

Approved by Minister  
23 SEPTEMBER 2003

# REPUBLIC OF SOUTH AFRICA

## COMMUNAL LAND RIGHTS BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 25492 of 3 October 2003) (The English text is the official text of the Bill)*

**(MINISTER OF LAND AFFAIRS)**

**[B -2003]**

# BILL

**To provide for a community and person including a woman to obtain legally secure tenure on communal land; to provide for the transfer and registration of communal land; to provide for the awarding of comparable redress where tenure cannot be made legally secure; to provide for the eviction of persons whose tenure rights have been terminated; to provide for civil dispute resolution; to provide for the conduct of a land rights inquiry; to provide for community rules and their registration; to provide for the democratic administration of communal land and the establishment and functions of land administration committees and Land Rights Boards; to provide for the application of certain provisions of this Act to KwaZulu-Natal Ingonyama Trust land; to provide for the co-operative performance of municipal functions on communal land; to provide for the expropriation of land for the purposes of this Act; to provide for offences and penalties; to provide for the delegation of powers and the making of regulations; to provide for the amendment or repeal of certain laws; and to provide for matters incidental thereto.**

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

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## CHAPTER 1

### DEFINITIONS AND APPLICATION OF ACT

#### Definitions

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

**"beneficial occupation"** means the occupation of land for a continuous period of not less than five years prior to 31 December 1997 by a person as if she, he or it is the owner, without force, openly and without the permission of the owner, and **"beneficially occupied"** has a corresponding meaning;

**"Board"** means, with the exception of Chapter 11, a Land Rights Board established in terms of section 33.

**"communal land"** means land contemplated in section 2 which is, or is to be, occupied or used by members of a community subject to the rules or custom of that community;

**"community"** means a group or portion of a group of persons whose rights to land are derived from shared rules determining access to land held in common by such group;

**"community rules"** mean the rules registered in terms of section 27(1);

**"comparable redress"** means the redress contemplated in Chapter 4;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

**"Deed of Communal Land Right"** means a deed in terms of which a new order right is registered in the name of a person as contemplated in section 6;

**"Deeds Registries Act"** means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

**"Department"** means the Department of Land Affairs;

**"Director-General"** means the Director-General of Land Affairs;

**"land administration committee"** means a committee established in terms of section 29;

**"land rights enquirer"** means a land rights enquirer designated or appointed in terms of section 22;

**"Minister"** means the Minister responsible for land affairs;

**"new order right"** means a tenure right in communal or other land which has been confirmed, converted, conferred or validated by the Minister in terms of section 26;

**"old order right"** means a tenure or other right in or to communal land which-

- (a) is formal or informal;
- (b) is registered or unregistered;
- (c) derives from or is recognised by law including customary law, practice or usage; and

(d) exists immediately prior to a determination by the Minister in terms of section 26,  
but does not include –

- (e) any right or interest of a tenant, labour tenant, sharecropper or employee if such right or interest is purely of a contractual nature; and
- (f) any right or interest based purely on temporary permission granted by the owner or lawful occupier of the land in question, on the basis that such permission may at any time be withdrawn by such owner or lawful occupier;

**"prescribed"** means prescribed by regulation in terms of this Act;

**"this Act"** includes any regulation under this Act;

### **Application of Act**

2. This Act applies to–

- (a) State land which is beneficially occupied and State land which –
  - (i) at any time vested in a government contemplated by the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971) or of the former Republics of Transkei, Bophuthatswana, Venda or Ciskei, or in the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936) excluding the former South African Development Trust Land which has been disposed of in terms of the State Land Disposal Act, 1961 (Act No.48 of 1961);
  - (ii) was listed in the schedules to the Black Land Act, 1913 (Act No. 27 of 1913) or the schedule of released areas in terms of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);



- (b) land to which the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No.3 KZ of 1994) applies to the extent provided for in Chapter 11;
- (c) land acquired by, or for, a community whether registered in its name or not; and
- (d) any other land, including land which provides equitable access to land to a community as contemplated in section 25(5) of the Constitution, as the Minister may determine by notice in the *Gazette* ; PROVIDED THAT the Minister may in such notice specify which provisions of this Act apply to such land.

## **CHAPTER 2**

### **JURISTIC PERSONALITY AND LEGAL SECURITY OF TENURE**

#### **Juristic personality of a community**

3. Upon the registration of its rules in terms of section 27(1), a community acquires juristic personality with perpetual succession regardless of changes in its membership and may, subject to such rules, this Act and any other law, in its own name -

- (a) acquire and hold rights and incur obligations;

#### **Old order right must be legally secured**

4. As required by section 25(6) of the Constitution an old order right which is legally insecure as a result of past racially discriminatory laws or practices, whether such right is formal or informal and whether held by a community or person including a woman must be legally secured as provided for in this Act, and is capable of being registered in the name of a community or person including a woman as contemplated in Chapter 3.

**CHAPTER 3**  
**TRANSFER AND REGISTRATION OF COMMUNAL LAND**

**Registrability of communal land and new order rights**

5. (1) Communal land and a new order right are capable of being and must be registered in the name of the community or person including a woman entitled to such land or right in terms of this Act and the relevant community rules.

(2) Despite the provisions of any other law -

(a) the ownership of communal land which is not State land but which is registered in the name of a person, including a traditional leader or traditional leadership, communal property association in terms of the Communal Property Associations Act, 1996 (Act No. 28 of 1996), a trust or other legal entity, vests in the community on whose behalf such land is held, and such land remains subject to all obligations imposed on, and remains entitled to all rights accruing to, such land;

(b) the title deed relating to land contemplated in paragraph (a) and any mortgage bond or other deed registered in respect of such land must in the prescribed manner be endorsed by the Registrar of Deeds to reflect the community as the registered owner of such land;

(c) the provisions of this Act must apply with the necessary changes to land contemplated in paragraph (a).

(3)(a) A document evidencing an old order right which will, by virtue of a determination concerning such right in terms of section 26, be replaced by a new order right, must be lodged simultaneously with the deed of transfer or Deed of Communal Land Right, and the Registrar of Deeds must endorse such document as having been cancelled.

