

**Joint Submission on**  
**The Prevention of Illegal Eviction from and Unlawful Occupation of**  
**Land Amendment Bill, 2026**

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## **1. Introduction**

The Draft Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2026 (the Amendment Bill), proposed by the Department of Human Settlements, weakens the duty of municipalities to provide alternative accommodation to people who would be rendered homeless by an eviction, contrary to the Constitution and Constitutional decisions. It also criminalises occupation, community organization and support from civil society and grassroots movements, with even up to 2 years of imprisonment.

In accordance with the invitation of the Department of Human Settlements for written comments to the Amendment Bill, the proposal of this submission is to offer a wider global perspective that can better situate the debate.

In this regard, it is possible to identify an international trend of increasing criminalisation of illegal occupiers and the removal of procedural guarantees in cases of evictions, contrary to the international commitments of States to protect vulnerable communities and families from evictions that might render them homeless.

Despite local and historic contextual differences, the rhetorics, the networks, political and non-political actors and groups that are lobbying for these regressive measures are on many occasions also pushing for a wider anti human rights agenda for collectives such as women, LGBTQI+ community, indigenous groups, migrant people and poor communities, portraying all of their rights as the root cause of the socioeconomic inequalities.

This agenda relies on criminalising and dehumanising these collectives, especially migrant people, and rejecting climate change at the same time. The global orchestrated attack on the social function of property and international human rights obligations is crucial to allow for new estate-corporate crimes consisting of privatization of land, speculative urban developments and extractivism projects. The effects of this offensive can only fuel the climate crisis and force millions of people affected by its effects to migrate. It is in this context where this submission will situate the Amendment Bill.

## **2. About us**

**International Network for Economic, Social and Cultural Rights (ESCR-Net)** is a network consisting of 360 members, including social and feminist movements, Indigenous Peoples, NGOs, and environmental and human rights defenders across 80 countries. For 20 years and counting, the Network continues to work towards social justice through human rights including the right to land, the right to housing, the right to self-determination and other ESCER.

**Global Network of Movement Lawyers (GNML)** is a network of movement lawyers across the world who work with organized communities and social movements fighting for human rights, self-determination and a healthy planet. Forged in a context of rising authoritarianism and the compounding crises of climate change, war, extreme economic inequality, the GNML seeks to build a solidaristic and strong community of practice of movement lawyers globally who can address crises at the transnational level using innovative legal strategies that build the power of movements for social, economic, and environmental justice.

**Socio-Economic Rights Institute of South Africa (SERI)** is a registered non-profit organisation and public interest law clinic that provides professional, dedicated, and expert socio-economic rights assistance to individuals, communities, community-based organisations, and social movements in South Africa. SERI conducts applied legal research, litigates in the public interest, facilitates civil society mobilisation and coordination, and conducts popular education and training. Our core work is the advancement and protection of socio-economic rights in poor and marginalised communities.

**Observatori DESCA** is a human rights centre and think tank in defence of social rights and ecological justice. We carry out research to make visible and denounce violations of rights such as housing, food and the environment, and to make proposals towards food sovereignty and economic and climate justice, all from the local level to the international level. We also work hand in hand with other organizations and movements of civil society in order to strengthen the

shared struggles for the guarantee of rights, offering legal and technical support.

**Tensions between the right to housing and private ownership in rental relations. A socio-legal approach** (TEVIPROP) is an academic project, funded by the Spanish Ministry of Science, Innovation and Universities (grant number PID2022-138661NB-I00), and based in the University of Barcelona. It elaborates an interdisciplinary socio-legal analysis of the discourses, strategies and practices of the actors involved in the housing problem, especially regarding the tensions between the right to housing and private ownership, discrimination in access to housing, and occupations in vacant homes.

### **3. Global rhetorics for regressive and criminalising measures**

The developments in South Africa are not new to the global landscape. From far right to neoliberal and conservative forces, the agenda to erode protections against evictions is presented as a crusade to protect property rights, democracy, small landowners, and their land from usurpers and criminal organizations. However, behind that rhetoric it is possible to see the main objective of expanding real estate speculation and extractivism. Below are some of the most common arguments used to defend these measures:

- **Protection for homeowners when it is aimed to benefit business owners, developers and extractive companies:**

“Florida doesn’t tolerate squatters; we stand with property owners (...) Florida already has strong protections for homeowners, and the bills I signed today will **ensure the same protections for business owners**” (Ron De Santis, Governor of the State of Florida, Republican Party)<sup>1</sup>.

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<sup>1</sup> Executive Office of the Governor Ron DeSantis (2nd June 2025). *Governor Ron DeSantis Signs Anti-Squatting Legislation*

<https://www.flgov.com/eog/news/press/2025/governor-ron-desantis-signs-anti-squatting-legislation>

- **Portraying occupation as trespassing of homes** and residences where homeowners live, **but occupation mainly takes place in empty and vacated properties** and lands.

