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GENERAL NOTICE

NOTICE 1423 OF 2002**MINISTRY OF AGRICULTURE AND LAND AFFAIRS**

I, Angela Thokozile Didiza, Minister for Agriculture and Land Affairs hereby publish the Communal Land Rights Bill, 2002 for comment by the general public. Comments must be submitted in writing within 60 days of publication of this notice to:

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A T Didiza

Minister for Agriculture and Land Affairs

COMMUNAL LAND RIGHTS BILL, 2002

BILL

To provide for an enabling legal environment for communities or individual households or individual families or individual persons to obtain legally secure tenure; to provide for the protection against arbitrary deprivation of land tenure rights and general principles applicable to land tenure rights; to provide for the transfer of communal land to communities and members of communities who have land tenure rights; to provide for the awarding of comparable redress where tenure is legally insecure; to give legal recognition to customary and other communal land tenure systems; to provide for the administration of communal land and the functions of administrative structures in this regard; to provide for further democratization and support in respect of the functioning of the institution of traditional leadership and other community-based institutions or structures which administer communal land; to provide for the settlement of disputes by communities by way of alternative dispute resolution mechanisms as well as recourse to magistrate's courts and the Land Claims Court; to provide for the eviction of persons whose land tenure rights have lawfully been terminated; to provide for land rights investigations; to provide for the establishment of land rights boards; to provide for leases of communal land for commercial and developmental purposes; to provide for the expropriation of communal land or individual holdings within communal land for certain purposes; to provide for the registration of deeds and alienation of certain rights in communal land; to provide for offences and penalties; to provide for the delegation of powers and assignment of duties and the making of regulations; to provide for the repeal of certain laws; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 25(5)(6), (8) and (9) of the Constitution requires the State to take reasonable legislative and other measures to enable citizens to gain access to land on an equitable basis; to provide either secure tenure of land to communities, individual households, individual families and individual persons whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices, or alternatively comparable redress; and to effect land and related reforms;

RECOGNISING that millions of people who occupy, use or have formal or informal access to land in communal areas, particularly in the former homeland and former South African Development Trust areas, do not have secure tenure of such land;

FURTHER RECOGNISING that there is severe overcrowding of land and conflicting land tenure rights and interests in land in these areas, contributing to severe poverty, disputes and poor utilization of land;

AND FURTHER RECOGNISING that the institution of traditional leadership played an important role in channeling the resistance to colonial dispossession of land and upholding the dignity and cohesion of the African people and in retaining access to parts of their land;

AND FURTHER RECOGNISING that many women were made perpetual minors without rights to property and that legal mechanisms need to be developed to assert their equal rights to property.

AND ACKNOWLEDGING that-

- ❖ some of the land in these areas vests in the State;
- ❖ there is widespread confusion regarding the status of rights in such land and regarding who may make decisions in respect of the land; and

- ❖ this confusion contributes to disputes and delays, inhibiting attraction of resources for development on the land;

AND FURTHER ACKNOWLEDGING that-

- ❖ a range of laws govern the system of land administration and natural resources management in these areas; and
- ❖ administrative practices have undermined the ability of inhabitants and other rights holders of this land to enter into legally enforceable arrangements in respect of land tenure rights;

AND CONSCIOUS that-

- ❖ the inherited system of land administration and natural resources management in these areas is derived from past racially discriminatory laws and practices and does not provide security of tenure and is unevenly applied;
- ❖ some existing systems of land tenure rights violate fundamental human rights guaranteed in the Constitution, in particular, the equality rights of women to benefit from the land and to participate in all democratic decision-making processes;
- ❖ traditional leadership institutions and other community-based institutions should continue to play a meaningful and key role in the administration of communal land subject to the provisions of this Act and any other applicable law;
- ❖ it is desirable for the well-being and dignity of the people living in these areas that they acquire secure land rights and decision-making powers in respect of the land which they occupy and use;

- ❖ people whose land tenure rights are diminished or compromised as a result of conflicting rights and interests in land may need security of tenure on the land or, additional or alternative land;

AND RECOGNIZING that there is a need to-

- ❖ extend full legal status to all land tenure rights held under various land tenure systems;
- ❖ provide for the transfer of certain communal land to communities which have historically occupied or used the land while ensuring that conditions exist for the secure tenure of land by the communities and the members of those communities; and
- ❖ rationalize the range of laws and administrative practices which apply to land administration in these areas and to introduce a single, uniform and development-orientated system of land administration;

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

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CHAPTER I

DEFINITIONS

Definitions

1. In this Act, unless the context indicates otherwise-
 - (i) "administrative structure" means any body of persons representing a community and authorized by that community to perform functions in respect of land administration and natural resources management in terms of that community's community rules as contemplated in section 32, which may include the institution of traditional leadership and other community-based institutions;
 - (ii) "application" means an application contemplated in sections 10 or 12(2)(b) or 17 or 25 ;
 - (iii) "authorized officer" means authorized officer as contemplated in clause 32(6)(b);
 - (iv) "beneficial occupation" means the occupation of land by a person, as if she or he is the owner, without force, openly and with or without the permission of the owner since 31 December 1992;
 - (v) "communal land" means-
 - (a) State land which is historically occupied or used by a community and which at any time vested in –
 - (i) the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);

- (ii) the government of any area for which a legislative assembly was established in terms of the former so-called Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971); or
 - (iii) the governments of the former so-called Republics of Transkei, Bophuthatswana, Venda and Ciskei;
- (b) State land that is historically occupied or used by a community on a communal basis, and which-
 - (i) was listed in the schedules to the Black Land Act, 1913 (Act No. 27 of 1913);
 - (ii) was listed in the schedule of released areas in terms of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);
- (c) land which has been purchased by a community, and is held in trust by the Minister for the community;
- (d) land which was acquired by or for a community, but was not registered in its name because of racially discriminatory laws and practices; and
- (e) other state land which has been occupied or used by the community on a beneficial occupation basis for a continuous period since 31 December 1992;
- (f) land as contemplated in section 3 of the KwaZulu-Natal Ingonyama Trust Act, No. 3KZ of 1994 as amended;

- (g) land transferred in terms of section 20 of the Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991);
- (vi) "community" means-
- (a) a group or a portion of a group of people within a geographical area:
- (i) who possess historical social cohesiveness; and
 - (ii) whose land tenure rights or incidental rights thereto to occupy or use communal land in the geographic area have historically been established; and
 - (iii) who occupy the land on the basis of shared rules, or established practices, which regulate or limit the decision making by individuals or families within that group; and
 - (iv) who are beneficially occupying and using the land;

Provided that the persons who are alleged not to be historically members of a community but have existing land tenure rights within the geographical area concerned shall be regarded as members of the community; provided further that a portion of a group of people within such area shall qualify as a community in precedence to the group in respect of the land occupied by the portion of the group; or

- (b) a group or a portion of a group of people within a geographic area who do not possess the characteristics set out in subsection (a)(i) to (iii) above save that they are beneficially occupying and using land in terms of their land tenure rights, a majority of whom wish to be associated together as a community under community rules to be registered in terms of section 32; and

- (c) "communities" has a corresponding meaning.
- (vii) "community rules" mean the rules governing land tenure and the management of natural resources within a community in respect of the communal land, as derived from customary law or common law or made applicable to that land in terms of any other law, including this Act or the founding document of a similar entity and which have been registered in terms of section 32;
- (viii) "comparable redress" means the assistance contemplated in section 9; an
- (ix) "conflicting land tenure rights" mean conflicting land tenure rights held by more than one community or household or family or person in respect of the same land;
- (x) "Constitution" means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
- (xi) "Deeds of Land Tenure Rights" mean a deed of transfer conveying a land tenure right from the community or the registered holder of such a land tenure right to an individual household or individual family or individual person or persons for their exclusive use and enjoyment according to the rules of the community;
- (xii) "Deeds Registry Act" means the Deeds Registry Act, 1937 (Act No. 47 of 1937);
- (xiii) "Deed of transfer" means a deed of transfer as contemplated in section 21 and 23;
- (xiv) "Department" means the Department of Land Affairs;
- (xv) "Director-General" means the Director-General of Land Affairs;

- (xvi) "duly convened meeting of the community or the administrative structure" means a meeting convened by the community or the community's administrative structure in accordance with section 7(3) and (4) and the community rules and after giving a public notice of not less than thirty days and specifying the purpose of the meeting, the date and place of the meeting as well as the agenda items.
- (xvii) "established practice" means the practice that governs the occupation or use of communal land, and is generally accepted as authoritative and binding by a community;
- (xviii) "family" means persons related to each other by consanguinity, by reason of their descent from a common ancestor, including their spouses, having the right to reside in a homestead by virtue of a land tenure right or rights;
- (xix) "household" means persons having the right to reside in a homestead by virtue of a land tenure right or rights;
- (xx) "land rights inquirer" means any official of the Department of Land Affairs designated or any other person appointed by the Minister as contemplated in section 58(1) of this Act;
- (xxi) "land rights board" means a board established in terms of Chapter VIII;
- (xxii) "land tenure right" means a right to own, occupy, use or alienate communal land which is held collectively by the members of a community or individual households or individual families or individual persons and is recognized or acknowledged or conferred by:
- (a) legislation, (including a permission to occupy land);

- (b) any communal, customary law or indigenous law or practice of a community;
- (c) usage or administrative practice in a particular area or community;
- (d) common law;
- (e) a trust arrangement
- (f) section 5(2);
- (g) section 24;

And including beneficial occupation; but excluding:

- (a) any right or interest of a tenant, labour tenant, sharecropper, or employee if such right or interest is purely of a contractual nature;
 - (b) any right or interest based purely on temporary permission granted by the holder of a land tenure right of the land in question, on the basis that such permission may at any time be withdrawn by such holder of a land tenure right;
- (xxiii) "land tenure right holder" means a holder of land tenure right as contemplated in section xxi;
- (xxiv) "the Minister" means the Minister responsible for land affairs;
- (xxv) "traditional leadership" means a traditional authority or leadership as contemplated in sections 211 and 212 of the Constitution;

- (xxvi) "occupant" means a person whose land tenure right has been lawfully terminated but who continues to occupy or use such land, and includes any person occupying or using the land through such other person;
- (xxvii) "organ of state" bears the same meaning assigned to it in section 239 of the Constitution;
- (xxviii) "owner" means the registered owner of land, in terms of the Deeds Registries Act and "own" and "ownership" shall have a corresponding meaning;
- (xxix) "prescribed" means prescribed by regulation made and in force under this Act;
- (xxx) "project" means a project as contemplated in section 17.
- (xxxi) "putative land tenure right" means an unlawful land tenure right believed by the holder thereof, in good faith, to be lawfully held by her or him;
- (xxxii) "Registrar of Reeds" means a registrar appointed in terms of section 2 of the Deeds Registries Act;
- (xxxiii) "registration officer" means a registration officer as contemplated in section 32(13) of this Act.
- (xxxiv) "similar entity" means a communal property association established in terms of the Communal Property Association Act, 1996 Act, (Act No. 28 of 1996), trust as contemplated in the Trust Property Control Act, (Act No. 57 of 1988), a company established in terms of the Companies Act, 1973 (Act No. 63 of 1973) or an association of persons whose members have received property from the State in terms of any law or agreement;

(xxxv) "Surveyor-General" means a Surveyor-General as contemplated in the Land Survey Act, 1997 (Act 8 of 1997); and

(xxxvi) "this Act" includes any regulations made and in force under this Act.

