

LAND REFORM (LABOUR TENANTS)
BILL, 1995

To provide for security of tenure of labour tenants and those persons occupying or using land as a result of their association with labour tenants; to provide for the acquisition of land and rights in land by labour tenants; and to provide for matters connected therewith.

WHEREAS the institution of labour tenancy is the result of racially discriminatory laws and practices;

WHEREAS it is desirable to ensure the adequate protection of labour tenants, who are persons who were disadvantaged by unfair discrimination, in order to promote their full and equal enjoyment of human rights and freedoms;

WHEREAS it is desirable to institute measures to assist labour tenants to obtain security of tenure and, where feasible, ownership of land;

WHEREAS the Land Reform (Labour Tenants) Bill was published in the Gazette for general comment on 2 June 1995;

AND WHEREAS it is desirable to ensure that labour tenants are not further prejudiced;

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

CHAPTER I
Introductory provisions

Definitions

1. In this Act, unless the context indicates otherwise -

- (i) "affected land" means land in respect of which a claim has been lodged in terms of section 17(1); (v)
- (ii) "associate" means a family member of a labour tenant, including a person who has the right to occupy and use land through a labour tenant; (vi)
- (iii) "claimant" means a labour tenant or his or her successor who has lodged a claim in terms of section 17(1) of this Act; (iii)
- (iv) "Court" means the Land Claims Court established by section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); (vii)
- (v) "Director-General" means the Director-General of the Department of Land Affairs or an official -
 - (a) of that Department; or
 - (b) in the service of a provincial government, who with the consent of the Premier of that province,

has been designated by the said Director-General either generally or in respect of a particular case, or in cases of a particular nature; (i)
- (vi) "eviction" includes the deprivation of a right of occupation or use of land; (xii)
- (vii) "family member" means a labour tenant's grandparent, parent, spouse (including a partner in a customary union, whether or not the union is registered), or dependant; (iv)
- (viii) "farm" means a portion or portions of agricultural land as defined in the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970); (x)
- (ix) "farmworker" means a person who is employed on a farm in terms of a renewable contract of employment which provides that -
 - (a) in return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some other form of remuneration, and not predominantly in the right to occupy and use land; and
 - (b) he or she is obliged to perform his or her services personally; (xi)

- (x) "grazing land" means farm land which is used to meet the feed requirements of stock, and which the owner has set aside for that purpose or which has been used for that purpose with the permission of the owner; (xv)
- (xi) "labour tenant" means a person -
 - (a) who is residing or has the right to reside on a farm;
 - (b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provide or has provided labour to the owner or lessee; and
 - (c) whose parent or grandparent resided on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided labour to the owner or lessee of such or such other farm,

including -

- (i) a person who is a labour tenant within the meaning of the Native Servants Contract Act, 1932 (Act No. 24 of 1932), or the Development Trust and Land Act, 1936 (Act No. 18 of 1936), whether or not the formalities prescribed by those Acts were or have been complied with;
- (ii) a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3(4) and (5),

but excluding -

- (aa) a farmworker; or
- (bb) a person for whom the owner or lessee of the farm has provided housing; (viii)

- (xii) "Minister" means the Minister of Land Affairs; (ix)
- (xiii) "owner" means the owner, as defined in the Deeds Registries Act, 1937 (Act No. 47 of 1937), of a farm and where it occurs in the definition of labour tenant includes his or her successors and predecessors in title; (ii)
- (xiv) "prescribed" means prescribed by regulation; (xiv)
- (xv) "right in land" means any real or personal right in land, including a right to share cropping or grazing land, but excluding mineral rights and real rights ancillary thereto which relate to the exploitation of minerals. (xii)

Limitation and waiver of rights

2.(1) The rights conferred by this Act shall be subject to the provisions of any law providing for the expropriation of land or rights in land.

(2) In the event of expropriation of land which is occupied or used by a labour tenant or his or her associate, such labour tenant or successor in title shall be entitled to just and equitable compensation as prescribed in the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), for the resulting loss of rights in land.

