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2 October 2022

To: The Speaker of Parliament
By email: speaker@parliament.gov.za
CC: legislation@da.org.za

Dear Honourable Madam Speaker,

RE: NDIFUNA UKWAZI'S COMMENT ON THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND AMENDMENT BILL

1. Ndifuna Ukwazi is a non-profit activist organisation and law centre that combines research, organising and litigation in campaigns to advance urban land justice in Cape Town. Our primary mission is to expand and protect access to affordable housing and build an integrated and inclusive city.

2. Over the last seven years, Ndifuna Ukwazi has been involved in legal, research and organising work around evictions, relocations, rental housing, the allocation of state-subsidised housing, the management of public land in a manner that prioritises socio-economic needs and the promotion of social, transitional and inclusionary housing. We have published several resource guides and research reports on these issues. Ndifuna Ukwazi has also been involved in a series of important court cases dealing with land occupations, evictions, the provision of alternative accommodation, and the state's constitutional and legislative obligation to combat spatial apartheid and promote spatial, economic and racial justice and equality through expanding access land and affordable housing.

3. This comment is made pursuant to the invitation for comments as per Notice 1267 published in Government Gazette no. 46847 on 2 September 2022. Ndifuna Ukwazi has read and considered the Draft Bill and hereby makes this submission.

Yours faithfully,

Ndifuna Ukwazi

(Per: Mpho Raboeane, Attorney)

NDIFUNA UKWAZI COMMENT

Comment on proposed amendments to the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (the Principal Act)

1. **Section 1**

> ""**building or structure**" includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter <u>in which incidences of ordinary residency have been established"</u>
>
> <u>""**Reside**" means to occupy and maintain a place of permanent abode"</u>

2. The principal act, in giving effect to section 26 of the Constitution, must, as with all statutes per our Constitutional democracy, be interpreted purposively. It is now trite that courts must properly contextualise statutory provisions when ascribing meaning to the words used therein.[1] While maintaining that words should generally be given their ordinary grammatical meaning, this Court has long recognised that a contextual and purposive approach must be applied to statutory interpretation.[2] Further, the principal act specifically provides that words must be given meanings ascribed not only by the Act, but also by context should it indicate a different meaning.[3]

3. The principal act defines **building or structure** as any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter - the use of the word 'any' underscores the fact that the 'hut', 'shack' or 'tent' need not be of a particular nature or character. Secondly, the use of the word 'includes' connotes expansiveness as opposed to restrictiveness.[4] The proposed amendments and additions to the definitions of the principal act will have the effect of curtailing the purposive and contextual interpretation and application of the Act and promotes an assumption of

[1] See *Saidi v Minister of Home Affairs* [2018] ZACC 9; 2018 (4) SA 333 (CC); 2018 (7) BCLR 856 (CC) at para 36 in which this Court said: "This Court has noted on numerous occasions that text is not everything. Unless there is no other tenable meaning, words in a statute are not given their ordinary grammatical meaning if, to do so, would lead to absurdity."

[2] *Road Traffic Management Corporation v Waymark (Pty) Limited* [2019] ZACC 12; 2019 (5) SA 29 (CC); 2019 (6) BCLR 749 (CC) at para 29 citing Natal Joint Municipal Pension Fund v Endumeni Municipality [2012] ZASCA 13; 2012 (4) SA 593 (SCA) at para 18.

[3] Section 1

[4] *Gees v Provincial Minister of Cultural Affairs and Sport, Western Cape and Others* 2017 (1) SA 1 (SCA)

normalcy[5] with respect to property rights that is simply incongruent with the South African context. These amendments will inadvertently (or otherwise) legislatively weaken the position of people ascribed 'non - ownership rights' by virtue of the dispossession of the past and present and one's socio-economic position in the most unequal country in the world.[6]

4. The added requirement to prove 'ordinary residency' necessitates the demonstration that one resides in the place in question. Reside, in terms of the Bill, means the occupation and maintenance of a place of *permanent* abode or residence. These amendments, read together, will lead to absurdity as the forms of shelter contemplated by the principal act are temporary *or* permanent in nature.[7] The addition of reside introduces such absurdity as it, by definition, requires permanence thereby ousting temporary structures used for shelter from the substantive and procedural protections provided for by this legislation as intended by the original legislators and the Constitution. This addition must be reconsidered as it ascribes an inappropriately restrictive reading of residence (and by implication 'residency') that caters for incidence of permanent occupation only.