CHAPTER II

OBJECTS AND APPLICATION

Objects of Act

2. The objects of this Act are to-

- (a) give effect to section 25(5),(6), (8) and (9) of the Constitution;
- (b) confer juristic personality on communities with full legal capacity;
- (c) give legal recognition to land tenure rights held by communities and their members or individual households or individual families or individual persons on communal land;
- (d) confer legal status upon certain land tenure systems and community rules based on local custom;
- (e) provide for legally secure tenure where the tenure of land is legally insecure as a result of past racially discriminatory laws and practices including the transfer of communal land to communities, or similar entities or individual households or individual families or individual persons and the registration thereof of land tenure rights in terms of the Deeds Registries Act and this Act;
- (f) provide suitable comparable redress to persons whose tenure of land is insecure due to past discriminatory laws or practices and which cannot be made legally secure;

- (g) regulate certain aspects of decision-making in respect of land tenure rights in communal land in order to promote security of tenure and attraction of resources for development in communal land;
- (h) provide, in the context of this Act, for the protection of the fundamental human rights contained in the Bill of Rights in the Constitution, including –
 - (i) the right to equality, especially gender equality in respect of the ownership, allocation, use of, or access to land;
 - (ii) the democratic right of the members of a community to choose the appropriate land tenure system, community rules and administrative structures governing their communal land; and
 - (iii) the right to democratic participation by the members of a community in decision-making processes affecting their tenure rights;
- (i) provide for further democratization and support in respect of the functioning of the institution of traditional leadership and other community-based institutions or structures which administer communal land;
- (j) recognize alternative dispute resolution mechanisms for the resolution of conflicts and disputes concerning communal land, arising from any cause, including forced overcrowding or conflicting land tenure rights in such land; and
- (k) provide for certain institutional, material and technical support by the State to communities in the ownership and management of their land tenure rights, subject to the provisions of the Constitution and this Act.

Application of Act

3. This Act applies to-

- (a) communities and their members having land tenure rights in respect of communal land;
- (b) communities and their members receiving land and other forms of property from the State as contemplated in this Act;
- (c) any other communities as the Minister may determine by regulation; provided that the Minister may in such regulation specify the relevant provisions of this Act which shall apply to such communities;

excluding land restored or awarded to any individual or community in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).

CHAPTER III

LEGAL SECURITY OF TENURE UNDER COMMUNAL LAND TENURE SYSTEMS

Juristic personality of communities

4 (1) A community, upon the registration of its community rules in terms of section 32 shall be established as a juristic person.

(2) A community registered as a juristic person as contemplated in subsection (1) may-

- (a) acquire rights and incur obligations in its own name in accordance with its community rules as contemplated in section 32;

- (b) subject to the provisions of its community rules and this Act:
 - (i) acquire and dispose of immovable property and real rights therein; and
 - (ii) encumber such immovable property or real rights by mortgage, servitude, or lease or dispose of immovable property in any other manner as contemplated under this Act;
- (c) have perpetual succession regardless of changes in its membership.

Entitlement of communities and their members to legal security of tenure

5. (1) Communities, and their members, individual households, individual families and individual persons who hold land tenure rights in relation to communal land are entitled to secure tenure of land, as contemplated in this Act: Provided that the registration of Deeds of Transfer of land in the name of any communities or individual households or individual families or individual persons and the issuing of any Deeds of Land Tenure Rights to individual households or individual families or individual persons as contemplated in Chapter V in respect of any land which is subject to a claim in terms of the Restitution of Land Rights Act, 1994 (Act No.22 of 1994), shall take place, if at all, only after and subject to the final determination of the restitution claim.

- (2) Any putative land tenure right purportedly created under or in terms of -
 - (i) Black Areas Land Regulations, Proclamation R188 of 1969;
 - (ii) Any similar legislation or Regulation or Proclamation in force in any area currently comprising the Republic of South Africa at any material time; and
 - (iii) any other law

and existing at the date of commencement of this Act shall be deemed to have been lawfully created, provided that the Minister is satisfied, after due and thorough enquiry, including consultation with the Land Rights Board or Boards, that the alleged rights holder acted in good faith and further provided that the issuing of the land tenure right was not for any other reason unlawful.

Protection against arbitrary deprivation of land tenure rights

6. (1) Subject to sub-section (2), a person may not be deprived of a land tenure right without his or her consent unless the right is cancelled by the Minister as contemplated in section 14 or the land in question is expropriated in accordance with section 62 or any other law providing for the expropriation of land or rights in land.

(2) Community rules on deprivation of land tenure rights must provide for appropriate compensation, which compensation shall as far as possible incorporate the principles applicable to expropriation as contemplated in section 25 of the Constitution.

(3) The administrative structure shall cause any existing deed evidencing the existence of a land tenure rights to be lodged with the Registrar of Deeds who shall cancel the deed by suitably endorsing all relevant deeds and making the necessary entries in her or his registers, on compliance whereupon the land tenure right shall vest in the registered owner of the land.

The general principles applicable to land tenure rights

7. (1) The enjoyment, administration and alienation of land tenure rights in communal land must be exercised and administered in a manner-

- (a) which is consistent with the provisions of this Act and any other applicable law; and

- (b) which upholds the values and protects the rights enshrined in the Constitution.

(2) A person or customary or communal system of land tenure may not unfairly discriminate against anyone, directly or indirectly, with regard to a community rule or practice or decision, which determines-

- (a) the ownership, allocation, occupation, use or alienation of communal land for any purpose;
- (b) participation in decision-making processes and fora concerned with the ownership, allocation, occupation, use or alienation of communal land; or
- (c) the membership of any institution or structure involved in the management or allocation of rights in the community's communal land.

(3) A decision pertaining to land and land tenure rights taken at a duly convened meeting of a community must-

- (a) be preceded by the giving of a public notice of not less than thirty days, specifying the purpose of the meeting, the date, place and time of the meeting as well as the agenda items;
- (b) be preceded by reasonably adequate consultation with the right holders who will be affected by the decision.
- (c) enjoy the support of at least a majority of the members of the community who are present or represented at the meeting.

(4) The convenor or facilitator of a meeting contemplated in sub-section (3) must take reasonable measures to ensure free participation and expression of

views by everyone attending or represented at the meeting, which may include secret voting and the holding of separate consultations with different interest groups.

CHAPTER IV

PROVISION OF COMPARABLE REDRESS WHERE LAND TENURE IS INSECURE

Provision of comparable redress in certain circumstances

8. (1) The Minister shall, in order to achieve the objects of this Act provide comparable redress, as contemplated in this Chapter to a community or the individual household, or individual family or individual person whose land tenure rights are legally insecure due to the existence of conflicting land tenure rights as a result of past racially discriminatory laws or practices.

(2) From money appropriated by Parliament for this purpose, the Minister shall provide comparable redress as contemplated in sub-section (1).

(3) Comparable redress as contemplated in sub-section (1) may consist of one or more of the following-

(a) transfer of ownership of alternative or additional land to communities or individual households or individual families or individual persons or similar entities;

(b) any other appropriate assistance for development and the provision of services.

Comparable redress to satisfy certain requirements

9. The Minister shall satisfy herself or himself that an award of comparable redress provided in terms of this Chapter-

- (a) will promote the security of land tenure rights held by all persons in the area which is the subject of the proposed comparable redress;
- (b) accommodates in a just and equitable manner any significant differential interests in the land, including differential historical interests, taking into account all relevant factors, including-
 - (i) the length of the period of occupation or use of the land; and
 - (ii) the manner and circumstances of the acquisition of the land tenure rights or interests in question.

Application for comparable redress

10. (1) An administrative structure, duly acting on behalf of the community, or any person whose right to land is adversely affected by the conditions referred to in section 8 may, as prescribed, apply to the Minister for an award of comparable redress. A copy of the application shall be lodged with the Land Rights Board having jurisdiction in the area.

(2) The Minister may, after receipt of an application contemplated in subsection (1), at her or his discretion, initiate the procedure in terms of this Chapter for the awarding of comparable redress.

Prioritization of comparable redress

11. The Minister may, on any reasonable ground, prioritize the processing of different applications or projects for comparable redress, having regard to-

- (a) the severity of the threat to, or diminution of, the enjoyment of land tenure rights by persons in the area which is the subject of the requested redress;
- (b) the extent of such threat to other right holders beyond such area;

- (c) the extent of overcrowding or poverty in the area; and
- (d) the number of persons affected by the conditions referred to in paragraphs (a) to (c).

Land rights inquiry and report

12. (1) The Minister shall designate or appoint a land rights inquirer as contemplated in section 58(1) to investigate and report in each instance on the application referred to in section 10.

