

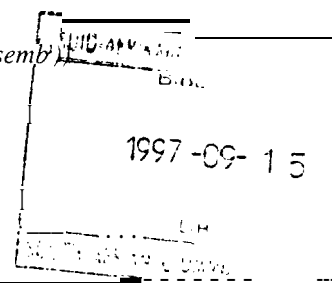
REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
EXTENSION OF SECURITY OF
TENURE BILL**

[B 47—97]

(As agreed to by the Portfolio Committee on Land Affairs (National Assembly))

[B 47A—97]



REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WETSONTWERP OP DIE
UITBREIDING VAN SEKERHEID
VAN VERBLYFREG**

[w 47—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Grondsake (Nasionale Vergadering))

[W 47A—97]

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AMENDMENTS AGREED TO

EXTENSION OF SECURITY OF TENURE BILL
[B 47-97]

CLAUSE 1

1. On page 2, after line 6, to insert the following definition:

‘consent’ means express or tacit consent of the owner or person in charge of the land in question, and in relation to a proposed termination of the right of residence or eviction by a holder of mineral rights, includes the express or tacit consent of such holder;
2. On page 4, in line 8, to omit paragraph (iv).
3. On page 4, in line 10, after “person” to insert ‘-against his or her will’.
4. On page 4, in line 11, to omit “against his or her will” and to substitute “which is linked to a right of residence in terms of this Act”.
5. On page 4, from line 17, to omit “the effective date had the express or tacit consent of the owner or person in charge to occupy such land. or has or on that date had another right in law to reside on such land” and to substitute “4 February 1997 or thereafter had consent or another right in law to do so”.
6. On page 4, in line 20, to omit “as defined in section 1” and to substitute “in terms”.
7. On page 4, in line 23, after “purposes” to insert “, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family”.
8. On page 4, after line 23, to insert the following paragraph:

(c) a person who has an income in excess of the prescribed amount;
9. On page 4, from line 25, to omit “a secure right of residence on land other than land on which the occupants concerned” and to substitute “an independent tenure right on land owned by someone other than the owner of the land on which they”.
10. On page 4, from line 28, to omit “a secure right of residence on land on which the occupants concerned” and to substitute “an independent tenure right on land on which they”.
11. On page 4, from line 30, to omit the definition of “organ of state”.
12. On page 4, from line 32, to omit the definition of “owner” and to substitute the following definition:

‘owner’ means the owner of the land at the time of the relevant act, omission or conduct, and includes, in relation to the proposed termination of a right of residence by a holder of mineral rights, such holder in so far as such holder is by law entitled to grant or terminate a right of residence or any associated rights in respect of such land, or to evict a person occupying such land;

13. On page 4, in line 37, after “of the” to insert “relevant”.
14. On page 4, in line 38, to omit “to which reference is made, ” and to substitute “had or”.
15. On page 4, in line 38. to omit “permission” and to substitute “consent”.
16. On page 4, from line 42, to omit the definition of “suitable alternative accommodation” and to substitute:

‘suitable alternative accommodation’ means alternative accommodation which is safe and overall not less favorable to the occupier’s previous situation, having regard to the residential accommodation, land for agricultural use, and services available to them prior to eviction, and suitable having regard to—

 - (a) the reasonable needs and-requirements of all of the occupiers in the household in question for residential accommodation, land for agricultural use, and services;
 - (b) their Joint earning abilities; and
 - (c) the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active;
17. On page 4, after line 48, to insert the following definition:

‘terminate’ includes to withdraw consent to a person to occupy or use land;
18. On page 4, in line 53, to omit “an organ of state or any other” and to substitute “or an”.

CLAUSE 2

1. On page 6, in line 5, after “Application” to insert “and implementation”
2. On page 6, in line 12, to omit “the effective date” and to substitute “4 February 1997”.
3. On page 6, from line 15, to omit subsection (2) and to substitute the following subsections:

(2) Land in issue in any civil proceedings in terms of this Act shall be presumed to fall within the scope of the Act unless the contrary is proved.

(3) The Minister may, from moneys appropriated by Parliament for that purpose and subject to such conditions as he or she may determine, make funds available to another person, body or institution which he or she has recognised for that purpose, to promote the implementation of the rights conferred by this Act.

CLAUSE 3

1. On page 6, in line 20, to omit “The consent of the owner or person in charge” and to substitute “Consent”.
2. On page 6, in line 20, after “on” to insert “or use”.