- (b) If a document contemplated in paragraph (a) cannot be lodged, the Registrar must accept an appropriate affidavit to that effect by the holder of such right.

### **Transfer of communal land**

6. After making a determination in terms of section 26, the Minister must -
- (a) transfer the entire communal land determined by her or him to be the land to which a community is entitled, to such community subject to the conditions contemplated in section 26(4) which are applicable to such land; and
  - (b) despite the provisions of any other law to the contrary, on behalf of such community and in respect of such land –
    - (i) have a communal general plan prepared and approved in terms of the Land Survey Act, 1997 (Act No. 8 of 1997);
    - (ii) have such plan registered and have a communal land register opened in terms of the Deeds Registries Act;
    - (iii) transfer, by means of a Deed of Communal Land Right, the new order rights to the persons determined by her or him to be entitled to such rights, to such persons; and
    - (iv) generally do all things necessary to give effect to her or his determination and this section.

### **Functions of a conveyancer**

7. A suitably qualified official of the Department may perform the functions of a conveyancer as may be required in terms of the Deeds Registries Act.

**Registration of subsequent transactions**

**8.** Registrable transactions in respect of communal land, including new allocations of rights in such land, arising after the opening of a communal land register must be registered in terms of this Act and the Deeds Registries Act.

**Conversion of registered new order right into freehold ownership**

**9.** (1) The holder of a registered new order right may apply to the community owning the land to which such right relates for the conversion of such right into freehold ownership and such community must, subject to community rules and any applicable title conditions, consider and approve or reject such application.

(2) If a community approves an application in terms of subsection (1) it may impose any condition or reserve any right in favour of the community.

(3) On application by the holder referred to in subsection (1), the Registrar of Deeds must in the prescribed manner record the conversion contemplated in this section.

**Transfer costs and stamp duties**

**10.** Transfer duty, value added tax, stamp duty and deeds registration fees of office are not payable in respect of any registration required to give effect to sections 5 and 6.

**Surveying and registration costs**

**11.** The Minister may from money appropriated by Parliament for this purpose, pay the costs of surveying and registration required to give effect to sections 5 and 6.

**CHAPTER 4**  
**PROVISION OF COMPARABLE REDRESS WHERE TENURE**  
**CANNOT BE LEGALLY SECURED**

**Award of comparable redress**

12. The Minister may, on application by the holder of an old order right which is legally insecure as contemplated in section 25(6) of the Constitution and which the Minister determines cannot be legally secured, determine an award of comparable redress to such holder.

**Cancellation of old order right**

13. (1) For the purposes of this Act the Minister may, with the written agreement of the holder of an old order right and on such conditions as may be agreed to, cancel such right.

(2) Section 5(3) applies with the necessary changes to a right cancelled in terms of this section.

**CHAPTER 5**  
**EVICITION OF A PERSON UNLAWFULLY OCCUPYING COMMUNAL LAND**

**Application for eviction order**

14. If communal land is unlawfully occupied by any person, including a person whose old order right in such land has been cancelled, the registered owner or person in charge of such land or the holder of any right who is affected by such unlawful occupation, may institute proceedings for the eviction of such person in a customary court or a magistrates' court as contemplated in section 19.

**Limitations on eviction**

15. (1) An unlawful occupant may only be evicted from communal land by virtue of a court order.

(2) A court may grant an eviction order if-

- (a) the person seeking the order has given the unlawful occupant written notice as prescribed of her or his intention to obtain an eviction order; and
- (b) the occupant has not vacated the land within the period of such notice.

**Eviction order**

16. (1) A court which orders the eviction of an unlawful occupant must -

- (a) determine a suitable date on which such occupant must vacate the land;
- (b) determine the date on which an eviction order may be carried out if such occupant has not vacated the land on the date contemplated in paragraph (a);
- (c) where feasible and if such occupant is entitled in law to do so, grant the occupant a fair opportunity to -
  - (i) demolish any structures erected and improvements made by her or him or a predecessor, and to remove any material salvaged or recovered; and
  - (ii) tend standing crops to which the occupant is entitled until they are ready for harvesting, and to harvest and remove them;

- (d) where applicable make an order for the demolition and removal of any structures and improvements; and
- (e) where applicable, order the payment of compensation for any crops, structures or improvements forfeited by such occupant, and determine the date on which such compensation is payable and impose any condition.

(2) In determining a suitable date on which an unlawful occupant must vacate the land, the court must give consideration to the date when such occupant may obtain suitable alternative accommodation.

(3) An order for eviction, demolition or removal contemplated in subsection (1) must be carried out by, or in the presence of, the sheriff.

(4) A court may, at the request of the sheriff, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal subject to such conditions as the court may determine.

(5) A court may, on good cause shown, vary any term or condition of an eviction order made by it.

#### **Urgent application for eviction**

17. (1) A person contemplated in section 14 may move an urgent application for the removal of an unlawful occupant from land pending the outcome of proceedings for a final order for eviction on notice to such occupant and the Land Rights Board having jurisdiction.

(2) The court may grant an urgent order contemplated in subsection (1), if it is satisfied that-

- (a) there is a real and imminent danger of substantial injury or damage to any person or property if such occupant is not immediately removed from the land;
- (b) there is no other effective remedy available to the applicant;
- (c) the likely hardship to the applicant or any other person similarly affected, if an order for removal is not granted, exceeds the likely hardship to such occupant against whom the order is sought, if an order for removal is granted; and
- (d) adequate arrangements have been made for the reinstatement of any person evicted, if a final order is not granted.

## CHAPTER 6 CIVIL DISPUTE RESOLUTION

### **Mediation**

18. (1) The Minister may designate an officer of the Department and the Minister or the chairperson of a Board may appoint a person, including a Board member or land rights enquirer, with suitable expertise to mediate a civil dispute regarding or incidental to any matter governed by this Act.

(2) The Minister must, in terms of the law governing public finance and this Act, determine –

- (a) the terms of reference;
- (b) the conditions of service; and



- (c) with the concurrence of the Minister of Finance, the remuneration and allowances

applicable to a person appointed in terms of subsection (1) who is not a State official.

(3) A dispute contemplated in subsection (1) may be mediated in terms of the applicable customary law.

