

https://dspace.org/

Comment on General Notice 1851 of 2006 - Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006

Huchzermeyer, Marie

2007

http://abahlali.org/files/huchzermeyer%20PIE%20Act%20amendment-comment-16-02-07.pdf

http://hdl.handle.net/10539/11931

http://abahlali.org/files/huchzermeyer%20PIE%20Act%20amendment-comment-16-02-07.pdf

Downloaded from a DSpace repository. https://dspace.org/

Comment on General Notice 1851 of 2006 - Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006

By Marie Huchzermeyer, Associate Professor, School of Architecture and Planning, University of the Witwatersrand

Private Bag 3
Wits 2050
marie.huchzermeyer@wits.ac.za
Tel: 011-7177688
Fax: 011-7177649

16 February 2007

Marie Huchzermeyer is an academic who has researched and published extensively on informal settlements and evictions in South Africa, Brazil and Kenya over the past ten years. She has contributed to housing rights work of the organisation COHRE (Centre on Housing Rights and Evictions), particularly its work in relation to informal settlement/slum eviction in Nairobi, Johannesburg and Abuja. She has also collaborated with the pro-bono unit of Weber Wentzel Bowen in eviction and relocation threats to informal settlements in Gauteng. She has analysed informal settlement relocation and eviction cases, including the high profile case of Bredell in 2001.

In 2004, she led a team of consultants in conducting research and developing recommendations for the national Department of Housing on 'Informal Settlement Support'. Many of the principles that were developed through this report were incorporated into the new Informal Settlement Upgrading Programme of national Department of Housing, Chapter 13 of the Housing Code, in particular the principle of relocation as a last resort, the need to strengthen social capital including community organisation in informal settlements, the need to minimise disruption to livelihoods, schooling and access to survival opportunities in the city.

In 2006, she co-edited a book (UCT Press) titled 'Informal Settlements: A Perpetual Challenge?' which seeks to promote in situ upgrading of informal settlements in South Africa and to provide a wide understanding of the complexities involved in this, also in relation to housing rights. The book was welcomed by the Department of Housing.

The comment below draws on this experience. While identifying positive aspects of the amendment, it also points out where the proposed amendment is a departure from spirit and principles of the Breaking New Ground programme which introduced informal settlement upgrading, embracing a tangible operationalisation of povery alleviation and of the right to housing for desperately poor and under-housed people in South Africa. I

Ownership of land
p.2,
Definitions:
'Owner' to include the organ of the state administering and controlling or land – this definition should include that which is given in the memoradum on the objects of the amendment bill (p.10, item 2.12), namely that it applies only to cases where transfer of ownership of the land to the municipality is being processed by the Deeds Office. It must clearly state that it does not apply to the municipalities' role, in respect of all land, of regulating land use and administering development controls.

Ending application of PIE to tenants
p.3
2(2)(a) – Here reference needs to be made to the comments submitted by the Centre for Applied Legal Studies at Wits University, which were discussed. This commentary supports those made by CALS in full.

p.8 Objects of the Bill
2.3 Here reference needs to be made to the comments submitted by the Centre for Applied Legal Studies at Wits University, which were discussed. This commentary supports those made by CALS in full.

Criminalising the organisation of a land invasion
3(1) The word 'person' legally includes organisations with legal standing, and in effect most NGOs, CBOs, civic organisations, housing federations and social movements.
3(2) Therefore, this section makes it illegal for community based organisations to operate collectively on behalf of a membership of people living in desperate conditions (as per Grootboom), to secure themselves shelter, in a situation where the municipality does not have appropriate plans to enable access to land for such people (as per Grootboom). This criminalisation of collecting money as membership fees etc. should not be included in the amendment bill, as there is no guarantee or evidence that municipalities are providing access to land/shelter at the appropriate scale for the class of people to whom the Grootboom ruling applies.

The PIE Act currently criminalises only the receipt of a fee for arranging for a land occupation. Justification for the amendment or criminalisation is 'the nature and increase in land [and building] invasions'.

Underlying the proposed amendment to the PIE Act is an assumption that South African citizens agree that the invasion of land or buildings by poor households is an unjustified practice that must be stopped, and that it must be stopped by criminalising the activity of arranging an invasion. The 'nature' and 'increase' of this activity are stated in the amendment as a problem that justifies the amendment.

Two questions arise: One, is there any evidence of a gradual or sudden change in nature of and an increase in land invasions? Two, should such evidence exist, is there consensus among the majority of South African citizens that increased land invasion is a process that must be stopped? The amendment assumes consensus, to the extent that it need not offer any further explanations as to the 'nature' it refers to or evidence of the assumed 'increase' in invasions.