- (2) The land rights inquirer shall-
 - (a) conduct a land rights inquiry on the matter and in particular the priority, if any, the application must be accorded and the extent of the threat to, or diminution of, the enjoyment of land tenure rights by the persons applying for comparable redress;
 - (b) establish the views and the circumstances of persons, other than the applicants referred to in paragraph (a), whose land tenure rights are or may be affected by the application;
 - (c) advise the affected parties with regard to the provisions of this Chapter; and
 - (d) provide the Minister with a written report, in the prescribed form, regarding the land rights inquiry together with an appropriate recommendation with regard to the issues contemplated in paragraphs (a), (b) and (c) or any other issue the land rights inquirer may find necessary to submit to the Minister.

Awarding of comparable redress

13. (1) The Minister shall, after considering the report and recommendation referred to in section 12(2)(d), award comparable redress in respect of an area if-

- (a) the land tenure rights which are the subject of the proposed comparable redress, are legally insecure as contemplated in section 8;
- (b) the application or other procedure for seeking comparable redress, complies with the provisions of this Act; and
- (c) such insecure land tenure rights cannot be rendered legally secure in any other manner.

(2) The Minister may impose any reasonable condition in respect of a comparable redress award and may impose different conditions in respect of different awards, if there is a reasonable basis for the imposition of such conditions.

Cancellation of land tenure rights

14. (1) The Minister may, in order to give effect to an award of comparable redress contemplated in section 8, after consultation with the Land Right Board having jurisdiction in the area, cancel an existing land tenure right in the prescribed manner, subject to subsection 2: Provided that following the resolution of the matter, the Minister simultaneously offers other comparable redress to the land tenure right holder as compensation for the right intended to be cancelled.

- (2) A land tenure right may be cancelled in terms of sub-section (1) only-
 - (a) if the written consent of the person holding such right or the consent of a majority of the community, should the right be held by a community, is obtained, and

- (b) after the Minister has, in writing-
- (i) given the holder of the land tenure right reasonable notice of the intention to cancel the right and the grounds for cancellation, as well as a reasonable opportunity to make representations with regard to such intention;
 - (ii) offered to the land tenure right holder whose right is intended to be cancelled, comparable redress as contemplated in section 9 and such right holder has accepted the offer;
 - (iii) duly considered any representations.

(3) The Minister shall cause any existing deed evidencing the existence of a land tenure right to be lodged with the Registrar of Deeds who shall cancel the deed by suitably endorsing all relevant deeds and making the necessary entries in her or his registers, on compliance where upon the land tenure right shall vest in the registered owner of the land.

Purchase and expropriation of land

15. (1) To facilitate the granting of redress in terms of this Chapter, the Minister shall have the power to:

- (a) acquire land through purchase; or
- (b) expropriate land in terms of section 25 of the Constitution and the Expropriation Act, 1975 (Act No. 63 of 1975); or
- (c) take any other reasonable programme of action that may satisfy the granting of comparable redress

for the purpose of transferring such land to the beneficiaries of comparable redress in terms of this Chapter or to appropriate juristic bodies of which such beneficiaries are the members or beneficiaries.

(2) Notwithstanding the provisions of sections 14 of the Deeds Registries Act, the transfer of land may be effected directly into the name of the beneficiaries.

(3) Neither transfer duty in terms of the Transfer Duty Act, 1949 (Act No. 40 of 1949) nor value added tax in terms of the Value Added Tax Act, 1991 (Act No. 89 of 1991) nor stamp duty shall be payable in respect of the transactions referred to in section 15(1).

CHAPTER V

TRANSFER OF COMMUNAL LAND

Transfer of communal land to communities or similar entities or individual households or individual families or individual persons

16. (1) The Minister shall, subject to the provisions of this Act and section 7(3) and (4) cause the transfer of communal land or parts thereof to-

- (a) any community or similar entity in the form of a Deed of Transfer as contemplated in section 21; or
- (b) individual household or individual family or individual person in the form of Deed of Transfer as contemplated in sections 21.

(2) The functions of a conveyancer to be performed in order to effect the registration of a transfer to a community, or individual household, or individual family or individual person may be performed by an official employed by the Department.

Application for transfer of land and the initiation of projects for transfer of land by the Minister

17. (1) A community or individual household or individual family or individual person may, in the prescribed manner apply to the Minister for the transfer of communal land or any right which is incidental thereto.

(2) The Minister may on behalf of any community, as a project initiate the procedure for the possible transfer of land and appropriate registration of rights in land referred to in this Chapter.

(3) An application contemplated in sub-sections (1) shall be lodged with the Minister and shall include the following minimum information-

(a) an identification of the boundaries of the land in respect of which the application is made;

(b) the full name of the community or individual household or individual family or individual person to which the land or any part thereof, is to be transferred;

(c) community resolution indicating the community's support for the proposed transfer of land, and in the case of an application or project for transfer of land to a community, which resolution shall include the community's commitment to the principles set out in sections 7 and 32(3); and

(d) any other document or information that may be required or prescribed.

Preliminary land rights inquiry process and report

18. (1) The Minister shall cause a land rights inquirer as contemplated in section 58(1) to inquire into the merits of the application submitted in terms of section 17(1) or a project for the transfer of land to beneficiaries initiated by the Minister in terms of section 17(2) and prepare and submit a report on her or his findings of the land rights inquiry to the Minister.

- (2) The report referred to in subsection (1), must indicate-
- (a) a detailed exposition of the grounds on which the application was made;
 - (b) whether or not the transfer of the land will promote security of land tenure and equitable access to land;
 - (c) whether the members of the community have consented to such transfer;
 - (d) whether the land tenure rights of any members of the community who do not support the application will be prejudiced;
 - (e) how the transfer of land in ownership to a community or similar entity or individual household or individual family or individual person will promote gender equity in the ownership, allocation, use of and access to land;
 - (f) how the land tenure rights of any members of the community not supporting the application should be addressed, if necessary; and
 - (g) the commitment of the applicants to observe the general principles contained in sections 7 and 32(3) and the intended future management of land tenure rights on the land;
 - (h) whether any putative land tenure rights as contemplated in section 5(2) exist on the land;
 - (i) the outer boundaries of the relevant land;
 - (j) the sites or areas of such land which are allocated or used for specific purposes, and describing such purposes and the individual households or individual families or individual persons or entities to whom or to which such sites or areas are allocated, or who or which use them;

- (k) the nature, extent and legal authority for all existing land tenure and other rights in the relevant land, and the holders of such rights;
- (l) all conflicting land tenure rights;
- (m) the nature and extent of the rights sought to be transferred and the transferees to whom or which each such right is sought to be transferred; and
- (n) whether the land tenure rights of any communities or similar entities or individual households or individual families or individual persons adjacent to the applicant community will be prejudiced.

(3) A land rights inquirer appointed for this purpose shall use her or his best endeavours to complete the investigation within a period of 120 days of receipt of the application or such extended period as may be agreed with the applicant.

Notice of application or project

19. (1) The Minister shall if she or he is reasonably satisfied after considering the report of the land rights inquirer that the application or the project would if approved fulfil the objectives of this Act-

- (a) give notice in the prescribed manner, or other method deemed to be appropriate, of the application or the project, by radio, in the *Government Gazette*, in a newspaper circulating within the district where the land is situated and through other relevant and transparent media;
- (b) cause a notice pertaining to the application or the project to be simultaneously displayed on any public building accessible to the general public in the area concerned, if such a building exists;

- (c) serve a copy of the notice on the Land Rights Board having jurisdiction in the area; and
 - (d) in such notice invite any interested party to lodge an objection together with the reasons for the objection against the application or the project, within 60 days from the date of publication or display of the notice, to the Director-General.
- (2) Should the Minister be of the opinion that the application or the project, if granted, would not fulfill the objectives of this Act, she shall not give notice of the application or the project in terms of section 19(1), in which event she shall inform the applicant or the intended beneficiary of the project of her or his decision with reasons and advise on how the application or the project could be amended to make it comply with the objectives of this Act.

Inquiry into objections and any other matter the Minister may deem relevant

20. The Minister shall cause the land rights inquirer to inquire into and furnish a report within 60 days of any objections received or any other matter, which the Minister may consider to be necessary for her or his final decision on the application or the project.

Consideration of application or project by Minister

21. (1) The Minister may, after she or he has considered the final report of the land rights inquirer as contemplated in section 20, approve or refuse the application or the project provided that if the application or the project has been refused, the Minister shall furnish the reasons for the decision to the applicant or the intended beneficiary of the project.

- (2) Any approval of an application or project by the Minister shall be subject to a community concerned, compiling and having registered its community

rules as contemplated in Chapter VII within such a period as the Minister may stipulate.

- (3) Any approval of an application by the Minister for the transfer of land in terms of section 16(1)(b) shall be subject to the consent of the community of which such an applicant is a part, adopted by a majority vote of the community at a meeting convened in accordance with section 7(3) and (4).
- (4) The Minister shall if the application or the project is approved and on registration of the community rules, where applicable, as contemplated in sub-section 21(2) cause a Deed of Transfer in respect of the communal land to be prepared and lodged with the Registrar of Deeds in accordance with the Deeds Registries Act.
- (5) The Registrar of Deeds shall subject to the provisions of this Act and Deeds Registries Act register the Deed of Transfer.
- (6) The Minister may impose any reasonable conditions including a provision to open a communal land register as contemplated in section 22 on the transfer of land in terms of this Chapter, either generally or in a particular case, and may retain any part of the land or reserve any right in favour of the State with regard to any part of the land that is used for a public purpose or in the public interest.

Opening of communal land register

22. (1) An administrative structure acting on behalf of a community shall request the Minister's approval to the opening of a communal land register in respect of land registered in the community's name.

- (2) The administrative structure shall, if the Minister grants approval, cause a communal general plan in respect of the communal land or any part thereof, as

the case may be, to be prepared in the prescribed manner, and cause such plan to be lodged with the Surveyor-General for approval.