(4) A person having an interest in the subject matter of a dispute is disqualified from acting as a mediator in such dispute.

#### **Courts having jurisdiction**

**19.** (1) A party to a dispute contemplated in section 18(1) may, subject to the limits of jurisdiction imposed by any other law but as extended by this section, institute civil proceedings in -

- (a) a customary court;
- (b) a magistrates' court;
- (c) a High court; or
- (d) the Land Claims Court established by section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);

as a court of first instance.

(2) A customary court and a magistrates' court also have, for the purposes of this Act, jurisdiction in respect of any proceedings -

- (a) regarding eviction; and
- (b) in which an interdict or a declaratory order is sought.

(3) The Land Claims Court also has, for the purposes of this Act and throughout the Republic of South Africa, jurisdiction equivalent to that of a High Court.

(4) Any order of eviction made by a customary court or a magistrates' court in terms of this Act is subject to automatic review by the Land Claims Court which may –

- (a) confirm, set aside or substitute such order in whole or in part; or
- (b) remit the case to the magistrates' court with directions to deal with any matter in such manner as the Land Claims Court may think fit.

(5) An order for eviction contemplated in subsection (4) is suspended pending review by the Land Claims Court.

#### **Extension of access to courts**

20. The Minister and a Board, in their capacities as such and on behalf of any community or person, each has the legal capacity to institute or intervene in any legal proceedings contemplated by this Act.

### **CHAPTER 7**

#### **THE CONDUCT OF A LAND RIGHTS ENQUIRY**

#### **Land rights enquiry**

21. (1) Prior to securing an old order right in terms of section 4 or transferring communal land to a community or person in terms of section 6 or determining comparable redress in terms of section 12, the Minister must initiate a land rights enquiry.

- (2) A land rights enquiry must enquire into-
- (a) all old order and other land rights including conflicting rights within an area;
  - (b) the options available for legally securing any legally insecure rights;
  - (c) the provision of access to land on an equitable basis, spatial planning and land use management, land development, and the necessity of conducting a development or a de-densification or other land reform programme, and the nature of such programme;
  - (d) the need for comparable redress and the nature and extent of such redress; and
  - (e) the measures required to promote gender equity in the allocation and registration of new order rights and the exercise of such rights;
  - (f) any matter relevant to a determination to be made by the Minister in terms of section 26; and
  - (g) any other matter as prescribed or as instructed by the Minister.

#### **Designation or appointment of a land rights enquirer**

22. (1) The Minister may designate an officer of the Department or a suitable person who is not such an officer to conduct a land rights inquiry as prescribed.

(2) The provisions of section 18(2) apply with the necessary changes to the appointment of a land rights enquirer who is not a State official.

#### **Notice of land rights enquiry**

23. The Minister must in the prescribed manner publish -

- (a) a notice of an enquiry inviting interested parties to participate in such enquiry and
- (b) a notice regarding the determinations made consequent upon a completed land rights enquiry.

#### **Functions of land rights enquirer**

**24.** A land rights enquirer must conduct a land rights enquiry in the prescribed manner.

#### **Powers of land rights enquirer**

- 25.** (1) Whenever relevant to an enquiry a land rights enquirer may —
- (a) call and if necessary subpoena any person including an expert witness to appear before her or him to provide information or an opinion or to produce a book, document or object and to be questioned on any relevant matter, if it is believed that such a person may be able to assist in such enquiry;
  - (b) administer an oath or accept an affirmation from any person required or wishing to give evidence or to be questioned;
  - (c) subject to subsection (4) -
    - (i) enter and inspect any premises on or in which any book, document or object is kept or is believed to be kept;
    - (ii) demand the production of, examine and seize any such book, document or object;

- (iii) inspect and retain any book, document or object which has been produced or seized for the purpose of such enquiry; and
    - (iv) take a statement concerning any matter from any person on the premises in relation to land and land tenure rights; and
  - (d) convene and attend meetings of interested persons in consultation with the relevant land administration committee or local government or a traditional council.
- (2) A land rights enquirer may be accompanied by any person who is required to assist her or him in exercising a power or performing a function.
- (3) A subpoena issued for any purpose in terms of subsection (1) must be signed by the land rights enquirer and must –
- (a) request the person named in it to appear before her or him at a stated date, time and place; and
  - (b) sufficiently identify any book, document or object to be produced .
- (4) In the absence of the consent of the owner, occupier or person in charge of the premises contemplated in subsection (1)(c), the land rights enquirer must obtain the prior written authorisation of a judge of the High Court or Land Claims Court or a magistrate in chambers who may give such authorisation on an application setting out under oath or affirmation-
- (a) the nature of the subject matter of the land rights enquiry;
  - (b) a description of the book, document or object believed to be on the premises and its relevance to such enquiry; and
  - (c) the grounds for such belief.

(5) A written receipt must be issued for a book, document or object received or seized in terms of this Act.

(6) The Minister may delegate to a specified person a power assigned to a land rights enquirer in terms of this Act.

### **Determination by Minister**

**26.** (1) If the Minister, having received a report by a land rights enquirer, is satisfied that the requirements of this Act have been met, she or he must, having regard to such report, all relevant law including legislation governing local government and agriculture, the old order rights of all affected right holders and the need to promote gender equality in respect of land, and subject to subsection (2), make a determination as contemplated in subsection (3).

(2) The Minister may refer an unresolved dispute concerning the land and a recommendation of the land rights enquirer to be dealt with in terms of Chapter 6 and, pending the resolution of such dispute, may not make a determination affecting those specific rights and those specific areas of land which are directly affected by such dispute.