Regarding the 'nature', the memorandum of objects attached to the amendment offers only one explanation, namely that invasions are 'often on land which has already been earmarked for housing development'. This is in fact nothing new – the invasion, subsequent eviction and demand for shelter assistance that was subject of the landmark 'Grootboom' ruling in the Constitutional Court (which helped define the constitutional right to housing) was an invasion of land earmarked for housing development. There have been many others over the past 12 years.

Regarding evidence of increase in invasions, the City of Cape Town in October 2006 claimed it had curbed invasions within its jurisdiction. Other cities are following with officially termed 'zero tolerance' measures instituted by 'squatter control units', policing and protecting vacant land with rapid response teams. It is increasingly difficult to invade land, and hard to believe that there is currently an increase in land invasions. And even if there were evidence of a sudden surge in land invasions, would this justify an amendment to an act, without any analysis of the reasons for this surge?

Reasons for ongoing land/building invasions, despite measures to prevent them, are twofold. Firstly, they relate to ongoing farm evictions as well as the failure of rural and small-town development programmes in curbing city-ward migration of desperately poor households, in a context where the economy has not managed to even out the distribution of wealth or reduce inequality.

Additional reasons are localised, and related to processes of displacement. Often, these are in response to increases in property values and rentals in urban renewal areas preparing for 2010 developments. In Johannesburg, areas such as Bertrams, in proximity to designated 2010 stadiums, have experienced a surge of evictions and displacement of poor households, who have no affordable legal alternatives to move to.

The timing of the PIE Act amendment is worrying. It comes at a stage when cities increasingly put themselves under pressure to prepare for 2010, and when 2010 is increasingly associated with the need to eradicate or eliminate slums. These eradication drives make incorrect reference to the unfortunately termed 'Cities without Slums' campaign of UN-Habitat and the World Bank, which seeks to promote (but in fact often does the opposite, whether in Nairobi, Abuja or Johannesburg) action towards the Millennium Development Goal of significantly improving the lives of 100 million slum dwellers globally by 2020.

An amendment this year would remain in force beyond 2010, until repealed. What may be expected after 2010 has not entered South Africa's imagination. Whether the assumed

current ‘nature’ and ‘increase’ of invasion will be relevant to post-2010 South Africa must be questioned – reasons for displacements and therefore for invasions will be different, they cannot be anticipated, and on that ground an amendment based on a (merely perceived) immediate situation in anticipation of an international event should not be approved.

And now to the question of consensus: How does the majority of South African society actually view the invasion of land? And does sufficient consensus exist, to justify an amendment that criminalises the arrangement of invasions through a perceived change in nature and increase in invasions?

The strongest and best articulated views on land invasions are expressed from the land owning class, the property elite. From its perspective, land invasion is a threat to property values, always with the hope that the property clause in the Constitution be interpreted as protection not only of property but also against decrease in its value. Less explicitly articulated is the threat that land invasions pose to the South African middle class privilege (unsurpassed among middle income countries with similar levels of inequality) of living at a safe distance from the poor, without being reminded of their existence.

It is widely and officially acknowledged that urban class segregation (still overlapping to a large extent with race segregation) has been perpetuated in the post-apartheid city, in fact, one may argue, to the extent that the term ‘post-apartheid’ in spatial terms may as yet not apply to South African cities. While formal land developments continue to litter the urban periphery in segre-gated patterns in seeming ignorance of South African consensus on the need to overcome the apartheid city, land invasions have bravely inserted themselves on underutilised land, opening up access to the city for the poor.

Informal settlements or unlawfully occupied buildings aren’t ideal, nor is the process of invading land or buildings a pleasant one. Invaders would much rather take lawful occupation of affordable housing in suitable locations, should such exist at scale. If asked, the poor majority of South Africans would first of all call for an increase in provision of affordable housing in suitable locations. Having experienced the frustration of waiting lists (or ‘wasting lists’, as put by a resident from the Harry Gwala informal settlement in Ekurhuleni), the same class of people will not agree to criminalising the arrangement of land or building invasions.

Criminalising the act of arranging an invasion in the absence of suitable alternatives to invasion (and this can only be determined on a case by case basis) is not appropriate. Truly criminal activity in relation to informal settlements comes in the form of red ants demolishing homes without court orders while parents work and children are at school (as in the case of Makausi informal settlement in Germiston since 1 February), contracted by municipal governments often in contempt of court. A PIE Act amendment should instead address and prevent this sadly common violation.