CHAPTER II

Right to occupy and use land

Right to occupy and use land

3.(1) Notwithstanding the provisions of any other law, but subject to the provisions of subsection (2), a person who complied with the definition of a labour tenant on 2 June 1995 shall have the right with his or her family members to occupy and use that part of the farm -

- (a) which he or she or his or her associate was using and occupying on that date; and
- (b) to which he or she is reinstated in terms of this Act or any other law.

(2) The right of a labour tenant to reside on and to use that part of the farm referred to in subsection (1) together with his or her family members

may only be terminated in accordance with the provisions of this Act, and shall terminate -

- (a) subject to the provisions of subsections (3) to (7), by the waiver of his or her rights;
- (b) subject to the provisions of subsections (4) and (5), on his or her death;
- (c) subject to the provisions of section 10, on his or her eviction; and
- (d) on acquisition by the labour tenant of ownership or other rights to land in terms of Chapter III.

(3) A labour tenant shall waive his or her rights if he or she with the intention to terminate the labour tenant agreement -

- (a) leaves the farm voluntarily;
- (b) appoint a person as his or her successor; or
- (c) reaches an agreement with the owner that his or her rights shall be terminated.

(4) If a labour tenant dies, is of unsound mind or under another disability or leaves the farm voluntarily without appointing a successor, his or her family may appoint a person as his or her successor.

(5) A person who -

- (a) is not a family member of a labour tenant; or
- (b) is a family member of a labour tenant, but is not resident on the farm,

may only be appointed as the successor to such labour tenant if he or she is acceptable to the owner, who may not unreasonably refuse such appointment.

(6) A labour tenant may only waive his or her rights or a part of his or her rights in terms of subsection (3)(c) if such waiver is contained in a written agreement signed by both the owner and the labour tenant.

(7) The terms of an agreement whereunder a labour tenant waives his or her rights or part of his or her rights in terms of subsection (6), shall not come into operation unless -

- (a) the Director-general has certified that he or she is satisfied that the labour tenant had full knowledge of the nature and extent of his or her rights as well as the consequences of the waiver of such rights; or
- (b) such terms are incorporated in an order of the Court or of an arbitrator appointed in terms of section 19.

Provision of labour

4.(1) A labour tenant may nominate another person of comparable ability, acceptable to the owner or the lessee of the farm concerned, to provide labour in his or her stead.

(2) The owner or lessee shall not unreasonably refuse to accept the nomination of a person referred to in subsection (1).

(3) The conditions of service of a person who is obliged to provide labour to an owner or lessee in terms of this Act, may not be generally less favourable than those conditions applicable to farm workers in terms of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983).

Eviction of labour tenants and other persons

Prohibition on eviction

5. A labour tenant or a person having the right to reside on a farm with him or her may only be evicted in terms of an order of the Court made in terms of this Act.

Application for eviction

6.(1) No person other than the owner may institute proceedings for an order for the eviction of a labour tenant or his or her associate, unless the owner gives evidence under oath that he or she supports the institution of those proceedings.

(2) An owner shall not be obliged or under any duty, whether by reason of an agreement or for any other reason, to support the institution of proceedings referred to in subsection (1) by another person, and any provision of any agreement to the contrary shall be void.

Order for eviction

7.(1) The Court shall have the power to make an order for the eviction of a labour tenant or his or her associate.

(2) An order for the eviction of a labour tenant shall include an order for the eviction of his or her associates.

Grounds for eviction

8. No order of eviction in terms of section 7 shall be made unless it is fair and equitable and -

- (a) subject to the provisions of section 9(1), the labour tenant has contrary to the agreement refused or failed to provide labour to the owner or lessee, and after one calendar month's written notice has been given to him or her, still refused or failed to provide such labour;
- (b) the labour tenant or his or her associate has committed an act which amounts to a fundamental breach of the relationship between such labour tenant or associate and the owner or lessee, such that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship; or
- (c) the owner requires, for his or her own agricultural activities, the land used or occupied by the labour tenant or his or her associate: Provided that the owner shall satisfy the Court that greater hardship will be done to him or her if the labour tenant is not evicted, than will be done to the labour tenant if he or she is so evicted: Provided further that if the owner does not use the said land within twelve calendar months of the carrying out of such order for that agricultural activities for which the Court made the order of eviction, the said order shall lapse and the labour tenant may apply to the Court for -
 - (i) the reinstatement of his or her right to use or to occupy that land; and
 - (ii) compensation for losses suffered through the eviction.