**“Imagine coming home, only to find strangers occupying the space** where you’ve created cherished memories and then being told that removing them will require a costly and prolonged legal battle” (Dan Laughlin, Pennsylvania State Senate, Republican party)<sup>2</sup>.

**“In my district over the last year we have seen a homeowner arrive home only to find a stranger in their shower,** unwilling to leave until they finished using the homeowner’s home” (Rob Standridge, Oklahoma State Senator, Republican Party) <sup>3</sup>.

- **Using the small landlord’s premise to accelerate evictions,** confusing between tenants and illegal occupiers:

**“64% of landlords own only one rental property. Small landlords are a reality,** and a third of them are retirees” (French Proposed Bill by Ensemble and Horizons)<sup>4</sup>.

**“95% of landlords in Spain are small property owners. Without sufficient legal safeguards, many of them choose not to put their homes on the market”** (Spanish proposed Bill by conservative Partido Popular)<sup>5</sup>.

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<sup>2</sup> PA Senate Republicans (12 June 2024). *Senate Approves Laughlin Legislation to Help Property Owners Deal With Squatters* <https://www.pasenategop.com/news/senate-approves-laughlin-legislation-to-help-property-owners-deal-with-squatters/>

<sup>3</sup> *Oklahoma Senate. Standridge Bill to Combat Squatting Passes Senate* <https://oksenate.gov/press-releases/standridge-bill-combat-squatting-passes-senate>

<sup>4</sup> Assemblée nationale (18/10/2022). Proposition de Loi visant à protéger les logements contre l’occupation illicite, [https://www.assemblee-nationale.fr/dyn/16/textes/l16b0360\\_proposition-loi](https://www.assemblee-nationale.fr/dyn/16/textes/l16b0360_proposition-loi)

<sup>5</sup> Partido Popular (11 de noviembre de 2025). *Proposición no de Ley relativa a la adopción de medidas urgentes contra la ocupación ilegal de viviendas.* (161/002679) [https://www.congreso.es/public\\_oficiales/L15/CONG/BOCG/D/BOCG-15-D-428.PDF](https://www.congreso.es/public_oficiales/L15/CONG/BOCG/D/BOCG-15-D-428.PDF)

- **Inflating the dimension of squatting**, when it is not a common phenomenon in many countries, **or avoiding social and historical context**:

“Parliament must act quickly to combat not only this rhetoric, but the practice of land invasions as a whole, which, **unfortunately, has been on the rise**” (Brazilian proposed Bill by Partido Liberal)<sup>6</sup>.

“The **constant media coverage of squats** and rent disputes testifies to the strong emotion that these examples of incivility and injustice experienced daily arouse among our fellow citizens” (French proposed Bill by Ensemble and Horizons)<sup>7</sup>.

- **Portraying occupation as criminal and/or hijacked driven phenomenon**:

“The recent increase in land seizures suggests that this lucrative business is not just about that but is fertile ground for strengthening **criminal organizations** and establishing professionalized crime” (Chilean Bill proposal by conservative forces)<sup>8</sup>.

“The land grabbers are setting up fictitious claims and indulging in large scale and fraudulent sales of land through **unscrupulous**

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<sup>6</sup> Câmara dos Deputados. PL 1919/2026 Altera o Decreto-Lei nº 2.848, de 7 de dezembro de 1940 (Código Penal), para endurecer as penas aplicáveis aos crimes de esbulho possessório e invasão de propriedade.

<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2598906>

<sup>7</sup> Assemblée nationale (18/10/2022).

<sup>8</sup> Cámara de Diputados y Diputadas de Chile. Bill, initiated by motion of the Honorable Senators Mr. Kast and Ms. Sabat and Ms. Von Baer, amending the Penal Code. <https://www.camara.cl/legislacion/proyectosdeley/tramitacion.aspx?prmID=14588&prmBOLETI N=14015-25>

**real estate dealers** or otherwise”(Gujarat Land Grabbing (Prohibition) Act, 2020 promoted by Bharatiya Janata Party)<sup>9</sup>.

- **Distinguish between extreme necessity carried occupations and speculative and criminal occupations, but criminalizing both:**

“It is necessary to distinguish between two types of usurpation: occupation due to extreme need, from which irregular settlements such as land grabs or camps arise, and that which is carried out for different purposes, such as the illegal commercialization of other people's land” (Chilean Bill proposal by conservative forces)<sup>10</sup>.

“Situations of vulnerability or social exclusion due to housing issues and the protection of families in situations of social emergency have nothing to do with the illegal occupation that we are regulating here. **A squatter is not evicted, they are removed from their property**; and a vulnerable person is protected, without the state being able to transfer its own responsibilities to the citizens in either of these cases” (Spanish proposed Bill by conservative Partido Popular)<sup>11</sup>.

