

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on extreme poverty and human rights

Ref.: OL ZAF 3/2026
(Please use this reference in your reply)

17 August 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 61/16 and 53/10.

According to information received, we are writing to express my concerns about some of potential human rights implications of the **Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2026 (the Amendment Bill)**, published in the Government Gazette No. 54526 on 13 April 2026.¹

The Amendment Bill introduces **deliberately retrogressive measures with respect to the right to housing, a) by returning to a criminal approach when dealing with occupation as during the apartheid area, b) by undermining the obligation to ensure that nobody is rendered homeless as a result of an eviction, and c) by failing to strike a balance between the interests of property owners and protection from forced evictions and homelessness**. The Amendment Bill contradicts the egalitarian spirit of the 1996 Constitution, and it may also result in violations of international human rights law, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by South Africa in 2015.

A significant departure from the transformational ambition of the Constitution:

Section 26(3) of the South African Constitution guarantees that nobody may be evicted without a proper and independent assessment of the situation: “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.” The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act) was enacted to give effect to this right. It replaced the apartheid-era legislation that had been used to justify the forced removal of millions of Black and Coloured people from urban land. The PIE Act decriminalised occupation and required courts to consider justice, equality and the risk of homelessness before granting an eviction order.

Even though South Africa only ratified the ICESCR in 2015, having signed the treaty in 1994, its influence on the Constitution is palpable. For example, section 26(2) reads: “The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation” of adequate housing, which

¹ South African Government Gazette Vol 730 No 54526 (13 April 2026).
<https://gazettes.africa/akn/za/officialGazette/government-gazette/2026-04-16/54526/eng@2026-04-16>

goes hand in hand with article 2(1) ICESCR. The influence also permeated the jurisprudence of the Constitutional Court. In the widely recognised *Grootboom* case (2000), the Court interpreted the principle of progressive realization in line with the UN Committee on Economic, Social and Cultural Rights (CESCR), and endorsed the Committee's presumption of non-retrogression derived from progressive realisation.² The influence between the CESCR and the South African Constitutional Court has been bidirectional, with the inclusion of the reasonableness test – enshrined in the Constitution and developed in *Grootboom* and other cases – in the Optional Protocol to ICESCR.

The Constitution also makes clear that public authorities must respect, protect, promote and fulfil the Bill of Rights, which is binding on all organs of the State, including the legislature, the executive and the judiciary (sections 7(2) and 8(1)). The general constitutional rule is that international treaties will be binding once they have been approved by the two chambers of parliament, the National Assembly and the National Council of Provinces (section 231(2)). Judges are expected to interpret legislation in the most consistent way with the letter and spirit of the Bill of Rights and with international obligations, including international human rights law (sections 39(1), 39(2) and 233). Substantive equality underpins the Bill of Rights; section 9(2) makes clear that equality before the law is necessary but not sufficient: "Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken." The Constitutional Court has recognised the relationship between substantive equality and socio-economic rights: "When determining the scope of socio-economic rights, it is important to recall the transformative purpose of the Constitution which seeks to heal the injustices of the past and address the contemporary effects of apartheid and colonialism" (*Mahlangu and Another v. Minister of Labour and Others*, 2020).³

Bearing these constitutional principles in mind, the Amendment Bill constitutes a significant departure from the general approach to housing and property in post-apartheid South Africa of the last three decades. In particular, the three issues we want to draw your attention to are:

Criminalisation of homelessness:

The proposed amendment of section 3 introduces criminal offences for "inciting", "arranging", "organising" or "permitting" "any person to occupy land without the consent of the owner, organ of state or person in charge of the land". Thereby, the Amendment Bill broadens the scope of criminal behaviour irrespective of whether any financial benefit is received.

The Amendment Bill is a direct reversal of the foundational purpose of the PIE Act of 1998, which was specifically designed to decriminalise unlawful occupation and

² Government of the Republic of South Africa and Others v. Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000), para. 45.