- (3) Notwithstanding the provisions of the Land Survey Act, 1997 (Act No.8 of 1997), the Surveyor-General must approve the communal general plan referred to in subsection (2), if the plan complies with the requirements prescribed under this Act: Provided, that in the cases of transfer of land as contemplated in section 16(1)(b), the provisions of the Land Survey Act shall apply.
- (4) Once the Surveyor-General has approved the communal general plan lodged with him or her in terms of subsection (2), the administrative structure shall cause the lodgment of the plan with the Registrar of Deeds in terms of the Deeds Registries Act for registration and simultaneously, in the prescribed manner, apply for the opening of a communal land register in respect of the land.
- (5) The Registrar of Deeds must, when the communal general plan has been lodged in terms of subsection (4), register the communal general plan and open the communal land register in respect of the land concerned, containing the prescribed information. Section 46 of the Deeds Registries Act will apply with the necessary changes.
- (6) The Minister may impose any reasonable condition on the opening of a communal land register including restrictive conditions affecting the communal land, any specific site or area of the land and any land tenure or other right in respect thereof.

Registration of Deeds of Land Tenure Rights and Deeds of Transfer

23. (1) An administrative structure acting on behalf of a community shall on the opening of a communal land register cause the preparation and lodgment of deeds of land tenure rights or deeds of transfer, as the case may be, as prescribed in the Deeds Registries Act.
- (2) Any existing document referred to in section 5 evidencing a land tenure right, in communal land, shall be lodged simultaneously with the Deed of Land Tenure Right or Deed of Transfer which shall supersede the existing document. The Registrar of Deeds shall subject to the provisions of the Deeds Registries Act register the Deed of Land Tenure Rights or the Deed of Transfer.
- (3) In the case of land or land tenure right, allocated to an individual household or the individual family, the Deed of Land Tenure Right or the Deed of Transfer shall be registered in the name of the person or persons, subject to the laws governing the matrimonial property regime between spouses on behalf of the household or family, as governed by the community rules.
- (4) A Deed of Land Tenure Rights or a Deed of Transfer in respect of a putative land tenure right identified in the land rights inquiry as contemplated in section 18(2)(h) shall not be registered unless it is deemed to have been lawfully created in terms of section 5(2).
- (5) Subject to the provisions of this Act and community rules, land tenure rights may be conveyed from one household or family or person to another by Deed of Land Tenure Rights in accordance with the provisions of this Chapter and the Deeds Registries Act subject to the necessary changes.
- (6) The right of the holder of the land tenure right to alienate or otherwise dispose of a right shall governed by the community rules.

Registration of new allocations of land or land tenure rights to community members after opening of communal land rights register

24 New land or land tenure rights allocated in terms of community rules and any other registerable transactions arising after the opening of a communal land register shall be registered as prescribed in this Act, the Deeds Registries Act and any other applicable legislation.

Conversion of land tenure rights into full ownership

25 (1) The registered owner of a land tenure right may apply to the administrative structure for the conversion of her or his land tenure right into full ownership.

(2) The community, subject to section 7(3) and (4) and the community rules, must consider and approve or reject the application for the conversion of land tenure right into full ownership.

(3) The community may impose any reasonable condition or reserve any right on behalf of or in favour of the community.

(4) The administrative structure shall cause the relevant portion of the land to be surveyed and a diagram to be prepared and submitted to the Surveyor-General for approval in terms of the Land Survey Act.

(5) The administrative structure on behalf of the owner shall cause the preparation and lodgment of a Deed of Transfer together with the existing Deed of Land Tenure Right, the Title Deed of the community and the diagram of the relevant portion with the Registrar of Deeds.

(6) The Registrar of Deeds shall subject to the provisions of the Deeds Registries Act, register the Deed of Transfer and make the necessary entries and endorsements in her or his registers and on the relevant deeds on compliance

whereupon the Deed of Transfer shall supercede the existing Deed of Land Tenure Right.

Transfer costs and stamp duties

26. Transfer duty, value added tax or stamp duty is not payable in respect of the first registration of a Deed of Transfer or Deeds of Land Tenure Rights in terms of this Chapter.

Payment of preparation, survey and registration costs and other incidentals

27. The Minister may from money appropriated by Parliament for this purpose, pay for the preparation, survey, conveyancing and registration costs of the first registration of a Deed of Land Tenure Rights or a Deed of Transfer in terms of this Chapter.

Designation of officials to assist communities with applications or projects or requests

28. (1) The Minister shall designate an officer who is in the full time employment of the Department or appoint any other suitable person to assist a community or other applicant to apply or make requests for-

- (a) the transfer and appropriate registration of land or rights in land as contemplated in this Chapter;
- (b) an award of comparable redress and assistance with an intended cancellation of a land tenure right as contemplated in Chapter IV; and
- (c) the drafting, amending and registration of community rules as contemplated in Chapter VII;
- (d) the drafting of lease agreements for commercial and development purposes as contemplated in Chapter VI

and with anything consequent on such application or request including the preparation, lodgment and attestation or execution of any deed, document or diagram required for such registration.

(2) The provisions of section 58(2) and (3) apply, with the necessary changes required by the context, to a person appointed in terms of sub-section (1).

CHAPTER VI

ALIENATION OF COMMUNAL LAND FOR DEVELOPMENT AND COMMERCIAL PURPOSES

Agreements concerning use of land for public purposes

29. (1) If the Minister has imposed conditions in terms of section 22(6), an administrative structure on behalf of the community shall, in respect of any communal land, grant an organ of State the right to occupy or use such land for a public purpose beneficial to the community having jurisdiction subject to the provisions of sections 6 and 62: Provided that the consent of at least a majority of the members of the community having land tenure rights on the land in question is obtained.

(2) The granting of a right contemplated in sub-section (1) by means of a deed executed by the administrative structure on behalf of the community and the organ of State concerned shall be attested to by a registered legal practitioner.

(3) The deed referred to in sub-section (2) must contain-

(a) an appropriate description of the land concerned; and

(b) the public purposes for which the land may be occupied or used by the organ of State, including any reasonable conditions or limitations on such occupation or use.

(4) The administrative structure shall cause the deed to be lodged with the Registrar of Deeds for the registration thereof in accordance with the Deeds Registry Act.

Leases of land by the Minister for Commercial and Developmental Purposes

30. (1) In respect of land still held in trust by the Minister or land that is occupied and used by communities but registered in the name of the State, the Minister may subject to community's consent in terms section 7(3) and (4) lease such communal land to any person for commercial or development purposes for the benefit of a community holding land tenure rights in the communal land, excluding land allocated to and held by any individual household or individual family or individual person in terms of a land tenure right: Provided that the affected community becomes a third party signatory to the agreement.

(2) Any benefit accruing to the community arising from an agreement contemplated in sub-section (1), must-

(a) not be paid into the National Revenue Fund established by section 213 of the Constitution; and

(b) be distributed in a just and equitable manner to the community as agreed to by the Minister and at least a majority of the holders of land tenure rights or interests referred to in sub-section (1).

(3) Such leases shall be mortgageable and alienable by the lessees.

(4) Any such lease shall not exceed forty years duration but may be renewed with the consent of the community for further successive periods not exceeding twenty years each.

(5) The administrative structure shall cause the deed of lease to be lodged with the Registrar of Deeds for the registration of deeds of lease thereof in accordance with the Deeds Registries Act.

Leases of land by a Community for Commercial and Developmental Purposes

31. (1) A community may, subject to the community rules and the provisions of this Act, lease communal land owned by it, excluding land occupied by a member of the community in terms of a land tenure right, to any person.

(2) Any benefit accruing to community members arising from an agreement contemplated in sub-section (1), must be distributed in a just and equitable manner to the community in accordance with its rules and the provisions of this Act.

(3) Such leases shall be mortgageable and alienable by the lessees.

(4) Any such lease shall not exceed forty years duration but may be renewed with the consent of the community for further successive periods not exceeding twenty years each.

(5) The administrative structure shall cause the deed to be lodged with the Registrar of Deeds for the registration of deeds of lease in accordance with the Deeds Registries Act.

CHAPTER VII

LAND ADMINISTRATION AND NATURAL RESOURCES MANAGEMENT IN COMMUNAL LAND

The making of community rules, the application for registration of rules and land administration and natural resources management in terms of this Act

32. (1) The community rules must regulate-

- (a) the administration and use of the community's communal land;
- (b) the matters referred to in Schedule 1;
- (c) any matter considered by the community to be necessary;
- (d) such matters as may be prescribed.

(2) On approval of an application or project by the Minister, a community must make rules with regard to the nature and content, exercise or administration of its land tenure rights.

(3) The community rules shall be consistent with the protection of fundamental human rights as contained in section 2(e)(i), the general principles applicable to land tenure rights as contemplated in section 7, and the following general principles:

- (a) Fair and inclusive decision-making processes, in that-
 - (i) all members are afforded a fair opportunity to participate in the decision-making processes of the community;
 - (ii) any decision to amend the community rules or dissolve the community, or to dispose of or to encumber the property of the community, requires an inclusive decision-making process; and

- (iii) the membership of any person may only be terminated on reasonable grounds by the community after the matter has been considered at a fair hearing at which the member was given an opportunity to present his or her case;

- (b) equality of membership, in that there is no unfair discrimination against any prospective or existing member of the community, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds, namely race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language: Provided that community rules may reflect the rules of a community with regard to the age at which a member may attend and vote at meetings of the community and the age at which a member may receive an allocation of land rights;

- (c) democratic processes, in that all members have the right-
 - (i) to receive adequate notice of all general meetings of the community;
 - (ii) to attend, speak at and participate in the voting at any general meeting;
 - (iii) to receive copies of minutes or to have other reasonable access to records of decisions taken at general meetings;
 - (iv) to inspect and make copies of the financial statements and records of the community; and
 - (v) to have access to a copy of the community rules;

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- (d) fair access to the property of the community, in that-
- (i) the community shall manage the property owned, controlled or held by it for the benefit of the members in a participatory and non-discriminatory manner;
 - (ii) a member may not be excluded from access to or use of any part of the community's property which has been allocated for such member's exclusive or the communal use except in accordance with the procedures set out in the community rules; and
 - (iii) the community may not sell or encumber the property of the community, or any substantial part of it, without the consent of a majority of the members present at a general meeting of the community and subject to any other provision of this Act;
- (e) accountability and transparency, in that-
- (i) accountability by the administrative structure to the members of the community is promoted in accordance with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) and Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
 - (ii) the financial records of the community are subject to an annual independent verification, as approved by the Director-General;
 - (iii) there shall be effective financial management and recording of the transactions of the community; and

- (vi) members of the administrative structures shall have fiduciary responsibilities in relation to the community and its members, and shall exercise their powers in the best interests of all the members of the community, without any advantage to themselves in comparison with other members who are similarly placed.

