

REPUBLIC OF SOUTH AFRICA

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**EXTENSION OF SECURITY OF  
TENURE BILL**

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*(As introduced)*

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(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 47—97]

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REPUBLIEK VAN SUID-AFRIKA

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**WETSONTWERP OP DIE  
UITBREIDING VAN SEKERHEID  
VAN VERBLYFREG**

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*(Soos ingedien)*

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(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 47—97]

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**GENERAL EXPLANATORY NOTE:**

Words underlined with a solid line indicate insertions in existing enactments.

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# BILL

**To provide for measures to facilitate long-term security of land tenure for persons with State assistance; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and to regulate the conditions and circumstances under which persons, whose right of residence has been terminated, maybe evicted from land; and to provide for matters connected therewith.**

**WHEREAS** many South Africans do not have secure tenure of their homes and the land which they use and are therefore vulnerable to unfair eviction;

**WHEREAS** unfair evictions lead to great hardship, conflict and social instability;

**WHEREAS** this situation is in part the result of past discriminatory laws and practices;

**AND WHEREAS** it is desirable—

that the law should promote the achievement of long-term security of tenure for occupiers of land, where possible through the joint efforts of occupiers, land owners, and government bodies;

that the law give due recognition to the rights, duties and legitimate interests of owners and occupiers of land;

that the law regulates the eviction of occupiers from land in a fair manner, while recognizing the right of land owners to evict in appropriate circumstances;

to ensure that occupiers are not further prejudiced;

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**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

## CHAPTER 1

### Introductory provisions

#### Definitions

1. (1) In this Act, unless the context indicates otherwise—

- (i) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (viii)
  - (ii) “court” means a competent court having jurisdiction in terms of this Act; (x)
  - (iii) “Director-General” means the Director-General of the Department of Land Affairs or an officer of that Department who has been designated by the said Director-General either generally or in respect of a particular *case*, or in respect of cases of a particular nature; (iii)
  - (iv) “effective date” means 4 February 1997; (iv)
  - (v) “employee” means an employee in terms of the Labour Relations Act; (xix)
  - (vi) “evict” means to deprive a person of residence on land or the use of land or 10 access to water against his or her will, and “eviction” has a corresponding meaning; (xvii)
  - (vii) “Land Claims Court” means the court established by section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); (vii)
  - (viii) “Minister” means the Minister responsible for Land Affairs; (xi) 15
  - (ix) “occupier” means a person residing on land which belongs to another person, and who has or on 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, but **excluding—**
    - (a) a labour tenant as defined in section 1 of the Land Reform (Labour 20 Tenants) Act, 1996 (Act No. 3 of 1996); and
    - (b) a person using or intending to use the land in question ‘mainly’ for industrial, mining, commercial or commercial farming purposes; (xii) 20
  - (x) “off-site development” means a development which provides the occupants thereof with a secure right of residence on land other than land on which the 25 occupants concerned resided immediately prior to **such development**; (i)
  - (xi) “on-site development” means a development which provides the occupants thereof with a secure right of residence on land on which the occupants concerned reside or previously resided; (xiii)
  - (xii) “organ of state” means an organ of state as defined in section 239 of the 30 Constitution; (xvi)
  - (xiii) “owner” means the person who is the owner of the land in question at the time of the act, omission or conduct to which reference is made, including a holder of mineral rights over such land, in so far as such a holder is in terms of any law entitled to grant or terminate a right of residence or any associated rights 35 in respect of such land, or to evict a person occupying such land; (v)
  - (xiv) “person in charge” means a person who at the time of the act, ‘omission’ or conduct to which reference is made, has **legal** authority to give permission to a person to reside on the land in question; (xiv)
  - (xv) “prescribed” means prescribed by regulation; (xviii) 40
  - (xvi) “regulation” means a regulation made under this Act; (xv)
  - (xvii) “suitable alternative accommodation” means alternative accommodation that is safe and not less favorable than the occupier’s accommodation prior to eviction, having regard to the occupier’s circumstances and the reasonable requirements and joint abilities of the persons in the occupier’s household 45 (including future earning ability), including the need to reside in proximity to opportunities for employment or other economic activities if the occupier intends to be economically active; (vi)
  - (xviii) “the Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995); (ii) 50
  - (xix) “this Act” includes the regulations. (ix)
- (2) In respect of unalienated State land, **unsurveyed** State land, or land registered in the name of the State, an organ of state or any other institution or functionary exercising powers on behalf of the **State—**
- (a) “owner or person in charge” includes a person who has been certified by the 55 Director-General, on application made in the prescribed manner, to be the owner or person in charge, subject to the conditions that the Director-General may determine; and

- (b) a certificate purporting to have been issued by the Director-General in terms of paragraph (a) shall constitute *prima facie* evidence of the authority of the person named in it to act as owner or person in charge of the land concerned, and shall be admissible in evidence on its production in a court.

