

## GENERAL EXPLANATORY NOTE:

[            ] Words in square brackets indicate omissions from existing enactments.  
>>        << Words bracketed as such indicate insertions in existing enactments.

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## UPGRADING OF LAND TENURE RIGHTS BILL, 1995

To amend the Upgrading of Land Tenure Rights Act, 1991, to give effect to the government's policy that within the context of an ongoing consultative tenure reform process, the upgrading of land tenure rights should henceforth be demand driven as well as the policy that security of tenure should be protected under a variety of forms of tenure; to insert a definition of "putative holder" and to protect the rights and interests of putative holders; to alter the definition of tribal resolution to provide for a minimum requirement of democratic procedures in decision making; to grant discretion to the Minister regarding payment for the costs of upgrading, as well as regards 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 the position regarding offences in terms of the Act; to further regulate the delegation of powers and assignment of functions under this Act; and to provide for matters incidental thereto.

BE IT 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(b) 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 (Act No. 112 of 1991) (hereinafter referred to as the principal Act), is hereby amended -

- (a) 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 but who is not formally recorded in the register of land rights as the holder of the right in question.";<<

- (b) 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;".

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 the provisions of subsections (1A), (1B), (1C), (1D), (1E) and (1F)<< any land tenure right mentioned in Schedule 2 and which was granted in respect of >>any erf or other piece of surveyed land<< [-

- (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 under a provision of any law  
and does not form part of a township,]

shall, upon the submission by the owner of such erf or piece of land at the deeds registry of a [certificate of ownership], >>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 where the State is the owner of an erf or piece of land situated outside a formalised township, the provisions of this subsection shall not be interpreted to mean that the state is obliged to submit a deed of transfer in terms of this subsection.";<<

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

" >>(1A) The owner of an erf or piece of land shall not submit a deed of<< transfer in terms of subsection (1) if the relevant erf or other piece of land is occupied by a putative holder.

(1B) The Registrar of Deeds shall not register an erf or piece of land in terms of subsection (1) unless -

- (a) the holder of the land tenure right to be converted into ownership certifies that the relevant erf or piece of land is not occupied by a putative holder;
- (b) where the erf or other piece of land in respect of which the land tenure right is to be converted is situated outside a formalised township, the deed of transfer submitted by the owner is accompanied by the Minister's written consent to such conversion;
- (c) the owner of the land certifies that satisfactory arrangements regarding payment, which may be required in terms of subsection (1E), if any, have been made;
- (d) the owner of the land certifies that appropriate measures have been or will be taken to protect the rights or interests of any other person in the erf or piece of land concerned.

(1C) While the Minister shall not be obliged to give his or her consent in terms of subsection (1B), he or she shall in considering his or her decision whether or not to give such consent, take into account together with any other factors he or she may consider relevant, the following factors:

- (a) Whether the holder of the relevant land tenure right has had the opportunity to consider alternative tenure options which may be available;
- (b) whether the conversion by the Registrar of Deeds of such land tenure right into ownership is appropriate for the area;
- (c) whether the erf or other piece of land over which the relevant land tenure right has been granted will be economically viable for the holder of the land tenure right if the land tenure right is upgraded into individual ownership;
- (d) whether the upgrading will not have a detrimental effect on the holders of any rights or interests in the erf or other piece of land concerned;
- (e) whether there is an unresolved historical dispute regarding rights in that erf or other piece of land;

- (f) whether the holder of the relevant land tenure right has acquired or is to acquire ownership of other land in terms of this Act; and
- (g) whether the extent of the erf or piece of land is greater than the extent permitted in terms of the relevant legislation referred to in Schedule 2.

(1D) When the owner of an erf or piece of land submits a deed of transfer in terms of subsection (1) he or she may simultaneously impose such conditions in respect of the use of the land concerned as are considered desirable by him or her.

(1E) The Minister may -

- (a) prescribe an amount to be paid to the owner of the erf or other piece of land in respect of which the relevant land tenure right is upgraded;
- (b) prescribe by regulation a method of determining such amount;
- (c) prescribe by regulation different methods contingent on different categories of land and land use for determining the amount to be paid in terms of paragraph (a).

(1F) Where erven on tribal land are transferred to persons in ownership such erven shall not be administered according to the rules of such tribe but >>shall be held in accordance with the rules of the common law.<<".

Amendment of section 7 of Act 112 of 1991, as amended by section 12 of Act 11 of 1995

3. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may by notice in the Official Gazette cancel -

- (a) any servitude registered against the title of the land on which a formalized township is situated and which in his opinion is not being utilized beneficially or, as a result of the township situated on such land, cannot be utilized; or
- (b) any restrictive condition so registered or otherwise operative in respect of such land,

if he is of the opinion, >>having had due regard to the interests of the occupiers of the land concerned,<< that any such servitude or condition is inconsistent with, or undesirable with reference to, the use or occupation or the further development or subdivision of such land as a township."

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

4. 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 [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 formalised 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

5. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(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 [from moneys appropriated for that purpose by Parliament] -

- (a) in conjunction with the community residing in such township, cause the layout of such township to be rearranged and cause such adjustments to be effected to the layout thereof as he may deem necessary;
- (b) cause the land on which the township is situated, including such township itself, to be surveyed and cause a diagram [and] >>or<< general plan to be prepared; and
- (c) cause such diagram and general plan to be submitted to the surveyor-general for his approval."