5. The principal act was enacted to give effect to section 26(3) of the Constitution where section 26 reads:

> "Housing
> (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."

[5]AJ Van der Walt "Exclusivity of ownership, security of tenure, and eviction orders: a model to evaluate South African land-reform legislation" 2002 *TSAR* 254 at 258, quoted with approval by Olivier JA in *Ndlovu v Ngcobo; Bekker and Another v Jikka* 2003 (1) SA 113 (SCA) at para 65; 2002 (4) All SA 384 (SCA) at para 69. '"The 'normality' assumption that the owner was entitled to possession unless the occupier could raise and prove a valid defence, usually based on agreement with the owner, formed part of Roman-Dutch law and was deemed unexceptional in early South African law, and it still forms the point of departure in private law. However, it had disastrous results for non-owners under . . . apartheid land law: the strong position of ownership and the (legislatively intensified) weak position of black non-ownership rights of occupation made it easier for the architects of apartheid to effect the evictions and removals required to establish the separation of land holdings along race lines.'

[6] V Sulla; P Zikhali; P F Cuevas. "Inequality in Southern Africa : An Assessment of the Southern African Customs Union" (English). Washington, D.C. : World Bank Group (March 2022) Available at: http://documents.worldbank.org/curated/en/099125303072236903/P1649270c02a1f06b0a3ae02e57eadd7a82.

[7] Section 1(i).

Non-prescriptive Constitutional regard for the home

6. The sanctity of a home has special constitutional regard evinced in section 26(3).[8] The Constitutional Court recognises that the Constitution acknowledges the nature of a home being far more than shelter from the elements but a 'zone of personal intimacy and family security' in a context of hostility and turbulence 'for poor people in particular'[9] outside of any express or implied requirement of permanence.

7. International instruments recognise the institution of the home in accordance with the right to adequate housing and protection from evictions, as enshrined in article 25 of the Universal Declaration of Human Rights[10] (UDR) as well as Article 11 of the International Covenant on Economic, Social and Cultural Rights[11] (ICESCR). Instructively, the Committee on Economic, Social and Cultural Rights does not interpret this right restrictively as 'the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity.'[12] Instead, the right should be seen as 'the right to live somewhere in security, peace and dignity',[13] as one's home is inextricably linked to the inherent dignity of the human person. The human rights and the fundamental principles upon which the ICESCR is premised further require that income or access to economic resources are not prohibitive factors to the enjoyment of this right as detailed above. The proposed amendment is vehemently opposed to the recognition and respect of the sanctity of a home through legislating discrimination based on socio-economic status and the lack of access to economic resources which characterise occupiers and communities living in informality.

8. This is inimical to a constitutional democracy fundamentally founded on principles of dignity as pointed out by our courts:

> "'It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society as a whole is demeaned when state action intensifies rather than mitigates their marginalisation. The integrity of the rights-based vision of the Constitution is punctured when governmental action augments rather than reduces denial of the claims of the desperately poor to the basic elements of a decent existence.'"[14]

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[8] Port Elizabeth Municipality v Various Occupiers (CCT 53/03) [2004] ZACC 7 at para 17.
[9] Id.
[10] Article 25 of the Universal Declaration of Rights provides:
"(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."
[11] Similarly, the International Covenant on Socio Economic Rights Article 11 requires states parties to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
[12] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23 at para 7.
[13] General Comment No. 4: The Right to Adequate Housing at para 7Id.
[14] PE Municipality at para 18.

9. Finally, the principal act in giving effect to section 26(3) has sufficiently provided courts with non-prescriptive legislative room for the resolution of issues as remarked by the Constitutional Court itself:

> "... precisely to underline how non-prescriptive the provision is intended to be. The way in which the courts are to manage the process has accordingly been left as wide open as constitutional language could achieve, by design and not by accident, by deliberate purpose and not by omission."[15]

Comment on proposed amendments to Section 3 of the Principal Act

10. Section 3

"3A(1) No person may cause, directly or indirectly participate in, incite, arrange, organise, nor permit a person to occupy land without the consent of the owner or person in charge of that land."