#### Application of Act

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2. (1) Subject to the provisions of section 4, this Act shall apply to all land other than land in a township established, approved, proclaimed or otherwise recognised as such in terms of any law, or encircled by such a township or townships, but including—
- (a) any land within such a township which has been designated for agricultural purposes in terms of any law; and
  - (b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after the effective date, in respect only of a person who was an occupier immediately prior to such establishment, approval, proclamation or recognition.
- (2) In any civil proceedings in terms of this Act, the land in question shall, in the absence of evidence to the contrary, be presumed to fall within the scope of this Act.

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## CHAPTER II

### Measures to facilitate long-term security of tenure for occupiers

#### Consent to reside on land

3. (1) The consent of the owner or person in charge to an occupier to reside on land shall only be terminated in accordance with the provisions of section 8.
- (2) If a person who resided on land on the effective date previously did so with the consent of the owner or person in charge, and such consent was lawfully withdrawn prior to the effective date—
- (a) the person who resided on that land shall be deemed to be an occupier in terms of this Act, provided that he or she has resided continuously on that land since consent was withdrawn; and
  - (b) the withdrawal of consent by the owner or person in charge shall be deemed to be a valid termination of the right of residence in terms of section 8.
- (3) For the purposes of this Act, the express or tacit consent of an owner or person in charge to any person to reside on land shall be effective regardless of whether the occupier, owner or person in charge has to obtain some other official authority required by law for such residence.
- (4) If it is proved in any civil proceedings in terms of this Act that a person resides or resided without stealth on land for a continuous period of one year, it shall be presumed, in the absence of evidence to the contrary, that the person in question has or had the consent of the owner or person in charge.
- (5) The provisions of subsection (4) shall not be applicable, to any land held by or registered in the name of the State, an organ of state or any other institution or functionary exercising powers on behalf of the State.

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#### Subsidies

4. (1) The Minister shall, from moneys appropriated by Parliament for that purpose and subject to the conditions the Minister may prescribe in general or determine in a particular case, grant subsidies—
- (a) to facilitate the planning of on-site and off-site developments;
  - (b) to enable occupiers, former occupiers and persons who have been evicted from land in terms of the provisions of section 10 or 11 to acquire land or rights in land; and
  - (c) for the development of land occupied or to be occupied in terms of on-site or off-site developments.
- (2) 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, the Minister shall have regard to the extent to which an application complies with following criteria:

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- (a) The development entails a mutual accommodation of the interests of occupiers and owners;
- (b) the development is cost-effective;
- (c) in the case of an off-site development under circumstances where the occupiers have indicated that they would prefer an on-site development, satisfactory reasons have been provided why an on-site development would not be a more appropriate solution;
- (d) owners **and** occupiers have made a reasonable attempt to devise a development which complies with the criteria contemplated in paragraphs (a) and (b);
- (e) the occupiers are **the** spouses or dependants of persons contemplated in section 8(4)(u); **and**
- (f) there is an urgent need for the development because occupiers have been evicted or are about to be evicted:

Provided that where an application is made by or on behalf of occupiers for an off-site development, such an application shall not be prejudiced by reason only of the absence of support from an on-site owner.

(3) Where the persons who are intended to benefit from a development have been identified, a subsidy shall not be granted unless the Minister has been satisfied that the development is acceptable to the persons concerned.

(4) The Minister may, for the purposes of this section, grant subsidies through an agreement with a provincial or local government, *or* a person or body which he or she has recognised for that purpose, where—

- (a) a provincial or local government **or** such person or body will undertake or contract with a third party for the undertaking of a development; or
- (b) the subsidy is paid to the provincial or local government or such person or body to enable it to undertake or contract with a third party for the undertaking of a development.