Limitations on eviction

9.(1) A labour tenant who -

- (a) has attained the age of sixty-five years, or as a result of disability is unable personally to provide labour to the owner or lessee; and
- (b) has not, for reasons acceptable to the Court, been able to appoint a person to provide labour in his or her stead in terms of section 4,

shall not be evicted on the grounds referred to in section 8(a).

(2) On the death of a labour tenant who has retained the right to occupy the farm in terms of the provisions of subsection (1), all his or her associates may be given six calendar months' notice to leave the farm.

Effect of order for eviction

10.(1) If the Court makes an order for eviction in terms of section 7 -

- (a) the Court shall order the owner to pay compensation; and
- (b) the Court may order the owner to give the labour tenant a fair opportunity to -
 - (i) demolish such structures and improvements as were erected by the labour tenant and his or her associates or predecessors, and to remove materials so salvaged; and
 - (ii) tend a crop on which he or she is entitled, until it is matured and thereafter to reap and remove it.

(2) The compensation referred to in subsection (1) shall be determined by the Court as being just and equitable, taking into account -

- (a) the replacement value of such structures and improvements;
- (b) the value of materials which the labour tenant may remove;
- (c) the value of materials supplied by the owner or his or her predecessors for the erection of such structures and improvements; and
- (d) if the labour tenant has not been given the opportunity to remove the crop, the value of the crop.

(3) No order for eviction made in terms of section 7 may be executed before the owner has paid the compensation which is due in terms of subsection (1).

Notice of intended eviction

11.(1) An owner who intends to evict a person in terms of the provisions of this Chapter, shall give the labour tenant and the Director-General not less than two calendar months' written notice of his or her intention to obtain an order for eviction.

(2) The notice referred to in subsection (1) shall, in addition to any prescribed particulars, contain the grounds on which such intended eviction is based.

(3) The Director-General shall during the period referred to in subsection (1) convene a meeting between the labour tenant and the owner in order to attempt to mediate a settlement of the dispute between the labour tenant and owner.

Reinstatement

12.(1) A person who -

- (a) in terms of section 3 would have had a right to occupy and use land if the provisions of this Act would have been in effect on 2 June 1995;
- (b) between 2 June 1995 and the commencement of this Act vacated a farm or was for any reason or by any process evicted,

may institute proceedings in the Court for an order of reinstatement of such rights.

(2) Proceedings in terms of subsection (1) shall be instituted within twelve calendar months of the commencement of this Act.

(3) The Court may, subject to the conditions which the Court may impose, make an order -

- (a) that a person be regarded as a labour tenant or his or her associate for the purposes of this Act;
- (b) for the reinstatement of a labour tenant or his or her associate on such terms as it deems just;
- (c) order the payment of compensation, having regard inter alia to the provisions of section 10; and
- (d) for costs.

(4) When making an order in terms of subsection (3), the Court shall apart from those factors which it deems just and equitable, take into account -

- (a) whether the order of eviction would have been granted if the proceedings had been instituted after the commencement of this Act; and
- (b) whether the person ordered to be evicted was effectively represented in those proceedings, either by himself or herself or by another person.

Pending proceedings

13. The provisions of sections 8 to 10 shall apply to proceedings pending at the commencement of this Act.

Eviction pending claim for acquisition of rights in land

14. No labour tenant may be evicted while a claim by him or her in terms of Chapter III is pending: Provided that the Court may order eviction if

it is satisfied that -

- (a) it is fair and equitable to do so; and
- (b) taking all the circumstances into account, it will result in a substantial degree of hardship to the owner of lessee if an order for eviction is not granted.

Urgent proceedings for eviction

15. Notwithstanding the other provisions of this Chapter, an owner or lessee may make urgent application for the removal of any person from the farm pending the outcome of proceedings for a final order, and the Court may grant an order for the removal of that person if it is satisfied that -

- (a) there is a real and imminent danger of substantial damage to the owner or lessee or his or her property if the person concerned is not removed from the farm;
- (b) there is no other effective remedy available to the owner or lessee; and
- (c) the likely harm to the owner or lessee if an order for removal is not granted, exceeds the likely harm to the person against whom the order is sought, if an order for removal is granted.