Amendment of section 18 of Act 112 of 1991, as amended by section 35 of Act 108 of 1993 and section 12 of Act 11 of 1995

6. Section 18 of the principal Act is hereby amended -

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

"(1) If the Minister is of the opinion that [the] a register of land rights [of a township] 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 may designate any person to investigate and to compile a register of land rights for the [township] >>area<< or to update the existing register and to rectify or supplement errors and omissions, as the case may be.";

- (b) by the substitution for subsection (2) of the following subsection:

"(2) If the Minister receives a request from a tribe in terms of section 16(2) in respect of any [township] area on tribal land in which the individual erven or other pieces of land are occupied or utilized by individuals and their families under the indigenous law or customs of that tribe, he may designate any person to compile a register of land rights in respect of such [township] area.";

- (c) by the substitution for subsection (3) of the following subsection:

"(3) If [a township] >>an area<< referred to in subsection (1) or (2) has not been surveyed, the functions contemplated in that subsection shall not be performed before the survey of such [township] >>area<< has commenced.";

- (d) by the substitution for subsection (5) of the following subsection:

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

- (a) satisfy himself that the property descriptions in the register or which he makes in the register correspond with those descriptions on the general plan of the [township] >>area<< concerned prepared in terms of section 17(1) (b);
- (b) ascertain the identity of the person who at the relevant time is [physically and beneficially] the >>de iure<< holder of the land tenure right in each relevant erf or other piece of land in the

[township] area >>as well as the identity of any putative holder of the land tenure right in such erf or piece of land;<<

- (c) consider any representations made to him 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) conduct the investigation and compilation in a manner which includes taking reasonable steps to ensure that persons affected or potentially affected by the investigation and compilation receive effective notice of the investigation and of the results thereof;

- (e) if he or she deems it just and equitable and in order to update a register of land tenure rights, transfer a land tenure right mentioned in Schedule 2 from the de iure holder thereof to the putative holder thereof.";<<

- (e) by the substitution for paragraph (d) of subsection (6) of the following paragraph:

"(d) >>if it is strictly necessary<< for the purposes of paragraph (a), (b) or (c), at any reasonable time enter upon any erf or other land in the [township] area concerned.";

- (f) by the insertion after subsection (6) of the following subsection:

>>"(6A) If any person refuses to co-operate with the person requiring information or assistance in terms of subsection (6)(a) or (b), the person requiring such information or assistance may apply to the magistrate's court for the district in which the erf or piece of land is situated for an order compelling the former person to co-operate and such 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 person who refused to co-operate.";<<

- (g) by the substitution for subsection (9) of the following subsection:

"(9)(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 became aware of the entry, >>but under no circumstances more than a year after the entry was made,<< appeal in writing against such entry to the Minister.

(b) The Minister may, after he 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 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 to be notified in writing of his decision on the appeal."

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

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

Amendment of section 21 of Act 112 of 1991

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

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

9. 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) [18D(1) or (2)] or 20 (3) in the performance of his functions under this Act;
- (b) >>fails to comply with an order in terms of section 18(6A), except an order for costs<< [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
- ( 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 [not exceeding R2000] 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

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

"Delegation of powers and assignment of functions

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

- (i) a Premier or a member of the Executive Council of a province; or
- (ii) 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.

(b) Any person to whom any power has been delegated under paragraph (a) shall 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 from exercising that power himself or herself.

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

- (i) the Director-General of that province;
- (ii) any officer in the service of the provincial government concerned.

- (2) The President may, by proclamation in the Gazette -
- (a) assign the administration of this Act to a Premier of a province; or
  - (b) reassign the administration of this Act 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 consider necessary.

(3) When the President assigns the administration of this Act in terms of subsection (2), 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 -

- (a) amend or adapt this Act in order to regulate its application and interpretation; and
- (b) regulate any other matter which in his or her opinion is necessary 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.

(4)(a) The transfer of any asset, liability, right or obligation as contemplated in subsection (3) shall be done subject to the provisions of the relevant applicable Exchequer Act.

(b) The transfer or secondment of persons as contemplated in subsection (3) shall be done after consultation with the Public Service Commission and the relevant provincial service commission, if applicable.

(5) The Premier of a province may, subject to such conditions and periods of time as he or she may consider necessary, in writing authorise-

- (a) any member or members of the Executive Council of that province;
- (b) any member or members 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 (2) authorised to exercise or perform, except the power to make regulations.

(6) 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 (2)(a) or reassigned to >>a Minister under subsection (2)(b).".<<

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

11. The principal Act is hereby amended by the insertion of the following sections after section 24A:

"Payment of costs of upgrading

>>24B. The person who is the holder of the relevant land tenure right shall be<< responsible for the payment of all costs including the costs of surveying, connected with the upgrading of such right: Provided that the Minister may, subject to the availability of funds, 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 in his or her opinion are necessary or expedient to be prescribed in order to achieve the objects of this >>Act<<".

#### Short title

12. This Act shall be called the Upgrading of Land Tenure Rights Amendment Act, 1995.