(5) No transfer duty shall be payable in respect of **any transaction** for the acquisition of land in terms of this section or in respect of any transaction for the acquisition of land which is financed by a subsidy in terms of this section.

(6) Nothing in this section shall affect any right to apply for a **housing** subsidy as provided for in terms of sections 10A, 10B, 10C and 10D of the Housing Act, 1966 (Act No. 4 of 1966).

## CHAPTER III

### Rights and duties of occupiers and owners ,

#### Fundamental rights

5. Subject to limitations which are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, an occupier, an owner and a person in charge shall have the right to—

- (a) human dignity;
- (b) freedom and security of the person;
- (c) privacy;
- (d) freedom of religion, belief and opinion and of expression; and
- (e) freedom of association.

#### Rights and duties of occupier

6. (1) Subject to the provisions of this Act, an occupier shall have the right to reside on and use the land on which he or she resided and which he or she used on or after the effective date, and to have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly.

(2) Without prejudice to the generality of the provisions of section 5 and subsection (1), and balanced with the rights of the owner or person in charge, an occupier shall have the right-

- (a) to security of tenure;
  - (b) to receive *bona fide* visitors at reasonable times and for reasonable periods: Provided that—
    - (i) the owner or person in charge may impose reasonable conditions that are normally applicable to visitors entering such land in order to safeguard life or property or to prevent the undue disruption of work on the land; and
    - (ii) the occupier shall be liable for any act, omission or conduct of any of his or her visitors causing damage to others while such a visitor is on the land if the occupier, by taking reasonable steps, could have prevented such damage;
  - (c) to receive postal or other communication;
  - (d) to family life;
  - (e) not to be denied or deprived of access to water; and
  - (f) not to be denied or deprived of access to educational or health services.
- (3) An occupier may not—
- (a) intentionally harm any other person occupying the land;
  - (b) intentionally or negligently cause material damage to the property of the owner or person in charge;
  - (c) unreasonably interfere with the use of the land by the owner or person in charge;
  - (d) engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; or
  - (e) enable or assist unauthorised persons to establish new dwellings on the land in question.
- (4) Any person shall have the right to visit and maintain his or her family graves on land which belongs to another person, subject to any reasonable condition imposed by the owner or person in charge of such land in order to safeguard life or property or to prevent the undue disruption of work on the land.

**Rights and duties of owner** 30

- 7.(1) The owner or person in charge of land may have a trespassing animal usually in the care of an occupier impounded and removed to a pound in accordance with the provisions of any applicable law, if the owner or person in charge has given the occupier at least 72 hours notice to remove the animal from the place where it is trespassing and the occupier has failed to do so: Provided that the owner or person in charge may take reasonable steps to prevent the animal from causing damage during those 72 hours.
- (2) An owner or person in charge may not prejudice an occupier if one of the reasons for the prejudice is the past, present or anticipated exercise of any right conferred by this Act.
- (3) If it is proved in any proceedings in terms of subsection (2), that the effect of the conduct complained of is to prejudice an occupier as set out in that subsection, it shall be deemed, in the absence of evidence to the contrary, that such prejudice was caused for one of the reasons referred to in subsection (2).

**CHAPTER IV**

**Termination of right of residence and eviction** 45

**Termination of right of residence**

- 8.(1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination or withdrawal is just and equitable having regard to all relevant factors and in particular to—
- (a) the fairness of any agreement, provision of a contract, provision of a law or other legal provision on which the owner or person in charge relies;
  - (b) the conduct of the parties giving rise to the termination;
  - (c) the interests of the parties, including the comparative hardship to which the

owner or person in charge, the occupier and the remaining occupiers shall be exposed if the right of residence is or is not terminated;

- (d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and
- (e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.

(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.

(3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act.

(4) The right of residence of an occupier who has resided on the land in question for 20 years and—

- (a) has reached the age of 60 years; or
- (b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge,

may not be terminated unless that occupier has committed a breach contemplated in section 10(1)(a) or (c).

(5) On the death of an occupier contemplated in subsection (4), the right of residence of his or her spouse or any dependant who resided on the land at the time of his or her death may be terminated only on 12 calendar months' written notice to leave the land, unless such a spouse or dependant—

- (a) has committed a breach contemplated in section 10(1); or
- (b) is able to obtain suitable alternative accommodation.