3. On page 6, from line 22, to omit "on land on the effective date previously did so with the consent of the owner or person in charge" and to substitute "on or used land on 4 February 1997 previously did so with consent".
4. On page 6, in line 24, to omit "the effective" and to substitute '-that'.
5. On page 6, in line 25, to omit "the" and to substitute '-that'.
6. On page 6, in line 25, to omit "who resided on that land".
7. On page 6, from line 25, to omit "in terms of this Act".
8. On page 6, in line 28, to omit "by the owner or person in charge".
9. On page 6, in line 29, after "8" to insert "provided that it was just and equitable having regard to the provisions of section 8".
10. On page 6, in line 30, to omit "the express or tacit".
11. On page 6, from line 30, to omit "of an owner or person in charge to any" and to substitute "for a".
12. On page 6, from line 34, to omit subsection (4) and to substitute the following subsection:
 - (4) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of one year shall be presumed to have consent unless the contrary is proved.
13. On page 6, after line 37, to insert the following subsection:
 - (5) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of three years shall be deemed to have done so with the knowledge of the owner or person in charge.
14. On page 6, in line 38, after "(4)" to insert '-and (5)'.
15. On page 6, in line 39, to omit ". an organ of state or any other" and to substitute "or an".

CLAUSE 4

1. On page 6, in line 45, after "planning" to insert "and implementation".
2. On page 6, from line 51, to omit "In deciding on the priority to be given to an application for a subsidy, whether to approve an application and on the priority to be given to a successful application" and to substitute "In deciding whether to approve an application for a subsidy, and if so, the priority to be given to that application".
3. On page 8, in line 16, to omit "on-site owner" and to substitute "owner who is not the owner of the land on which the development is to take place".

4. On page 8, in line 19, to omit “the persons” and to substitute “a majority of the adults”.
5. On page 8, in line 23, after “will” to insert “facilitate, implement or”.
6. On page 8, in line 24, after “the” to insert “facilitation, implementation or”.
7. On page 8, in line 26, after “it to” to insert “facilitate, implement or”.
8. On page 8, in line 26, after “the” to insert “facilitation, implementation or”.
9. On page 8, in line 31, to omit “Nothing in this section shall affect any right to” and to substitute “A potential beneficiary of a development may”.
10. On page 8, after line 33, to add the following subsection:
 - (7) The provisions of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), shall not apply to land on which a development is undertaken in terms of this Act.

CLAUSE 5

1. On page 8, in line 43, to omit the third “and”.
2. On page 8, in line 44, after “association” to insert “; and”.
3. On page 8, after line 44, to add the following:
 - (f) freedom of movement,
with due regard to the objects of the Constitution and this Act.

CLAUSE 6

1. On page 8, from line 47, to omit “the effective date” and to substitute “4 February 1997”.
2. On page 10, in line 13, after “life” to insert “in accordance with the culture of that family: Provided that this right will not apply in respect of single sex accommodation provided in hostels erected before 4 February 1997”.
3. On page 10, in line 17, after “intentionally” to insert “and unlawfully”.
4. On page 10, in line 18, to omit “or negligently” and to substitute “and unlawfully”.

5. On page 10, from line 20, to omit paragraph (c).

CLAUSE 7

1. On page 10, in line 31, after “usually” to insert “or actually”.
- Z. On page 10, from line 38, to omit “right conferred by this Act” and to substitute “legal right”.
3. On page 10, in line 42, to omit “deemed, in the absence of evidence to the contrary” and to substitute “presumed, unless the contrary is proved”.

CLAUSE 8

1. On page 10, in line 48, to omit “or withdrawal”.
- Z. On page 10, from line 50, to omit “of a contract, provision of a law or other legal provision” and to substitute “in an agreement, or provision of law”.
3. On page 10, in line 53, to omit “which”.
4. On page 12, from line 1, to omit “and the remaining occupiers shall be exposed” and to substitute “concerned, and any other occupier”.
5. On page 12, in line 15, after “Act” to insert “, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act”.
6. On page 12, in line 16, after “question” to insert “or any other land belonging to the owner”.
7. On page 12, in line 17, to omit “20” and to substitute “10”.
8. On page 12, in line 23, to omit “10(1)(a) or (c)” and to substitute “10(1)(a),(b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach”
9. On page 12, from line 25, to omit “his or her spouse or any dependant who resided on the land at the time of his or her death” and to substitute “an occupier who was his or her spouse or dependant”.
10. On page 12, in line 27, to omit “such a spouse or dependant”.
11. On page 12, in line 28, before “has” to insert “such a spouse or dependant”,
12. On page 12, in line 29, to omit “is able to obtain”.
13. On page 12, in line 29, after “accommodation” to insert “is available”.
14. On page 12, in line 32, after “section” to insert “, or the occupier is a person who has a right of residence in terms of section 8(5)”.
15. On page 12, in line 37, to omit “, pending an application for eviction,”.

