

GOVERNMENT GAZETTE Vol. 397, NO. 19105, 31 JULY 1998

GENERAL NOTICE

NOTICE 1521 OF 1998

DEPARTMENT OF LAND AFFAIR.

TRANSFORMATION OF CERTAIN RURAL AREAS BILL

In terms of section 154(2) of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996), the Transformation of Certain Rural Areas Bill is hereby published for public comment.

Any comment in this regard should be addressed to:

The Director-General
For attention: Ms E L Steyn
Department of Land Affairs
Private Bag X 833
Pretoria

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Comments may also be faxed to facsimile number (012) 3234796.

Comments must be received on or before 21 August 1998.

BILL

To provide for the transfer of certain land to municipalities and certain other legal entities, the removal of restrictions on the alienation of land; matters with regard to minerals, the repeal of the Rural Areas Act, 1987 and related laws; and to provide for matters connected therewith.

Be it enacted by the Parliament of the Republic of South Africa, as follows:

Definitions

1. In this Act, unless the context otherwise indicates

"board area" means an area, or part of an area, consisting of one or more pieces of land (whether they are contiguous or not) to which the provisions of the Rural Areas Act, 1987, applied immediately before the commencement of this Act;

"elected committee" means a committee, elected by the residents of a board area who have reached the age of 18 years or older, which has satisfied the Minister that it represents the majority of such residents;

"entity" means-

- a. a municipality;
- b. a communal property association registered in terms of section 8 of the Communal Property Associations Act, 1996 (Act No. 28 of 1996); or
- c. another body or person approved by the Minister in general or in a particular case;

"Minister" means the Minister of Land Affairs;

"municipality" means a municipality referred to in section 10B of the Local

Government Transition Act, 1993 (Act No. 209 of 1993);

"remainder" means land situated in a board area other than township land, including land which has been planned, classified and subdivided as an agricultural area or outer commonage in terms of section 20(2) of the Rural Areas Act, 1987;

"resident" means a person who, at the date of commencement of this Act,

- a. ordinarily resides in a board area; or
- b. under law is liable for the payment of assessment rates, rent, service charges or levies to a municipality in respect of land situated in a board area;

"Rural Areas Act, 1987" means the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);

"township" means any township situated in a board area established, approved, proclaimed or otherwise recognised as such under any law;

"transitional period" means a period referred to in section 9;

"trust land" means land situated in a board area that vests in the Minister in terms of section 7 of the Rural Areas Act, 1987.

Transfer of trust land in a township

2. (1) At the commencement of this Act, all trust land situated in a township shall vest in the municipality of the area where such land is situated, subject to the continued existence of any registered or registrable rights of a person in or over a piece of land in the township.

(2) No transfer duty, stamp duty or other registration fees shall be payable in respect of any transfer in terms of subsection (1).

Transfer of land in the remainder

3. (1) (a) Trust land in the remainder or land in the remainder which vests in a municipality in terms of a law listed in the Schedule, shall at the expiration of the transitional period be transferred to an entity as a community asset of the residents, subject to the continued existence of any right or interest of a person in such land.

(b) Different pieces of the land contemplated in paragraph (a) may be transferred to different entities.

(2) The transfer of land contemplated in subsection (1) to an entity shall not take place, unless the Minister is satisfied that, in the event of a transfer to

- a. a municipality, the legislation applicable to such a municipality; or
- b. a communal property association or other body approved by the Minister, the rules of such association or body;

make suitable provision for a balance of security of tenure rights and protection of rights of use of

- i. the residents mutually;
- ii. individual members of such a communal property association or other body;
- iii. present and future users or occupiers of land, and the public interest of access to land on the remainder.

(3) If in the opinion of the Minister the said legislation or rules do not fully achieve the objects of subsection (2), he or she may determine terms and conditions for the transfer of such land, in order to achieve such objects.

(4) (a) Within three months of the commencement of this Act, the municipality of a board area must submit a notice to the Minister setting out how and when it intends determining to which entity the land contemplated in subsection (1) should be transferred.

(b) If the municipality fails to submit a notice contemplated in paragraph (a) within three months of the commencement of this Act, an elected committee may submit such a notice to the Minister.

(c) The notice referred to in paragraph (a) may include

- i. a date of a special meeting to be convened for that purposes; or
- ii. a written survey reflecting the name, identity number or date of birth, address and signature of the residents; or
- iii. any other manner.

