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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 285 OF 1997

DEPARTMENT OF LAND AFFAIRS

EXTENSION OF TENURE SECURITY BILL, 1997

PRETORIA, 4 FEBRUARY 1997

The Department of Land Affairs hereby publishes the draft Extension of Security of Tenure Bill for public information and comment.

Comments should be send to: The Director General, Department of Land Affairs, Private Bag X833, Pretoria 0001, for the attention of Mr Jan Truter, preferably on or before 14 February 1997.

BILL

To regulate the circumstances under which the right of persons to occupy land may be terminated; to regulate the circumstances under which persons, whose right of occupation has been terminated, may be evicted from land; to regulate the conditions of occupation of land; to provide measures to facilitate long-term security of tenure for such persons; and to provide for matters incidental thereto.

WHEREAS many South Africans do not have secure tenure of their homes and land;

WHEREAS people who do not have secure tenure of their homes and land are vulnerable to unfair eviction;

WHEREAS unfair evictions lead to great hardship, conflict and social instability;

WHEREAS this situation is in part the result of past racially discriminatory laws and practices;

WHEREAS it is desirable that the law should give due recognition to the legitimate rights and interests of owners and occupiers of land;

WHEREAS it is desirable that the law should fairly regulate the eviction of occupiers from land;

WHEREAS it is desirable that the law should promote the achievement of long-term tenure security for occupiers, where possible through the joint efforts of occupiers, owners, and government bodies;

AND WHEREAS it is desirable to ensure that occupiers are not further prejudiced:

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

CHAPTER I

Introductory provisions

Definitions

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

- (i) "**Director-General**" means the Director-General of the Department of Land Affairs or an officer of that Department who has been designated by him or her generally, or in respect of a particular case, or in respect of cases of a particular nature; (i)
- (ii) "**effective date**" means the date on which the Extension of Security of Tenure Bill, 1997, has for the first time been published in the *Gazette* for general information and comment; (ii);

- (iii) **"evict"** means to deprive a person of the occupation or use of land by force or by unlawful action or threat of unlawful action, and **"eviction"** has a corresponding meaning; (ix)
- (iv) **"Land Claims Court"** means the Court established by section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); (iv)
- (v) **"Minister"** means the Minister for Agriculture and Land Affairs; (v)
- (vi) **"occupier"** means a person dwelling on land which belongs to another person, and who has or on the effective date had the express or tacit consent of the owner or person in charge to do so, but excluding -
 - (a) a labour tenant referred to in section 1 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);
 - (b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes; (vii)
- (vii) **"off-site development"** means a development on land other than land which the occupant or occupants concerned occupied prior to such development, and in respect of which the occupants obtain long-term tenure security; (vi)
- (viii) **"on-site development"** means a development on land which the occupants concerned currently occupy or previously occupied and in respect of which they obtain long-term tenure security; (viii)
- (ix) **"owner"** or **"person in charge"** means the person who was the owner or person in charge of the land in question, as the case may be, at the time of the act, omission or conduct to which reference is made. (iii)

(2) In the case of land registered in the name of the State or an institution or functionary exercising powers on behalf of the State-

- (a) **"owner or person in charge"** means a person who has been certified by the Director-General, on application made in the prescribed manner, to be the owner or person in charge, subject to such conditions as the Director-General may determine; and
- (b) a certificate purportedly issued by the Director-General in terms of this subsection shall constitute prima facie evidence of the authority of the person named in it to act as owner or person in charge of the land concerned, and shall be admissible on its production in Court.

Application of Act

2. (1) Subject to the provisions of subsection (2), this Act applies to all land except a township established, approved, proclaimed or otherwise recognised as such under any law, but including any land within such a township which has been designated for agricultural purposes in terms of any law;

(2) The amendments referred to in sections 21, 22 and 23 of this Act shall apply throughout the Republic.

(3) In any civil proceedings in terms of this Act, the land in question shall be presumed to fall within the scope of the relevant provisions of this Act unless the contrary is proved.

Consent to occupy or use land

3.(1) For the purposes of this Act, the express or tacit consent of the owner or person in charge for the occupation or use of the land in question shall be effective regardless of whether some other official authority is required for such occupation or use.

(2) In any proceedings for eviction which are based on the absence of consent of the owner or person in charge, it shall be necessary to plead and prove the absence of such consent.