"3A(2) Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment not exceeding five years, or to both such fine and such imprisonment"

11. Section 3 as amended seeks to introduce criminal liability for the causation of or conduct of unlawful occupation. The broad scope of liability in the proposed section 3A(1) nullifies one of the key undertakings of the principal act - the decriminalisation of unlawful occupation. One must remain cognisant of the context against which the principal act was legislated: one in which the Prevention of Illegal Squatting Act 52 of 1951 (PISA) subjected occupiers who held no permission to be on the land to summary eviction following criminal prosecution. Therefore, persons from whom permission to remain on land had been withdrawn by new owners were treated as criminals and subjected to summary eviction, even in cases where they had been born on the land and had lived their entire lives there.[16] The use of PISA was but one of the weapons in a legislative arsenal designed for the dispossession and erasure of the African population, as "[f]or all black people, and for Africans in particular, dispossession was nine-tenths of the law."[17]

12. In view of the politically motivated precarity of black tenure in urban areas and the abuses of segregationist, exploitative apartheid era land legislation, the PIE Act was legislated with the manifest objective of bringing eviction processes in line with

[15] Id at para 22.
[16] See *R v Zulu* 1959 (1) SA 263 (A).
[17] *PE Municipality* at para 9; See also *DVB Behuising (Pty) Ltd v North West Provincial Government and Another* [2000] ZACC 2; 2001 (1) SA 500 (CC); 2000 (4) BCLR 347 (CC) at para 41. See also the judgment of Madala J at paras 75-9. In terms of the Group Areas Act 36 of 1966, persons classified as Coloured and Indian were compelled to live in very small portions of the land from which Africans were excluded.

constitutional imperatives. Importantly, the principal act decriminalised unlawful occupation:

> "PIE not only repealed PISA but in a sense inverted it: squatting was decriminalised and the eviction process was made subject to a number of requirements, some necessary to comply with certain demands of the Bill of Rights. The overlay between public and private law continued, but in reverse fashion, with the name, character, tone and context of the statute being turned around. Thus the first part of the title of the new law emphasised a shift in thrust from prevention of illegal squatting to prevention of illegal eviction. The former objective of reinforcing common law remedies while reducing common law protections, was reversed so as to temper common law remedies with strong procedural and substantive protections; and the overall objective of facilitating the displacement and relocation of poor and landless black people for ideological purposes was replaced by acknowledgement of the necessitous quest for homes of victims of past racist policies. While awaiting access to new housing development programmes, such homeless people had to be treated with dignity and respect."[18]

Over-Criminalisation

13. Criminalising conduct bears a societal cost both on the ones convicted of a crime as well as on the public purse in as far as resourcing South Africa's overburdened criminal justice system. The severity of the consequences of criminalising conduct cannot be gainsaid moreover where the decision to criminalise leads to an unjustifiable societal net loss with the benefits being outweighed by social and economic costs. It has been posited that modern, notably westernised societies have exhibited an over reliance on criminal sanction leading to a 'crisis of over-criminalisation'.[19] The nature of the crisis lies in the adverse effects on the administration of criminal justice that results from over criminalisation which are, *inter alia*, the lifelong stigma and economic harm of a criminal record (moreover when one's only crime is securing a home); lessening regard of criminal law and its resultant moral authority; encouraging further (organised) crime in response to artificially suppressed supply and further crippling the overburdened criminal justice system.[20]

14. Invoking criminal sanction for the public benefit should thus be scrutinised according to a criteria that would indicate when such action is indeed appropriate in the circumstances and not lead to further persecution of the poor. According to authorities such as Packer[21] the following may act as a guideline in making this determination, that is:

    14.1. The conduct is prominent in most people's view of socially threatening behaviour, and is not condoned by any significant segment of society.

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[18] *PE Municipality* at para 12.
[19] See the Decriminalisation Act 107 of 1991, as amended.
[20] J M Burchell, 'Principles of Criminal Law', 3rd ed (2006).
[21] H L Packer 'The Limits of the Criminal Sanction' (1968) Stanford University Press

14.2. Subjecting it to punishment is not consistent with the goals of punishment.
14.3. Suppression will not inhibit socially desirable conduct.
14.4. It may be dealt with through even-handed, non-discriminatory enforcement.
14.5. Controlling it through the criminal process will not lead to severe qualitative or quantitative strain.
14.6. There are no reasonable alternatives to the criminal sanction for dealing with the issue.