- (4) The community rules shall be interpreted in a manner, which is consistent with the spirit and objects of the principles referred to in subsection (3).

- (5) Drafting of community rules-
 - (a) A community wishing to be established as a juristic person in terms of section 4 of the Act may apply to the Director-General for assistance in the preparation of community rules.

 - (b) The Director-General shall, after receiving an application in terms of subsection (5)(a), designate an authorized officer in the Department of Land Affairs or any other suitable person to provide the community with such assistance as may be required and available for the preparation of community rules.

 - (c) The Director-General may suggest amendments to such draft community rules in order to make it comply with the provisions of section 32(3), and shall notify the community of the reasons for such suggestions.

- (6) Adoption of community rules-
 - (a) When a community wishes to adopt community rules it shall notify the Director-General accordingly and shall convene a meeting or meetings in such manner as may be prescribed for the adoption of community rules;

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- (b) The authorized officer referred to in sub-section (5)(b) shall attend the meeting or meetings contemplated in sub-section (6)(a), to witness the adoption of the rules and to prepare a report setting out her or his observations in relation to:
- (i) the number of members of the community present at the meeting or validly represented at the meeting, and whether the various interest groups in the community were represented at such meeting;
 - (ii) the number of members of the community who voted in favour of and the number who voted against the adoption of the community rules or any specific provisions thereof;
 - (iii) whether the interests of any person or group of persons are likely to be adversely affected as a result of the adoption of the community rules;
 - (iv) the views of any dissenting persons; and
 - (v) any other matter which the Director-General may prescribe.
- (7) The community shall, as soon as practicable after the adoption of the community rules, submit the rules together with the prescribed information to the Director-General.
- (8) Any person claiming to have been excluded from participation in the process of preparation and adoption of the community rules or claiming that the process was not fair may lodge a complaint with the Director-General, who may, if she or he is satisfied on reasonable grounds that the complaint has merit or is material, refuse to cause the community to be established as a juristic person until the issue has been resolved to the satisfaction of the Director-General.

- (9) Upon the registration of the rules of a community a community shall be established as a juristic person with the characteristics set out in section 4.
- (10) The community rules shall be a legally binding agreement between the community and its members and such rules shall be accessible to the public and be deemed to be a matter of public knowledge.
- (11) The Director-General shall consider an application for a community to be established as a juristic person together with any prescribed information, the report referred to in sub-section 6(b), the report of the Land Rights Board having jurisdiction in the area and the community rules adopted by the community.
- (12) A community shall qualify to be established as a juristic person if-
- (a) the provisions of this Act apply to the community concerned;
 - (b) the community has as its main object the holding of property in common;
 - (c) the community rules adopted by it comply with the principles set out in sub-section 32(3);
 - (d) the community rules adopted by it deals with the matters referred to in Schedule 1;
 - (e) the meeting or meetings referred to in sub sub-section 32(6) was or were attended by a majority of the members of the community present or represented at the meeting or meetings; and
 - (f) the resolution to adopt the community rules was supported by the majority of the members of the community present or represented at the meeting or meetings: Provided that the Director-General may cause a community to be established as a juristic person if she or he is satisfied that-

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- (i) there has been substantial compliance with the provisions of paragraphs (a) to (f) of this subsection;
 - (ii) the community rules reflects the view of the majority of the members of the community; and
 - (iii) the community rules have been adopted through a process, which was substantially fair and inclusive.
- (13) If the Director-General is satisfied that the community qualifies to be established as a juristic person, she or he shall refer the application, community rules and written consent, to the Registration Officer, who shall register the community rules in the prescribed manner, allocate a registration number, and issue a certificate of registration. The Registration Officer shall be an officer of the Department of Land Affairs designated by the Director-General.
- (14) The Registration Officer shall keep a register of registered communities to which the provisions of this Act applies.
- (15) On request and on payment of the prescribed fee, the Registration Officer shall provide members of the public with information contained in the register and with a copy of the community rules of any registered community.
- (16) If the Director-General is not satisfied that the community qualifies to be established as a juristic person, she or he shall notify the community of the steps to be taken to qualify to be established as a juristic person.
- (17) The Director-General may assist a community to deal with any issue, which is to be addressed in order to establish the community as a juristic person.

(18) Amendment of community rules-

(a) A community may revoke or amend any rule or rules contained in the community rules provided that such amendments will be consistent with paragraph (b) and that a decision to amend the community rules was taken in accordance with the procedures in the community rules which deal with the amendment of community rules;

(b) An amendment of community rules of a community established as a juristic person under this Act shall not be valid or binding until it has been accepted by the Director-General in writing and lodged with the Registration Officer.

(19) The rules contemplated in this section shall be made subject to the provisions of this Act.

Appointment of administrative structure to administer communal land

33. (1) A community shall, subject to and in accordance with its community rules and rules governing the conduct of meetings under section 7(3) and (4) and further subject to section 2(e)(ii) and (iii)-

- (a) appoint an administrative structure;
- (b) authorize an administrative structure to represent it or manage its interests in matters relating to land and land tenure rights in the communal land; and
- (c) withdraw or renew such authorization by a resolution adopted at members meeting convened in terms of this Act and the community rules.

(2) Where applicable, the institution of traditional leadership which is recognized by a community as being its legitimate traditional authority may participate in an administrative structure in an ex-officio capacity; provided that

the ex-officio membership in the administrative structure should not exceed 25 percent of the total composition of the structure; further provided that the ex-officio component of the administrative structure shall have no veto powers in the decision-making of the structure.

Role, powers and functions of administrative structures in land administration and natural resources management

34. (1) An administrative structure appointed in terms of section 33 and provided for in terms of the community rules has powers necessary to properly perform the functions of land administration and natural resources management in communal areas.

(2) In the performance of its powers and functions in land administration and natural resources management, an administrative structure must-

(a) take reasonable measures towards ensuring the-

(i) allocation of land tenure rights to individual households or individual families or individual persons and the management of the occupation, use of and access to the community's land in accordance with sections 2(e)(i), 7 and 32(3) and any other applicable laws;

(ii) registration of the communal land in the name of the community and the names of the holders of such rights;

(b) manage the establishment, promotion, protection, implementation and development of the community's land tenure system;

(c) promote and safeguard the interests of the community and its individual members in their land;

(d) endeavour to promote co-operation among community members and with any other person in dealing with matters pertaining to the land;

- (e) involve itself in the resolution of disputes concerning the land;
- (f) compile and maintain a record of existing land tenure rights and of any land tenure rights conferred in the future as contemplated in section 24 in the communal land in order to facilitate the regular updating of the land register contemplated in section 22, and the issuing of deeds of land tenure rights in terms of Chapter V.
- (g) establish and maintain the registers and records with regard to the particulars of right holders within the community and the transactions affecting such rights as may be prescribed or as may be required by the rules;
- (g) manage the processes required for the community to comply with the provisions of this Act;
- (h) obtain such assistance from the Department or elsewhere as the community may require;
- (i) keep minutes of its meetings and meetings of the community convened by it, and record-
 - (i) the names of persons attending the meetings;
 - (ii) decisions taken at meetings; and
 - (iii) the number of persons who voted for, against or abstained from voting at any such meeting;
- (j) allow any community member to inspect the minutes of meetings convened by the structure, the written community rules, if any, and the register of land tenure rights, and to make copies thereof;

- (j) promote compliance with the Constitution and the provisions of this Act, in particular section 2(e)(i), the general principles applicable to land tenure rights contained in section 7 and the community rules as contemplated in section 32(3);
- (k) promote co-operation among community members and between the community and non-members;
- (l) mediate disputes concerning the communal land and any rights in such land involving community members or other persons, and refer unresolved disputes for mediation or resolution as contemplated in Chapter IX;
- (m) liaise with the relevant Land Rights Board having jurisdiction over the communal land and any other institution concerning such land;
- (n) perform any other function prescribed by this Act or any other law;
- (o) generally deal with all matters necessary or incidental to the performance of its functions in terms of or under this Act;

Restriction on rewards

35. An administrative structure or a member of the structure may not derive any reward, consideration or other material or monetary benefit, in the course of exercising her, his or its functions in terms of or under this Act, unless the benefit in question has previously been approved by the community in accordance with section 7(3), or is provided for in the community rules.

Meetings convened by Director- General

36. (1) The Director-General may, after consultation with the Land Rights Board having jurisdiction in the area, subject to the provisions of section 44(1), convene a meeting of the community in any land to which this Act applies, if any community member or members request her or him to do so on grounds that, in relation to any matter regarding their land tenure rights-

- (a) their views are not being considered;
- (b) the majority view in the area concerned is being ignored; or
- (c) circumstances in the area prevent them from convening such a meeting or from freely expressing their views.

(2) The Director-General may, after she or he has satisfied herself or himself that the provisions of section 44(1) have been complied with and that the dispute could not be settled, in accordance with a decision taken at a meeting contemplated in subsection (1), treat any matter discussed and unresolved at the meeting as the subject of a dispute to be dealt with in terms of the remaining provisions of Chapter IX, and must advise the land tenure right holders of their rights in terms of that Chapter.

CHAPTER VIII

LAND RIGHTS BOARDS

Establishment of Land Rights Boards

37 The Minister may, by notice in the *Gazette*-

- (a) establish such Land Rights Boards as she or he may determine, having jurisdiction for such areas as he or she must prescribe; and
 - (b) disestablish a Board or amend its area of jurisdiction if its establishment or area is no longer appropriate.
- (2) A Land Rights Board must perform the functions prescribed in this Act.

