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To whom it may concern,

**DRAFT PREVENTION OF ILLEGAL EVICTION
FROM AND UNLAWFUL OCCUPATION OF LAND AMENDMENT BILL, 2026**

THE FREE MARKET FOUNDATION WELCOMES THE BILL BUT SUBMITS THAT IT IS INADEQUATE IN
GENERAL AND PROBLEMATIC IN CERTAIN RESPECTS.

ABOUT THE FREE MARKET FOUNDATION

1. The Free Market Foundation (FMF), founded in 1975, promotes and defends the principles of individual liberty, private property, free enterprise, and limited constitutional government. The FMF primarily engages with the policy environment by informing the public of the benefits of liberalisation and generating pressure on political authorities to lessen and cease their interference in market exchanges and private affairs.

PROBLEM STATEMENT

2. The draft Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2026 (the Bill) is presented against the backdrop of a rise in unlawful land and building occupations across the country, which impose significant financial, administrative, and social burdens on both ordinary South African property owners and state structures.

3. The FMF notes with approval the positive change in sentiment reflected in several provisions, most notably the introduction of criminal offences targeting those who incite or organise illegal occupations.
4. These elements constitute a step in the right direction. They recognise that organised, bad-faith invasions undermine property rights, the rule of law, and social stability, and they seek to equip owners and responsible state entities with more effective tools to respond decisively. The FMF has previously supported similar measures, including proposals to criminalise the incitement of land invasions, and welcomes the closure of previous loopholes that limited liability to cases involving payment or solicitation of consideration.
5. Nevertheless, the FMF's detailed analysis of the Bill indicates that it does not go far enough, and is in some ways harmful to property rights.

PRINCIPAL CONCERNS

General

6. The Bill in its current form gives rise to several concerns of a legal, constitutional, and practical character. These concerns centre on the failure to establish ownership and the owner's rights as the unambiguous foundation of the regime; the perpetuation of arbitrary distinctions (particularly regarding counter-spoliation); the risk that private owners may be required or effectively compelled to bear the burden of alternative accommodation; and the inadequate protection of indigent and disadvantaged owners' equal constitutional rights under section 25 of the Constitution.
7. The FMF also notes alignment with concerns raised by other property-rights advocates, including the Foundation for Rights of Expression and Equality, regarding the potential for elements of the design to shift control and burdens in ways that indirectly erode the practical enjoyment of property rights without sufficient constitutional justification.

Owner Primacy and the Common Law Foundation

8. The FMF's consistent position is that the owner and the incident of ownership must constitute the foundation upon which any eviction or removal regime is constructed. At common law, the owner is entitled to the occupation and use of their property unless another person demonstrates a legally recognised right to exclude the owner (for example, a valid and subsisting lease or other recognised tenure right). Where an owner is unlawfully kept out of occupation, they are entitled to seek eviction or removal. The onus properly rests on the occupier to defend the proceedings by demonstrating *bona fides* and a recognised legal right, rather than relying on broad judicial discretion framed around whether eviction would be “just and equitable” in all the circumstances.
9. The Bill does not sufficiently embed or operationalise this principle. While it retains and refines the “just and equitable” inquiry inherited from the PIE Act, it does not clearly distinguish between two fundamentally different situations that warrant different legal treatment: (a) the eviction of a person who initially occupied lawfully (for example, under a lease or with consent) but whose right has since terminated or been lawfully withdrawn – the classic anti-eviction scenario; and (b) the removal of a person who occupied unlawfully from the outset, with full knowledge of the absence of consent – the unlawful occupation or trespass scenario. In the latter case, the common law “dirty hands” doctrine and the owner's established common law rights should predominate. The occupier should be required to demonstrate a *bona fide*, legally recognised right to remain, rather than invoking expansive judicial discretion to resist removal. The Bill's failure to effect this separation risks diluting the protection of ownership and perpetuating a regime in which even bad-faith, initially unlawful occupiers can effectively shift the burden onto owners through procedural and discretionary mechanisms.