CHAPTER III

Acquisition of ownership or other rights in land by labour tenant

Right to acquire land

16. Subject to the provisions of this Act, a labour tenant or his or her successor may acquire and register -

- (a) the land which he or she is entitled to occupy or use in terms of section 3;
- (b) the land which he or she or his or her family occupied or used during a period of five years prior to the commencement of this Act, and of which he or she or his or her family was deprived of contrary to the terms of an agreement between the parties; and
- (c) such servitudes of right of access to water, rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which he or she has previously enjoyed as a labour tenant,

or such other compensatory land or rights in land and servitudes he or she accepted in terms of section 18(5): Provided that the right to acquire and register such land and servitudes shall lapse if no claim is lodged with the Director-General in terms of section 17 within three years of the commencement of this Act.

Notice of claim and initial procedure

17.(1) A claim for the acquiring of land and servitudes referred to in section 16 shall be lodged with the Director-General.

(2) On receiving a claim in terms of subsection (1), the Director-General shall -

- (a) forthwith give notice of the claim to the owner of the land and to the holder of any other registered right in the land in question;
- (b) in the notice to the owner, draw his or her attention to the contents of this section and section 18; and
- (c) direct the relevant Registrar, as contemplated in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), for the area in which the land in question is situated to note in his or her records the fact that a claim for the acquisition of land has been made in terms of this Act.

(3) A notice given in terms of subsection (2)(a), may be given by way of registered mail or through service in the manner provided for the service of summons in the Rules of Court made in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), read with section 6(3) of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

(4) The owner of affected land shall within one calendar month of receipt of the notice referred to in subsection (2), inform the Director-General in writing -

- (a) whether he or she admits or denies that the claimant is a

labour tenant within the meaning of this Act; and

- (b) if he or she denies that the claimant is a labour tenant, the grounds on which he or she does so.

(5) If the owner fails to inform the Director-General within the period referred to in subsection (4) that he or she denies that the claimant is a labour tenant, he or she shall be deemed to have admitted that the claimant is a labour tenant, and such admission shall be proof of this fact in any proceedings before an arbitrator or in the Court, unless the contrary is proved.

(6) If the owner does not inform the Director-General within the period referred to in subsection (4) that he or she admits that the claimant is a labour tenant, the Director-General shall, on receiving a request to that effect from either party, refer the claim to the Court.

Resolution of claim by agreement

18.(1) An owner of affected land, who informs the Director-General in terms of section 17(4) that he or she admits that the claimant is a labour tenant may, within one calendar month of making such admission, submit to the Director-General alternative proposals as to an equitable means of disposing of the claim other than by the acquisition of the land contemplated in section 16, including but not limited to the acquisition of rights in land elsewhere on that farm or in the vicinity, or payment of compensation in lieu of the acquisition of such land.

(2) The Director-General shall forthwith give notice of any proposal referred to in subsection (1), and a copy thereof, to the claimant.

(3) The Director-General may appoint a mediator to assist the claimant and the affected owner to discuss any such proposal and to arrive at an agreed resolution of the claim.

(4) The claimant may reject any such proposal and persist with his or her original claim: Provided that he or she shall not be entitled to do so until a period of one calendar month has passed from the time when he or she received a copy of the proposal: Provided further that the previous proviso shall not apply to any proposals which are submitted to the Director-General later than the period referred to in subsection (1).

(5) No agreement for the settlement of any claim shall be valid and binding unless either the Director-General has certified that he or she is satisfied that it is reasonable and equitable, or it is incorporated in an order of an arbitrator or the Court in terms of this Act.

(6) If -

- (a) the owner does not submit proposals in terms of subsection (1); or
- (b) the claimant rejects a proposal in terms of subsection (4); or
- (c) the parties reach an agreement but the Director-General is not satisfied that it is reasonable and equitable,

the Director-General shall, on receiving a request to that effect from any party, refer the claim to the Court and inform the other parties that he or she has done so.

(7) The parties may, within thirty days of the referral of the claim to the Court, make a joint recommendation to the Court as to who should be appointed as the arbitrator.

