

INTERIM PROTECTION OF INFORMAL LAND RIGHTS BILL, 1995

To provide protection for legally insecure rights to and interests in land; and to provide for matters incidental thereto.

WHEREAS it is necessary to provide protection for legally insecure rights to and interests in land;

AND WHEREAS temporary measures are to be taken in this regard, pending a comprehensive review of land tenure laws:

NOW THEREFORE 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) "community" means any group of persons whose rights to land are derived from shared rules determining access to land held in common by such group, including a portion of any such group, and includes a tribe or a portion of a tribe;

(ii) "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 practise in a particular area or community, where the land concerned 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 statutory body or functionary or the holder of a public office;

- (c) beneficial occupation of land for a continuous period of not less than three years; 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 -

- (iA) any right or interest of a tenant, sharecropper or employee if such right or interest is purely of a contractual nature; and
- (iB) any right or interest based purely on temporary permission granted by the owner or lawful occupier of the land concerned, on the basis that such permission may at any time be withdrawn by such owner or lawful occupier; (ii)
- (iii) "Minister" means the Minister of Land Affairs; (iii)
- (iv) "person" includes a community or a part thereof; (iv)
- (v) "prescribed" means prescribed by or under this Act; (vi)
- (vi) "tribe" includes -
 - (a) any community living and existing like a tribe; or
 - (b) any part of a tribe living and existing as a separate entity. (v)

(2) 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.

Deprivation of informal right to land

2.(1) Subject to the provisions of subsection (2), and the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975), no person may be deprived of any informal right to land without his or her consent.

(2) Where land is used on a communal basis, an informal right to such land may be disposed of in accordance with the custom and usage of that community: Provided that such custom and usage 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 of which they have been given reasonable 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 in his or her opinion are necessary or expedient to be prescribed in order to achieve the objects of this Act.

Application of Act

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

(2) The provisions of this Act shall lapse on 31 December 1996: 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 twelve 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, 1995.

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