- **Use of irrelevant and non-representative associations of people affected by squatters:**

“Accordingly, and after listening in the context of the Reform of the Penal Code to the **Association of Victims of Usurpation**, an NGO founded by victims of the crime of usurpation due to the lack

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<sup>9</sup> Gujarat State Judicial Academy (2021). *E-Digest on Gujarat Land Grabbing (Prohibition) Act, 2020*.

[https://gsja.nic.in/gsjanew/files/20210409143200\\_E\\_DIGEST\\_GUJARAT\\_LAND\\_GRABBING\\_ACT\\_2020\\_GSJA.pdf](https://gsja.nic.in/gsjanew/files/20210409143200_E_DIGEST_GUJARAT_LAND_GRABBING_ACT_2020_GSJA.pdf)

<sup>10</sup> Cámara de Diputados y Diputadas de Chile.

<sup>11</sup> Proposición de Ley Orgánica contra la ocupación ilegal y para la convivencia vecinal (122/000248)

[https://www.congreso.es/public\\_oficiales/L14/CONG/BOCG/B/BOCG-14-B-272-1.PDF#page=1](https://www.congreso.es/public_oficiales/L14/CONG/BOCG/B/BOCG-14-B-272-1.PDF#page=1)

of protection suffered from the State” (Argentinian Bill proposal by La Libertad Avanza)<sup>12</sup>.

“Unless we put a stop to evictions, there will be no solution to the housing crisis; that is why we are opening the Senate’s doors to experts, professionals, and those affected” (Participation of Senate’s monographic on occupation by Platform of Affected by Squatting promoted by Partido Popular)<sup>13</sup>.

**These common rhetoric serves to circumvent social, historic and economic dimensions of dispossession.** Some of these dispossessions were linked to colonialism, while others were exacerbated by the economic and rights crisis of 2008.

**In the case of South Africa, the Department of Human Settlement is also relying on some of the above mentioned arguments.** As the purpose of the Amendment Bill contains, the proposal describes a “high numbers of unlawful occupations of land and buildings”<sup>14</sup>. This affirmation is void of the historical context and current socioeconomic reality that explain why poor and dispossessed people occupy land. It is not possible to isolate the history of land dispossession, apartheid and forced removals in South Africa from the current realities of land occupation.

Another argument of the proposal is the “huge financial burden on the municipality to provide alternative accommodation to everyone facing imminent eviction”<sup>15</sup>. In doing so, it connects the occupations with “a new trend of high-rise building hijacking in cities”, **portraying illegal occupations with criminals**, who can be more easily stripped of their rights in the eyes of the public opinion.

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<sup>12</sup> Diputados de Argentina (4/06/2025) 2940-D-2025 Código Penal de la Nación. Modificación del artículo 181 sobre usurpación de tierras o inmuebles deshabitados. [https://www.hcdn.gob.ar/proyectos/detalle\\_tp\\_adjunto/index.html?id=285260](https://www.hcdn.gob.ar/proyectos/detalle_tp_adjunto/index.html?id=285260)

<sup>13</sup> Partido Popular (22/11/2025). El PP impulsa unas sesiones monográficas sobre okupación. <https://www.pp.es/actualidad/articulos/el-pp-impulsa-unas-sesiones-monograficas-sobre-okupacion-en-la-comision-de-vivienda-del-senado-en-las-que-compareceran-expertos-profesionales-y-afectados/>

<sup>14</sup> Department of Human Settlements. *Request for comments on the draft prevention of illegal eviction from and unlawful occupation of land amendment bill*, 2026.

<sup>15</sup> Department of Human Settlements (2026).



However, against these assumptions, the inspections conducted by the Commission of Inquiry into Usindiso Building showed that:

**“Only five properties (5.74%) had allegations of non-owners collecting rent.** This suggests that while criminal elements exist, the crisis is more fundamentally driven by dire poverty and the severe lack of affordable housing options, compelling vulnerable individuals into deplorable living arrangements”<sup>16</sup>.

Therefore, the criminalization serves to justify the main purpose of the Amendment Bill: to restore the “investor confidence”, which could ultimately lead to investment growth, “addressing poverty and unemployment, which contribute to the unlawful occupation of land and buildings”.

If one should follow this line of reasoning, it would come to understand that it is necessary first to evict people, let them homeless, and then, “when investor confidence is restored”, they could possibly find a home for themselves because they will no longer be poor or unemployed.

#### **4. What is behind? Imprisonment of occupiers, threaten to civil society, fast removals and attack on indigenous lands**

Following are some of the main proposals or already approved measures that criminalize the occupation of land and housing without legal title and eliminate protections for vulnerable people during evictions.

For instance, in **India**, several States have made illegal squatting or land grabbing a punishable offence. For instance, the Gujarat Land Grabbing (Prohibition) Act, 2020<sup>17</sup>, establishes that land grabbing for any kind of land, including those from private persons, and the instigation or incitement to do so shall be punished to imprisonment by no less than **10 years and up to 14 years**.