15. In addition, the Canadian Committee on Corrections formulated its own criteria for the criminalisation of conduct:[22]
15.1. No act should be criminally proscribed unless its incidence, actual or potential, is substantially damaging to society.
15.2. No act should be criminally prohibited where its incidence may be adequately controlled by forces other than the criminal process.
15.3. No law should give rise to social or personal damage greater than it was designed to prevent.

16. As to whether conduct ought to be criminalised is thus a matter of balancing the societal gains to be accrued from the *successful* reduction of said conduct against the social, human and financial costs of invoking criminal sanction. In fact, authorities argue that such invocation be the last resort.[23]

17. We submit that this amendment will invariably criminalise poverty and necessary life sustaining actions such as providing shelter for oneself and thus infringes on one's autonomy and human dignity. Notably, the Principles on the Decriminalisation of Petty Offences in Africa were adopted by the African Commission in 2017 towards a holistic approach to the challenges that arise in Africa at the intersection between poverty, justice and human rights which we argue are the same elements introduced by the proposed criminalisation of unlawful occupation. The enforcement of these laws also perpetuates the stigmatisation of poverty by mandating a criminal justice response to what are essentially socio-economic issues. In this regard, the criminalisation of petty offences reinforces discriminatory attitudes against marginalised persons. The criminalisation of this nature contributes to discrimination and marginalisation by pathologising poverty, homelessness and unemployment, and impact the poorest and most marginalised persons in our communities.

18. Further, lifelong condemnation through a criminal record not only fosters social stigma against convicted individuals, it also significantly reduces the prospects of securing gainful employment in the future. In a country where the unemployed number 8 million, and where a significant number of people are forced to live in informality or in insecure tenure, the passage of the proposed amendment will be placing a significant part of the population at risk of conviction at a scale not seen since influx control legislation of the apartheid era for comparable politically fuelled offences.

[22] Canadian Committee on Corrections 'Towards Unity: Criminal Justice and Corrections' (1969) 11-12.
[23] LAWSA vol 6,13.

19. Justice demands the application of the principle of proportionality - that is, the severity of the sanction is proportional to the gravity of the offence.

20. The societal cost is further compounded by the added economic burden[24]. An increased reliance on criminal sanction to resolve a socio-economic issue will lead to more resources being required to prosecute and accommodate the added category of offenders. As it stands, overcrowding in the Western Cape alone is still at 90% or more.[25]

21. The South African prison population is particularly fluid with one of the highest incarceration rates in the world coupled with one of the highest recidivism rates in the world (estimates range from 60-90%).[26] Former Inspecting Judge Hannes Fagan warned that the harsh conditions created in the prisons because of overcrowding are 'not curbing crime' but are on the contrary, 'creating it'.[27]

22. Reliance on the criminal justice system to deal with inadequate housing is misplaced and will have a pernicious effect - on the correctional system, the convicted and especially on the 'law abiding citizen'. Fining and incarceration will have the reverse effect to what is intended: the need for shelter driving most occupations will continue where the state does not adequately plan for population growth, inmigration and other factors of urbanisation. A compromised criminal justice system be further incapacitated and offenders under this section will be exposed to other, more serious crimes thereby continuing the country's proclivity for recividism. It is clear that the societal harm will thus outweigh any societal benefit to be gleaned from criminalising unlawful occupation.

Comment on proposed amendments to Section 4 of the Principal Act

23. Section 4

"4(13) Where it is reasonable to do so, a court which makes an order for alternative accommodation or land to be made available to the unlawful occupier, must make an order stipulating the length of time the said alternative accommodation or land must be made available to the unlawful occupier by the municipality or any other organ of state."

24. Court ordered limitations on the provision of alternative accommodation belies the fact that this form of accommodation was intended to be a temporary measure offered to

[24] C/f U Turn 'The Cost of Homelessness' report (2019) which shows that the current response to homelessness is expensive. Currently each person facing homelessness costs society an average of R445,000 whilst they are on the street. An amount in excess of R744m a year is spent on homelessness in Cape Town – that is R51,811 per person per year with R335m or 45% on reactive activities such as urban management costs and punitive activities such as the incarceration of people facing homelessness.

25 E Cameron. "Comment and analysis - The crisis of criminal justice in South Africa". (2020). *SA Crime Quarterly* (69) at 1-15.