(6) Any termination of the right of residence of an occupier to prevent the occupier from acquiring rights in terms of this section, shall be void.

(7) If an occupier's right to residence has been terminated in terms of this section—

- (a) the occupier and the owner or person in charge may agree that the terms and conditions under which the occupier resided on the land prior to such termination shall apply to any period between the date of termination and the date of the eviction of the occupier; or
- (b) the owner or person in charge may, pending an application for eviction, institute proceedings in a court for a determination of the terms and conditions of further residence, including the payment of reasonable rent, having regard to the income and assets of all the members of the occupier's household to whom the termination applies.

### Limitation on eviction

9. (1) Notwithstanding the provisions of any other law, but subject to the provisions of the Prevention of Unlawful Occupation of Land Act, 1997, an occupier may be evicted only in terms of an order of court issued under this Act.

(2) A court may make an order for the eviction of an occupier if—

- (a) the occupier's right of residence has been terminated in terms of section 8;
- (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
- (c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and
- (d) the owner or person in charge has given the occupier not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall—

- (i) contain the prescribed particulars; and
  - (ii) set out the grounds on which the eviction is based:
- Provided that if a notice of application to a court for an eviction order has been served on the occupier not less than two months before the date of the

commencement of the hearing of the application, this paragraph shall be deemed to have been complied with,

**Order for eviction of person who was occupier on effective date “**

**10. (1)** An order for the eviction of a person who was an occupier on the effective date may be granted if—

- (a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;
- (b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier’s right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar month’s notice in writing to do so;
- (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship; or
- (d) the occupier—
  - (i) is or was an employee whose right of residence arises solely from that employment; and
  - (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act.

(2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) or (4) applies, a court may grant an order for eviction of the occupier if it is satisfied that the occupier is able to obtain suitable alternative accommodation.

(3) If—

- (a) an occupier has not obtained suitable alternative accommodation within a period of six months after the date of termination of his or her right of residence in terms of section 8;
  - (b) the occupier is or was an employee and his or her right of residence arose solely from that employment;
  - (c) the owner or person in charge provided the dwelling occupied by the occupier; and
  - (d) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge,
- a court may at the instance of the owner or person in charge grant an order for eviction if it is just and equitable to do so, having regard to—
- (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and
  - (ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.

(4) A court may grant an order for the eviction of an occupier who lives in the same dwelling as another occupier who is evicted in terms of this section and whose right of residence was wholly dependent on that other occupier’s right of residence.

**Order for eviction of person who becomes occupier after effective date “**

**11. (1)** If it was an express, material and fair term of the consent granted to an occupier to reside on land, that the consent would terminate upon a fixed or determinable date, a court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after the effective date.



(2) In circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after the effective date if it is of the opinion that it is just and equitable to do so.

#### Further provisions regarding eviction

- 12, (1) A court that orders the eviction of an occupier shall— 5
- (a) determine a just and equitable date on which the occupier shall vacate the land; and
  - (b) determine the date on which an eviction order may be carried out if the occupier has not vacated the land on the date contemplated in paragraph (a).
- (2) In determining a just and equitable date the court shall have regard to all relevant 10 factors, including—
- (a) the fairness of the terms of any agreement between the parties;
  - (b) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land; and
  - (c) the period that the occupier and his or her family have resided on the land in 15 question.
- (3) A court may, at the request of the sheriff in question, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal, subject to the conditions determined by the court as to the execution thereof Provided that the sheriff shall at all times be present during such eviction, demolition or removal. 20
- (4) Any order for the eviction of an occupier in terms of section 10 or 11 shall be subject to the terms and conditions that the court deems, reasonable, including the payment of reasonable rent until the eviction takes place, having regard to the income and assets of all the members of the occupier's household to whom the eviction order applies. 25
- (5) A court may, on good cause shown, vary any term or condition of an order for eviction made by it.
- (6) Notwithstanding the provisions of sections 10 and 11, the court shall not order the eviction of an occupier if it is of the opinion that one of the purposes of such intended eviction is to prevent the occupier from, acquiring rights in terms of section 8(4). 30