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<sup>16</sup> Commission of Inquiry into Usindiso Building (2025). *Report on part (a)(ii) regarding the prevalence of buildings or immovable properties in the Johannesburg Central Business District* <https://media.citizen.co.za/wp-content/uploads/2025/09/Executive-Summary-Khampepe-Report-28-Final.pdf>

<sup>17</sup> The Gujarat Land Grabbing (Prohibition) Act, 2020.

In **Spain**, the conservative party Partido Popular proposed a Bill that would **have stripped away the right of inviolability of the residence to people occupying**<sup>18</sup>. It would have also forced illegal occupiers to vacate the occupied property or to provide proof of the legal title, 24 hours after the filing of the complaint by the property. In addition, **the proposal aimed to pass from a criminal offense of penalties to imprisonment from 6 to 18 months**, also criminalizing the preparation or distribution of instructions or recommendations for occupation.

Despite this proposal was rebutted, the conservative forces in the Congress repealed the extension of the moratorium of eviction for vulnerable families, allowing for the eviction without alternative of 60.000 families<sup>19</sup>, against the communication from the former Special Rapporteur on the right to an adequate housing, Mr. Balakishnan Rajagopal<sup>20</sup>.

In **France**, the National Assembly and the Senate passed in 2023 the Act No. 2023-668 aimed at protecting dwellings against unlawful occupation<sup>21</sup>, despite communications from the Special Rapporteur on Adequate Housing and of the Special Rapporteur on Extreme Poverty and Human Rights<sup>22</sup>, which clearly indicated that was a non-justified regressive measure in contravention of France's international obligations. It **allows for criminalizing illegal occupation up to 2 years of imprisonment**, also targeting "propaganda or advertising, in any form", which could lead to the attack on the social movements and the civil society that accompanies occupiers. **The Act also**

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<sup>18</sup> Partido Popular (2022).

<sup>19</sup> Observatori DESCA (26/02/2026). *Congress's latest refusal to extend the eviction moratorium* <https://observatoridesca.org/es/noticies/la-nueva-negativa-del-congreso-a-convalidar-la-moratoria-antidesahucios-deja-a-miles-de-familias-vulnerables-ante-una-emergencia-habitacional-evitable>

<sup>20</sup> Observatori DESCA (12/02/2026). *The United Nations calls on Spain to extend the moratorium on evictions and to suspend the eviction of families with children*: <https://observatoridesca.org/es/noticies/naciones-unidas-exige-a-espana-prorrogar-la-moratoria-de-desahucios-y-suspender-los-desalojos-de-familias-con-menores>

<sup>21</sup> Loi n° 2023-668 du 27 juillet 2023 visant à protéger les logements contre l'occupation illicite <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000047897040/>

<sup>22</sup> Mandates of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and of the Special Rapporteur on Extreme Poverty and Human Rights. OL FR 2/2023.2023. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27957>

**streamlined eviction procedures** for all types of properties, **including vacant buildings**.

The case of **Italy** is quite similar. Just in July 2026 the Senate passed the Act concerning public safety, the protection of law enforcement personnel, victims of usury, and the prison system<sup>23</sup>. **It also criminalizes occupation in vague terms such as “deceit or fraud” from 2 to 7 years**, also for those who “interferes with or assists in the occupation of the property, or who receives or pays money or other benefits in connection with such occupation”. Again, the Bill was passed contrary to the Special Rapporteurs communication<sup>24</sup>.

In **Argentina**, the Ministry of Justice posted that: “As part of the reform of the Penal Code, we will increase penalties so that those who commit these crimes [occupation/usurpation] against private property will go to prison. **If the squatters are in the country illegally, they will be automatically deported**”<sup>25</sup>. In this regard, there are different Bill propositions aimed at criminalizing illegal occupation.

The last of them<sup>26</sup>, **includes prison sentences for pacific illegal occupation from 6 months to 2 years**. Sentences could be increased to up to 3 and 6 years, among other reasons, “if children and adolescents, people with disabilities, and/or any other tactic are used solely to delay the eviction from the unlawfully occupied property were involved in the commission of the criminal act”.

In parallel, **it has repealed the Indigenous Territorial Emergency Act No. 26,160**<sup>27</sup>, which suspended evictions from all communities until the survey

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<sup>23</sup> DDL S. 1236 Disposizioni in materia di sicurezza pubblica, di tutela del personale in servizio, nonché di vittime dell'usura e di ordinamento penitenziario  
<https://www.senato.it/leg/19/BGT/Schede/FascicoloSchedeDDL/ebook/58519.pdf>

<sup>24</sup> Communication sent by the Mandates of the Special Rapporteur on adequate housing, and of the Special Rapporteur on extreme poverty. OL ITA 1/2025 (20 January 2025)  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29640>

<sup>25</sup> Ministerio de Justicia, Argentina (14/05/2025).  
[https://x.com/MinJusticia\\_Ar/status/1922721131099787683](https://x.com/MinJusticia_Ar/status/1922721131099787683)