16. On page 12, in line 38, to omit “the” and to substitute “reasonable”.
17. On page 12, in line 39, to omit “, including the payment of reasonable rent”.
18. On page 12, from line 40, to omit “and assets of all the members of the occupier’s household to whom the termination applies” and to substitute “of all the occupiers in the household”.

CLAUSE 9

1. On page 12, from line 43, to omit “but subject to the provisions of the Prevention of Unlawful Occupation of Land Act, 1997,”.
2. On page 12, in line 52, to omit “given the occupier” and to substitute:
 - , after the termination of the right of residence, given—
 - (i) the occupier;
 - (ii) the local government in whose area of jurisdiction the land in question is situated; and
 - (iii) the head of the relevant provincial office of the Department of Land Affairs, for information purposes,
3. On page 12, from line 57, to omit “for an eviction order has been served on the occupier” and to substitute “has, after the termination of the right of residence, been given to the occupier, the local government and the head of the relevant provincial office of the Department of Land Affairs”.

CLAUSE 10

1. On page 14, in line 3, to omit “effective date” and to substitute “4 February 1997”.
2. On page 14, in line 4, to omit “the effective date” and to substitute “4 February 1997”.
3. On page 14, in line 24, to omit “or (4)”.
4. On page 14, in line 24, to omit “of the occupier”.
5. On page 14, in line 25, to omit “the occupier is able to obtain suitable alternative accommodation” and to substitute “suitable alternative accommodation is available to the occupier concerned”.
6. On page 14, from line 27, to omit “an occupier has not obtained suitable alternative accommodation within a period of six” and to substitute “suitable alternative accommodation is not available to the occupier within a period of nine”.
7. On page 14, in line 37, to omit “at the instance of the owner or person in charge”.

8. On page 14, in line 37, after “eviction” to insert “of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence”.
9. On page 14, from line 45, to omit subsection (4).

CLAUSE 11

1. On page 14, in line 48, to omit “effective date” and to substitute “4 February 1997”.
2. On page 14, in line 52, to omit “the effective date” and to substitute “4 February 1997, if it is just and equitable to do so”.
3. On page 16, from line 2, to omit “the effective date” and to substitute “4 February 1997”.
4. On page 16, after line 3, to add the following subsection:
 - (3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to—
 - (a) the period that the occupier has resided on the land in question;
 - (b) the terms of any agreement between the parties;
 - (c) whether suitable alternative accommodation is available to the occupier;
 - (d) the reason for the proposed eviction;
 - (e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.

CLAUSE 12

1. On page 16, in line 15, to omit “and his or her family have” and to substitute “has”.
2. On page 16, from line 21, to omit subsection (4) and to substitute the following subsection:
 - (4) Any order for the eviction of an occupier in terms of section 10 or 11 shall be subject to reasonable terms and conditions for further residence which may be determined by the court, having regard to the income of all of the occupiers in the household.

CLAUSE 13

1. On page 18, in line 3, to omit paragraph (a) and to substitute the following paragraph:
 - (a) the cost to the occupier of replacing such structures and improvements in the condition in which they were before the eviction;
2. On page 18, in line 10, to omit “of the planting” and to substitute “to the planting”.

CLAUSE 14

1. On page 18, in line 15, to omit “occupation and” and to substitute “residence and use of land and payment of”.
2. On page 18, in line 20, to omit b-the effective date” and to substitute “4 February 1997”.
3. On page 18, in line 21, to omit “the effective date” and to substitute “4 February 1997”.
4. On page 18, in line 26, to omit “occupation” and to substitute “residence on and use of land”.
5. On page 18, in line 35, after “damages” to insert “, including but not limited to damages for suffering or inconvenience caused by the eviction”.

CLAUSE 15

1. On page 18, in line 55, to omit “and”.
2. On page 20, in line 2, after “granted” to insert “; and”.
3. On page 20, after line 2, to add the following paragraph:

(d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.