(8) Any nomination referred to in subsection (7) shall be in writing, signed by all the parties, and submitted to the President of the Court.

Initiation of arbitration proceedings

19.(1) On referral of a claim by the Director-General the President of the Court or a judge of the Court nominated by him or her shall -

- (a) appoint an arbitrator to hear the claim;
- (b) set a date and venue for the hearing of the claim;
- (c) give such directions as he or she considers appropriate as to the procedure to be followed or steps to be taken before the hearing takes place; and
- (d) take steps to ensure that the parties are notified accordingly.

(2) The President of the Court or the judge nominated by him or her may appoint as arbitrator -

(a) a person nominated by the parties in terms of section 18(7);
or

(b) a person on the panel of arbitrators referred to in section 31,

but shall not be obliged to appoint a person nominated by the parties.

Arbitration proceedings

20.(1) The President of the Court may make rules to govern the procedure to be followed in arbitrations.

(2) The rules referred to in subsection (1) shall be published in the Gazette.

(3) Notwithstanding anything to the contrary in this Act or in the rules referred to in subsection (1), the arbitrator may -

- (a) allow the allegations contained in any form or document to be amended;
- (b) if it appears that any party has been incorrectly or defectively cited, correct such error or defect, or order the substitution of a party;
- (c) join any other person on such conditions as he or she deems fit;
- (d) make an order consolidating the disputes pending in separate proceedings;
- (e) admit any evidence which he or she considers cogent and relevant to the matter being heard by him, whether or not such evidence would be admissible in a court of law;
- (f) call as a witness any person who in his or her opinion may be able to give evidence which will be relevant to his or her decision on any matter;
- (g) put questions to the parties or their witnesses on any matter relevant to the claim, make such enquiries as he or she considers necessary or expedient, inspect any thing or property to the extent that he or she deems necessary, and in any other reasonable manner act in an inquisitorial manner;
- (h) rely on his or her own expert knowledge or experience in any relevant field;
- (i) propose to the parties interim compromise settlements or agreements in disposal of the whole or portion of the issues in dispute; and
- (j) make such interim decisions or awards as he or she considers just:

Provided that the rules of natural justice shall at all times be observed.

(4) Any party may be represented by a person of his or her choice in the arbitration proceedings.

(5) The arbitrator shall keep such record of the proceedings as he or she considers necessary and desirable: Provided that an arbitrator shall not be required to have the proceedings recorded on tape.

(6) The arbitrator shall make a determination or award in accordance with the provisions of this Act.

(7) The parties shall be notified of such determination or award either by the arbitrator, or in another manner prescribed in the rules referred to in subsection (1).

Appeal to Court

21.(1) A party may, in the time and manner prescribed in the rules of the Court, appeal to the Court against a decision made by an arbitrator.

(2) The procedure to be followed in an appeal shall be in accordance with the rules of the Court: Provided that -

- (a) the parties shall not be restricted to any record of the arbitration;
- (b) the arbitrator shall file with the Court a report on the arbitration proceedings; and

- (c) the report referred to in paragraph (b) shall be made available to the parties and shall on its production be admissible in evidence in the Court.

Powers of arbitrator and Court

22.(1) An arbitrator and the Court may order that land or a right in land, which are held by an affected owner, be transferred to a claimant.

(2) The arbitrator and the Court may, instead of or in addition to making an order for the transfer of land or a right in land, which are held by the owner of affected land, order that land or a right in land, which are held by another person (including the State) who is willing to have such rights transferred to the claimant, be transferred to such claimant.

(3) The arbitrator and the Court shall have the power to make a determination on the following matters:

- (a) The validity of a claimant's claim to be a labour tenant, if that is in dispute;
- (b) the nature, location and extent of any land or right in land which is to be awarded to a claimant, which may include undivided shares in grazing land;
- (c) such servitudes of access to water or rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which the claimant or the owner of the affected land has previously enjoyed;
- (d) the compensation to be paid by the claimant to the owner of affected land or the holder of a right in land which is to be transferred to the claimant;
- (e) the manner and period of payment of compensation;
- (f) the time when the transfer of the right in the land shall pass to the claimant;
- (g) compensation which shall be paid to the claimant in lieu of the transfer in land or a right to land; and
- (h) other matters which, in the opinion of the arbitrator or the Court, requires to be regulated by an order of the arbitrator or the Court.

