

UPGRADING OF LAND TENURE RIGHTS AMENDMENT ACT

PRESIDENT'S OFFICE

No. 1099. 3 July 1996

NO. 34 OF 1996: UPGRADING OF LAND TENURE RIGHTS AMENDMENT ACT, 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information-

General Explanatory Note:

Words in ***bold italics*** indicate omissions from existing enactments.

Words in *italics* indicate insertions in existing enactments.

ACT

To amend the Upgrading of Land Tenure Rights Act, 1991, so as to insert a definition of "putative holder"; to alter the definition of "tribal resolution"; to grant discretion to the Minister regarding payment for the costs of upgrading, as well as in respect of the upgrading of Schedule 2 rights outside formalised townships; to amend procedures regarding the compilation and correction of registers of land rights as well as the making of entries therein; to substitute the provisions relating to rural settlements; to further regulate offences in terms of the said Act; and to further regulate the delegation of powers and assignment of functions; and to provide for matters connected therewith.

(English text signed by the President.)

(Assented to 27 June 1996.)

WHEREAS it is the government's policy that the upgrading of land tenure rights should henceforth be demand driven and that security of tenure should be protected under a variety of forms of tenure;

AND WHEREAS it is necessary to protect the rights and interests of putative holders and to provide for a minimum requirement of democratic procedures in decision making;

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

Amendment of section 1 of Act 112 of 1991, as amended by section 30 of Act 108 of 1993 and section 8 of Act 11 of 1995

1. Section 1 of the Upgrading of Land Tenure Rights Act, 1991 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the insertion before the definition of "Deeds Act" of the following definitions:

" 'community' means a group of persons of which its members have or wish to have their rights to or in a particular piece of land determined by shared rules;

'community resolution' means any decision taken by a majority of the members of the community over the age of 18 years present or represented at a meeting convened for the purpose of considering the disposal of a right in land lawfully occupied by or allocated for the use of such community, of which they have been given sufficient notice, and in which they had a reasonable opportunity to participate";

(b) by the insertion after the definition of "Official Gazette" of the following definition:

" 'putative holder' means the person who occupies an erf as if he or she is the holder of the land tenure right in respect of that erf but who is not formally recorded in the register of land rights as the holder of the right in question;;"; and

(c) by the substitution for the definition of "tribal resolution" of the following definition:

" 'tribal resolution', in relation to a tribe, means a resolution passed by the tribe democratically and in accordance with the indigenous law or customs of the tribe: Provided that for the purposes of this Act any decision to dispose of a right in tribal land may only be taken by a majority of the members of the tribe over the age of 18 years present or represented at a meeting convened for the purpose of considering such disposal, of which they have been given sufficient notice, and in which they had a reasonable opportunity to participate;;".

Amendment of section 3 of Act 112 of 1991

2. Section 3 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to subsection (1B);, any land tenure right mentioned in Schedule 2 and which was granted in respect of –

(a) any erf or any other piece of land in a formalized township for which a township register was or is opened either before or after the commencement of this Act; or

(b) any piece of land under a provision of any law and does not form part of a township, any erf or other piece of surveyed land shall, upon the submission by the owner of such erf or piece of land at the deeds registry of a deed of transfer on the form prescribed for that purpose under the Deeds Act and made out in the name of the person who is the holder of the relevant land tenure right, be converted into ownership by the registrar of deeds by the registration of such erf or piece of land in the name of such person:

Provided that–

(a) where the State is the owner of an erf or piece of land situated outside a formalised township, the relevant land tenure right need not be converted into ownership, and a deed of transfer shall not be submitted unless–

(i) the Minister is satisfied, on the basis of a report by a person assigned or appointed by him or her, that the rights or interests of putative holders are being protected; and

(ii) where such land is lawfully occupied or has been allocated for the use of a tribe or community a tribal or community resolution has been obtained;

(b) where a tribe is the owner of the land, the decision to convert the relevant land tenure right into ownership shall be taken by way of a tribal resolution";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) For the purposes of an investigation referred to in subsection (1)(a), the designated or appointed person shall have all the rights and duties referred to in section 24D(7).