Constitution of Land Rights Board

38. (1) A Board must consist of the following members appointed by the Minister after the nomination and selection processes referred to in subsections (2) and (3) have taken place:

- (a) one official drawn from each of the government departments the Minister shall deem relevant for the purposes of participation in the Land Rights Boards;
- (b) two members nominated by each Provincial House of Traditional Leaders as contemplated in section 212(2)(a) of the Constitution having jurisdiction in the area subject to a Land Rights Board; and
- (c) five members drawn from the affected communities;

provided that the Minister may on his or her own initiative appoint a member if insufficient nominations are received.

(2) The Minister must call for nominations at least 30 days before the selection process takes place by-

- (a) publishing a notice in the *Gazette* and at least one national newspaper and any other appropriate manner and media, indicating the categories of members to constitute a Board, the number of representatives to be appointed in each category and the persons or bodies entitled to nominate persons in the specified categories;
- (b) inviting all interested persons, communities, institutions and organizations to submit nominations; and
- (c) taking any other steps he or she deems necessary.

(3) In appointing members of a Board, the Minister must have due regard to the general principles applicable to land tenure rights as contemplated in section 7, the objects of this Act, the need to ensure and promote gender, disability and other demographic representation and any other relevant factor.

(4) Every member of a Board must be appointed for a period of five years, but the Minister may in her or his discretion extend the term of such a member by a further period not exceeding three months until a new Board or member has been appointed.

(5) (a) The Minister must after consultation with a Board, appoint a chairperson and a deputy chairperson of such Board from its members.

(b) When the chairperson is unable to perform the functions of that office, the deputy chairperson shall perform them.

(6) A member may nominate an alternate member who must act in her or his place if required and if the Minister approves such nomination.

(7) The Minister must publish in the *Gazette* the names of and position held by each appointee to a Board and the date on which each appointment takes effect.

(8) If a member of a Board dies or vacates her or his office before the expiry of the period for which she or he was appointed, the Minister may appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed: Provided that the appointment does not materially alter the composition of a Board as set out in subsection (1).

Disqualification as Board member and vacation of office

39. (1) The Minister must not appoint as a member of a Board a person who –
- (a) is not a South African citizen or a permanent resident, and is not ordinarily resident in the Republic of South Africa;
 - (b) is an unrehabilitated insolvent;
 - (c) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Act, 1973 (Act 18 of 1973);
 - (d) has been removed from an office of trust on account of improper conduct;
 - (e) has had his or her name removed from any professional register on account of misconduct and who has not been reinstated;
 - (f) has been found guilty of unfair discrimination on the ground of race as contemplated in section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000);
 - (g) is an elected political representative at the national, provincial or municipal sphere of government; or
- (2) A member of a Board must vacate his or her office if he or she –
- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of a Board;
 - (b) resigns by written notice addressed to the Minister and his or her nominator;

- (c) is, in the Minister's opinion, after consultation with the Council, incapable of performing her or his duties;
- (d) has, without the leave of the Council, been absent from two or more meetings of the Council during a continuous twelve-month period.

Functions of Land Rights Board

40. (1) A Land Rights Board shall:

- (a) advise the Minister as required by him or her from time to time on matters pertaining, in general or in specific cases, to-
 - (i) land tenure rights;
 - (ii) the validation of putative rights as contemplated in section 5;
 - (iii) the cancellation of such rights as contemplated in section 14;
 - (iv) awards of comparable redress as contemplated in Chapter IV;
 - (v) the content and registration of community rules;
- (vi) the provision of material, technical and other assistance to communities, their administrative structures or members;
- (vii) any matter relevant to an investigation to be or being conducted in terms of this Act;
- (viii) the provision of communal or additional land for the use of communities for commonage or any other specified purpose;
- (ix) the leasing or other disposal of State-held communal land;

- (x) the use of communal land for non-customary purposes or by persons who are not communities or their members;
- (b) advise on and assist communities, their administrative structures, members and any other person as may be requested of a Board from time to time with any matter relevant to the achievement of the objects of this Act, including matters pertaining to the compliance with any prescribed requirement and the administration and development of communal and adjacent land;
- (c) monitor compliance by communities, their administrative structures, members and other persons with the requirements of this Act and its principles and objects, and to report any non-compliance to the Department;
- (d) liaise with the national, provincial and municipal spheres of government and civil and other institutions on matters affecting communities or communal land;
- (e) receive notices of disputes as contemplated in section 50 which are referred to it by a community, an administrative structure, community members or any other person, and to itself mediate such complaints or disputes or to refer them to an appropriate forum for resolution as the circumstances may require;
- (f) perform any other prescribed function.

Powers of Land Rights Boards

41. A Land Rights Board and any member of a Board acting in their official capacity may-

- (a) at any reasonable time enter upon any land;
- (b) investigate any relevant matter;
- (c) inspect any document in the possession of any administrative structure or any right holder concerning the land tenure rights and make copies of such a document;
- (d) convene a meeting or meetings of communities and administrative structures'
- (e) attend any meeting or meetings of communities and administrative structures; and
- (f) refer any dispute to the Director-General for the appointment of a mediator.

Resources and finances of Land Rights Boards

42. The Minister shall provide Land Rights Boards with the staff, accommodation and finances necessary for the exercise of their powers and performance of their functions, subject to the laws governing the public service.

Terms and conditions of service of members of Land Rights Boards

43. (1) The Minister may determine:

- (a) the term of office for the chairperson and each member of a Land Rights Board, but no member's term of office may exceed five years;

(b) remuneration and allowances to be paid to the members of the Land Rights Board with the concurrence of the Minister of Finance;

(2) The chairperson and members a Land Rights Board may resign by giving notice to the board;

(3) The Minister may prescribe any other matters pertaining to the terms and conditions of service of members of Land Rights Boards and any other matters the Minister considers necessary for the effective function of a Board.

CHAPTER IX

DISPUTE RESOLUTION

Settlement of disputes

44. (1) The parties to a dispute regarding a land tenure right or a right incidental thereto, may, by agreement, settle the dispute in accordance with the relevant customary law or the community rules, if such law or rule has adequate and fair provision for settlement of the dispute.

(2) A dispute, which could not be settled as contemplated in subsection (1), may be referred to mediation in terms of the provisions of this Chapter.

(3) Notwithstanding the provisions of subsections (1) or (2), any member of the community whose land tenure right or any right incidental thereto is infringed upon or threatened, may approach the magistrate's court or the Land Claims Court for appropriate relief.

Choice of court

45. (1) A party may institute proceedings in the magistrate's court within whose area of jurisdiction the land in question is situate, or the Land Claims Court.

(2) If all the parties to the proceedings consent thereto, proceedings may be instituted in any division of the High Court within whose area of jurisdiction the land in question is situate.

(3) The rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), may make rules to govern the procedure in the High Court and the magistrate's courts in terms of this Act.

(4) Until such time as rules of court for the magistrates' courts are made in terms of subsection (3), the rules of procedure applicable in civil actions and applications in a High Court shall apply in respect of any proceedings in a magistrate's court in terms of this Act.

Powers of Courts

46. A court may, in addition to other powers set out in this Act-

- (a) where the interests of justice require, direct that indigent parties to proceedings be afforded legal representation by qualified paralegal or legal practitioners;
- (b) direct how the order of the court shall be executed, including the setting of time limits for the implementation of such orders;
- (c) make such orders for the costs as it deems just.

Land Claims Court

47. (1) The Land Claims Court has jurisdiction for the purposes of this Act throughout the Republic in respect of all matters relating to the interpretation and application of this Act, other than criminal proceedings.

(2) The Land Claims Court has all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power –

- (a) to decide any constitutional matter, except a matter that only the Constitutional Court may decide;
- (b) to grant interlocutory orders, declaratory orders and interdicts;
- (c) to review any acts, omissions or decisions of any functionary or administrative body acting or purporting to act in terms of this Act; and

(3) The President of the Land Claims Court may make rules-

- (a) to govern the procedure in the Land Claims Court in terms of this Act; and
- (b) to govern the procedure for the automatic review of orders for eviction in terms of section 55.

Magistrate's courts

48. (1) A magistrate's court-

- (a) has jurisdiction in respect of-
 - (i) any proceedings regarding eviction in terms of this Act;
 - (ii) the review of any act, omission or decision of an administrative structure acting or purporting to act in terms of this Act; and
 - (iii) any criminal proceedings in terms of this Act; and

(b) is competent to grant interdicts and declaratory orders as to the rights of any party in terms of this Act.

(2) Any civil appeal from the magistrate's court in terms of this Act shall be lodged with the Land Claims Court.

(3) Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the Government Gazette, shall be subjected to automatic review by the Land Claims Court, which may-

(a) confirm such order in whole or in part;

(b) set aside such order in whole or in part;

(c) substitute such order in whole or in part; or

(d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the Land Claims Court may think fit:

(4) The provision of subsection (3) shall not apply to a case in which an appeal has been noted by an occupier

(5) Any order for eviction contemplated in subsection (3) shall be suspended pending the review thereof by the Land Claims Court.

Extension of standing before courts

49. (1) Any person with a legal interest, including the Land Rights Board having jurisdiction, may exercise the rights under sections 34 and 38 of the Constitution in pursuing legal action under this Act; and

(2) The Minister, the Director-General or an administrative structure may, on behalf of any person or community whose rights under this Act are infringed upon or threatened, approach a competent court for appropriate relief.

Mediation of disputes

50. (1) A party to a dispute arising from the application of this Act, may request the Director-General to appoint one or more persons with expertise in dispute resolution or a Land Rights Board, to facilitate meetings of interested parties and to attempt to mediate and settle the dispute.

(2) The Director-General may, on reasonable conditions that he or she may determine, appoint one or more persons referred to in subsection (1): Provided that the parties to the dispute may at any time, by agreement, appoint another person to facilitate meetings or mediate the dispute, on reasonable conditions the Director-General may determine.