#### Effect of order for eviction

13. (1) If a court makes an order for eviction in terms of this Act—
- (a) the court shall order the owner "or person in charge to pay compensation for structures erected and improvements made by the occupier" and any standing crops planted by the occupier, to the extent that it is just and equitable with due 35 regard to all relevant factors, including "whether— " " "
    - (i) the improvements were made or the crops planted with the consent of the owner or, person in charge;
    - (ii) the improvements were necessary or useful to the occupier; and " "
    - (iii) a written agreement between the occupier and the owner or person in 40 charge, entered into prior to the making of improvements, provides that the occupier shall not be entitled to compensation for improvements identified in that agreement;
  - (b) the court shall order the owner or "person in charge to pay" any outstanding wages and related amounts that are due in terms "of the Basic Conditions of 45 Employment Act, 1983 (Act No. 3 of 1983) the Labour Relations Act or a determination made in terms of the Wage Act, 1957 (Act No. 5 of 1957); and
  - (c) the court may order the owner or person in charge to grant the occupier a fair opportunity to—
    - (i) demolish any structures and improvements erected or made by the 50 occupier and his or her predecessors, and to remove materials so salvaged; and
    - (ii) tend standing crops to which he or she is entitled until they are ready for harvesting, and then to harvest and remove them.

- (2) The compensation contemplated in subsection (1) shall be determined by the court as being just and equitable, taking into account—
  - (a) the depreciated replacement value of such structures and improvements;
  - (b) the value of materials which the occupier may remove;
  - (c) whether any materials referred to in paragraph (b) or contributions by the owner or person in charge were provided as part of the benefits provided to the occupier or his or her predecessors in return for any consideration; and
  - (d) if the occupier has not been given the opportunity to remove the crop, the value of the crop less the value of any contribution by the owner or person in charge of the planting and maintenance of the crop.
- (3) No order for eviction made, in terms of section 10 or 11 may be executed before the owner or person in charge has paid the compensation which is due in terms of subsection (1): Provided that a court may grant leave for eviction subject to satisfactory guarantees for such payment.

**Restoration of occupation and damages**

- 14. (1) A person who has been evicted contrary to the provisions of this Act may institute proceedings in a court for an order in terms of subsection (3).
- (2) A person who—
  - (a) would have had a right to reside on land in terms of section 6 if the provisions of this Act had been in force on the effective date; and
  - (b) was evicted for any reason or by any process between the effective date and the commencement of this Act,
 may institute proceedings in a court for an order in terms of subsection (3).
- (3) In proceedings in terms of subsection (1) or (2) the court may, subject to the conditions that it may impose, make an order—
  - (a) for the restoration of occupation by the person concerned, on such terms as it deems just;
  - (b) for the repair, reconstruction, or replacement of any building, structure, installation or thing that was peacefully occupied or used by a person immediately prior to his or her eviction, in so far as it was damaged, demolished or destroyed during & after such eviction;
  - (c) for the restoration of any services to which the person had a right in terms of section 6;
  - (d) for the payment of compensation contemplated in section 13;
  - (e) for the payment of damages; and
  - (f) for costs.

- (4) Where the person contemplated in subsection (2) was evicted in terms of an order of a court—
  - (a) the proceedings contemplated in subsection (1) shall be instituted, within one year of the commencement of this Act; and
  - (b) the court shall, in addition, to any other factor which it deems just and equitable, take into account—
    - (i) whether the order of eviction would have been granted if the proceedings had been instituted after the commencement of this Act; and
    - (ii) whether the person ordered to be evicted was effectively represented in those proceedings, either by himself or herself or by another person.

**Urgent proceedings for eviction**

- 15. Notwithstanding any other provision of this Act, the owner or person in charge may make urgent application for the removal of any occupier from land pending the outcome of proceedings for a final order, and the court may grant, an, order for the removal of that occupier 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 occupier is not forthwith removed from the land;
  - (b) there is no other effective remedy available; and
  - (c) the likely hardship to the owner or any other affected person if an order for

removal is not granted, exceeds the likely hardship to the occupier against whom the order is sought, if an order for removal is granted.

## CHAPTER V

### Dispute resolution and courts

#### Pending proceedings 5

16. The provisions of sections 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15 shall apply to proceedings for eviction pending in any court at the commencement of this Act.

#### Choice of court

17. (1) A party may, subject to the provisions of sections 19 and 20, institute proceedings in the magistrate's court within whose area of jurisdiction the land in question is situate, or the Land Claims Court. 10

(2) If all the parties to 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.