(3) If a person who occupied or used land on the effective date previously did so with the consent of the owner or person in charge, and such consent was withdrawn prior to the effective date -

(a) the person who occupied or used that land shall be deemed to be an occupier in terms of this Act, provided that he or she has continuously resided on that land since consent was given; and

(b) the withdrawal of consent by the owner or person in charge shall be deemed to be a valid withdrawal of consent in terms of section 6.

CHAPTER II

Right of occupiers to occupy and use land

Rights and duties of occupiers

4.(1) Subject to the provisions of this Act, an occupier has the right to occupy the land which he or she occupied on the effective date or subsequently with the express or tacit consent of the owner or person in charge.

(2) Subject to the provisions of this Act and to limitations which are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, an occupier has the right to -

(a) security of tenure;

(b) human dignity;

(c) freedom of movement;

(d) freedom of association, including the right to receive visitors; and

(e) family life.

(3) An occupier may not -

- (a) unreasonably cause damage to the property of the owner or person in charge;
 - (b) unreasonably interfere with the use of the land by the owner or person in charge;
 - (c) enable or assist unauthorised persons to establish new dwellings on the land in question.
- (4) Any person shall have a right at reasonable times to visit and maintain his or her family graves on the land to which this Act applies.
- (5) In interpreting the other provisions of this Act, a court shall have regard to the rights and duties referred to in this section.

Limitation on eviction

5.(1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.

(2) An order for eviction may be issued if -

- (a) the occupier's right of occupation has been terminated in terms of section 6, and the conditions for an order for eviction in terms of section 7 or 8 have been satisfied; or
- (b) the requirements of section 14 have been satisfied.

Termination of right of occupation

6.(1) If an occupier's right of occupation of land arises from a contract of employment, the right of occupation may be terminated if the contract of employment is lawfully terminated.

(2) If an occupier's right of occupation arises from a fixed term contract, the right of occupation may be terminated when the fixed term comes to an end, except where the occupier has a reasonable expectation of renewal of the contract on expiry of the fixed term.

(3) An occupier's right of occupation may be terminated on any other lawful ground, provided such termination or withdrawal is just and equitable having regard to all relevant factors and in particular to -

- (a) the fairness of any agreement, provision in a contract or provision of law on which the owner or person in charge relies;
- (b) the conduct of the parties giving rise to the termination;
- (c) the interests of the parties, including the comparative hardship which will be caused to the owner or person in charge and the occupier if the right of occupation is or is not terminated;

(d) the fairness of the procedure followed by the owner or person in charge, including whether or not he or she gave the occupier an effective opportunity to make representations before making the decision to terminate the right of occupation.

(4) If the consent of an owner or person in charge to the occupation or use of land by an occupier was conditional on the consent which he or she has given to another person, the owner or person in charge may terminate the first person's right of occupation if he or she validly terminates the second person's right of occupation.

(5) The consent of the owner or person in charge to the occupation or use of land by an occupier may not be withdrawn except on the grounds set out in this section.

Order for eviction of person who was an occupier on effective date

7.(1) This section applies to any person who was an occupier of the land in question on the effective date.

(2) If an occupier's right of occupation has been terminated in terms of section 6, the owner or person in charge of the land may institute proceedings in court for an order for eviction.

(3) The court may grant an order of eviction against an occupier if -

- (a) the occupier refuses a reasonable offer of other viable and affordable accommodation, and there is no appropriate alternative to eviction, having regard to the balance of the interests of the owner or person in charge and the occupier, and the possibility of providing tenure security through an on-site development; or
- (b) the occupier has through his or her deliberate act or omission breached a material term of any agreement justifying the cancellation of his or her right of occupation, and has not remedied the breach despite being given one calendar month's notice in writing to do so; or
- (c) the occupier has intentionally and maliciously harmed a person occupying the land or adjacent land, or his or her property; or
- (d) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship; or
- (e) the occupier has enabled or assisted unauthorised persons to establish new dwellings on the land, and the court is satisfied that it is just and equitable to grant an order of eviction.

(4) The court may order the suspension of an order for eviction for a period it considers just and equitable under the circumstances, with due regard to all relevant factors, including -

- (a) how long the occupier has lived on the land in question;
- (b) the availability to the occupier of other reasonable and affordable accommodation in the same area; and

(c) the balance of the interests of the owner or person in charge and the occupier.