<sup>26</sup> 1802-D-2026 (27/04/2026). Código Penal de la Nación. Modificaciones sobre Usurpacion de Tierras. [https://www.hcdn.gob.ar/proyectos/detalle\\_tp\\_adjunto/index.html?id=291462](https://www.hcdn.gob.ar/proyectos/detalle_tp_adjunto/index.html?id=291462)

<sup>27</sup> Poder Ejecutivo Nacional. Decreto DNU 1083 / 2024 Emergencia en materia de posesión y propiedad de tierras.  
<https://www.argentina.gob.ar/normativa/nacional/decreto-1083-2024-406980/texto>

of their ancestral lands was completed. As stated by human rights organization Centro de Estudios Legales y Sociales (CELS), “The law was a tool to protect these communities—which are defending their rights—from criminalization; that is why it is essential that it remain in effect. It provided a response, albeit a partial one, to the Argentine government’s debt to the indigenous peoples”. Under the guise of protecting “the rightful owners,” the aim is to benefit companies or individuals seeking to encroach on community lands to develop various businesses: mining, hydrocarbons, real estate, and tourism.

In addition, a parliamentary debate on the Bill on the Inviolability of Private Property is to take place<sup>28</sup>. This Bill **would allow for the evictions in “popular neighbourhoods”, to streamline the process and reduce the number of guarantees required during evictions**, the possibility for foreign investment to acquire land without restrictions, and the removal of prohibitions set forth to eliminate incentives for arson.

In the case of **Chile**, the Legislative Chamber passed in 2023 the Law no. 21.633 that regulates the crimes of illegal occupation of real property<sup>29</sup>. It incorporates as an offence the illegal occupation without violence nor intimidation and without property damages that could amount up to 20 days of imprisonment. In the case of illegal occupation without violence nor intimidation but with property damages could amount to imprisonment from 61 up to 540 days. **The data from the Parliamentary Technical Advisory Office indicates that pacific illegal occupation amount to 80,4% of the sentences**<sup>30</sup>.

In addition, **the President Kast announced a reform regarding indigenous lands that would eliminate land-use restrictions and allowing indigenous lands to be leased or mortgaged**<sup>31</sup>, in a regressive measure that echoed the

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<sup>28</sup> Poder Ejecutivo Nacional. (26/03/2025). Proposición de Ley de inviolabilidad de la propiedad privada. <https://www.senado.gob.ar/parlamentario/comisiones/verExp/13.26/PE/PL>

<sup>29</sup> Congreso Nacional de Chile. Ley núm. 21.633 (21-nov-2023) regula los delitos de ocupación ilegal de inmuebles <https://www.bcn.cl/leychile/navegar?idNorma=1198283&idVersion=2023-11-24>

<sup>30</sup> Asesoría Técnica Parlamentaria (Marzo, 2025). Efectos de la implementación de la Ley de Usurpaciones. Información estadística. [https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/37029/1/BCN\\_GF\\_Efectos\\_Ley\\_de\\_Usurpaciones.pdf](https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/37029/1/BCN_GF_Efectos_Ley_de_Usurpaciones.pdf)

<sup>31</sup> Guerra Schleef, Felipe. *La igualdad que desprotege: los anuncios del Presidente Kast en materia de tierras indígenas y el riesgo de volver atrás*. Agenda Estado de Derecho. 2026/07/17.

ones from the Pinochet's Dictatorship and contributed to the commodification and division of communal indigenous lands.

Similarly, the context of **Brazil** also counts with several of these proposals. For instance, the Legislative Proposition N°. 1919/2026 to increase the penalties for the crimes of dispossession and trespassing **would lead to increase the prison sentences for illegal occupation up to four and ten years**, applicable also to “any person who finances, sponsors, promotes, encourages, or in any other way incites” for it<sup>32</sup>. For their part, the Legislative Proposition N°. 709/2023 that provides for restrictions applicable to occupants and squatters of properties would amount to the **impossibility to receive aid, benefits, and other programs** from the Federal Government, and to be eligible for public office by those commended by the crimes of dispossession and trespassing<sup>33</sup>.

In the **United States**, several of its States have passed legislation to criminalize illegal occupation and erode evictions minimum guarantees. For instance, in 2024 the **Georgia's General Assembly** passed the House Bill 1017<sup>34</sup> that **allowed for the arrest for unlawful squatting before the sentence**, and to speed up the eviction in less than two weeks. The New Hampshire House Bill 1400 (2024) mandates Courts to rule the immediate removal of the occupants if they rule in favour of the plaintiff<sup>35</sup>.

Similar to the previous cases, in **South Africa**, the Amendment Bill would weaken the duty of municipalities to provide alternative accommodation, contrary to the Constitution and Constitutional decisions. It would also criminalise occupation, community organization and support from civil society and grassroots movements, with even up to 2 years of imprisonment.