(3) A person appointed in terms of subsection (1) who is not in the full-time service of the State may, from moneys appropriated by Parliament for this purpose, for services performed by her or him, be paid such remuneration and allowances as the Minister, in consultation with the Minister of Finance, may determine.

Access to courts and arbitration

51. Nothing contained in this Act limits the right of a person to approach an appropriate court or to refer a dispute to arbitration.

CHAPTER X

EVICITION OF PERSONS WHOSE TENURE RIGHTS HAVE BEEN TERMINATED

Application of Chapter

52. This Chapter applies to the eviction of persons whose land tenure rights have lawfully been terminated by a community as contemplated in subsection 6(2) or by the Minister in terms of section 14 and does not prohibit recourse to any other legal remedies in relation to eviction.

Application for eviction order

53. (a) A person who holds a land tenure right in communal land;
- (b) the registered owner of such land;
- (c) a community which holds land tenure rights in such land, and
- (d) the Minister in respect of State land being administered by her or him,

may, if such right is infringed upon by an occupant, institute proceedings for the eviction of that occupant.

Limitations on eviction

54. (1) Notwithstanding the provisions of any other law, an occupant may only be evicted from land after her or his land tenure right has been terminated as contemplated in sections 6 and 14, and in terms of an order of court granted in terms of this Chapter.

- (5) A court may grant an order for eviction if-
- (a) the person seeking the order has, after the termination of the land tenure right in question, given the occupant at least 60 days written notice of his or her intention to obtain an order for eviction;
 - (b) the occupant has not ceased her or his occupation or use of the land within the period of the notice contemplated in subsection (2)(a).

(3) The notice contemplated in subsection (2) must give reasons for the intended eviction, and be given in the manner and contain such other particulars as may be prescribed.

Order for eviction

55. (1) A court that orders the eviction of an occupant-
- (a) must determine a just and equitable date by which the occupant must cease the occupation or use of the land;
 - (b) must determine the date on which an eviction order may be carried out if the occupant has not ceased to occupy or use the land by the date contemplated in paragraph (a);
 - (c) must, where applicable, order the payment of appropriate compensation, determine the date on which it is payable and any other condition attaching to compensation;
 - (d) must grant the occupant a fair opportunity to-
 - (i) demolish any structures erected and improvements made by the occupant or his or her predecessors, and to remove any material salvaged or recovered; and

- (ii) tend standing crops to which the occupant is entitled until they are ready for harvesting, and to harvest and remove them; and
 - (e) may make an appropriate order for the demolition and removal of any structures and improvements.
- (2) In determining a just and equitable date by which an occupant must cease occupation and use of land, the court shall give consideration to the date when in terms the applicable comparable redress, the occupant will obtain suitable alternative accommodation.
- (3) An order for eviction, demolition or removal contemplated in sub-clause (1) must be carried out by and in the presence of the sheriff.
- (4) A court may authorize any person to assist the sheriff to carry out an order for eviction, demolition or removal at the request of the sheriff and subject to such conditions as the court may determine.
- (5) A court may, on good cause shown, vary any term or condition of an order for eviction made by it.

Urgent proceedings for eviction

56. (1) A person contemplated in section 53, may lodge an urgent application for the removal of an occupant from land pending the outcome of proceedings for a final order for eviction. Notice of such application shall be given to the Land Rights Board having jurisdiction in the area.
- (2) The court may grant an urgent order contemplated in subsection (1), if it is satisfied that-

- (a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupant is not immediately removed from the land;
- (b) there is no other effective remedy available to the applicant;
- (c) the likely hardship to the applicant or any other person similarly affected, if an order for removal is not granted, exceeds the likely hardship to the occupant against whom the order is sought, if an order for removal is granted; and
- (d) adequate arrangements have been made for the reinstatement of any person evicted, if a final order is not granted.

CHAPTER XI

THE CONDUCT OF LAND RIGHTS INQUIRIES

Matters calling for the conduct of a land rights inquiry

57. (1) The Minister must cause rights inquiry to be conducted on-
- (a) an application for or a project concerning the transfer and registration of land in terms of section 17;
 - (b) an application for or a project concerning comparable redress in terms of section 8;
 - (c) the necessity for and the feasibility and implications of a possible cancellation of an existing land tenure right in terms of section 14;
 - (d) any other application, claim or complaint concerning any matter governed by this Act which he or she may receive; and

(e) any other prescribed matter.

(2) The Minister may, in general or in specific cases, cause the compliance or otherwise with the provisions of this Act and in particular those relating to the protection of fundamental human rights as contemplated in section 2(e), (i), (ii) and (iii), the general principles applicable to land tenure rights referred to in section 7 and land administration and natural resources management principles contained in Chapters VII to be under a land rights inquiry process.

Designation of a land rights inquirer or appointment of any other suitable person to conduct land rights inquiry

58. (1) The Minister may, in general or in specific cases, designate an officer in the full time employ of the Department or appoint any other suitable person as a land rights inquirer or an assistant to a land rights inquirer to conduct investigations contemplated in this Act.

(2) The Minister shall, in terms of the laws governing public finance and of this Act, determine the terms of reference of a land rights inquirer and an assistant to the land rights inquirer, and the conditions of service and, with the concurrence of the Minister of Finance, the remuneration and allowances to be paid to a person appointed in terms of sub-section (1) who is not an official employed by the State.

(3) A designation or appointment in terms of subsection (1) may be terminated as prescribed and the Minister may designate or appoint a suitable replacement.

(4) A person who has an interest of whatever nature in any aspect of the subject matter of the inquiry may not be appointed as a land rights inquirer or assistant to the land rights inquirer in respect of such inquiry.

Functions of a land rights inquirer and assistant to the land rights inquirer

59. (1) A land rights inquirer and an assistant to the land rights inquirer must-
- (a) conduct a land rights inquiry in an impartial, thorough and transparent manner but expeditiously and with the minimum of formalities;
 - (b) consult the relevant Board and obtain and reflect its views in the investigation report;
 - (c) compile a detailed and motivated written report on the land rights inquiry, which report must include recommendations on matters requiring a decision and related matters;
 - (d) submit the original report to the Minister and a copy to the relevant Board; and

where applicable to an inquiry, must inquire and report on-

- (e) the merits and all aspects of an application for or a project concerning-
 - (i) the transfer and registration of land contemplated in Chapter V;
 - (ii) comparable redress as contemplated in Chapter IV;
- (iii) the cancellation of an existing land tenure right as contemplated in Chapter IV;
- (f) the priority, if any, to be accorded to an application or project in terms of section 11;

- (g) the circumstances and views of the holders of land tenure rights in land adjacent to the land which is the subject of an application or project in terms of this Act;
 - (h) the commitment of affected communities, their members and other persons to the principles and land administration provisions of this Act;
 - (i) the implications for, and the impact on-
 - (i) access to land and the legal security of tenure rights in the land being subject to a land rights inquiry;
 - (ii) planning, development and the management of natural resources on such land;of the circumstances found by the land rights inquiry to exist, and of any recommendation contained in the land rights inquiry report;
 - (j) how the rights and interests of affected rights holders who do not support an application or project, should be addressed;
 - (k) the need or desirability and nature and extent of any material, technical or other support to be provided;
 - (l) any prescribed matter.
- (2) A land right inquirer or an assistant to a land rights inquirer may –
- (a) advise any person affected by a land rights inquiry on the provisions of this Act; and
 - (b) as contemplated in Chapter IX, act as a mediator in a dispute or refer such dispute for mediation or resolution.

(3) Any party to a land rights inquiry proceeding may give evidence, call witnesses, question any witness and present argument.

Powers of a land rights inquirer and assistant to the land rights inquirer

60. (1) A land rights inquirer and an assistant to a land rights inquirer may-
- (a) subpoena any person who may be able to give information or whose presence at the land rights inquiry proceedings may help to resolve the matter;
 - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the land rights inquiry to appear before him or her for questioning and to produce that book, document or object;
 - (c) call and, if necessary, subpoena any expert to appear before her or him to give evidence relevant to the matter;
 - (d) call any person present at the land rights inquiry proceedings or who was or could have been subpoenaed for any purpose set out in this section, to be questioned about any matter relevant to the land rights inquiry;
 - (e) administer an oath or accept an affirmation from any person called to give evidence or to be questioned;
 - (f) at any reasonable time, enter upon any land, and subject to subsection (3);
 - (i) enter and inspect any premises on or in which any book, document or object relevant to the matter subject to the land rights inquiry, is kept or is suspected on reasonable grounds of being kept;

- (ii) examine, demand the production of, and seize any book, document or object that is on or in any premises and which is relevant to the matter subject to a land rights inquiry; and
- (iii) take a statement in respect of any matter relevant to the matter that is subject to a land rights inquiry from any person on the premises who is willing to make a statement; and
- (g) inspect and retain, for a reasonable period, any book, document or object which has been produced to or seized by the land rights inquirer for the purpose of her or his inquiry;
- (h) convene and attend meetings of land tenure right holders, an administrative structure and other persons and render advice in connection with any provision of this Act, in consultation with the relevant administrative structure; and
- (i) refer any dispute relating to communal land or this Act to the relevant Board or the Director-General for the appointment of a mediator.

(2) A land rights inquirer and an assistant to a land rights inquirer may be accompanied by any other person reasonably required to assist him or her in exercising or performing any function or duty under this Act.

(3) A subpoena issued for any purpose in terms of subsection (1) must be signed by the land rights inquirer and must-

- (a) require the person named in it to appear before the land rights inquirer at a stated date, time and place; and
- (b) sufficiently identify any book, document or object to be produced.

(4) If the premises contemplated in subsection (1)(f) are residential premises, the land rights inquirer must obtain the prior written authorization of a judge of the Land Claims Court or a magistrate in chambers who, with due regard to the Constitution may give such authorization, and then only on the application of the land rights inquirer setting out under oath or affirmation-

- (a) the nature of the matter subject to the land rights inquiry;
- (b) a description of the book, document or object suspected of being on the premises and its relevance to the land rights inquiry; and
- (c) the grounds for such suspicion.