The Right to Counter-Spoliation

10. A particularly acute and arbitrary feature of the current framework – one the Bill does not address – is the treatment of the common law right to counter-spoliation.
11. Under prevailing jurisprudence and practice, an owner (or person acting on their behalf) who is physically present at the moment of an attempted unlawful occupation may employ reasonable and proportional force to prevent it. Yet an owner who arrives even a short time later – 30 minutes, for example – is effectively prohibited from any form of self-help and must resort exclusively to court processes, irrespective of the circumstances, the good faith of the owner, or the bad faith of the occupiers. This distinction turns on arbitrary timing and formalities rather than on substance – specifically, whether the owner has unreasonably delayed in responding or has acquiesced in the occupation. Such arbitrariness is antithetical to the rule of law, which evidence- and reason-based lawmaking and substance over procedural formalism.
12. The FMF recommends that the right to counter-spoliation be placed on a clear, robust statutory footing. An owner or their authorised agent should be entitled to take reasonable and proportional steps to prevent or reverse an unlawful occupation, provided they have not unreasonably delayed in responding or acquiesced in the occupation. Ignorance of the occupation, or inability to respond timeously due to circumstances genuinely beyond their control, should never operate to the owner's prejudice. Only demonstrated unreasonable delay or acquiescence – assessed objectively but with due regard to the owner's circumstances – should limit the right.
13. This formulation would align the law with principle rather than arbitrary temporal cut-offs, enhance consistency with the rule of law, and provide meaningful protection particularly for owners who are not immediately present or resourced to respond instantaneously.

Alternative Accommodation and Burdens on Private Owners

14. The FMF notes with concern the potential – whether through explicit provision, judicial interpretation, or the practical operation of the amended framework – for private property owners to be required, ordered, or effectively compelled to provide, fund, or make available alternative accommodation for unlawful occupiers.
15. The provision of housing, including interim or emergency accommodation pending removal, is a matter of public policy and is subject to socialised funding. It is not a burden that should be externalised onto private owners through the mechanism of eviction or removal proceedings.
16. Expecting private owners – whether indigent, middle-class, previously disadvantaged, or otherwise – to involuntarily bear this burden constitutes an unjustifiable limitation on their property rights under section 25 of the Constitution and on their freedom of choice, which is integral to human dignity.
17. The Bill should contain an express and unambiguous provision that no private party may be required, ordered, or effectively compelled, directly or indirectly, to provide, fund, or facilitate alternative accommodation in any eviction or removal proceedings.
18. Correspondingly, the state must bear a clear, enforceable duty to provide expedited interim accommodation where removal would otherwise result in homelessness, accompanied by dedicated funding mechanisms, clear timelines, and accountability measures sufficient to ensure that unlawful occupiers can be removed from the property in question without undue delay. This is essential to restore possession to the owner promptly while addressing legitimate humanitarian considerations through appropriate public channels rather than by conscripting private resources.

Discrimination Against Poor and Disadvantaged Owners

19. Section 25 of the Constitution guarantees the right to property to *all* persons equally; it does not distinguish on the basis of wealth, race, or prior disadvantage. Yet the practical operation of the current PIE regime,

compounded by the Bill's failure to address structural barriers to enforcement, entrenches discrimination against poor owners, including many previously and currently disadvantaged South Africans who have lawfully acquired property through effort, inheritance, or other legitimate means.

20. Affluent owners possess the resources to sustain prolonged and complex litigation to vindicate their rights. Poor owners do not. Moreover, institutions such as the South African Human Rights Commission and Legal Aid South Africa have, in practice and by stated policy in many instances, prioritised assistance to occupiers over indigent owners, leaving the latter without effective recourse in circumstances where their property rights are under direct threat. This double disadvantage – limited resources coupled with institutional support asymmetry – is incompatible with the section 9 constitutional commitment to equality before the law in both substance and form.
21. The overwhelming focus on the rights and interests of occupiers over the preceding three decades has created an untenable impression that the person on the other side of the dispute, the owner, are themselves never equally or more disadvantaged than the trespasser. With the rights and interests of occupiers fully accounted for in South African law, it is now time for poorer owners to gain suitable recognition, both legally and in regulatory impact assessments.
22. The Bill should introduce explicit, practical mechanisms to level the playing field for poor and disadvantaged owners. In particular, the state should bear the full legal costs of eviction or removal proceedings instituted by qualifying owners. A threshold should be set inclusively – for example, owners with annual taxable income or gross household income below R5 million (adjustable for inflation and subject to appropriate asset or means testing) – to ensure that disadvantaged, emerging, and middle-class property owners are not excluded from protection.
23. Robust counter-spoliation rights (as discussed above) are especially critical for this cohort, as they lack the resources to engage in protracted court

battles and are most vulnerable to the arbitrary timing-based restrictions that currently characterise the law. The FMF regards such targeted state support not as charity but as a necessary incident of equal constitutional protection under section 25 read with section 9.