(1B) If an owner of an erf or piece of land is requested to submit a deed of transfer of land in terms of subsection (1), the Minister may on request of such owner, or if the State is the owner of such land, of his or her own accord—

(i) impose conditions in respect of the use of such land, but if the State is the owner of such land and it is lawfully occupied by or has been allocated for the use of a tribe or community, in consultation with such tribe or community;

(ii) from moneys appropriated by Parliament or at the cost of an affected person and on such conditions as he or she may determine, cause such land to be surveyed;

(iii) order that an amount to be determined by him or her be paid by an affected person to the owner of the erf or other piece of land, or if the erf or other piece of land falls within an area lawfully occupied or allocated for use by a tribe or community, to the tribe or community concerned;

(iv) provide for a method for determining the amount to be paid in terms of paragraph (iii).".

Amendment of section 16 of Act 112 of 1991, as amended by sections 31 and 35 of Act 108 of 1993 and section 12 of Act 11 of 1995

3. Section 16 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of subsection (2) and the availability of moneys and personnel, the Minister B>shall may in respect of a township in which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land, take in conjunction with the community residing in such township such steps as may be necessary to declare such township to be a formalized township.".

Amendment of section 17 of Act 112 of 1991, as amended by section 35 of Act 108 of 1993 and section 12 of Act 11 of 1995

4. Section 17 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) If a township in which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land has not been surveyed, the Minister may B>*from moneys appropriated for that purpose by Parliament-*"; and

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) cause the land on which the township is situated, including such township itself, to be surveyed and cause a diagram B>*and orgeneral* plan to be prepared; and".

Repeal of section 18 of Act 112 of 1991

5. Section 18 of the principal Act is hereby repealed.

Deletion of Chapter 2A of Act 112 of 1991, as inserted by section 32 of Act 108 of 1993 and amended by section 12 of Act 11 of 1995

6. Chapter 2A of the principal Act is hereby deleted.

Substitution of section 20 of Act 112 of 1991

7. The following section is hereby substituted for section 20 of the principal Act:

"20. (1) A tribe may request the Minister to transfer tribal land the control of which vests in the tribe to the tribe in ownership.

(2) If the land has been surveyed B>*and* the Minister B>*is of the opinion that the request is feasible, he shall forthwith may*take steps to transfer the land concerned to the tribe in question.

(3) If the land has not been surveyed B>*or* the Minister B>*has any doubt as to the feasibility of the request, he shall may*designate any person to investigate the feasibility of the request and to submit a report and recommendation to him *or her*in regard thereto.

(4) Any person designated under subsection (3) 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 them in consultation with interested parties;

(f) *on the authority of a warrant issued by a magistrate or a judge having jurisdiction* at any reasonable time enter upon such land or any contiguous land.

(5) Any person designated under subsection (3) may in the performance of his *or her* functions be accompanied by such persons as he *or she* under the circumstances of any particular case may deem necessary.

(6) The Minister shall issue to a person designated under subsection (3) proof in writing of his *or her* designation, and such person shall in the performance of his *or her* functions under this section produce, at the request of any person affected such functions, such proof to the latter person.

(7) B>*If* After receipt of a report and recommendation referred to in subsection (3), the Minister B>*is of the opinion that the request is feasible or partially feasible,* he shall *may* cause the land to be surveyed, if such land or any portion thereof B>*which may in the opinion of the Minister be transferred* has not been surveyed, and B>*forthwith* take steps to transfer such land or such portion to the tribe in question.

(8) If B>*after receipt of a report and recommendation referred to in subsection (3),* the Minister B>*is of the opinion that the request is not feasible, he does not proceed in terms of subsections (2) or (7) he or she* shall cause the tribe in question to be notified in writing of the reasons for his *or her* decision not to accede to such request.

