

INTERIM PROTECTION OF INFORMAL LAND RIGHTS ACT

PRESIDENT'S OFFICE

No. 1057. 26 June 1996

NO. 31 OF 1996: INTERIM PROTECTION OF INFORMAL LAND RIGHTS ACT, 1996.

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

ACT

To provide for the temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law; and to provide for matters connected therewith.

(Afrikaans text signed by the President.) (Assented to 21 June 1996.)

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

Definitions

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

(i) "beneficial occupation" means the occupation of land by a person, as if he or she is the owner, without force, openly and without the permission of the registered owner; (vi)

(ii) "community" means any 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; (i)

(iii) "informal right to land" means-

(a) the use of, occupation of, or access to land in terms of-

(i) any tribal, customary or indigenous law or practice Of a tribe;

(ii) the custom, usage or administrative practice in a particular area or community, where the land in question at any time vested in-

(aa) the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);

(bb) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971), or

(cc) the governments of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei,

(b) the right or interest in land of a beneficiary under a trust arrangement in terms of which the trustee is a body or functionary established or appointed by or under an Act of Parliament or the holder of a public office;

(c) beneficial occupation of land for a continuous period of not less than five years prior to 31 December 1997; or

(d) the use or occupation by any person of an erf as if he or she is in respect of that erf, the holder of a right mentioned in Schedule 1 or 2 of the Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991), although he or she is not formally recorded in a register of land rights as the holder of the right in question,

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; (ii)

(iv) "Minister" means the Minister of Land Affairs; (iii)

(v) "person" includes a community or a part thereof; (iv)

(vi) "prescribed" means prescribed by or under this Act; (vii)

(vii) "tribe" includes-

(a) any community living and existing like a tribe; and

(b) any part of a tribe living and existing as a separate entity. (v)

(2)(a) This Act shall not confer on the holder of a real right to land, any rights in addition to those which he or she holds in that land.

(b) The holder of an informal right in land shall be deemed to be an owner of land for the purposes of section 42 of the Minerals Act, 1991 (Act No. 50 of 1991).

Deprivation of informal rights to land

2. (1) Subject to the provisions of subsection (4), and the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975), or any other law which provides for the expropriation of land or rights in land, no person may be deprived of any informal right to land without his or her consent.

(2) Where land is held on a communal basis, a person may, subject to subsection (4), be deprived of such land or right in land in accordance with the custom and usage of that community.

(3) Where the deprivation of a right in land in terms of subsection (2) is caused by a disposal of the land or a right in land by the community, the community shall pay appropriate compensation to any person who is deprived of an informal right to land as a result of such disposal.

(4) For the purposes of this section the custom and usage of a community shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting convened for the purpose of considering such disposal and of which they have been given sufficient notice, and in which they have had a reasonable opportunity to participate.

Sales and other dispositions subject to informal rights

3. Subject to the provisions of section 2, any sale or other disposition of any land shall be subject to any existing informal rights to that land.

Regulations

4. The Minister may make regulations regarding all matters which are necessary or expedient to be prescribed in order to achieve the objects of this Act.

Application and duration of Act

5. (1) This Act binds all persons, including the State.

(2) The provisions of this Act shall lapse on 31 December 1997: Provided that the Minister may, at any time before such provisions lapse, by notice in the Gazette extend the application of such provisions for a period of not more than 12 months: Provided further that any such notice shall be laid upon the Table of Parliament, and if Parliament by resolution disapproves of such notice, such notice shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such notice before it so ceased to be of force and effect.

Short title

6. This Act shall be called the Interim Protection of Informal Land Rights Act, 1996.