Institutional Design, Enforcement, and Rule of Law

24. While the expansion of municipal and “person in charge” standing is welcomed in principle as a pragmatic measure, the Bill must incorporate adequate safeguards against potential overreach, politicisation, or inconsistent application by state entities. The overall framework remains heavily dependent on court processes that are inaccessible, costly, and slow for many ordinary – especially indigent – owners.
25. The FMF echoes concerns raised by other property-rights advocates that elements of the design risk shifting practical control and financial or administrative burdens in ways that indirectly erode the meaningful enjoyment of property rights without sufficient constitutional justification or parliamentary scrutiny.
26. The rule of law requires that any limitation on rights be authorised by law, rational, and non-arbitrary. The arbitrary, timing-based restriction on counter-spoliation; the potential for externalisation of public housing obligations onto private owners; the absence of targeted support mechanisms for poor owners (strictly not to be confused with unlawful occupiers); and the retention of an undifferentiated “just and equitable” framework without clear prioritisation of owner rights in initially unlawful occupation cases, all raise questions of compliance with these principles.
27. The Bill should be amended to eliminate arbitrary distinctions, embed clear owner-centric principles, and ensure that enforcement mechanisms are accessible and effective for all owners, not merely those with resources to navigate complexity.

RECOMMENDATIONS

28. In light of the foregoing analysis, the FMF recommends that the Bill be reconsidered and amended along the following lines:
29. Owner Primacy and Regime Separation: Introduce explicit statutory provisions affirming that ownership and the owner's common law rights form the foundation of the regulatory regime. Clearly distinguish, both procedurally and substantively, between eviction arising from terminated or withdrawn lawful occupation and removal of occupation that was unlawful from its inception. Provide that the occupier must demonstrate a *bona fide*, legally recognised right to remain, with the “just and equitable” inquiry appropriately weighted or secondary to the owner's established rights, absent malicious conduct by the owner to contrive the occupation in the first place.
30. Robust Statutory Counter-Spoliation: Enact a clear statutory formulation of the right to counter-spoliation that turns on substance – specifically, the absence of unreasonable delay or acquiescence – rather than arbitrary temporal or formal distinctions. Specify that reasonable and proportional measures may be taken by an owner or their authorised agent to prevent or reverse unlawful occupation in such circumstances, and that ignorance of the occupation or genuine inability to act timeously shall not prejudice the owner.
31. Explicit Prohibition on Private Alternative Accommodation Obligations: Insert an express and unambiguous provision that no private party may be required, ordered, or effectively compelled, directly or indirectly, to provide, fund, or facilitate alternative accommodation in any eviction or removal proceedings. Codify the state's duty to provide expedited interim accommodation (with clear timelines, dedicated funding, and accountability mechanisms) where removal would otherwise result in homelessness, ensuring prompt restoration of the owner's undisturbed possession.
32. State-Funded Legal Support for Qualifying Owners: Introduce a dedicated, accessible mechanism for state-funded legal representation and full costs

coverage in eviction or removal proceedings instituted by qualifying owners. Propose a threshold such as annual taxable income or gross household income below R5 million (adjustable for inflation and subject to appropriate means or asset testing) to ensure inclusive protection for disadvantaged, emerging, and middle-class owners. Direct Legal Aid South Africa or an equivalent dedicated fund to prioritise such applications on a basis commensurate with other constitutional rights.

33. Strengthened “Person in Charge” with Safeguards: Retain the expanded definition but introduce procedural safeguards, such as requirements for demonstrated authority or control and, where reasonably practicable, notice to registered owners, to prevent abuse, displacement of owner rights, or politicised application.
34. Broader Procedural and Enforcement Reforms: Consider further measures to reduce complexity and cost for ordinary owners, including simplified standard forms and processes, expedited tracks for clear-cut cases of initially unlawful occupation, and guidelines that emphasise owner rights and the *bona fides* requirements for occupiers.
35. Regulatory Impact Assessment and Outcome-Focused Monitoring: Prior to finalisation, publish a comprehensive, independent Regulatory Impact Assessment addressing effects on investment, property markets, poor and disadvantaged owners (not occupiers), enforcement capacity, and organised invasion risks. Establish ongoing monitoring mechanisms focused on measurable outcomes (for example, timelines for restoration of possession, incidence and success of counter-spoliation, impact on organised bad-faith occupations) rather than inputs or process compliance alone.