#### Powers of court 15

18. A court may, in addition to other powers set out in this Act—  
 (a) direct how the order of the court shall be executed, including the setting of time limits for the implementation of such orders; and  
 (b) make such orders for costs as it deems just.

#### Magistrates' courts 20

19. (1) A magistrate's court—  
 (a) shall have jurisdiction in respect of—  
 (i) proceedings for eviction or reinstatement; and  
 (ii) criminal proceedings in terms of this Act; and  
 (b) shall be competent— 25  
 (i) to grant interdicts in terms of this Act; and  
 (ii) to issue declaratory orders as to the rights of a party in terms of this Act.

(2) Civil appeals from magistrates' courts in terms of this Act shall lie to the Land Claims Court. 30

(3) A magistrate's court shall forward to the Director-General a copy of any decision given in terms of this Act, as well as the reasons for such decision.

#### Land Claims Court

20. (1) The Land Claims Court shall have jurisdiction in terms of this Act throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power— 35

(a) to grant interlocutory orders, declaratory orders and interdicts;  
 (b) to review an act, omission or decision of any functionary acting or purporting to act in terms of this Act; and  
 (c) to review an arbitration award in terms of the Arbitration Act, 1965 (Act No. 40  
 42 of 1965), in so far as it deals with any matter that may be heard by a court in terms of this Act.

(2) Subject to the provisions of section 17(2), the Land Claims Court shall have the powers set out in subsection (1) to the exclusion of any court contemplated in section 166(c), (d) or (e) of the Constitution. 45

(3) If in any proceedings in a High Court at the date of commencement of this Act that court is required to interpret this Act, that Court shall stop the proceedings if no oral evidence has been led and refer the matter to the Land Claims Court.

## Mediation

21. (1) The Director-General may, on the conditions that he or she may determine, 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: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the Director-General may determine.

(2) 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 that purpose, be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance for services performed by him or her.

(3) All discussions, disclosures and submissions which take place or are made during the mediation process shall be privileged, unless the parties agree to the contrary.

## Arbitration

22. (1) If the parties to a dispute in terms of this Act refer the dispute to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), they may appoint as arbitrator a person from the panel of arbitrators established in terms of section 31(1) of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).

(2) 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 that purpose, be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance for services performed by him or her.

(3) If the parties appoint as arbitrator a person who is not on the panel of arbitrators referred to in subsection (1), the Director-General may approve the payment to such arbitrator of the remuneration and allowances referred to in subsection (2), on the conditions that the Director-General may determine.

## Offences

23. (1) No person shall evict an occupier except on the authority of an order of a competent court.

(2) No person shall wilfully obstruct or interfere with an official in the employ of the State or a mediator in the performance of his or her duties under this Act.

(3) Any person who contravenes a provision of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(4) Any person whose rights or interests have been prejudiced by a contravention of subsection (1) shall have the right to institute a private prosecution of the alleged offender.

(5) The provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall apply to a private prosecution in terms of this Act: Provided that if the person prosecuting privately—

- (a) prosecutes through any person admitted to practise as an advocate or an attorney in the Republic; and
- (b) proves to the satisfaction of the court that he or she has informed the public prosecutor with jurisdiction, in a manner as may be prescribed, that he or she intends to prosecute privately and requested the public prosecutor not to prosecute the alleged offence,

then -

- (i) the person prosecuting privately shall not be required to produce a certificate issued by the Attorney-General stating that he or she has refused to prosecute the defendant;
- (ii) the person prosecuting privately shall not be required to provide security for such action;
- (iii) the defendant shall be entitled to an order for costs against the person prosecuting privately, if—
  - (aa) the charge against the defendant is dismissed or the defendant is acquitted or a decision in favour of the defendant is given on appeal; and

- (bb) the court finds that such prosecution was unfounded or vexatious; and  
 (iv) the Attorney-General shall be barred from prosecuting except with the leave of the court concerned.

## CHAPTER VI

### Miscellaneous provisions

5

#### Subsequent owners

24. (1) The rights of an occupier shall, subject to the provisions of [his Act, be binding on a successor in title or predecessor of an owner or person in charge of the land concerned.