(3) The Minister may determine that-

- (a) the whole of an area of communal land which is or is to be surveyed is to be or remain registered in the name of a specified community;
- (b) the whole of an area contemplated in paragraph (a) is to be subdivided into portions of land, each of which is to be registered in the name of a person and not a community; or
- (c) a part of an area contemplated in paragraph (a) is to be or remain registered in the name of a specified community, and part of such land is to be subdivided and registered as contemplated in paragraph (b);

- (d) an old order right is to be -
  - (i) confirmed;
  - (ii) converted into ownership or into a new order right, and the Minister must determine the nature and extent of such right; or
  - (iii) cancelled in accordance with Chapter 4 and -
    - (aa) the land to which such right relates being incorporated into land held or to be held by a community; and
    - (bb) the holder of such right being awarded specified comparable redress as contemplated in Chapter 4.
- (4) In making a determination in terms of this section, the Minister may -
  - (a) after consultation with the municipality having jurisdiction, impose or reserve to the State including a municipality, or impose any township establishment, developmental, title or other condition which is necessary -
    - (i) for a public purpose or which is in the public interest;
    - (ii) to protect the affected land, rights in such land and an owner of such land and a holder of such rights; and
    - (iii) to give effect to this Act;
  - (b) confer a new order right on a woman -
    - (i) who is a spouse of a male holder of an old order right, to be held jointly with her spouse;

- (ii) who is the widow of a male holder of an old order right, or who otherwise succeeds to such right, to be held solely by such woman; or
  - (iii) in her own right; and
- (c) validate a putative old order right which was acquired in good faith and declare invalid such a right which was not acquired in good faith;

and must determine the holder or holders of a new order right.

## **CHAPTER 8**

### **CONTENT, MAKING AND REGISTRATION OF COMMUNITY RULES**

#### **Content, making and registration of community rules**

27. (1) A community whose communal land is, or is to be, registered in its name must in the prescribed manner make, adopt and have registered its community rules.
- (2) Community rules must, subject to any other applicable laws, regulate -
    - (a) the administration and use of communal land;
    - (b) such matters as may be prescribed; and
    - (c) any matter considered by the community to be necessary.
  - (3) Community rules are binding on the community and its members and must be accessible to the public and are on registration deemed to be a matter of public knowledge.
  - (4) (a) A community must apply to the Director-General for the registration of its adopted rules.



- (b) The Director-General must consider the adopted community rules and information submitted and the report of the Land Rights Board having jurisdiction in the area.
- (c) If the Director-General is satisfied that the adopted community rules comply with the requirements of this Act, she or he must have such rules registered in the prescribed manner by a Registration Officer in the Department designated by her or him for that purpose.
- (d) If the Director-General is not satisfied that community rules comply with the requirements of the Constitution and this Act, she or he must notify the community of the steps to be taken to make such rules so comply.

(5) Should a community fail to adopt and have community rules registered, the standard rules prescribed by Regulation as adapted by the Minister to such community, are deemed to be the rules of such community and must be registered as the rules of such community.

#### **Amendment of community rules**

**28.** (1) A community may in a general meeting and in a manner applicable for the adoption of community rules as prescribed, amend or revoke any community rule.

(2) An amendment or revocation contemplated in subsection (1) must be registered and only becomes effective on registration.

**CHAPTER 9****LAND ADMINISTRATION COMMITTEE****Establishment of a land administration committee**

29. (1) A community must establish a land administration committee as required by its registered community rules.

(2) A land administration committee may only be disestablished if its existence is no longer required by this Act.

**Composition**

30. (1) A land administration committee must consist of a total number of members as determined by the applicable community rules and must comply with subsections (2) to (7).

(2) (a) The recognized chieftainess, chief, headwoman or headman of the community concerned or her or his nominee must be a member of the relevant land administration committee by virtue of her or his office and, if provided for in the community rules, an additional number of persons nominated by such traditional leader to represent the traditional leadership of the community may be members of such committee up to a maximum of 25 per cent of the total membership.

(b) A dispute concerning the traditional leadership of a community must be resolved as provided for in legislation governing such matters, or failing such legislation, by the Minister in the prescribed manner after consultation with the Minister of Provincial and Local Government and the Premier of the relevant province.

(3) The remainder of the members of the land administration committee must be persons not holding any position in traditional leadership and must be elected by the community.

(4) At least one third of the total membership must be women

(5) Where applicable –

(a) one member must represent the interests of households headed by minors; and

(b) one member must represent the interests of persons with disabilities.

(6) One member must represent the interests of the youth as defined in section 1 of the National Youth Commission Act, 1996 (Act No. 19 of 1996).

(7) Each of –

(a) the Minister, in respect of the Department;

(b) the chairperson of the relevant Land Rights Board;

(c) the relevant provincial Member of the Executive Committee for agriculture;

(d) the relevant provincial Member of the Executive Committee for provincial and local government; and

(e) the council of the relevant local municipality or, failing a designation by such council, the council of the relevant district or metropolitan municipality;

may designate an official or member to attend meetings of a land administration committee as a non-voting member of such committee.

#### **Term of office**

31. The term of office of the members of a land administration committee is determined by community rules but may not exceed a period of five (5) years.

#### **Functions and Powers**

32. (1) To the extent provided by this Act and subject to any other applicable law, a land administration committee represents a community as the owner of its communal land, and has the powers necessary for the proper ownership and administration of such land.

(2) In the exercise of its powers and the performance of its functions a committee must—

- (a) take measures towards ensuring—
  - (i) the allocation by such committee, after a determination by the Minister in terms of section 26, of new order rights to persons including women, the disabled and the youth in accordance with law;
  - (ii) the registration of communal land and of new order rights;
- (b) establish and maintain registers and records of all new order rights and transactions affecting such rights as may be prescribed or as may be required by the rules;
- (c) promote and safeguard the interests of the community and its members in their land;

- (d) endeavour to promote co-operation among community members and with any other person in dealing with matters pertaining to land;
- (e) assist in the resolution of land disputes;
- (f) continuously liaise with the relevant municipality, Land Rights Board and any other institution concerning the provision of services and the planning and development of the communal land of the community;
- (g) perform any other duty prescribed by this Act or any other law; and
- (h) generally deal with all matters necessary or incidental to the performance of its duties.

## CHAPTER 10

### LAND RIGHTS BOARD

#### **Establishment of a Land Rights Board**

33. The Minister may, by notice in the *Gazette* –
- (a) establish one or more Land Rights Boards having jurisdiction for such areas as she or he may determine; and
  - (b) disestablish a Board or amend its area of jurisdiction.