26 Id.

27 Id.

those in emergency situations which per the Emergency Housing Programme is inclusive of evictions into homelessness. The issue which this Bill abdicates to the court is in fact a polycentric matter for the determination of the state. Specifically, the issue underpinning this amendment is not the length of time for which alternative accommodation must be provided but the fact that the *de facto* permanence of such accommodation is merely a symptom of the lack of permanent affordable housing solutions for evictees to take up after a transitional period in emergency or transitional housing. The lack of permanent alternatives creates a bottleneck effect where occupiers of state or privately provided alternative accommodation stagnate both in terms of abode and economic mobility given that most of the emergency housing currently provided in the form of Transitional Relocation Areas (TRAs) are far flung encampments - marred by corruption and far from opportunities, amenities, community networks and livelihood strategies. The approach proposed by this amendment implicitly positions the evictee as the cause of this stagnation, when it is in fact the unmet imperative in section 26(2) of the Constitution that creates situations of permanence.

25. Further, the amendment fails to factor relevant considerations such as the average period it takes for a job seeker to find employment.[28]

26. The Emergency Housing Programme (EHP) is contained in Part 3 Volume 4 of the National Housing Code and makes provision for municipalities to apply for grants from the provincial government to provide emergency housing to those affected by emergencies. As the EHP states, the aim is to enable municipalities to "provide temporary relief to people in urban and rural areas who find themselves in emergencies" through the provision of land, municipal engineering services, relocation assistance and accommodation or shelter.[29] In addition, the cost of consumption of certain basic services can also be funded through the programme for a period of three years (provided approval is obtained from the MEC and the municipality is unable to fund these services from its own resources)[30]. Evictions and the threat of imminent evictions are specifically classed in the programme as emergencies. [31]

27. The programme provides for a broad range of possible emergency housing options, including various types of temporary and permanent housing.[32] A housing option that is particularly relevant in the context of evictees is "temporary assistance with resettlement to a permanent temporary settlement area" in cases where municipalities choose to establish such areas for affected persons until permanent housing at another location

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[28] See Statistics South Africa's Q4 2020 Quarterly Labour Force Survey available at http://www.statssa.gov.za/publications/P0211/P02114thQuarter2020.pdf.
According to the survey, approximately the vast majority of South African youth (over 1 million) are stuck without work for a minimum of 12 months. This is exacerbated by low levels of education, where the largest proportion of unemployed youth are those with a matric, or without any formal qualifications at all (1.23 million), and these South Africans are also the least likely to find any formal employment over a longer period of time.

[29] EHP, 2009.

[30] Id at 18.

[31] Id at 15-16.

[32] Id at 31-37.

becomes available.[33] However, ultimately it is within the discretion of the municipality to determine whether assistance is required in terms of the programme and decide what approach should be adopted based on the emergency housing need.

28. The EHP applies to all people who are homeless or are likely to become homeless as a result of an eviction or emergency. The ordinary housing qualifying criteria therefore does not apply in relation to assistance provided in terms of the EHP. This means that assistance can be provided to people or households regardless of their household income, citizenship, whether they have dependents or whether they have previously received assistance through a national housing programme.

29. Importantly, the EHP creates a strong preference for allowing occupiers to remain on the land they occupy by providing that relocations should only be carried out as a last resort once other alternatives have been exhausted[34] . Along with the on-site development options offered in the programme, this principle creates opportunities for utilising the EHP to repair or reconstruct existing housing or, at the very least, make genuine attempts to identify ways in which unlawful occupiers could be accommodated on the land from which they are being evicted. Second, the EHP provides that the provision of alternative accommodation in the wake of an eviction or emergency should, wherever possible, be the first step in providing permanent housing. As the programme states, temporary alternative accommodation should wherever possible be "an initial phase towards a permanent housing solution" [35] Moreover, if this is not possible, the EHP says that temporary alternative accommodation should be provided "while steps are being taken to prepare and develop land for permanent settlement purposes in terms of the approved municipal IDP and development priorities".[36] These provisions ensure that the EHP can be used to provide immediate relief to people rendered homeless due to an eviction or other emergency and indicates that funding provided in terms of the EHP could be used strategically to ensure that the housing or infrastructure developed through the EHP could be upgraded or redeveloped through other housing programmes.

