedly emphasised the importance of meaningful engagement and the resolution of disputes through cooperative processes wherever possible.
- 7.3. HSF is, however, concerned by the proposed insertion of the phrase "organ of state or person in charge" in sections 7(1) and 7(2).
- 7.4. It is not clear from either the text of the amendment or the Memorandum what purpose this addition is intended to serve. The wording introduces uncertainty into provisions that should be clear and readily capable of implementation.

7.5. HSF therefore recommends that these provisions be reconsidered and redrafted to clarify their intended effect.

8. Conclusion

8.1. HSF recognises the practical and financial pressures faced by municipalities, landowners, and communities in responding to the precarious balancing of the progressive right to housing and the rights of landowners.

8.2. However, HSF is concerned that several of the proposed amendments may have the effect of undermining the constitutional framework developed through section 26 of the Constitution and the jurisprudence interpreting it. In particular, a number of provisions appear to diminish safeguards that have become central to ensuring that eviction proceedings are conducted in a manner that is just and equitable.

8.3. For the reasons set out above, HSF submits that the following amendments should be prioritised:

8.3.1. The retention of the existing safeguards contained in sections 4(6), 4(7), and 6(3);

8.3.2. The deletion of the proposed sections 4(13) and 4(14);

8.3.3. The deletion of provisions that create uncertainty regarding compulsory joinder requirements;

8.3.4. The reconsideration of amendments that seek to extend responsibility for alternative accommodation beyond the state; and

8.3.5. Amendments to ensure that the Bill remains consistent with section 26 of the Constitution and the jurisprudence developed by the courts.

8.4. Ultimately, the effectiveness of any amendment to PIE will not be measured solely by its ability to facilitate eviction proceedings, but by whether it maintains an appropriate balance between the rights of property owners, the constitutional obligations of the state, and the rights of unlawful occupiers who may face homelessness. Legislative reform in this area must therefore remain consistent with the constitutional principles that have developed since the enactment of PIE and must preserve the safeguards necessary to ensure that eviction proceedings remain just and equitable.