#### **Composition**

34. (1) Members of a Board must be appointed by the Minister in accordance with the prescribed nomination and selection processes and such a Board consists of -
- (a) one representative from each of the organs of State determined by the Minister;

- (b) two members nominated by each Provincial House of Traditional Leaders contemplated in section 212(2)(a) of the Constitution having jurisdiction in the area of that Board;
- (c) one member nominated by institutions or persons in the commercial or industrial sector;
- (d) seven members from the affected communities, of whom at least -
  - (i) two must be women;
  - (ii) one must represent the interests of child-headed households;
  - (iii) one must represent the interests of persons with disabilities; and
  - (vi) one must represent the interests of the youth as defined in section 1 of the National Youth Commission Act, 1996 (Act No. 19 of 1996).

(2) In appointing members of the board, the Minister must have due regard to the required knowledge of land, land tenure, bid and new order rights and the required capabilities, including relevant skills, expertise and experience.

(3) A member of the board is appointed for a period of five years but the Minister may in her or his discretion extend such term of office by a further period not exceeding six months until a new board member has been appointed.

- (4) (a) The Minister must, after consultation with the appointed Board members, appoint a chairperson and a deputy chairperson from among such members.
- (b) When a chairperson is unable to perform her or his duties, the deputy chairperson must perform such duties.

(5) The Minister must publish in the *Gazette* the names of and position held by each appointee to a Board and the date on which each appointment takes effect and such other information as may be prescribed.

(6) If a member of a Board dies or vacates her or his office before the expiry of her or his term of office, the Minister may appoint a person to fill the vacancy for the remaining portion of such term.

#### **Disqualification as Board member**

35. (1) The Minister must not appoint as a member of the board a person who—

- (a) is not a South African citizen or a permanent resident and is not ordinarily resident in the Republic of South Africa;
- (b) is an unrehabilitated insolvent;
- (c) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Care Act, 1973 (Act No. 8 of 1973) or any other applicable law;
- (d) has been removed from an office of trust on account of improper conduct;
- (e) has had his or her name removed from any professional register on account of misconduct and who has not been reinstated;
- (f) has been determined by a court, tribunal or forum as contemplated by the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) to have contravened section 7 or any other provision of that Act; or

- (g) is an elected political representative at the national, provincial or local sphere of government.
- (2) A member of a board must vacate her or his office if she or he –
  - (a) becomes disqualified in terms of subsection (1) from being appointed as a member of a board;
  - (b) resigns by written notice addressed to the Minister;
  - (c) is removed from office by the Minister on valid grounds, after consultation with the board; or
  - (d) has, without the leave of the board, been absent from two or more meetings of the board during a continuous twelve-month period.

### **Functions and Powers**

36. (1) A board must, as directed by the Minister –
- (a) advise the Minister and a community on the alienation and encumbrance of communal land or a new order right to or in favour of third parties;
  - (b) advise the Minister from time to time on matters pertaining, in general or in specific cases, to -
    - (i) old and new order rights;
    - (ii) the cancellation of old order rights;
    - (iii) awards of comparable redress contemplated in Chapter 4;
    - (iv) the content, registration and implementation of community rules;



- (v) the provision of material, technical and other assistance to communities, their administration committees and members;
  - (vi) any matter relevant to an investigation to be or being conducted in terms of this Act;
  - (vii) the provision of additional land for the relief of overcrowding or for the use by a community as commonage or for any other purpose; and
  - (viii) the conversion of an old order right into freehold ownership;
- (c) advise on and assist communities, their administration committees, members and any other person with any matter relevant to the compliance with any provision of law and the administration and development of communal and adjacent land;
  - (d) monitor compliance by communities with the Constitution and the requirements of this Act, and report any non-compliance to the Department;
  - (e) liaise with the national, provincial and local spheres of government and civil and other institutions on matters affecting communities and communal land;
  - (f) monitor and advise on disputes contemplated in section 18(1) and participate in the resolution of such disputes as provided for in Chapter 6; and
  - (g) perform any other function assigned to such Board by the Minister.
- (2) A Board and any Board member acting in her or his official capacity may in the performance of a Board function -

- (a) at any time enter upon any communal land;
- (b) enquire into any relevant matter;
- (c) inspect any document in the possession of any land administration committee or any rights holder concerning old and new order rights and make copies of such document; and
- (d) convene and attend meetings of a community or land administration committee ;

and a Board has all powers necessary or incidental to the performance of its functions.

#### **Resources of a Board**

37. The Department must provide a Board with the staff, accommodation and financial and other resources required by such Board.

#### **Service conditions of Board members**

38. The Minister must, in terms of the law governing public finance and statutory bodies, determine the conditions of service of Board members and, with the concurrence of the Minister of finance, the remuneration and allowances payable to Board members who are not employed by the State from monies appropriated by Parliament for this purpose.

**CHAPTER 11****KWAZULU-NATAL INGONYAMA TRUST LAND****Laws governing KwaZulu-Natal Ingonyama Trust Land**

**39.** Communal land to which the KwaZulu -Natal Ingonyama Trust Act, 1 994 (Act No. 3 KZ of 1994) applies is, from the date of commencement of this Act, governed by the provisions of that Act as amended by this Act and, to the extent provided for in this Chapter, by the provisions of this Act.

**Ingonyama Land Rights Board for KwaZulu-Natal**

**40.** From the date of commencement of this Act, the KwaZulu-Natal Ingonyama Trust Board established by section 2A of the KwaZulu-Natal Ingonyama Trust Act, 1994–

- (a) is known as the Ingonyama Land Rights Board for KwaZulu-Natal ;
- (b) constitutes both the Board so established by that Act and, despite the provisions of sections 33, 34 and 35 of this Act, the Land Rights Board for KwaZulu-Natal as contemplated in Chapter 10, with all the powers and functions provided for in both the KwaZulu-Natal Ingonyama Trust Act, 1994 and in this Act;
- (c) is headed in perpetuity by the Ingonyama referred to in section 13 of the KwaZulu Amakhosi and Iziphakanyiswa Act, 1990 (Act No. 9 KZ of 1990) or his successors in title as the chairperson and member of the Ingonyama Land Rights Board;
- (d) continues to be constituted by the Ingonyama and the members appointed by the Minister in terms of section 2A of the KwaZulu-Natal Ingonyama Trust Act, 1994 until it is reconstituted in terms of section 41 of this Act.