(2) Consent contemplated in this Act given by the owner or person in charge of the 10 land concerned shall be binding on his or her successor in title or predecessor as if he or she or it had given it.

#### Legal status of agreements

25. (1) The waiver by an occupier of his or her rights in terms of this Act shall be void, unless it is permitted by this Act or incorporated in an order of a court. 15

(2) A court shall have regard to, but not be bound by, any agreement in so far as that agreement seeks to limit any of the rights of an occupier in terms of this Act.

(3) Notwithstanding the provisions of subsections (1) and (2), if an occupier vacates the land concerned freely and willingly, while being aware of his or her rights in terms of this Act, he or she shall not be entitled to institute proceedings for restoration in terms 20 of section 14.

#### Expropriation Act

26. (1) Without derogating from the powers that a Minister may exercise under the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may for the purposes of any development in terms of this Act, exercise equivalent powers to the powers that such 25 other Minister may exercise under the Expropriation Act, 1975.

(2) Notwithstanding the provisions of the Expropriation Act, 1975, the owner of the land in question shall be given a hearing before any land is expropriated for a development in terms of this Act.

(3) In the event of expropriation, compensation shall be paid as prescribed by the 30 Constitution, with due regard to the provisions of section 12(3), (4) and (5) of the Expropriation Act, 1975.

#### Trespass Act, 1959

27. Nothing in this Act shall affect the rights of an owner or person in charge in terms of the Trespass Act, 1959 (Act No. 6 of 1959). 35

#### Regulations and guidelines

28. (1) The Minister may make regulations regarding—

(a) general conditions for the granting of subsidies in terms of section 4;

(b) the form and manner of service of notices in terms of this Act;

(c) any other matter required or permitted to be prescribed in terms of this Act; 40  
and

(d) generally, all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) The Minister may make different regulations for different areas or for different classes of occupiers. 45

(3) The Minister may by notice in the *Gazette*—

(a) issue guidelines in respect of the procedures to be followed in terms of this Act

and to provide assistance to parties who may become involved in a dispute related to matters that fall within this Act; and  
(b) amend or withdraw any guideline contemplated in paragraph (u).

**Amendment of laws**

29. The laws mentioned in the Schedule are hereby amended to the extent indicated 5 in the third column thereof.

**Short title**

30. This Act shall be called the Extension of Security of Tenure Act, 1997.

## SCHEDULE

Laws amended  
(Section 29)

No. and year of law	Short title	Extension of amendment
Act No. 6 Of 1959	Trespass Act, 1959	<p>1. Amendment of section 1 by the insertion after subsection (1) of the following subsection:</p> <p>“(1 A) A person who is entitled to be on land in terms of the Extension of Security of Tenure Act, 1997, shall be deemed to have lawful reason to enter and be upon such land 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.”.</p> <p>2. Amendment of section 2 by the insertion of the following subsection:</p> <p>“(2) A court which convicts any person under subsection (1) may make an order for the summary ejection of such person from the land concerned.”.</p> <p>3. Insertion of section 3A:</p> <p>“Application of Act</p> <p>3A. This Act shall apply throughout the Republic.”.</p>

**MEMORANDUM ON THE OBJECTS OF THE EXTENSION OF SECURITY  
OF TENURE BILL, 1997**

1. The principal object of the Bill is to provide security of tenure for vulnerable occupants of land outside urban areas and, where appropriate, the acquisition of land by such occupants. Provision is made that the State can actively promote and support the creation of long-term security of tenure for vulnerable occupants, while protecting them against unfair eviction. The Bill also includes measures to regulate the relationship between land owners and vulnerable occupants, conferring certain basic rights on an occupant and an owner in their relationship with each other.

2. The Bill was published in the *Gazette* on 4 February 1997. A process of wide consultation has taken place since the publication thereof. The published draft has now been significantly amended as a result of the comments received.

3. The Bill provides for three main matters:

- (a) To facilitate the provision of long-term security of tenure for occupiers of land outside urban areas;
- (b) to protect occupiers of land outside urban areas against unfair eviction, by setting out criteria and procedures for eviction; and
- (c) to set out the basic rights and obligations of occupiers and owners of land outside urban areas.

4. The Bill will apply to all land excluding land registered or recognised in a Deeds Registry as a township, or any township established, approved, proclaimed or otherwise recognised as such under any law, and land surrounded by such a township. This means that the Bill will apply to land which is commonly understood as rural land — commercial farm land, rural land owned by tribes, and peri-urban land.