(5) The owner or occupier of any premises to be entered and inspected, and every person employed by that owner or occupier, must provide such facilities required by the land rights inquirer to enter those premises to enable him or her to carry out the inspection and seizure.

(6) The land rights inquirer must issue a receipt to the owner or occupier of the premises for any book, document or object seized in terms of this section.

(7) The law relating to privilege as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law shall apply to the questioning of any person or the production or seizure of any book, document or object in terms of this section.

(8) The prescribed witness fees and allowances must be paid to a person who appears before a land rights inquirer, whether in response to a subpoena or not.

CHAPTER XII

MISCELLANEOUS PROVISIONS

Laws relating to sub- division of agricultural land and township establishment

61. The laws governing the sub-division of agricultural land and the establishment of townships shall not apply to communal land unless the Minister directs otherwise in a notice in the Gazette.

Expropriation

62. (1) Subject to sub- section (3), the Minister may expropriate any land or any right incidental to such land-

- (a) if the expropriation is in the public interest; and
- (b) for any purpose relating to a provision of this Act.

(2) Without derogating from the powers a Minister may exercise under section 25 of the Constitution and the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may for the purposes of this Act, exercise equivalent powers to the powers such other Minister may exercise under the Expropriation Act, 1975 (Act No. 63 of 1975).

- (3) The Minister shall-
 - (a) give notice of the intended expropriation in terms of subsection (1), to the owner of the land and the holder of any other right in the land, as the case may be, in the prescribed manner;
 - (b) give the owner and the holder of any other right in the land, as the case may be, a reasonable opportunity to make representations regarding the intended expropriation; and

(c) consider such representations.

(4) The owner of any land or the holder of a right to the land, which has been expropriated in terms of sub-section (1), is entitled to payment of such compensation in respect of the expropriation of such land or right as is prescribed by the Constitution.

(5) Any right in land may be expropriated in accordance with the provisions of this section or any other law providing for the expropriation of land or rights in land, and for purposes of such an expropriation, the holder of a right in land must be treated as the owner of the right.

Offences

63. (1) A person who-

- (a) hinders, obstructs or unduly influences any person in the exercise of the powers or the performance of the duties conferred on or vested in such person by or under this Act;
- (b) unlawfully requires any other person to refrain from exercising a right in terms of or under this Act; or
- (c) in any manner prevents any other person from exercising such a right,

is guilty of an offence.

(2) Any persons or persons who grants or purports to grant to any person, other than a member of the community, a land tenure right pertaining to the communal land-

- (a) in contravention of or without complying with a community rule;

- (b) without the prior consent of the community or its administrative structure;
or
- (c) in the case of State land, the consent of the Minister,

is guilty of an offence.

- (3) A person commits an offence who-
 - (a) after having been subpoenaed to appear before the land rights inquirer, without good cause does not attend at the time and place stated in the subpoena;
 - (b) having appeared in response to a subpoena by the land rights inquirer, fails to remain in attendance until excused by the investigator;
 - (c) refuses to take an oath or affirmation as a witness when the land rights inquirer so requires;
 - (d) refuses to answer any question of the land rights inquirer fully and to the best of that person's knowledge and belief, subject to section 60(7);
 - (e) without good cause, fails to produce any book, document or object specified in a subpoena issued by the land rights inquirer; or
 - (f) does or says anything in relation to the land rights inquirer which if said or done in relation to a court of law would be contempt of court.

Penalties

64. (1) A person convicted of an offence in terms of this Act, is liable-
- (a) in the case of an offence referred to in section 63(1) or (2) to a fine or imprisonment for a period not exceeding two years, or both such fine as may be prescribed by regulation and imprisonment; and
 - (b) in the case of an offence referred to in section 66(3), to the penalty applicable to a similar offence in a magistrate's court.
- (2) Notwithstanding anything to the contrary contained in any other law, a magistrate's court shall have the jurisdiction to impose the penalty referred to in subsection (1)(a).

Delegation of powers and assignment of duties

65. The Minister and the Director-General, as the case may be, may delegate or assign any power or duty, which has been conferred or imposed upon her or him in this Act.

Regulations

66. (1) The Minister may make regulations, which are not inconsistent with the provisions of this Act, in respect of-
- (a) conditions for the awarding of comparable redress in terms of Chapter IV, the particulars or information which shall be contained in a communal land rights register if the opening of such a register has been approved in terms of Chapter V;
 - (b) forms and procedures in relation to the land right registers, applications and transfer of land tenure rights in terms of this Act;

- (c) any other matter required or permitted to be prescribed in terms of this Act; and
- (d) any matter the Minister considers necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

(2) The Minister may make different regulations for different areas in accordance with the circumstances in those areas.

(3) Any regulation made under sub-sections (1) and (2) may, in respect of any contravention thereof create an offence.

Act binds State

67. This Act is binding on the State.

Limitation of liability

68. Neither the State nor any other person is liable for any damage or loss caused by-

- (a) the reasonable exercise of any power or the performance of any duty under this Act; or
- (b) the reasonable failure to exercise any power, or perform any function or duty under this Act,

unless the exercise of the power or the failure to perform the duty was unlawful, negligent or in bad faith.

Amendment and Repeal of laws and savings

69. (1) The laws mentioned in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule.

(2) Anything done or deemed to have been done under a provision repealed by this Act-

- (a) remains valid to the extent that it is consistent with this Act until anything done under this Act overrides it; and
- (b) subject to paragraph (a) is considered to be on action under the corresponding provision of this Act.

The status of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)

70. The Interim Protection of Informal land Rights Act, 1996 (Act No. 31 of 1996) shall, subject to the provisions of this Act, be applicable to persons having land tenure in respect of communal land whose security of tenure to such land has not been secured by the registration of deeds of transfer and deeds of land tenure rights.

Short title

71. This Act is called the Communal Land Rights Act, 2002.

Date of commencement

72. This Act shall come into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1**MATTERS WHICH SHALL BE ADDRESSED BY A COMMUNITY WHEN MAKING OR
AMENDING COMMUNITY RULES**

(Section 32)

Community membership

1. The criteria and procedures for-
 - (a) the acquisition; and
 - (b) the termination;of community membership.

Administrative structure

2. The administrative structure's-
 - (a) composition, including-
 - (i) the criteria and procedure for electing or appointing members;
 - (ii) the number of members;
 - (iii) the criteria and procedure for appointing or electing office bearers;
 - (iv) the designation of offices to be held;
 - (v) the terms of office of members and office bearers;

- (vi) the right of the community to remove members and office bearers;
and
- (vii) the remuneration, if any, payable to members and office bearers
and the procedures applicable to such removal; and
- (b) functions;
- (c) powers; and
- (d) procedural rules, including-
 - (i) the calling, holding, frequency and minuting of meetings;
 - (ii) the attendance of and quorum at meetings;
 - (iii) voting; and
 - (iv) rights of access to attend meetings and to records and minutes
held by community members and other persons.

Community general meetings

- 3. Procedural matters relating to community general meetings, including-
 - (a) by whom, for what purposes and in what manner such meetings may or
must be called;
 - (b) how such meetings are held and chaired;
 - (c) attendance, voting and rights of representation at such meetings;
 - (d) the minuting of proceedings and particularly decisions made; and

- (e) the rights of community members and other persons of access to the records and minutes of such meetings.

Community representatives

- 4. The criteria and procedure for the election or appointment of community representatives to the Land Board and other institutions.

Decision making

- 5. The decisions or categories of decisions which may or must be made by-
 - (a) the community;
 - (b) the administrative structure; or
 - (c) one or more holders of land tenure rights;

and where applicable, the voting majorities required to make a decision and the method or methods of voting.

Land tenure rights

- 6. The community's land tenure system, including-
 - (a) the designation, nature, content, duration and purpose (by type of land use) of shared and exclusive land tenure rights and categories of rights capable of being held;
 - (b) the conditions, if any, to which different rights are or may be held and by whom such conditions may be stipulated;

- (c) the criteria and procedures for the allocation, acquisition and termination of different land tenure rights;
- (d) whether and to what extent, with whom and on what conditions the holders of different land tenure rights may alienate or otherwise dispose of their land tenure rights ;
- (e) the succession to, or other disposal of, a land tenure right of a deceased holder of such right;
- (f) the grounds and procedure for the deprivation or termination of a land tenure right; and
- (g) by which person or group of persons, including a household or family, a land tenure right is held and, in the case of a group of persons, -
 - (i) the land, voting and other rights, if any, of each member of such group, household or family; and
 - (ii) by whom such group, household or family is represented.

Land identification

7. The criteria and procedures for the allocation of specific areas of land, including the determination, implementation and monitoring of-
 - (a) the location and size of a specific area;
 - (b) the use to which such area may be put and any limitations stipulated;
 - (c) whether such area is allocated, in whole or in part, for shared or exclusive use;

- (d) the method or methods of demarcating such areas and maintaining and recording such demarcations.

Finances

8. The community's financial management system, including the mechanisms, roles and responsibilities for-

- (a) the payment, collection, banking and safeguarding of levies, fees and other capital and revenue payments to the community from whatever source;
- (b) the allocation of capital and revenue to development, administration and other expenditure;
- (c) systematic budgeting and financial planning;
- (d) the disbursement of funds and the distribution and retention of funds including profits;
- (e) the keeping of financial records and the provision for their independent verification; and
- (f) the provision of access to financial records and information by community members and other persons.

9. **Custodianship of households headed by minors**

- (a) Provision shall be made for the appointment of custodians of households headed by minors for the benefit of such households.
- (b) The rules shall provide that no land tenure rights vesting in a minor or a household headed by a minor may be alienated or otherwise disposed of without an order of the Land Claims Court.

10 Settlement of Disputes

Rules and procedures for the settlement of disputes as contemplated in section 44(1).

General

11. Any other matter as may be prescribed from time to time.

SCHEDULE 2**REPEAL OF LAWS**

(Section 69)

No. and year of Law	Short title	Extent of repeal

No. and year of Law	Short Title	Enactment