CLAUSE 19

1. On page 20, after line 32, to add the following subsections:

(4) Any order for eviction by a magistrate’s court in terms of this Act, in respect of proceedings instituted on or before 31 December 1999, shall be subject 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;
 - (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:

Provided that before the Court makes any order in terms of paragraph *(b)* or *(c)*, it shall give the parties an opportunity to make written submissions, and may give the parties an opportunity to make oral submissions, in that regard.

(5) The provisions of subsection *(4)* shall not apply to a case in which an appeal has been noted by an occupier.

CLAUSE 20

1. On page 20, after line 36, to insert the following paragraph:

(a) to decide any constitutional matter in relation to this Act;

2. On page 20, after line 48, to add the following subsection:

(4) The President of the Land Claims Court may make rules to govern the procedure in the Land Claims Court in terms of this Act.

CLAUSE 21

1. On page 22, after line 1. to insert the following subsection:

(1) A party may request the Director-General to appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act.

2. On page 22. from line 3. to omit “one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act” and to substitute “a person referred to in subsection (1)“.

CLAUSE 23

1. On page 22, in line 38, to omit “Act 51 “ and to substitute “Act No. 51”.
2. On page 22, from line 39, to omit “the person prosecuting privately”.
3. On page 22, in line 41, to omit “prosecutes through any person admitted” and to substitute “the person prosecuting privately does so through a person entitled”.
4. On page 22, from line 43, to omit paragraph (b) and to substitute the following paragraphs:
 - (b) the person prosecuting privately has given written notice to the public prosecutor with jurisdiction that he or she intends to do so; and
 - (c) the public prosecutor has not, within 14 days of receipt of such notice, stated in writing that he or she intends to prosecute the alleged offence,
5. On page 22, in line 50, to omit “defendant” and to substitute “accused”.
6. On page 22, in line 53, to omit “defendant” and to substitute “-accused”.
7. On page 22, in line 55. to omit “b-defendant”, wherever it occurs, and to substitute “accused”.
8. On page 22, in line 56. to omit “defendant” and to substitute “accused”.

CLAUSE 24

1. On page 24, in line 8, to omit “or predecessor”.
2. On page 24, in line 11. to omit “or predecessor”.

CLAUSE 26

1. On page 24, after line 32, to insert the following subsection:

(4) Any right in land which derives from the provisions of this Act will be capable of expropriation in accordance with the provisions of any applicable legislation.

CLAUSE 28

1. On page 24, after line 41, to add the following paragraph:

(d) criteria for the recognition of persons, bodies or institutions in terms of sections 2(3) and 4(4);

2. On page 24, from line 44, to omit ‘-or for different classes of occupiers’ and “to-substitute “in accordance with the circumstances in those areas”.

CLAUSE 29

1. On page 26, after line 6, to add the following subsection:

(2) The provisions of the Prevention of Illegal Squatting Act, 1951 (Act No. 52 of 1951), shall not apply to an occupier in respect of land which he or she is entitled to occupy or use in terms of this Act.

SCHEDULE

1. On page 28, from the tenth line of the third column, to omit “unless he or she enters a portion of such land that the owner or person in charge has expressly and reasonably prohibited him or her from entering”.
2. On page 28, in the twenty-fourth line of the third column, after “concerned” to add the following proviso:

: Provided that an occupier who has a right of residence or right to use land in terms of the Extension of Security of Tenure Act, 1997, shall not be ejected in terms of this subsection from land in respect of which he or she has such a right.

PREAMBLE

1. On page 2, from the ninth line, to omit “that the law give due recognition to the rights, duties and legitimate interests of owners and occupiers of land” and to substitute “that the law should extend the rights of occupiers, while giving due recognition to the rights, duties and legitimate interests of owners”..
2. On page 2, in the eleventh line, to omit “that the law regulates the eviction of” and to substitute “that the law should regulate the eviction of vulnerable”.
3. On page 2, in the twelfth line, to omit ‘-evict’ and to substitute “apply to court for an eviction order”.

HEADING

1. On page 6, from line 17, to omit the following:

CHAPTER II

Measures to facilitate long-term security of tenure for occupiers

NEW HEADING

1. On page 6, after line 40, to insert the following heading:

CHAPTER 11

Measures to facilitate long-term security of tenure for occupiers

LONG TITLE

1. In the English text, on page 2, in the first line, after “measures” to insert “with State assistance”.
2. In the English text, on page 2, from the first line, to omit “for persons with State assistance”.