In conclusion, these measures do not address the underlying causes that drive individuals and communities to occupy homes and land around the world. On

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<https://agendaestadodederecho.com/la-igualdad-que-desprotege-los-anuncios-del-presidente-kast/>

<sup>32</sup> PL 1919/2026 Altera o Decreto-Lei nº 2.848.

<sup>33</sup> Câmara dos Deputados. Projeto de Ley N° 709/2023 dispõe sobre impedimentos aplicados aos ocupantes e invasores de propriedades em todo território nacional. <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2349493>

<sup>34</sup> Georgia's General Assembly. House Bill 1017 <https://www.legis.ga.gov/legislation/66263>

<sup>35</sup> New Hampshire. House Bill 1400 <https://legiscan.com/NH/text/HB1400/id/2864243>

the contrary, **they turn civil eviction proceedings into criminal expedited, urgent, and lacking safeguards procedures.** In practice, this makes it impossible for public authorities to allocate an adequate alternative.

It also leads to the criminalization, often with the possibility of imprisonment, of individuals and communities who have already been deprived of access to land and housing. For them squatting is, at the same time, the only reasonable alternative to becoming homeless, and the only form to protest effectively to reclaim its rights to land, housing and city.

This criminalisation is expanded to the prosecution and criminalization of social movements and civil society that accompany, protect and represent these communities.

In a context where governments are not complying with its obligations for providing social housing that meets the need of the most vulnerable communities, and where inequality and forced migrations are on the rise due to the socioeconomic and climate consequences of decades of neoliberalism, **the criminalization and re-dispossession of these communities is against international commitments of human rights.**

## **5. International Human Rights perspective**

The Amendment Bill and all these proposals raise profound concerns under international human rights law. Although States are entitled to regulate land occupation and protect property rights, they must do so consistently with their obligations to respect, protect and fulfil the right to adequate housing and other fundamental rights.

The proposed amendments move in the opposite direction by weakening procedural safeguards against eviction, expanding the criminalisation of persons occupying land or housing out of necessity, and creating the possibility of criminal liability for those providing legal advice and assistance to vulnerable communities. Taken together, these regressive measures would disproportionately affect those who continue to bear the legacy of colonialism, apartheid and structural inequality.

The Committee on Economic, Social and Cultural Rights (CESCR) has repeatedly emphasised that States “must give due priority to social groups living in adverse conditions by paying them special attention. Policies and legislation should not, in this case, be designed to benefit already privileged social groups at the expense of other social groups”<sup>36</sup>.

In the context of the debate on the "Inviolability of Private Property" bill proposal in Argentina, the United Nations Special Rapporteur on adequate housing, Koldo Casla, sent a communication to the Argentine State concerning about the bill failing to “strike a fair balance between the protection of private property and the right to adequate housing”, and warning about “the potentially disproportionate protection of property owners at the expense of the general interest of society”<sup>37</sup>.

While the right to adequate housing is progressively realised, any measure that deliberately reduces existing levels of protection constitutes a regressive measure and must therefore be “fully justified by reference to the full range of the rights covered by the Covenant, and by making use of all available resources”<sup>38</sup>.

In this regard, the **United Nations Special Rapporteurs on Adequate Housing and on Extreme Poverty**, commenting on Argentina, France and Italy’s amendments, have previously **warned that facilitating evictions without strengthening the right of vulnerable households** to access affordable housing **constitutes a regressive measure** incompatible with States' international obligations<sup>39</sup>.

A central concern relates to the erosion of **procedural safeguards in eviction proceedings**. International human rights law does not prohibit all evictions, but it requires that they take place only under conditions that fully respect human dignity and the rule of law. CESCR General Comment No. 7 establishes that all persons facing eviction must have access to genuine consultation, reasonable

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<sup>36</sup> CESCR, GC No. 4 (1991), para. 11.

<sup>37</sup> Special Rapporteur on adequate housing, OL ARG 3/2026, 4th May 2026. Available here: <https://www.cels.org.ar/web/2026/05/la-regulacion-de-la-propiedad-debe-tener-en-cuenta-su-funcion-social/>

<sup>38</sup> CESCR, GC No. 4 (1991), para. 11; CESCR, GC No. 3 (1990), para. 9

<sup>39</sup> Special Rapporteur on adequate housing, and of the Special Rapporteur on extreme poverty OL FR 2/2023; OL ITA 1/2025; OL ARG 3/2026.

notice, complete information regarding the eviction, effective judicial remedies and legal assistance where necessary. Authorities must also ensure transparency in the execution of eviction orders and avoid carrying out evictions in circumstances that place individuals at heightened risk. These procedural guarantees are not merely technical requirements but essential protections against arbitrary interference with a wide range of human rights<sup>40</sup>.