(9) No transfer duty, stamp duty or other fees shall be payable in respect of any transfer in terms of subsection (2) or (7).

(10) For the purposes of this section 'surveyed' means surveyed under a provision of any law."

Amendment of section 21 of Act 112 of 1991

8. Section 21 of the principal Act is hereby amended by the deletion of paragraph (a).

Substitution of section 22 of Act 112 of 1991, as amended by section 12(b) of Act 11 of 1995

9. The following section is hereby substituted for section 22 of the principal Act:

"Transfer of certain offices to Department B>*of Public Works and Land Affairs*

22. (1) B>*Subject to the provisions of section 25, the President may by proclamation in the Gazette, and as from a date determined in the proclamation, transfer* Any office –

(a) *for the registration of land tenure rights–*

(a) *mentioned in Schedule 1; or*

(b) similar to the rights mentioned in Schedule 1, as contained in laws which by virtue of section 229 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), continue to be in force in any area of the Republic,

B>(b) which renders surveying services, and which has been established in the Department of Development Aid or in any department under the control of the government of a B>self-governing territory, which after the commencement of that Constitution, forms part of the national territory, is hereby transferred to the Department of B>Public Works and Land Affairs.

(2) As from the date B>specified in a proclamation under subsection (1) of the commencement of the Upgrading of Land Tenure Rights Amendment Act, 1996-

(a) the control of such an office B>so specified, and all registers, books, plans, diagrams, records and other documents relating to the affairs of such office, shall vest in the Director-General: B>Public Works and Land Affairs; and

(b) the officers and employees attached to such office shall, subject to subsection (3), perform their functions as if they were seconded to the Department of B>Public Works and Land Affairs.

(3) B>(a) Any officer or employee referred to in subsection (2) and who is an officer or employee in the public service may be dealt with in accordance with the Public Service Act, B>1984 (Act No. 113 of 1984) 1994.

B>(b) Any officer or employee referred to in subsection (2) who is an officer or employee in the government service of a self-governing territory may be transferred to the Department of Public Works and Land Affairs in accordance with the Public Service Act, 1981, as if he is a member of the public service: Provided-

(i) that such transfer shall not be effected without his consent; and

(ii) that such transfer shall not be effected under conditions which are less favourable than the conditions applicable to him as a member of the government service concerned."

Substitution of section 23 of Act 112 of 1991, as amended by section 33 of Act 108 of 1993

10. The following section is hereby substituted for section 23 of the principal Act:

"23. Any person who-

(a) wilfully hinders or obstructs any person designated under section 18 (1) or (2) B>181)(1) or (2) or 20(3) in the performance of his or her functions under this Act;

(b) B>refuses or fails to answer to the best of his ability any questions put to him by any such person in the performance of his functions under this Act; or fails to comply with an order in terms of section 18(6A), except an order for costs,

B>(c) *refuses or fails to comply to the best of his ability with any request made by any such person in the performance of his functions under this Act, shall be guilty of an offence and liable on conviction to a fine B>not exceeding R 2 000 or to imprisonment for a period not exceeding six months."*

Amendment of section 24A of Act 112 of 1991, as amended by section 9 of Act 11 of 1995

11. The following section is hereby substituted for section 24A of the principal Act:

"Delegation of powers and assignment of functions

24A. (1) The Minister may, either in general or in a particular case or in cases of a particular nature, in writing delegate to–

(a) a Premier or a member of the Executive Council of a province; or

(b) any officer in the service of the national government or a local government body contemplated in section 1 of the Local Government Transition Act, 1993 (Act No. 209 of 1993), any power conferred upon him or her by or under this Act.

(2) Any person to whom any power has been delegated under subsection (1) shall exercise that power subject to the directions of the Minister.