**Reconstitution of KwaZulu-Natal Land Rights Board**

**41.** Upon the termination of the term of office of the appointed members of the KwaZulu -Natal Ingonyama Land Rights Board immediately after the date of commencement of this Act, the Board must be reconstituted as required by the provisions of sections 34 and 35 and from the date of such termination all the provisions of Chapter 10, with the exception of paragraph (a) of section 33, apply to such Board.

**Exercise of powers and performance of functions in relation to Ingonyama land**

**42.** From the date of commencement of this Act, the powers and functions provided for in the undermentioned sections must, insofar as such powers and functions relate to land to which the KwaZulu-Natal Ingonyama Trust Act, 1994 applies, be exercised or performed in the following manner –

- (a) section 6: by such Board;
- (b) section 13(1) : by the Minister, after consultation with such Board;
- (c) section 21(1) and (2).(g) : by the Minister or such Board;
- (d) section 22: by the Minister, in relation to the designation of an officer of the Department, or by such Board in relation to the appointment of a suitable person who is not such an officer; and
- (e) section 23 : by the Minister or such Board.

**Inconsistency in laws**

43. The provisions of this Act must, in the event of any inconsistency in the provisions of this Act and those of the KwaZulu-Natal Ingonyama Trust Act, 1994, prevail.

**CHAPTER 12****GENERAL PROVISIONS****Provision of assistance to a community**

44. The Minister may designate an officer of the Department to assist a community or person to give effect to the implementation of this Act.

**Provision of municipal services and development infrastructure on communal land**

45. Despite the other provisions of this Act and the provisions of any other law, no law must prohibit a municipality from providing services and development infrastructure and from performing its constitutional functions on communal land however held or owned.

**Acquisition of land by Minister**

46. (1) The Minister may, for the purposes of this Act, purchase, acquire in any other manner or expropriate land, a portion of land or a right in land.

(2) The Expropriation Act, 1975 (Act No. 63 of 1975) must, with the necessary changes, apply to an expropriation under this Act, and any reference to the Minister of Public Works in that Act must be construed as a reference to the Minister for the purpose of such expropriation.

(3) Where the Minister expropriates land, a portion of land or a right in land under this Act, the amount of compensation and the time and manner

of payment must be determined either by agreement or by a court in accordance with section 25(3) of the Constitution.

**Application of the Act to other land reform beneficiaries**

47. (1) The provisions of this Act, read with the necessary changes, apply to beneficiaries of communal land or land tenure rights in terms of other land reform legislation.

**Offences**

48. (1) A person who -
- (a) hinders, obstructs or unduly influences any other person in the exercise of the powers or the performance of the duties conferred on, or vested in, such other person in terms of this Act;
  - (b) unlawfully requires any other person to refrain from exercising a right in terms of this Act; or
  - (c) in any manner prevents any other person from exercising such a right,

is guilty of an offence.

(2) Any person who grants or purports to grant to any other person, other than a member of a community, a new order right in communal land -

- (a) in contravention of, or without complying with, a community rule;
- (b) without the prior consent of the community or its land administration committee or, in the case of State land, the consent of the Minister;

is guilty of an offence.

- (3) A person who, without good cause -

- (a) having been subpoenaed to appear before the land rights enquirer does not attend at the time and place stated in the subpoena;
- (b) having appeared in response to a subpoena by the land rights enquirer fails to remain in attendance until excused;
- (c) refuses to take an oath or affirmation as a witness when the land rights enquirer so requires;
- (d) refuses to answer any question fully and to the best of her or his knowledge and belief;
- (e) fails to produce any book, document or object when required to do so;  
or
- (f) does or says anything in relation to a land rights enquirer which if said or done in relation to a court of law, would be contempt of court;

is guilty of an offence.

#### **Penalties**

49. (1) A person convicted of an offence in terms of this Act, is liable on conviction -
- (a) in the case of an offence referred to in section 48(1) or (2), to a fine or imprisonment for a period not exceeding two years, or both such fine and imprisonment; and
  - (b) in the case of an offence referred to in section 48(3), to the penalty applicable to a similar offence in a magistrate's court.

(2) A magistrate's court has the power to impose any penalty in terms of this section.

### **Delegation of powers**

50. The Minister and the Director-General respectively may delegate any power which has been conferred upon each of them in terms of this Act.

### **Regulations**

51. The Minister may make any regulation with regard to any matter which is necessary to ensure the proper implementation of this Act.

### **Act binds State**

52. This Act binds the State.

### **Amendment and repeal of laws**

53. The laws mentioned in the Schedule to this Act are hereby amended or repealed to the extent set out in the third column of that Schedule; PROVIDED THAT any legislation governing an old order right remains in force until repealed by a competent authority, and the provisions of this Act must, in the event of any inconsistency in the provisions of this Act and those of such legislation, prevail.

### **Short title and commencement**

54. This Act is called the Communal Land Rights Act, 2003, and comes into operation on a date to be determined by the President by Proclamation in the *Gazette*.