Equally important, international law requires that **no eviction should render individuals homeless**. Where persons cannot provide housing for themselves, the State must, to the maximum of its available resources, ensure access to suitable alternative accommodation or other appropriate solutions<sup>41</sup>. The UN Guidelines on the Realization of the Right to Adequate Housing further require authorities to explore all feasible alternatives to eviction, ensure access to justice throughout the proceedings and, where relocation is unavoidable, provide adequate replacement that allows affected persons to maintain their social and economic ties<sup>42</sup>.

The proposed Bill is also problematic because it **criminalises occupation that may arise from necessity rather than criminal intent**. International human rights bodies recognise that States may legitimately protect private property and prevent abusive occupations. Nevertheless, CESCR has clarified that measures regulating access to housing or social protection must never perpetuate the stigmatisation or discrimination of persons who occupy property in good faith because they lack any realistic housing alternative<sup>43</sup>.

**Criminal law should not become the mechanism through which structural failures in housing policy are addressed**. This principle has been reaffirmed in the 2024 report of the **Special Rapporteur on Extreme Poverty and Human Rights and the Special Rapporteur on Adequate Housing**, which concludes that criminalising homelessness and occupation undertaken for survival is fundamentally incompatible with international human rights law.

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<sup>40</sup> CESCR, GC No. 7 (1997), paras. 11 and 15.

<sup>41</sup> CESCR, GC No. 9 (1998), para. 2; *I.D.G. v. Spain*, Communication No. 2/2014, para. 12.1.

<sup>42</sup> United Nations Special Rapporteur on Adequate Housing, *Guidelines for the Implementation of the Right to Adequate Housing* (26 December 2019), para. 38(b).

<sup>43</sup> CESCR, *Maribel Viviana López Albán v. Spain*, Communication No. 37/2018 (11 October 2019), paras. 10.1–10.2.



According to the report, laws penalising life-sustaining activities, such as occupying vacant buildings or land where no adequate housing alternative exists, “may violate the right to equality before the law, due process of law, and the prohibition of discrimination in the administration of justice”. Rather than addressing the structural causes of homelessness, criminalisation entrenches poverty, social exclusion and discrimination while diverting public resources away from more effective housing-based responses<sup>44</sup>.

The proposed criminal sanctions also raise concerns under the **prohibition of torture and cruel, inhuman or degrading treatment or punishment**. International human rights mechanisms have recognised that repeated evictions without adequate alternatives, criminal penalties imposed on persons acting out of necessity, and continuous harassment of homeless persons may amount to degrading treatment contrary to Article 7 of the International Covenant on Civil and Political Rights and Article 16 of the Convention against Torture<sup>45</sup>.

This concern is particularly acute where legislation introduces prison sentences up to two years for conducts that are directly linked to the absence of adequate housing. In such circumstances, individuals are first denied their right to housing and are subsequently punished because of that deprivation, creating what the Special Rapporteurs have described as a **second human rights violation**. Criminal sanctions imposed in these circumstances are unlikely to satisfy the principles of necessity, proportionality and reasonableness required under international human rights law<sup>46</sup>.

The Amendment Bill further raises serious concerns regarding the **right to equality and non-discrimination**, particularly when considered against South Africa's historical context. CESCR has consistently recognised that discrimination includes not only laws that explicitly distinguish between groups but also facially neutral measures that disproportionately affect historically disadvantaged populations. States therefore have an immediate obligation to

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<sup>44</sup> Special Rapporteur on Extreme Poverty and Human Rights and Special Rapporteur on Adequate Housing, *Breaking the Cycle: Ending the Criminalization of Homelessness and Poverty* (26 June 2024), paras. 1, 8, 10–12, 20–29 and 49.

<sup>45</sup> Idem, paras. 1, 8, 10–12, 20–29 and 49.

<sup>46</sup> Human Rights Committee, GC No. 35 (2014), para. 12.

eliminate both direct and indirect discrimination and to adopt measures that promote substantive equality rather than simply formal equality<sup>47</sup>.

**The likely impact of the proposed legislation cannot be separated from South Africa's history of colonial dispossession and apartheid.** Despite constituting only 7.3% of the population, White South Africans continue to own 72.4% of all land held by individuals, while Africans, who represent approximately 81.4% of the population, own only 4.4%. Urban land ownership also remains deeply unequal, with White South Africans owning approximately 49% of individually owned urban land compared with 30% owned by Africans. Gender disparities are equally significant, with men owning approximately 46% of land and women only 17%. These inequalities are the direct consequence of historical systems of racial exclusion and dispossession.

Against this background, the Amendment Bill would disproportionately affect African communities, women, children, people living in informal settlements, migrants and other socioeconomically excluded groups. At least **8.1% of South Africa's population, approximately eight million people, live in informal settlements or shacks** and therefore face heightened exposure to eviction and criminalisation.

Communities residing in the former homelands and protected under the Interim Protection of Informal Land Rights Act (IPILRA) may also be particularly affected, especially given that approximately 11,000 land restitution claims remain unresolved.