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

(4) The Premier or a member of the Executive Council of a province to whom any power has been delegated under subsection (1)(a) may, subject to any directions contemplated in subsection (2) and such further conditions and periods of time as he or she may determine, delegate any such power in writing to–

(a) the Director-General of that province; or

(b) any officer in the service of the provincial government concerned.

(5) The President may, by proclamation in the Gazette–

(a) assign the administration of this Act or any provision of this Act to a Premier of a province; or

(b) reassign the administration of this Act or any provision as assigned in terms of paragraph (a) to a Minister referred to in section 88 of the Constitution, either generally or to the extent specified in the proclamation, and subject to such conditions, amendments, adaptations, modifications, and periods of time as the President may determine.

(6) When the President assigns the administration of this Act under subsection (5), or at any time thereafter, and to the extent that he or she considers it necessary for the efficient carrying out of the assignment, he or she may regulate any matter which is necessary or expedient as a result of the assignment, including matters relating to the transfer or secondment of persons (subject to the provisions of sections 236 and 237 of

the Constitution) and relating to the transfer of assets, liabilities, rights and obligations, including funds, to or from the national or a provincial government or any department of state, administration, force or other institution.

(7) The transfer of any asset, liability, right or obligation contemplated in subsection (6) shall be done subject to the provisions of the relevant applicable Exchequer Act.

(8) The transfer or secondment of persons as contemplated in subsection (6) shall be done after consultation with the Public Service Commission and the relevant provincial service commission, if applicable.

(9) The Premier of a province may, subject to such conditions and periods of time as he or she may determine, in writing authorise–

(a) any member of the Executive Council of that province;

(b) any member of such Executive Council and the Director-General of the province jointly;

(c) the said Director-General;

(d) any officer in the service of the provincial government concerned;

(e) any local government body contemplated in section 1 of the Local Government Transition Act, 1993, to exercise or perform in general or in a particular case or in cases of a particular nature, any power, duty or function which the Premier is in terms of a proclamation under subsection (5) authorised to exercise or perform, except the power to make regulations.

(10) The provisions of section 10(5) and (5A) of the Interpretation Act, 1957 (Act No. 33 of 1957), shall apply mutatis mutandis to the administration of this Act or any provision of this Act assigned under subsection (5)(a) or reassigned to a Minister under subsection (5)(b)."

Insertion of sections 24B, 24C and 24D in Act 112 of 1991

12. The following sections are hereby inserted in the principal Act after section 24A:

"Payment of costs of upgrading

24B. The holder of a land tenure right shall be responsible for the payment of all costs connected with the upgrading of such right including the costs of surveying: Provided that the Minister may assist such person with the payment of such costs.

Regulations

24C. The Minister may make regulations regarding–

(a) any matter required or permitted to be prescribed by regulation in terms of this Act; and

(b) generally, all matters which are necessary or expedient to be prescribed in order to

achieve the objects of this Act.

Updating and compilation of registers of land rights

24D. (1) *If the Minister is of the opinion that a register of land rights in respect of which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land has not been written up or properly written up, there is an incorrect entry therein or that it reflects the names of persons who are not the putative holders of the relevant land tenure right, he or she may designate any person to investigate and compile a register of land rights for the area or to update the existing register and to rectify errors or supplement omissions.*

(2) If the Minister receives a request from a tribe or community in respect of any area on land lawfully occupied by or has been allocated for use by such tribe or community, in which the individual erven or other pieces of land are occupied or utilized by individuals and their families under the rules or customs of that tribe or community, he or she may designate any person to compile a register of land rights in respect of such area.

(3) If an area referred to in subsection (1) or (2) has not been surveyed, the Minister may determine that the functions contemplated in that subsection shall not be performed before the survey of such area has commenced.

(4) Any register of land rights compiled or updated under subsection (1) or (2) shall, as to its shape, form and contents, be compiled or updated in accordance with the legal and administrative requirements applicable to a township or other relevant register.