(d) Upon receipt of the notice referred to in paragraph (a), the Minister shall cause it to be published in the Gazeffe and in a newspaper circulating in the district in which the land is situated, unless the Minister determines such other procedures as he or she may deem fit.

(5) After compliance with the notice referred to in subsection (4)(c), the municipality or elected committee must submit a written report to the Minister recommending to which entity or entities the land contemplated in subsection (1) must be transferred.

(6) If, upon receipt of the report referred to in subsection (5), the Minister is satisfied with the recommendation, he or she must inform the municipality or elected committee of his or her decision and must take steps to transfer such land to the entity concerned.

(7) If, upon receipt of the report referred to in subsection (5), the Minister is not satisfied with the recommendation, he or she must inform the municipality or elected committee of the reasons for his or her rejection and specify how a new recommendation should be made to him or her.

(8) The Minister may designate any person to

- a. assist the municipality or elected committee in making the recommendation referred to in subsection (7); or
- b. investigate the matter and submit a written report to the Minister recommending to which entity the land contemplated in subsection (1) must be transferred.

(9) Any person designated under subsection (8) may, for the purposes of his or her investigation

- a. gather such information as he or she may deem necessary;
- b. hear or receive representations from any person;
- c. question any person who in his or her opinion may have relevant information available;
- d. by agreement between interested parties, settle any difference as to the land which forms the subject of the investigation, or the boundaries of such land;
- e. if requested by the interested parties, determine the boundaries of such land or, if they cannot be determined, establish such boundaries after consultation with interested parties;
- f. at any reasonable time, enter upon such land or any contiguous land.

(10) Any person designated under subsection (8) may, in the performance of his or her functions, be accompanied by such persons as he or she may deem necessary.

(11) The Minister must issue a certificate of designation to a person designated under

subsection (8) and such person shall, at the request of any person affected by the performance of his or her functions under this section, produce such a certificate of designation.

(12) If, upon receipt of the recommendation referred to in subsections (7) or (8), the Minister is

- a. satisfied with the recommendation, he or she shall inform the municipality or elected committee of his or her decision and must take steps to transfer such land to the entity concerned;
- b. not satisfied with the recommendation, or if the residents fail to make a recommendation within the transitional period, the Minister must decide to which entity the land contemplated in subsection (1) must be transferred and must take steps to transfer the land to such entity.

(13) If the land contemplated in subsection (1), or any portion thereof, has not been surveyed, the Minister may cause such land to be surveyed.

(14) No transfer duty, stamp duty or other registration fees shall be payable in respect of any transfer in terms of subsections (6) and (12)(a) or (b).

(15) The Minister may direct that any costs, including survey costs, necessary for the implementation of the provisions of this section be defrayed in full or in part from monies appropriated by Parliament for that purpose.

Principles to be adhered to by a municipality

4. (1) When dealing with the land transferred to a municipality in terms of sections 3(6) and (12)(a) or (b) of this Act, such municipality must
 - a. (a) afford residents a fair opportunity to participate in the decision-making processes regarding the administration of the land;
 - b. (b) not discriminate against any resident;
 - c. (c) give residents reasonable preference in decisions about access to the land;
 - d. not sell or encumber the land' or any substantial part of it, without the consent of a majority of residents at a public meeting called for that purpose; and
 - e. (e) be accountable to the residents;
 - f. manage and record effectively all financial transactions regarding the land; and
 - g. have fiduciary responsibilities in relation to the residents.
- (2) Despite the provisions of any law regarding the disposal of municipal land in a township, the residents must be given reasonable preference to acquire land contemplated in section 3(1).

Removal of restrictions

5. (1) Subject to section 4 of this Act, at the commencement of this Act, any provision, irrespective of whether it is contained in any law listed in the Schedule or registered against the title of land situated in a board area which
 - a. placed any restriction on the period for which the land tenure right concerned was granted;
 - b. placed any restriction, other than by virtue of an agreement to which the holder of such land tenure right was a party, on the capacity of the holder to alienate, bequeath, let, hypothecate or otherwise deal with such land tenure right; or
 - c. placed any restriction on the transfer of such land tenure right to, or on the possession, use or occupation of such erf or piece of land by, any person of a particular population or ethnic group or who is not of a particular population or ethnic group, is hereby abolished.

(2) No transfer duty, stamp duty or other fees shall be payable in respect of any such abolition.

Mineral matters

6. (1) Despite the repeal of the Rural Areas Act, 1987 and section 3, at the commencement of this Act all mineral rights in land situated in a board area shall vest in the State.