If the Department of Human Settlement had carried “a thorough impact assessment (...), specifically to determine which categories of the population will be affected”<sup>48</sup>, it would have found this indirect discrimination that disproportionately impacts upon communities that continue to experience the consequences of historical discrimination.

The proposed amendments risk undermining **access to justice** by creating a chilling effect on civil society organisations and human rights defenders. The

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<sup>47</sup> CESCR, GC No. 20 (2009), paras. 7–12 and 38.

<sup>48</sup> Special Rapporteur on adequate housing, and of the Special Rapporteur on extreme poverty OL FR 2/2023.

UN Special Rapporteurs have warned that legislation criminalising those who advise or support persons threatened with eviction may discourage legitimate legal assistance and solidarity work, thereby weakening one of the principal safeguards against arbitrary evictions<sup>49</sup>. Access to legal advice, representation and advocacy is itself an essential procedural guarantee recognised under international human rights law and forms part of the effective protection of the right to adequate housing.

Finally, illegal occupations are not just many times the only means to secure housing for poor communities, they also can be an act of protest. Attending the lack of effective mechanisms to assert their rights, **peaceful reoccupations and self-demarcation are many times the last and most effective resort for communities and social movements to pressure Estates** to expropriate land, comply with property's social function, advance land reform and accomplish constitutional and international commitments<sup>50</sup>.

Even if these acts of protest are protected under the rights of association, freedom of expression and the right to protest<sup>51</sup>, many times indigenous, land and housing activists face criminal prosecution and violent attacks<sup>52</sup>. Further criminalizing these communities and civil society, **would hinder the work of non-governmental organizations and increase the jeopardy and attacks to human rights defenders** from Estate and non-Estate actors<sup>53</sup>.

Taken as a whole, the proposed Amendment Bill would weaken procedural protections, facilitate homelessness, criminalise poverty, disproportionately burden communities historically affected by racial and gender discrimination, expose vulnerable persons to treatment incompatible with international human rights standards, restrict the work of organisations that protect access to justice,

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<sup>49</sup> Idem.

<sup>50</sup> Inter-American Court Of Human Rights (IACtHR), Case Of Huilcamán Paillama et al. V. Chile, Judgment Of June 18, 2024, para. 48; Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani Addendum. Report Mission to Brazil, paras. 9 and 66.

<sup>51</sup> IACtHR, Case Of Huilcamán Paillama et al. V. Chile, paras. 237.265.

<sup>52</sup> Report of the Special Rapporteur on the situation of human rights defenders. Country visit Brazil A/HRC/58/53/Add.2, paras. 37-38; Mojondolo Abahlali (2025), Twenty years of courage and struggle, Daraja Press.

<sup>53</sup> Special Rapporteur on adequate housing, and of the Special Rapporteur on extreme poverty OL FR 2/2023; Report of the Special Rapporteur on the situation of human rights defenders. Country visit Brazil A/HRC/58/53/Add.2, paras. 37-38.

and increase the risk of attacks to human rights defenders. Rather than addressing South Africa's structural housing crisis through rights-based policies, the Amendment proposal shifts responsibility onto those least able to bear it.

Considering the above mentioned, the proposed amendments cannot be reconciled with South Africa's obligations under international human rights law. Any reform should instead strengthen procedural safeguards against eviction, ensure that no person is rendered homeless without adequate alternatives, avoid measures that produce discriminatory effects on historically disadvantaged communities, and fully protect the legitimate activities of civil society.

Additionally, the Amendment Bill ran counter to the post-apartheid constitutional mandate to reverse the spatial inequalities produced by apartheid. In this regard, the initiative builds on a context in which the South African state has been failing to fulfill its duty to comply with Section 25(5) of the 1996 Constitution, which reads: "The state must 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". With this decision, the South African state not only fails to take steps towards the progressive realization of the right to land and housing as required by the Constitution, but also advances narratives and enables practices that reinforce the legacy of land dispossession entrenched in South African's colonial and apartheid history, perpetuating systemic inequalities that disproportionately affect the Black population.

## **6. Conclusion**

The Amendment Bill proposed by the Department of Human Settlements, weakens the duty of municipalities to provide alternative accommodation to people who would be rendered homeless by an eviction, contrary to the Constitution and Constitutional decisions. It also criminalises occupation,

community organization and support from civil society and grassroots movements, with even up to 2 years of imprisonment.

From the perspective of international human rights, the Amendment Bill constitutes a regressive measure and an indirect discrimination based on racial and gender land and housing dispossession. It would not only violate the rights to housing, but also the right to equality before the law, due process of law, and the prohibition of discrimination in the administration of justice. It also raises concerns under the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

This proposal has been contextualised into an international trend of increasing criminalisation of illegal occupiers, the removal of procedural guarantees in cases of evictions, and a wider anti human rights agenda.

That is the reason why it is of utmost importance to comply with international human rights and fundamental rights, especially in times where democracies, human rights and the rule of law are under attack.