(5) Any person designated under subsection (1) or (2) shall in the compilation or updating of a register of land rights–

(a) satisfy himself or herself that if a general plan for an area exists the property descriptions in the register or which he or she makes in the register correspond with those descriptions on the general plan of the area concerned;

(b) ascertain the identity of the person who at the relevant time is the de jure holder of the land tenure right in each relevant erf or other piece of land in the area as well as the identity of any putative holder of the relevant land tenure right in each such erf or piece of land;

(c) consider any representations made to him or her either orally or in writing by any person who lays claim to be registered in the register as the holder of a land tenure right;

(d) take reasonable steps to ensure that persons affected or likely to be affected by the investigation and compilation receive effective notice of the investigation, are given an opportunity of making representations with regard thereto and are informed of the result thereof;

(e) if it is just and equitable, make a recommendation to the Minister regarding such arrangements as are appropriate and necessary to protect other rights and interests, if any, in that erf or piece of land, including the rights and interests of putative holders.

(6) In order to gather information which is necessary or expedient in compiling or updating a register of land rights for the area concerned, any person designated under subsection (1) or (2) may–

(a) subject to any law governing privilege, question any person who in his or her opinion may have relevant information available;

(b) subject to any law governing privilege, require any person to deliver to him or her forthwith, or to submit to him or her at such time and place as may be determined by him or her, any register, permit, certificate, title of land right or other document in the possession or under the control of any such person and which in his or her opinion contains relevant information;

(c) examine any such register, permit, certificate, title of land right or document or make an extract therefrom or a copy thereof;

(d) if it is necessary for the purposes of paragraph (a), (b) or (c), at any reasonable time, on the authority of a warrant issued by a magistrate or judge having jurisdiction, enter upon any erf or other land in the area concerned.

(7) If any person refuses to answer a question put to him or her under subsection (6)(a) or to deliver or submit anything required under subsection (6)(b), the person acting under subsection (6)(a) or (b) may apply to the magistrate's court for the district in which the erf or piece of land in question is situated for an order compelling the former person to answer the question or deliver or submit the thing and the court may make such order as it deems fair and just under the circumstances, including an order for costs, having regard to the public interest and the right to privacy of the respondent.

(8) Any person designated under subsection (1) or (2) may in the performance of his or her functions be accompanied by such persons as he or she under the circumstances of any particular case may deem necessary.

(9) The Minister shall issue to a person designated under subsection (1) or (2) proof in writing of his or her designation, and such person shall in the performance of his or her functions under this section produce, at the request of any person affected by such functions, such proof to the latter person.

(10) (a) Any person aggrieved by an entry made by a person designated under subsection (1) or (2) in a register of land rights, may within 30 days after he or she became aware of the entry, but not more than a year after the entry was made, appeal in writing against such entry to the Minister.

(b) The Minister may, after he or she has considered the grounds of the appeal and the reasons of the person designated under subsection (1) or (2) for such entry–

(i) either in whole or in part, allow the appeal, and–

(aa) direct such person to alter such entry or to substitute for it any other entry which such person in the Minister's opinion ought to have made; or

(bb) order that such arrangements be made as are appropriate and necessary to protect the rights and interests of the appellant as well as other rights and interests, if any, in that erf or piece of land; or

(ii) dismiss the appeal.

(c) The Minister shall cause a person who lodged an appeal with him or her to be notified in writing of his or her decision on the appeal.

(11) The Minister may from monies appropriated by Parliament for that purpose, after receiving a recommendation in terms of subsection (5)(e) or an order made in terms of subsection (10)(b)(i)(bb), provide assistance to persons having rights and interests in such erf or piece of land, including assistance to obtain rights in such erf or piece of land or alternative land.

(12) The designation of a person in terms of subsections (1) and (2) and section 3(1)(a) and assistance in terms of subsection (11) shall be subject to the availability of personnel and funds.

(13) This section shall apply throughout the Republic."

Short title

13. This Act shall be called the *Upgrading of Land Tenure Rights Amendment Act, 1996* .