(4) In determining the nature of an order which is to be made the arbitrator and the Court shall have regard to the following factors:

- (a) The desirability of assisting labour tenants to establish themselves on farms on a viable and sustainable basis;
- (b) the achievement of the goals of this Act;
- (c) the requirements of equity and justice; and
- (d) the willingness of the owner of affected land and the claimant to make a contribution, which is reasonable and within their respective capacities, to the settlement of the claim in question.

Owner's right to compensation

23.(1) The owner of affected land shall be entitled to just and equitable compensation as prescribed by the Constitution of the Republic of South Africa, 1993, for the acquisition by the claimant of land or a right in land.

(2) The amount of compensation shall, failing agreement, be determined by the arbitrator or the Court.

(3) Compensation shall, failing agreement, be paid in such manner and within such period as the arbitrator or the Court may determine as just and equitable.

Failure to pay compensation

24.(1) If the claimant does not make any payment due in terms of section 23, the owner of the affected land may give the claimant written notice to make such payment.

(2) If the claimant fails to make the payment within a period of two calendar months of receipt of the notice referred to in subsection (1), the owner of the affected land may apply to the Court for an order to declare the previous order of the arbitrator or the Court, or an agreement

contemplated in section 3, null and void.

(3) The Court may, after hearing an application in terms of subsection (2), make such order as it deems just and equitable: Provided that the previous order made by the arbitrator or the Court, or an agreement contemplated in section 3, shall not be declared null and void unless the owner of the affected land has paid or has given surety for the payment of the amounts which he or she has received from the claimant and the Minister respectively.

(4) If an order of an arbitrator or the Court, or an agreement contemplated in section 3, is declared null and void in terms of subsection (3) -

- (a) the Court shall forthwith notify the Registrar accordingly;
- (b) the land or right in land concerned shall immediately vest in the previous owner;
- (c) the owner of the affected land shall return to the claimant any money which he or she has paid as a deposit; and
- (d) if the land or right in land concerned has already been registered in the name of the labour tenant, it shall forthwith be re-registered in terms of the Deeds Registries Act, 1937, in the name of the previous owner of such land.

Land subject to mortgage bonds or deeds of sale

25.(1) If any land acquired under this Act was, immediately prior to the date of such acquisition, encumbered by a registered mortgage bond or subject to a deed of sale, the claimant shall not pay to the owner of the affected land any part of the compensation money except on terms agreed to by the owner and the mortgagee or buyer concerned, or in accordance with an order of the Court in terms of subsection (2).

(2) If the owner of the affected land and the mortgagee or buyer fail to conclude an agreement in terms of subsection (1), any of the said persons may apply to the Court for an order whereby the claimant is directed to pay out the compensation money as the Court may determine.

(3) The Court may, on hearing an application in terms of subsection (2), make such order, including an order for costs, as it deems fit.

Advances or subsidies

26.(1) The Minister may, from moneys appropriated by Parliament for that purpose, grant advances or subsidies -

- (a) for the acquisition of land or rights in land by labour tenants in terms of this Act; and
- (b) for the development of land occupied or to be occupied by labour tenants.

(2) The advances or subsidies referred to in subsection (1) may be applied to the acquisition by labour tenants of affected land, or any other land which may be acquired in order to settle any claim by a labour tenant in terms of this Act, and of any right in such land.

Application for advance or subsidy

27.(1) A labour tenant, who has a right to acquire land in terms of this Act, may apply to the Minister for an advance or subsidy referred to in section 26.

(2) In determining the amount and conditions of any advance or subsidy to be granted in terms of subsection (1), the Minister shall have regard inter alia to the following factors:

- (a) The desirability of assisting labour tenants to establish themselves on farms on a viable and sustainable basis;
- (b) the achievement of the goals of this Act;
- (c) the requirements of equity and justice; and
- (d) the willingness of the owner of affected land and the claimant to make a contribution, which is reasonable and within their respective capacities, to the settlement of the claim in question.