## SCHEDULE

## Amendment or repeal of laws

## (Section 53)

## Part 1: Laws enacted by Parliament

No. and year of law	Short title	Extent of amendment or repeal
Act 38 of 1927	Black Administration Act, 1927	Repeal of sections 6 and 7.
Act 47 of 1937	Deeds Registries Act, 1937	<p>1. Amendment of section 3 by the insertion of the following paragraphs after paragraph (d)(bis) of subsection (1):</p> <p style="padding-left: 40px;">"(d)(ter) register deeds of communal land rights as contemplated in the Communal Land Rights Act, 2003;</p> <p style="padding-left: 40px;">(d)(ter)(1A) register the conversion to full ownership of old order rights as contemplated in the Communal Land Rights Act, 2003;</p> <p style="padding-left: 40px;">(d)(ter)(1B) register the cancellation of old order rights as contemplated in the Communal Land Rights Act, 2003;"</p> <p>2. Insertion of the following section after section 16B:</p> <p style="padding-left: 40px;"><b><i>'Registration of new order rights as contemplated in the Communal Land Rights Act 2003</i></b></p> <p style="padding-left: 40px;">16C. New order rights shall be transferred by means of a deed of communal land right."</p> <p>3. Amendment of section 102 -</p> <p>(a) by the insertion of the following definition after the definition of 'court':</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>" 'deed of communal land right' means a deed of communal land right as defined in section 1 of the Communal Land Rights Act, 2003;"</p> <p>(b) by the substitution for the definition of "general plan" of the following definition:</p> <p>" 'general plan' means a plan which represents the relative positions and dimensions of two or more pieces of land and has been signed by a person recognised by law as a land surveyor, and which has been approved, provisionally approved or certified as a general plan by a surveyor-general or other officer empowered under any law so to approve, provisionally approve or certify a general plan, and includes a general plan or copy thereof prepared in a surveyor-general's office and approved, provisionally approved or certified as aforesaid, or a general plan which has at any time, prior to the commencement of this Act, been accepted for registration in a deeds registry or surveyor-general's office, and includes a communal general plan as contemplated in the Communal Land Rights Act, 2003;"</p> <p>(c) by the substitution for the definition of "immovable property" of the following definition:</p> <p>"'immovable property' includes –</p> <p>(a) ...;</p> <p>(b) any registered lease of land which, when entered into, was for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than ten years;</p> <p>(c) a registered right of leasehold ;</p> <p>(d) a registered right of initial ownership</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>contemplated in section 62 of the Development Facilitation Act, 1995; and</p> <p>(c) new order rights as contemplated in the Communal Land Rights Act, 2003;</p> <p>(d) by the substitution for the definition of "person" of the following definition:</p> <p>"person', for the purpose of any registration in terms of this Act includes a trust and, for the purpose of the Communal Land Rights Act, 2003 includes a community;".</p>
Act 112 of 1991	Upgrading of Land Tenure Rights Act, 1991	<p>1. Repeal of section 20.</p> <p>2. Amendment of section 25A -</p> <p>by the substitution for section 25A of the following section:</p> <p>"25A. As from the coming into operation of the Communal Land Rights Act, 2003 this Act shall apply throughout the Republic."</p> <p>3. Amendment of Schedule 1 by the insertion of the following items before item 1, items 1 to 6 becoming items 3 to 8:</p> <p>"1. Any quitrent title referred to in Proclamation 196 of 1920.</p> <p>2. Any quitrent title referred to in Proclamation 170 of 1922."</p>
Act 31 of 1996	Interim Protection of Informal Land Rights Act, 1996	Amendment of section 5 by the deletion of subsection (2).
Act 8 of 1997	Land Survey Act, 1997	<p>Amendment of section 1 -</p> <p>by the substitution for the definition of "general plan" of the following definition</p> <p><b>'general plan'</b> means a plan which, representing the relative positions and dimensions of two or more pieces of land, has been signed by a person recognised under any law then in force as a land surveyor, or which has been approved or certified as a general plan by a Surveyor-General and includes a general plan or a copy thereof prepared in a Surveyor-General's</p>

No. and year of law	Short title	Extent of amendment or repeal
		office and approved or certified as such or a general plan which has, prior to the commencement of this Act, been lodged for registration in a deeds registry or Surveyor - General's office in the Republic or any area which became part of the Republic at the commencement of the Constitution, 1993 and, for the purposes of the Communal Land Rights Act, 2003, includes a communal general plan contemplated in that Act;"

**Part 2: Laws of the former KwaZulu**

No. and year of law	Short title	Extent of amendment or repeal
Act 3 of 1994	KwaZulu-Natal Ingonyama Trust Act, 1994	<p>1. Amendment of section 2 -</p> <p>by the substitution for subsection (5) of the following subsection:</p> <p>"(5) The Ingonyama shall not encumber, pledge, lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he has obtained the prior written consent of the community concerned, and otherwise than in accordance with the provisions of any law."</p> <p>2. Amendment of section 2 -</p> <p>by the substitution for subsection (2) of the following subsection:</p> <p>"(2) The Trust shall, in a manner not inconsistent with the provisions of this Act, be administered for the benefit, material welfare and social well-being of the members of the communities as contemplated in the KwaZulu Amakhosi and Iziphakanyiswa Act, 1990 (Act No. 9 KZ of 1990), referred to in the second column of the Schedule, established in a district referred to in the first column of the Schedule, to whom the land referred to in section 3 and the real and other rights in such land must, subject to this Act and any other law, be transferred."</p>

**Part 3: Laws of the former Bophuthatswana**

No. and year of law	Short title	Extent of amendment or repeal
Act 39 of 1979	Bophuthatswana Land Control Act, 1979	Repeal of the whole.

**Part 4: Laws of the former Venda**

No. and year of law	Short title	Extent of amendment or repeal
Act 16 of 1986	Venda Land Control Act, 1986	Repeal of the whole.
Proclamation 45 of 1990	Venda Land Affairs Proclamation, 1990	Repeal of sections 1, 2, 3 to 5, 8 to 13, 20 to 43 and so much of sections 6, 7 and 14 to 19 as has not been assigned to the government of Limpopo province under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993).

**Part 5: Laws of the former Ciskei**

No. and year of law	Short title	Extent of amendment or repeal
Act 14 of 1982	Ciskei Land Regulation Act, 1982	Repeal of the whole with effect from the date of registration of a community's community rules under section 28(8)(c), but only within the area comprised of that community's communal land and with effect from the date on which Proclamation No. R. 188 of 1969 is repealed in that area.

**Part 6: Laws of the former Qwaqwa**

No. and year of law	Short title	Extent of amendment or repeal
Act 15 of 1989	Qwaqwa Land Act 1989	Repeal of the whole with effect from the date of registration of a community's community rules under section 28(8)(c), but only within the area

No. and year of law	Short title	Extent of amendment or repeal
		comprised of that community,s communal land.

**Part 7 Laws of the former KwaNdebele**

No. and year of law	Short title	Extent of amendment or repeal
Act 11 of 1992	KwaNdebele Land Tenure Act, 1992	So much as has not been repealed.