(2) (a) Despite anything to the contrary contained in any other law, prospecting for or mining of minerals on land situated in a board area, shall only be undertaken except with the written consent of the Minister of Minerals and Energy in terms of sections 6(3) and 9(2) of the Minerals Act, 1991 (Act No. 50 of 1991).

(b) The said Minister may only give his or her consent after consultation and with the approval of the entity concerned, which approval may not be unreasonably withheld.

(3) Despite anything to the contrary contained in any other law, the Minister of Minerals and Energy in granting the consent contemplated in subsection (2), shall impose such fees, restrictions and conditions as he or she may deem fit, in particular with respect to -

- a. (a) a preference to exploitation by the residents (and in suitable instances in collaboration with external institutions), taking the optimal utilization, exploration and exploitation of the minerals and the rehabilitation of surface into account;
- b. surface rentals;
- c. the establishment of an equity sharing arrangement to the mutual benefit of all parties concerned; and
- d. work opportunities to the extent reasonably possible for residents.

Regulations

7. The Minister may make regulations regarding

- a. (a) any matter required or permitted to be prescribed in terms of this Act; and
- b. (b) generally, all matters which in his or her opinion are necessary or expedient to be prescribed in order to achieve the objects of this Act.

Delegation of powers

8. (1) (a) The Minister may, either in general or in a particular case or in cases of a particular nature, in writing delegate any power conferred upon him or her by or under this Act, except the power referred to in section 7, to-

- i. a Premier of a province; or
- ii. any officer in the service of the national government.

(b) Any person to whom any power has been delegated under paragraph (a) must exercise that power subject to the directions of the Minister.

(c) The Minister may, at any time, revoke in writing such delegation, and the delegation of any power shall not prevent the Minister, during the period of revocation, from exercising that power himself or herself.

(2) (a) The Premier of a province to whom any power has been delegated under subsection (1)(a) (i) may, subject to any directions contemplated in subsection (1)(b) and such further conditions and periods of time as he or she may consider necessary, in writing delegate any such power to-

- i. any member of the Executive Council of that province; or

ii. any officer in the service of the provincial government.

(b) Any person to whom any power has been delegated under paragraph (a) shall exercise that power subject to the directions of the Premier.

(c) The Premier may, at any time, revoke in writing such delegation, and the delegation of any power shall not prevent the Premier, during the period of revocation, from exercising that power himself or herself.

Transitional period

9. (1) A transitional period shall be a period of 18 months from the commencement of this Act.

(2) The Minister may, by notice in the Gazette, extend such period for another period of 6 months.

Repeal of Act 9 of 1987 and related laws

10. (1) The laws listed in the Schedule are repealed to the extent indicated in the third column thereof.

(2) (a) The repeal of the laws listed in the Schedule comes into operation on a date determined by the President by proclamation in the Gazette.

(b) Different dates may be determined in respect of (i) different board areas or part of board areas; and (ii) different laws or part of laws.

(3) If, prior to the date contemplated in subsection (2), in the application of this Act in a board area,

- a. any conflict is found to exist between a provision of this Act and a provision of a law listed in the Schedule, or
- b. any provision of this Act and any provision of any law listed in the Schedule are found to give rise to administrative difficulty, the President may, by proclamation in the Gazette, determine to which extent either a provision of this Act or a provision of a law listed in the Schedule must apply to that area, in any manner he or she may deem necessary to remove the conflict or difficulty.

Short title

11. This Act shall be called the Transformation of Certain Rural Areas Act, 1998

SCHEDULE

Laws repealed by section 10

No. and year of Act	Short Title	Extent of repeal
Act No. 9 of 1987	Rural Areas Act (House of Representatives), 1987	The whole
Act No. 90 of 1990	The Mier Rural Area Act (House of Representatives), 1990	The whole
Act No. 121 of 1990	The Rural Areas Amendment Act (House of Representatives), 1990	The whole

Act No. 71 of 1991	The Businessess Act, 1991	Section 7(1)(b), in so far as it repealed or amended the Rural Areas Act, 1987
Act No. 108 of 1991	The Abolition of Racially Based Land Measures Act, 1991	Sections 57 to 71
Act No. 112 of 1991	The Upgrading of Land Tenure Rights Act, 1991	Section 6(5) and paragraph 3 of Schedule 2
Act No. 112 of 1993	The Rural Areas Amendment Act (House of Representatives), 1990	The whole
Proclamation No. R. 154 of 31 October 1994		The whole