5. The Bill proposes the penalisation of offenders who evict persons contrary to the provisions of the law, by allowing for criminal prosecution and appropriate penalties. This provision will not be retrospective in its operation. Provision is also made for expropriation for the purpose of facilitating any development in terms of the Bill.

6. Mechanisms and criteria are created to assist people to acquire long-term security of tenure, either on the land where they are living or on other land. Existing State subsidies from the Department of Land Affairs or the Department of Housing may be used for this purpose. Provision is made for fast-tracking those developments through making it possible to release “block grants” to provincial, district or local governments, or bodies specially approved for that purpose. The normal subsidy conditions will apply, and financial control will continue to be exercised by national government. However, those other bodies will be able to act as implementing agencies.

7. A two-step procedure is contemplated in respect of the eviction of persons who reside on land with the consent of the owner or person in charge:

- (a) The owner or person in charge may terminate the right of occupation on various grounds. These grounds broadly reflect the law as it stands at the moment, and include a valid termination of employment in terms of the Labour Relations Act; and
- (b) once the right of occupation has been terminated and the occupiers has failed to vacate the land, the question arises whether the court should grant an order for eviction, and if so, on what terms. The courts are given a broad equitable jurisdiction, and have to take into account factors such as the period the occupier has been on the land, the specific conduct which gave rise to the termination, and the respective interests of the parties. Where the termination is not the result of the fault of the occupier, eviction is not permitted unless suitable alternative accommodation is available, except in very exceptional circumstances.

8. The Bill sets out the basic rights of occupiers, owners and persons in charge of land. Fundamental human rights contained in the Constitution are made applicable to the relationship between the parties.

9. Legislation which is contrary to the Constitution or the aims of this Bill, such as the Prevention of Illegal Squatting Act, 1951 (Act No. 52 of 1951), and the Trespass Act,



1959 (Act No. 6 of 1959), have to be amended or repealed. The Prevention of Illegal Squatting Act, 1951, was assigned to the Minister of Housing and the Department of Housing will soon introduce a Bill to replace the said Act.

10. In the opinion of the Department of Land Affairs and the State Law Advisers this Bill should be dealt with in terms of section 75 of the Constitution of the Republic of South Africa, 1996.

#### **OTHER DEPARTMENTS/BODIES/PERSONS CONSULTED**

Agricultural Employers Organisation  
 Association for Rural Advancement  
 Business South Africa  
 Centre for Applied Legal Studies  
 Centre for Rural Legal Studies  
 Chamber of Mines  
 Church of the Province of South Africa (Anglican Church), Grahamstown  
 Council of South African Banks  
 De Beer & Meyer Attorneys  
 Deciduous Fruit Industry and KWV  
 Department of Finance  
 Department of Labour  
 Distillers Korporasie Beperk  
 Eastern Cape Agricultural Union  
 Eastern Cape Provincial Government  
 Farm, Food and Rural Workers Support Association  
 Farm Workers Research and Resource Project  
 Forest Industries Association  
 Free State Agricultural Union  
 Free State Ministry for Agriculture  
 Free State Ministry for Local Government, Housing and Planning  
 Free State Rural Committee  
 Gauteng Department of Housing and Land Affairs  
 Gauteng Eastern Services Council  
 Gauteng Legislature  
 Gauteng Western Services Council  
 J F Le Roux Boerderye (Edms) Bpk.  
 Land and Agricultural Policy Centre  
 Legal Resources Centre  
 Minister of Justice  
 MONDI  
 Mpumalanga Provincial Department of Land Affairs  
 Murray sburg Sentrale Boere-Unie  
 Natal Agricultural Union  
 National African Farmers' Union  
 National Department of Housing  
 National Land Committee and affiliates  
 National Union of Farm Workers (NACTU)  
 Rural Foundation  
 SAPPI  
 South African Agricultural Union  
 South African Agricultural and Plantation Workers Union (COSATU)  
 South African Wattle Growers' Union  
 Stellenbosch Agricultural Society  
 Tongaat Hulett Group Limited  
 Trans Hex Groep Beperk  
 Transvaal Agricultural Union  
 Western Cape Agricultural Union  
 Women on Farms Project