Removing the minimum of 6 month period of occupation to which the provision of suitable alternative accommodation applies

p.5

5(d)(6)(b) period of occupation

(c) availability of suitable alternative accommodation

The PIE Act has been applauded internationally(by UN-Habitat) for its innovation of ensuring a minimum level of tenure security (which ensures suitable alternative accommodation) for a class of households, namely those that have occupied land unlawfully for a period of at least 6 months. It is clear that the 6 month period is arbitrary, one day making such a difference in the tenure security of a desperately poor household. However, an amendment here needs to be very clear on the improvement of tenure security for those that have occupied land for less than 6 months, and must ensure that it is not used for the opposite purpose, to evict households that have occupied longer than six moths.

'Suitable alternative accommodation' must be defined. I call for 'alternative accommodation that does not disrupt livelihoods, social and religious networks and access to schooling and social and health facilities on which the household depends for its survival, health, development and relief from poverty'. I also call for a statement on distance and nature of the alternative accommodation and the relocation procedure – 'suitable accommodation should be no further than 5km from the current location, and if this is not possible, it must be ensured that transport at no additional cost to the household is provided to the existing schools, social and health facilities, livelihoods and social and religious ties on an ongoing basis. If alternative schooling and livelihoods are available at the place of alternative accommodation, can be accessed without disruption and are acceptable to the household, and if community participation in the decision-making takes place to the extent that residents have sufficient say in the planning of the relocation to be ensured that their social and religious ties are as accessible as before, then transport at no additional cost to the household need not be provided'. These principles are necessary in order for a relocation to avoid eviction and to ensure that poverty for the relocated households is not increased.

I also call for inclusion of: 'the transfer or relocation to the alternative accommodation may not occur under force, unless there are no reasonable grounds on which the household may refuse to relocate. Reasonable grounds relate to, and livelihoods, schooling, social and health facilities and essential social and religious ties, and whether the household is familiar and satisfied with the relocation site'.

Speed and scale of invasion as a ground for urgent eviction

p.6

6.5(1)(bA) This clause about the speed and scale of land occupation would justify the Bredell eviction of 2001 (which was unconstitutional and remained uncontested), where people who had resided on the land for more than 6 months had their rights to suitable alternative accommodation ignored through an urgent forced eviction, which was justified on the basis of rapid unlawful occupation of the same portion of land.

The clause is too crude to be applied fairly and should be omitted. As argued above, before any eviction (urgent or not) is granted in a situation of rapid large scale invasion of land, there needs to be an analysis of the reasons for this invasion – i.e. an investigation into how desperate the accommodation conditions of the invading households were, and whether the municipality is addressing these conditions adequately. If a municipality is subject to rapid large scale land invasion, this is usually a sign that this municipality is not governing access to land/housing appropriately or reasonably. 'Speed' and 'scale' would have to be clearly defined so that interpretation and application is not subject to the orientation (progressive or conservative) of the judge. However, a numerical definition would be meaningless without a clear understanding of the context of and reason for the invasion.

Instead, I call for a clause that criminalises political parties or elected political representatives' involvement in organising land invasions in return for political support, in other words the practice of 'clientelism', which has a fairly clear meaning in political terms.

p.8 Objects of the bill
2.5 For the argument about speed and scale of the invasion to be approved, one would need evidence that:
a) invasions have indeed increased. To my knowledge, as argued above, invasions have held a steady pace since 1994. Some municipalities (e.g. City of Cape Town, mentioned in a workshop in October 2006) claim to have curbed land invasion.

b) that housing delivery, or access to suitable accommodation in a certain locality has increased in pace in relation to growth in demand (demographic formation of households as well as migration) in that same location, and that there are no processes underway in that same municipality that displace households from accommodation that was previously affordable to them (a process that is gathering speed due to 2010 as well as policies of regulating back yard shack rental accommodation), i.e. there being no justification for any increase in land invasion. In addition, evidence is needed of an improvement in the speed of delivery on land already earmarked for housing. Delays in housing development on land earmarked for housing is acknowledged as a problem by *Breaking New Ground*. Unless there is evidence of this problem being resolved in the particular locality of the invasion, increase of invasions on land earmarked for housing development comes as no surprise.

2.10 Further, the speed and scale of the unlawful occupation has little or nothing to do with desperation of the individual occupier, and therefore contradicts the right to housing as defined in the Grootboom ruling.

For all the above reasons, I submit that the Amendment Bill in its current form should not be presented to Parliament.