Assistance to persons not qualifying under this Act

28. Advances or subsidies referred to in section 27 may also, subject to such conditions as the Minister may determine, be applied to the acquisition of land or rights in land by former labour tenants.

CHAPTER IV The Court and Arbitrators

Jurisdiction

29. The 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 to grant interlocutory orders and interdicts.

Application of provisions of Restitution of Land Rights Act

30. The provisions of sections 24, 30, 31, 32, 37 and 38 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), shall mutatis mutandis apply to the performance by the Court of its functions in terms of this Act: Provided that the reference to the Commission on Restitution of Land Rights in section 32(3) of the said Act shall for the purposes of this Act be deemed to be a reference to the Director-General.

Panel of arbitrators

31.(1) The Minister in consultation with the Minister of Justice shall appoint a panel of arbitrators from whom arbitrators shall be appointed in terms of section 19(2) (b).

(2) An arbitrator shall be a person who, by virtue of his or her training or experience, has skills and knowledge relevant to issues which are to be determined in terms of Chapters III and IV.

(3) An arbitrator who is not in the full-time employ of the State shall, from moneys appropriated by Parliament for that purpose, be paid such remuneration and allowances for the services performed by him or her as determined by the Minister in consultation with the Minister of Finance.

Powers of review

32. The Court shall have the same powers as the Supreme Court to review an act, omission or decision of any functionary acting in terms of this Act or purporting to act in terms of this Act, and shall exercise such power to the exclusion of the provincial and local divisions of the Supreme Court.

Additional powers of arbitrator and Court

33. An arbitrator or the Court may, in addition to the power to make other orders in terms of this Act -

- (a) order that the land and servitudes referred to in section 16, be registered in the name of a labour tenant;
- (b) order that land, used commonly or jointly by the claimant, the owner and any other person, be registered in undivided shares in the name of the owner, the labour tenant and other persons specified by the arbitrator or the Court;
- (c) determine conditions which must be fulfilled before land may be registered in the name of a labour tenant;
- (d) if a labour tenant is required to make any payment before the land is registered in his or her name, determine the time for and method of such payment;
- (e) give directives as to how the orders of the arbitrator or the Court shall be carried out, including the setting of time limits for the implementation of such orders;
- (f) make such orders for costs as it deems just.

Application to Court for further directives or orders

34. A party who is of the opinion that an order of an arbitrator or the Court has not been fully or timeously complied with, may make application to the Court for the issue of further directives or orders.

Effect of order of arbitrator or Court

35. For the purposes of the Deeds Registries Act, 1937 (Act No. 47 of 1937), an order of an arbitrator or the Court and an agreement, which has been certified by the Director-General in terms of section 19(5), shall have the same force as an order of the Supreme Court.

CHAPTER V Miscellaneous provisions

Mediation

36.(1) The Director-General may appoint one or more persons with expertise in relation to dispute resolution to facilitate meetings of interested parties, and to attempt to mediate and settle a dispute: Provided that the parties may at any time during the course of mediation or negotiation, by agreement, appoint another person to mediate the dispute.

(2) A person appointed in terms of subsection (1) and 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 for the services performed by him or her as may be determined by the Minister in consultation with the Minister of Finance.

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

Provision of technical information to parties

37. The Director-General shall take reasonable steps to ensure that, on request of interested parties to claims lodged or to be lodged in terms of section 17(1), cadastral and other technical information be made available.

Deeds registration

38.(1) Where an arbitrator or the Court has made an order in respect of land or a right in land, or where the Director-General has certified that he or she is satisfied that an agreement entered into by the parties in respect of land or a right in land is reasonable and equitable, such land or right shall be deemed to be land or a right in land for the purposes of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(2) Transfer of such land or right in land to a claimant shall be registered in terms of the provisions of the said Deeds Registries Act, 1937.

(3) The Minister may direct that any transfer duty or other fees payable by a claimant in respect of the transfer of any such land or right in land in terms of this Act, including duties and fees in respect of a re-registration referred to in section 24(4), shall be paid from money appropriated by Parliament for that purpose.