³ Mahlangu and Another v. Minister of Labour and Others (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC) (19 November 2020), para. 55; Khosa and Others v. Minister of Social Development and Others, Mahlaule and Another v. Minister of Social Development (CCT 13/03, CCT 12/03) [2004] ZACC 11; 2004 (6) SA 505 (CC); 2004 (6) BCLR 569 (CC) (4 March 2004), para. 40, 42 and 44.

to end the punitive approach of the apartheid era. As such, the Amendment Bill returns to the pre-constitutional model that treated occupation as a matter of criminality, not as a consequence of structural inequalities of wealth and general lack of affordable housing.

Furthermore, the proposed section 3 envisions fines of up to R2 million, and imprisonment of up to two years, which appear grossly disproportionate when they would likely affect particularly the poorest communities.

In relation to the possible conviction, the amended section 3 adds that “the court may decide after considering the manner and nature of the unlawful occupation and the value of the portion of land occupied”. Consequently, the same two acts of occupation may receive different degrees of punitive reprimand depending upon the location and the price of the land. In doing so, the Amendment Bill measures the deservingness of the extent of criminal punishment depending upon the asset’s financial value, which is not justifiable.

Furthermore, the mentioned verbs used in the proposed amendment to section 3 (“incite”, “arrange”, “organise”, “permit”) are inherently vague and indeterminate, which could result in the criminalisation of acts of solidarity in support of individuals and families that may be in desperate need for support.

In this respect, we want to refer as well to the joint report of the former Special Rapporteurs on the right to adequate housing and on extreme poverty and human rights, on the criminalisation of poverty and homelessness (A/HRC/56/61/Add.3). In that report, both Special Procedure mandate holders articulated that laws penalising life-sustaining activities, such as occupying vacant buildings or land where there is no suitable alternative, may violate the right to equality before the law, due process of law, and the prohibition of discrimination in the administration of justice. Instead of addressing the structural causes of homelessness, criminalisation entrenches poverty, social exclusion and discrimination, while diverting resources away from public policies necessary to satisfy the right to adequate housing.⁴

Failure to ensure that nobody is rendered homeless as a result of an eviction:

The Amendment Bill weakens the general duty of municipalities to provide alternative accommodation to people who would be rendered homeless after an eviction, which departs from the protective framework developed by the Constitutional Court over the years.

For close to three decades, South Africa’s Constitutional Court has established that tenants or occupiers should not be rendered homeless because of an eviction. This means that the availability and suitability of alternative accommodation will be a determining factor of the admissibility of the eviction request. The State bears the duty to take reasonable steps to prevent homelessness in an eviction, in line with section 26 of the Constitution and *Grootboom* (2000).⁵ Whether the eviction is instigated by a

⁴ Special Rapporteurs on the Right to Housing and Extreme Poverty and Human Rights, Breaking the cycle: ending the criminalization of homelessness and poverty, A/HRC/56/61/Add.3, para. 16, 11, 27.

⁵ Government of the Republic of South Africa and Others v. Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

private actor or a public one is “of little relevance” (*Blue Moonlight Properties*, 2011).⁶ In *Port Elizabeth Municipality* (2004), the Constitutional Court said that, as a general rule, “a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme” managed by the State.⁷ It has been a general constitutional standard that municipalities must not escape their obligation to provide accommodation by citing budget constraints.

However, the Amendment Bill weakens the constitutional obligation of municipalities by substituting the concept of “alternative accommodation” with the more precarious and time-limited notion of “temporary accommodation” (proposed amendment to section 1). The Amendment Bill also proposes that where a court determines that an occupier is “unlawful”, such a court may grant the eviction without requiring the municipality to provide alternative accommodation or land, irrespective of the families’ material need for a housing solution (section 4). The language of the Amendment Bill raises real risks that families living in poverty may face a chain of evictions and persistent homelessness.

The Amendment Bill does not appear in compliance with international human rights law and standards that set clear parameters for evictions. Namely, before an eviction is executed, public authorities must ensure that nobody will be rendered homeless or vulnerable to human rights violations because of an eviction.⁸ As part of this general duty, public authorities must adopt reasonable measures to provide alternative housing solutions for people who may need them.⁹ In exceptional circumstances, temporary accommodation may be necessary, but public authorities must ensure that temporary accommodation does not put personal safety at risk, does not become a long-term solution, respects the right of family members not be separated, and guarantees privacy reasonably.¹⁰ Facilitating evictions without strengthening the right of vulnerable households to access affordable housing is a retrogressive measure incompatible with States’ international obligations.

