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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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GENERAL NOTICE

NOTICE 2276 OF 2003

DEPARTMENT OF HOUSING

DRAFT PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND AMENDMENT BILL, 2003

The Department of Housing hereby publishes the **draft Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2003** for public information, discussion and comment.

Interested persons and institutions are invited to submit written comments on the draft legislation on or before **29 September 2003** to the Director-General, Department of Housing, for the attention of the following person:

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REPUBLIC OF SOUTH AFRICA

**PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL
OCCUPATION OF LAND AMENDMENT BILL, 2003**

(As introduced)

(MINISTER OF HOUSING)

[B - 2003]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWET OP DIE VOORKOMING VAN ONWETTIGE
UITSETTING EN ONREGMATIGE BESETTING VAN GROND, 2003**

(Soos ingedien)

(MINISTER VAN BEHUISING)

[W - 2003]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 so as to amend certain definitions; to qualify the application of the Act; to prohibit the arrangement or organisation of occupation of land and buildings without the owner's consent; to amend certain provisions relating to the prohibition of receipt or solicitation of consideration in respect of unlawful occupation of land and buildings; to create offences and penalties for contravention of certain provisions and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

1. Amendment of section 1 of Act 19 of 1998

Section 1 of the Prevention of Illegal Eviction from an Unlawful Occupation of Land Act, 1998 (hereinafter referred to as "the Act"), is hereby amended-

- (1) by the substitution for the definition of "court" of the following definition:

"court" means any division of the High Court or the magistrate's court in whose area or jurisdiction the land in question is situated, and includes a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) and a Land Claims Court established under section 22 of the Restitution of Land Act, 1994 (Act No. 22 of 1994).

- (2) by the substitution for the definition of "land" of the following definition:

"land" includes a surveyed or unsurveyed portion of land and buildings or structures on land;

- (3) by the insertion of the following definition after the definition "municipality";

"occupy" means to take possession of land or to erect a building or structure on land and "occupier" and "occupation" have corresponding meanings;

- (4) by the substitution for the definition of "unlawful occupier" of the following definition:

"unlawful occupier" means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996), and excluding any person who having initially occupied with such consent thereafter continues to occupy once such consent has been withdrawn.

2. Amendment of section 2 of Act 19 of 1998.

The following section is hereby substituted for section 2 of the Act:

2. Application of Act

- (1) Subject to subsection (2) [T] this Act applies in respect of all land throughout the Republic.
- (2) This Act does not apply in respect of any proceedings:
- (a) for the eviction of any tenant or former tenant or any person occupying land through the title of such tenant or former tenant;

(b) by a mortgagee for the foreclosure of the bond and the eviction of a mortgagor or of any person holding title through the mortgagor;

(c) to any land acquired by way of a sale in execution or judicial sale of property.

3. **Amendment of section 3 of Act 19 of 1998.**

The following section is hereby substituted for section 3 of the Act:

3. **Prohibition against arranging occupation of land without owner's consent or receiving or soliciting a consideration for arranging an unlawful occupation of land.** - (1) No person may arrange or organise or permit a person or persons to occupy land without the consent of the owner or person in charge of that land.

[3. Prohibition of receipt or solicitation of consideration in respect of unlawful occupation of land. - (1)] (2) No person may directly or indirectly receive or solicit payment of any money or rent or other consideration as a fee or charge for participation in, or arranging or organising or permitting a person to occupy land without the consent of the owner or person in charge of that land. The money or rent or consideration referred to above includes, but is not limited to, membership fees, legal costs, administration costs, services, services connection fees or payment for any socio economic infrastructure.

[(2)] (3) Any person who contravenes **[a]** any of the provisions of subsections (1) and (2) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years, or to both such fine and such imprisonment.

[(3)] (4) The court which convicts any person of a contravention of this section, must order any money or rent or any assets acquired with such money or rent, or other consideration received by that person which have been seized, to be forfeited, and the said money and the proceeds of the sale of such assets or such other consideration [may] shall be paid to the person or persons from whom the money, assets or other consideration was received, and where such person or persons cannot be positively identified, into the relevant municipal operating account or the National Revenue Fund [.] as the case may be. Where the money or consideration forfeited is rental money which was paid to a person other

than the landlord or his or her agent such money shall be paid to the landlord or his or her authorised agent.

[(4)] (5) If any money has been received in contravention of subsection **[(1)] (2)** but has not been seized or made available for purposes of confiscation, the court which convicts any person of a contravention of this section, may order the amount proved to the satisfaction of the court to have been received by such person to be paid to the person or persons from whom the money or other consideration was received, and where such person or persons cannot be positively identified, into the relevant municipal operating account or the National Revenue Fund as the case may be, and such order has the effect of and may be executed against such person as if it were a civil judgment in favour of that person or persons from whom the money or other consideration was received or in favour of the State.

4. Amendment of Section 4 of Act 19 of 1998.

- (1) The following subsections are substituted for subsections (2) and (3) of section 4 of the Act:
 - (2) At least 14 days before the hearing of the proceedings contemplated in subsection (1) **[the court must serve]** written and effective notice of the proceedings must be served on the unlawful occupier and the municipality having jurisdiction.
 - (3) **[Subject to the provisions of subsection (2),]** **[t]** The procedure for the serving of notices and filing of papers in terms of this Act is as prescribed by the rules of the court in question.
- (2) The following new subsection is to be inserted after subsection (7) of section 4 of the Act: -

(7B) If a court finds that an unlawful occupier referred to in subsections (6) and (7) above occupied the land in question when he or she was at the time already occupying a home, the Court may, after considering all the relevant circumstances as contemplated in section 26(3) of the Constitution, order the eviction of such unlawful

occupier, but must not take into account any of the specific circumstances referred to in subsections (6) and (7) above.

5. Amendment of section 5 of Act 19 of 1998

The following subsection is substituted for subsection (2) of section 5 of the Act:

- (2) Before the hearing of the proceedings contemplated in subsection (1), **[the court must give]** written and effective notice of the intention of the owner or person in charge to obtain an order for eviction of the unlawful occupier must be given to the unlawful occupier and the municipality in whose area of jurisdiction the land is situated.

6. Amendment of section 6 of Act 19 of 1998

The following subsection is substituted for subsection (1) of section 6 of the Act:

- (1) An organ of state may institute proceedings for the eviction of an unlawful occupier from land which falls within its area of jurisdiction **[except where the unlawful occupier is a mortgagor and the land in question is sold in a sale in execution pursuant to a mortgage.]** and the court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances, and if –

- (a) the consent of that organ of state is required for the erection of a building or structure on that land or for the occupation of the land, and the unlawful occupier is occupying a building or structure on that land without such consent having been obtained; or

- (b) it is in the public interest to grant such an order.

7. Amendment of section 9 of Act 19 of 1998

The following section is hereby substituted for section 9 of the Act:

Jurisdiction of magistrate's and other courts

9. Notwithstanding any provision of any other law, a magistrate's court as well as a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) and a Land Claims Court established under section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) [has] have jurisdiction to issue any order or instruction or to impose any penalty authorised by the provisions of this Act.

8. **Short title**

This Act is called the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Act, 2003, and comes into operation on a date determined by the President by proclamation in the Gazette.

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