(4) The Minister may, in consultation with the Minister of Finance, direct that no transfer duty or stamp duty contemplated in subsection (3) shall be paid in respect of a particular transfer under this Act.

(5) If a claim has been settled in terms of this Act, the Director-General, arbitrator or the Court, as the relevant Registrar, as contemplated in section 102 of the Deeds Registries Act, 1937, to cancel the note entered in terms of section 17(2)(c).

Attachment of or other prejudice to right to claim right in land

39. The right of a labour tenant to claim land or a right in land in terms of this Act -

- (a) shall not be capable of being attached in terms of an order of any court or in terms of section 55 of the Land Bank Act, 1944 (Act No. 13 of 1944);
- (b) shall not be affected by an agreement entered into in terms of section 38 of the Agricultural Credit Act, 1966 (Act No. 28 of 1966); and
- (c) shall not be regarded as an asset in terms of the Insolvency Act, 1936 (Act No. 24 of 1936).

Non-application of certain laws

40. Affected land shall not be subject to the provisions of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), or any other law regulating the subdivision of land.

Regulations

41. The Minister may make regulations regarding -

- (a) any matter required or permitted to be prescribed in terms of this Act; and
- (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 and assignment of powers

42.(1) The Minister may, either in general or in a particular case or in cases of a particular nature, delegate any power conferred upon him or her by or under this Act, except the powers conferred upon him or her by section 41, to any officer of the Department of Land Affairs.

(2) A delegation under subsection (1) shall not prevent the Minister from exercising the power himself or herself.

Short title

43. This Act shall be called the Land Reform (Labour Tenants) Act, 1995. MEMORANDUM ON THE OBJECTS OF THE LAND REFORM (LABOUR TENANTS) BILL, 1995

Labour tenancy is a semi-feudal relationship between a landowner and a labour tenant in terms of which the tenant is obliged to provide free, or virtually free, labour in exchange for the right to occupy and use a portion of farming land. In its classic form the labour tenant system does not involve any exchange of cash. The farmer does not give wages to the people working for him or her; their terms of payment are negotiated around the size of the lands they may plough and the number of cattle they may keep. This Bill makes provision for the protection of rights of labour tenants as part of the Land Reform Programme.

The Bill provides that labour tenants may only be evicted when they have breached the contract concerned or are guilty of misconduct, or the owner has very specific needs for the land. Furthermore the process of eviction is circumscribed and has to follow particular procedures; in this case eviction is governed by the Land Claims Court. An additional feature is that the land owner must pay evicted tenants compensation for the houses they have built on the land, and for unripe crops.

The Bill does not take away anything which the landowner was using before. It regularises and regulates the terms of a contract which the landowners themselves chose to enter into. By providing a legislative framework which governs the relationship between land owners and labour tenants, the Bill also provides a legislative remedy for landowners in situations of conflict and breach.

The other main feature of the Bill is that it provides labour tenants with the right to acquire ownership of the land which they have historically used and occupied. The right of acquisition is subject to the payment of compensation to the land owner; the amount is to be determined by the compensation formula contemplated in section 28 of the Constitution, as well as additional factors set out in the Bill. The Bill provides for state subsidies to assist labour tenants in the acquisition of land.

Since there is the danger of escalating pre-emptive evictions once the Bill becomes public, provision is made that the protection contemplated by the Bill, shall apply from the date the Bill was published for comments in the Gazette, namely 2 June 1995.

There is general agreement, including from organised agriculture, that the system of labour tenancy is archaic and inequitable. The aim of the Bill is neither to promote nor to entrench the system, but to ensure that in the process of its transformation and demise, the basic human rights of all parties are protected under a stable legal system.

Departments and institutions consulted:

Agricultural Employers Organisation
 Association for Rural Advancement: KwaZulu-Natal Province
 Centre for Applied Legal Studies
 Cosatu
 Department of Housing: Eastern Transvaal Province
 Department of Agriculture

Department of Agriculture: KwaZulu-Natal Province
Farmworkers Research and Resource Project
Forest Owners Association
Land Bank
Legal Resources Centre
Ministry of Justice
Naledi
Natal Agricultural Union
National Land Committee
South African Agricultural and Plantation Workers Union
South African Agricultural Union
Transvaal Agricultural Union
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