Against the social function/obligation of property:

As a general observation, we believe that the Amendment Bill does not strike a balance between the social function of property and the right to housing, sections 25 and 26 of the Constitution respectively.

The regulation of property should bear in mind its social function and the general interests of everyone in a society, including those who own and those who do not own property. Former Special Rapporteurs on the right to adequate housing have highlighted the importance of the social function of property in making the right to adequate housing real and effective for everyone. In his 2025 report on land and

⁶ City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd and Another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011), para. 95.

⁷ Port Elizabeth Municipality v. Various Occupiers (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004), para. 28.

⁸ CESCR, General Comment No. 7: Forced Evictions, E/1998/22 (1997), para 16.

⁹ CESCR, El Goumari and Tidli v. Spain, Communication No. 85/2018 (Views of 18 February 2021), E/C.12/69/D/85/2018, para. 9.1-9.3.

¹⁰ Ibid, para. 9.4.

housing, Balakrishnan Rajagopal advocated for a move beyond exclusivist forms of ownership and encouraged new democratic approaches to land use and management, including communal forms of land tenure.¹¹ In her 2017 report on the financialization of housing, Leilani Farha called on States to ensure that public and private investment in housing “recognizes its social function and States’ human rights obligations”.¹²

The social function of property is not explicitly proclaimed in the 1996 Constitution. However, both the wording and the location of property in the Bill of Rights – surrounded by environmental and social rights – indicate that ownership is meant to satisfy private interests but also the general interests of the community. The principle of the social function has been embraced by the Constitutional Court as well. In *FNB* (2002), the Court stressed that “under the 1996 Constitution the protection of property as an individual right is not absolute but subject to societal considerations”.¹³ Acknowledging the inherent “tension between individual rights and social responsibilities”, the Court established that “the purpose of section 25 has to be seen both as protecting existing private property rights as well as serving the public interest, mainly in the sphere of land reform but not limited thereto, and also as striking a proportionate balance between these two functions”.¹⁴ In *Shoprite* (2015), the Constitutional Court articulated the constitutional significance of the social function – to which it referred as “social obligation” – through the prism of the Bill of Rights:

“The fundamental values of dignity, equality and freedom necessitate a conception of property that allows, on the one hand, for individual self-fulfilment in the holding of property, and, on the other, the recognition that the holding of property also carries with it a social obligation not to harm the public good. The function that the protection of holding property must thus, broadly, serve is the attainment of this socially-situated individual self-fulfilment. The function of personal self-fulfilment in this sense is not primarily to advance economic wealth maximisation or the satisfaction of individual preferences, but to secure living a life of dignity in recognition of the dignity of others. And where the holding of property is related to the exercise, protection or advancement of particular individual rights under the Bill of Rights, the level of the protection afforded to that holding will be stronger than where no relation of that kind exists.”¹⁵

A combined reading of section 26, on housing, and section 25, on property, entails that an owner will have to tolerate the inconvenience of an occupation of their land until a court assesses the situation independently before authorising the eviction, or not. In *Blue Moonlight* (2011), the Constitutional Court ruled that, while an occupation is a form of deprivation of property, the involvement of the courts, as mandated by the Constitution and the PIE Act, makes the occupation non-arbitrary: “Of

¹¹ Special Rapporteur on Adequate Housing, Report on the land and housing, UN Doc. A/80/351 (27 Augst 2025), para. 1, 4.

¹² Special Rapporteur on Adequate Housing, Report on the financialization of housing, UN Doc. A/HRC/34/51 (18 January 2017), para. 77.

¹³ *First National Bank of SA Limited t/a Wesbank v. Commissioner for the South African Revenue Services and Another; First National Bank of SA Limited t/a Wesbank v. Minister of Finance* (CCT19/01) [2002] ZACC 5; 2002 (4) SA 768; 2002 (7) BCLR 702 (16 May 2002), para. 49.

¹⁴ *Id.*, para. 50.