**Part 8: Other laws**

No. and year of law	Short title or description	Extent of amendment or repeal
Proclamation 26 of 1936	Administrative Area Regulations- Unsurveyed Districts: Transkeian Territories	Repeal of the whole with effect from the date of registration of a community's community rules under section 288)(c), but only within the area comprised of that community's communal land.

**MEMORANDUM ON THE OBJECTS OF THE COMMUNAL LAND  
RIGHTS BILL, 2003**

**1. BACKGROUND**

South Africa's inequitable and racially-based system of land tenure causes an unsustainable imbalance in its citizens' access to land, legal recognition afforded to land rights and the consequent levels of security of tenure, and the registration of those rights.

On the one hand, much of the country's land is held by a minority of people under a system affording secure registrable (mainly individual) rights which are legally protected and enforceable. On the other hand, the greater majority of people have only insecure tenure rights (held communally or individually), in less advantaged areas and circumstances. The latter tenure rights (referred to in the Bill as 'old order rights') are often informal and unregistered and have a lower legal and social status, with title to the land vesting paternalistically in the State and the Ingonyama Trust.

The resultant overcrowding on communal land, lack of title to secure ('new order') rights, conflicting claims to land, gender inequities in the ownership and administration of communal land and the chaotic land administration systems occasioned by a plethora of disparate laws and administrative systems, perpetuate the imbalance in the enjoyment of the fundamental human and constitutional rights and prevent social and economic advancement of these areas.

**2. OBJECTS OF THE BILL**

The objects of the Bill are mandated by section 25(5) and (6) of the Constitution.

The Bill seeks to:

- legally recognise and formalise the African traditional system of communally-held land within the framework provided by the Constitution;
- legally secure land tenure rights of communities and people (including women, the disabled and the youth) within the tenure system of their choice;
- provide for the transfer and registration of communal land and rights in and to that land;
- create a uniform national registration system for all tenure rights whether held individually or communally;
- provide comparable redress where rights cannot be legally secured *in situ*;
- provide for community rules which are aligned to the Constitution and for their registration;
- provide for a systematic and democratic administration of communal land in which traditional leaders and local and national government actively participate and support communities in the administration of their land and tenure rights;
- extend the African peoples' access to land; and
- promote the resolution of disputes and conflicting claims to communal land.

### **3. FINANCIAL IMPLICATIONS FOR THE STATE**

The implementation of the Bill will require an extensive communication strategy, the provision and training of Departmental staff and the members of the Land Rights Boards, the conducting of land rights enquiries and the resolution of disputes around land and tenure rights, the training of and support to communities and their land administration committees and the provision of logistical requirements (accommodation, equipment, inventory and administration). The estimated annual total cost is R 68 318 299.00.



#### 4. ORGANISATIONS CONSULTED

##### **National Departments**

The following National Departments were consulted:

Department of Agriculture;  
Department of Environmental Affairs and Tourism;  
Department of Housing;  
Department of Justice and Constitutional Development;  
Department of Minerals and Energy;  
Department of National Treasury.  
Department of Provincial and Local Government;  
Department of Public Works;  
Department of Trade and Industry;  
Department of Transport; and  
Department of Water Affairs and Forestry.

##### **Provincial Governments/Departments**

The following provincial Governments/Departments were consulted:

1. Eastern Cape Provincial Government (the office of the senior State Law Advisor in the Premier's office, Department of Local Government and Housing and Directorate: Traditional Affairs);
2. Free State Provincial Government (the office of the senior State Law Advisor in the Premier's office, Department of Local Government and Housing and Directorate: Traditional Affairs);

3. KwaZulu-Natal Provincial Government (the office of the senior State Law Advisor in the Premier's office, the Department of Traditional Affairs and the Department of Housing);
4. Limpopo Provincial Government (the office of the senior State Law Advisor in the Premier's office, Department of Local Government and Housing and Directorate: Traditional Affairs) and Department of agriculture;
5. Mpumalanga Provincial Government (the office of the senior State Law Advisor in the Premier's office, the Department of Traditional Leaders and the Department of Housing); and
6. North West Provincial Government (the office of the senior State Law Advisor in the Premier's office, Department of Local Government and Housing and Directorate Traditional Affairs);

#### **Other Organizations**

The following organizations were consulted:

1. Bafokeng Royal Council;
2. Banking Council of South Africa;
3. Church communities in various places in KwaZulu-Natal;
4. Church hierarchy in KwaZulu-Natal;
5. Coalition of Traditional Leaders;
6. CONTRALESA;
7. National House of Traditional Leaders including the representation from the Provincial House of Traditional Leaders;
8. 68 local and district councilors from Polokwane and Capricorn district councils and officials from Polokwane municipality; and
9. 114 seminar participants in KwaZulu-Natal drawn from the legal fraternity, government departments, municipalities, the universities, Ingonyama Trust Board, financial institutions, farmers associations, community representatives, the press, representatives from organs of civil society, community-based

organisations, His majesty King G. Zwelithini, His Majesty King Zwelithini together with Inkosi Mangosuthu Buthelezi and Amakhosi in Ulundi

### **Reference Group**

The following organisations were represented in the Reference Group established by the Minister to participate in drafting the Bill:

1. Centre for Applied Legal Studies;
2. Coalition of Traditional leaders;
3. Department of Agriculture.
4. Gender Commission;
5. Legal Resources Centre;
6. National African Farmers Union;
7. National House of Traditional Leaders;
8. National Land Committee;
9. PLAAS (University of Western Cape); and
10. South African Law Commission;

### **Communities**

A total of 50 workshops were organized at the national, provincial and community levels. These workshops were conducted in consultation with organs of civil society. The workshops involved traditional leaders and their communities, the national House of Traditional Leaders with representation from the Provincial House of Traditional Leaders, the Coalition of Traditional Leaders and CONTRALESA and the Ingonyama Trust Board.

### 5. **CONSTITUTIONAL IMPLICATIONS**

None.

**6. COMMUNICATION IMPLICATIONS**

The Department will conduct an extensive communication campaign involving all categories of electronic and print media, and community-based communication methods. Workshops with the public and communities will also be held.

**7. PARLIAMENTARY PROCEDURE**

The State Law Advisor and the Department of Land Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.