Comment on proposed amendments to Section 6 of the Principal Act

30. Section 6

"6(7) For the purposes of subsection 6(3)(d), the Court must request a probation officer as contemplated in section 1 of the Probation Services Act, 1991 (Act 116 of 1991), or a maintenance investigator as defined in section 5 of the Maintenance Act 99 of 1998, to submit a report within a reasonable period after the commencement of any eviction proceedings in terms of section 4 and report on:
(a) where the unlawful occupier resided immediately before the commencement of the unlawful occupation;

[33] Id at 34.
[34] EHP, 2009: 37; and *Abahlali Basemjondolo Movement SA and Another v Premier of the Province of Kwazulu-Natal and Others* (CCT12/09) [2009] ZACC 31 at paras 114 and 126.
[35] Id at 14, 31 and 38.
[36] Id.

(b) the existing family relationship between the unlawful occupier and his/her direct family members;
(c) whether any legal duty to financially maintain the unlawful occupier exists and can be imposed on such family member in order to prevent the unlawful occupier from being rendered homeless;
(d) why any existing duty to maintain the unlawful occupier was not complied with.

31. The proposed section 6(7)(a) intimates a logic that has historically been proven deficient and underpinned racially exclusionary legislation. The requirement to report on the residence of the unlawful occupier prior to the unlawful occupation must not be treated as justification to use this legislation as a means of banishing occupiers back to "wherever they came from". This shortsighted reasoning would fail to recognise the unabaiting phenomenon of urbanisation, population growth and the economic climate. It further promotes the misconception that the population is static and non-migratory which then leads to a myopic view of the housing landscape whereas dynamic, proactive planning is necessary to adequately anticipate and provide for the appropriate housing solutions.

32. A cautionary tale from pre-apartheid attempts to limit urban influx premised on the above thinking is illustrative of racist intent in limiting civil liberties such as the freedom of movement for a specific class of persons in an unfairly discriminatory fashion and short sighted reasoning with respect to human settlement - such imperatives are contrary to the Bill of Rights and would not pass constitutional muster in a democracy premised on dignity, equality, accountability, responsiveness and openness[37].

33. In 1944, parliament enacted a War Measure in terms of the War Measures Act 13 of 1940.[38] The War Measure was inadequate, being premised on the hope that once evicted, these people "would go back to where they came from".[39] However, with nowhere else to go, the evictees merely moved to another piece of land nearby and waited for the process to start again. The city councils were forced to use a range of measures, mostly unsuccessful, to stem the influx of black people who flocked to the cities in search of employment opportunities. It was soon realised that a single measure would not solve the problem of urban squatting, and that a co-ordinated legislative framework was required.[40]

[37] Section 1 Constitution 1996.
[38] Procl 76, GG Extraordinary 3325 of 6 Apr 1944.
[39] HA Fagan Report of the Commission of Enquiry into the Disturbances at Moroka, Johannesburg, on the 30th August 1947 (1948) at 25.
[40] G Muller. 'The legal-historical context of urban forced evictions in South Africa.'(2014) Fundamina. 19 at 367.

Concluding Remarks

34. This Bill as it currently stands seeks to "assign the blame for the exclusion from their rights as citizens to the poor themselves."[41]

35. Were the imperatives of section 26(2) adequately met, including the appropriate planning for and treatment of evictees in terms of a Transitional Housing Policy then the issues proffered as the bases for these amendments by Member Powell would not be necessary. We caution against a symptomatic treatment of the challenges encountered in the application of the principal act, and favour a more integrated approach rooted in harmonising housing policies and prioritising appropriate urban planning and well located affordable housing.

36. These amendments effected in isolation would not serve to remedy the 'severe dysfunctionality in cities' as the Bill is contemplated outside of a proactive addressing of the causes of land occupations in the first place. Reactive punitive measures in response to actions of necessity are scarcely a sign of good governance but rather signals a failing state whose legitimacy pails in view of the lack of accountability, responsiveness and openness required of a democratic society and which instead rules by punitive measures enabled by the state's monopoly on violence.

Ends.

[41] B Bradlow, J Bolnick, & C Shearing, 'Housing, institutions, money: The failures and promise of human settlements policy and practice in Africa.' (2011) Environment and Urbanization, 23(1) at 267–275. https://doi.org/10.1177/0956247810392272.