¹⁵ *Shoprite Checkers (Pty) Limited v. Member of the Executive Council for Economic Development, Environmental Affairs and Tourism, Eastern Cape and Others* (CCT 216/14) [2015] ZACC 23; 2015 (6) SA 125 (CC); 2015 (9) BCLR 1052 (CC) (30 June 2015), para. 50.

course a property owner cannot be expected to provide free housing for the homeless on its property for an indefinite period. But in certain circumstances an owner may have to be somewhat patient and accept that the right to occupation may be temporarily restricted.”¹⁶

In *Grootboom* (2000), the Constitutional Court established that both the State and private actors have an obligation “to desist from preventing or impairing the right of access to adequate housing”, which includes the prohibition of arbitrary evictions.¹⁷ In *Daniels v. Scribante* (2017), the Constitutional Court expanded on the horizontality of the right to housing by establishing that tenants and occupiers do not need the owner’s consent to make improvements to the dwelling to ensure the place is habitable; habitability is therefore a positive obligation for owners: “By its very nature, the duty imposed by the right to security of tenure, in both the negative and positive form, does rest on private persons”.¹⁸

This is how Justice Albie Sachs summarised the challenge in *Port Elizabeth* (2004):

“The Constitution imposes new obligations on the courts concerning rights relating to property not previously recognised by the common law. It counterposes to the normal ownership rights of possession, use and occupation, a new and equally relevant right not arbitrarily to be deprived of a home. The expectations that ordinarily go with title could clash head-on with the genuine despair of people in dire need of accommodation. The judicial function in these circumstances is not to establish a hierarchical arrangement between the different interests involved, privileging in an abstract and mechanical way the rights of ownership over the right not to be dispossessed of a home, or vice versa. Rather it is to balance out and reconcile the opposed claims in as just a manner as possible taking account of all the interests involved and the specific factors relevant in each particular case.”¹⁹

Conclusions and recommendations

By thinking of occupation as a law enforcement problem and not as a consequence of profound wealth inequalities, the Amendment Bill seems to return to a pre-constitutional punitive approach that turns its back on international human rights law and reverses close to three decades of carefully developed constitutional standards. The Amendment Bill weakens the obligation of the State, through municipalities, to ensure that nobody is rendered homeless as a result of an eviction. The Amendment Bill is likely to affect disproportionately Black and Coloured families from poorer socio-economic backgrounds, raising serious concerns from the perspective of the right to equality and non-discrimination. It also appears to disregard the history of racialised dispossession that the Constitution and the PIE Act were called to address.

¹⁶ City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011), para. 37 and 40.

¹⁷ Government of the Republic of South Africa and Others v. Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000), para. 34.

¹⁸ Daniels v. Scribante and Another (CCT50/16) [2017] ZACC 13; 2017 (4) SA 341 (CC); 2017 (8) BCLR 949 (CC) (11 May 2017), para. 49.

¹⁹ Port Elizabeth Municipality v. Various Occupiers (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004), para. 23.

Based on information brought to our attention litigants (with experience dealing with owners and with residents) currently report multiple cases of municipal non-compliance with court orders, delays in providing alternative accommodation, and the sense that legal victories in court do not necessarily result in practical relief for residents even when courts order in their favour. It is unclear whether and how the Amendment Bill would address these shortcomings of the system.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned observations.
2. Specifically, please provide information concerning the assessment of the impact that a punitive approach to occupation may have on Black and Coloured families, and families in poverty.
3. Please explain how the Amendment Bill would ensure that no one is rendered homeless as a result of an eviction.
4. Please provide information on how the Amendment Bill would ensure that there is an assessment of proportionality in light of the personal and family circumstances in all cases of evictions.
5. Please elaborate on whether and how the Amendment Bill complies with the principle of social function (or social obligation) of property.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would kindly request your Excellency's Government that this communication is shared widely with parliamentarians and other relevant stakeholders, including the South African Human Rights Commission and the nine provincial authorities.

Please accept, Excellency, the assurances of our highest consideration.

Koldo Casla

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Elena Carolina Díaz Galán

Special Rapporteur on extreme poverty and human rights