(5) The court shall decide whether a term of a contract is material, or whether a breach of a relationship is fundamental, and shall not be bound by the terms of any agreement between the parties in this regard.

(6) The court may permit the plaintiff or applicant in proceedings in terms of this section to renew such proceedings from time to time.

(7) A person who institutes proceedings in terms of this section shall within one week furnish a copy of the summons or application to the Director-General.

Order for eviction of person who becomes an occupier after effective date

8.(1) This section applies to any person who first became an occupier of the land in question after the effective date.

(2) If an occupier's right of occupation has been terminated in terms of section 6, the owner or person in charge may institute proceedings in court for an order for eviction.

(3) The court shall grant an order for eviction if it was an essential and inherent term of the consent given to the occupier to occupy the land in question, that the consent would terminate upon a fixed date or determinable date.

(4) In circumstances other than those referred to in subsection (3), the court may grant an order for eviction if it is just and equitable to do so.

(5) The court may order the suspension of an order for eviction for a period it considers just and equitable under the circumstances.

(6) In considering what is just and equitable in terms of subsections (4) and (5), the court shall have regard to all relevant factors, including-

(a) how long the occupier has lived on the land in question;

(b) the availability to the occupier of other reasonable and affordable accommodation in the same area; and

(c) the balance of the interests of the owner or person in charge and the occupier.

(7) The court shall decide what is an essential and inherent term of a contract, with due regard to the true nature of the contract, and shall not be bound by the terms of any agreement between the parties in this regard.

(8) The court may permit the plaintiff or applicant in proceedings in terms of this section to renew such proceedings from time to time.

(9) A person who institutes proceedings in terms of this section shall within one week furnish a copy of the summons or application to the Director-General.

Notice of intended eviction

9.(1) The court shall not grant an order for eviction in terms of section 7 or 8 unless the owner or person in charge has given the occupier and the Director-General two calendar months' written notice of his or her intention to ask the court to make such an order.

(2) The Director-General may appoint a mediator to attempt to settle the dispute.

(3) The notice referred to in subsection (1) shall, in addition to any prescribed particulars, set out the grounds for the intended eviction.

Prohibition on eviction

10.(1) An occupier who has lived on the land in question for twenty years and-

- (a) has reached the age of 55 years; or
- (b) is a former employee of the owner or person in charge, and as a result of disability is unable to supply labour to the owner or person in charge

may not be evicted on the grounds set out in section 7(3)(a).

(2) On the death of an occupier who has retained the right to occupy land in terms of the provisions of subsection (1), his or her spouse and dependents may not be evicted on the grounds set out in section 7(3)(a) unless they have been given 12 calendar months' written notice to leave the land.

(3) Notwithstanding the other provisions of this section, if the court is of the opinion that the rights of the owner or person in charge of land are unfairly prejudiced by the operation of this section, it may grant such relief as it deems equitable under the circumstances.

(4) No person may terminate the right of occupation of an occupier or evict an occupier if one of the purposes of such termination or eviction is to prevent the occupier acquiring rights in terms of this section.

(5) Any person who contravenes the provisions of subsection (4) shall be guilty of an offence and liable on conviction to the penalties referred to in section 20.

Effect of order for eviction

11.(1) If the court makes an order for eviction in terms of section 7 or 8-

- (a) the court shall order the owner to pay compensation for structures erected and improvements made by the occupier and any crops planted by the occupier, to the extent that it is just and equitable;
- (b) the court may order the owner to give the occupier a fair opportunity to -
 - (i) demolish any structures and improvements erected or made by the occupier and his or her predecessors, and to remove materials so salvaged;

- (ii) tend a crop to which he or she is entitled until it is ripe, and then to reap and remove it.

(2) In determining just and equitable compensation the court shall have regard to all relevant factors including -

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

(3) An order for eviction in terms of section 7 or 8 may not be executed if the owner has not paid the compensation which is due in terms of subsection (1), except with the leave of the court granted subject to satisfactory guarantees for the payment of compensation.

Reinstatement and damages

12.(1) An occupier who has been evicted contrary to the provisions of this Act may institute proceedings in the court for an order in terms of subsection (3).

(2) A person who -

- (a) in terms of section 4 would have had a right to occupy and use land if the provisions of this Act had been in force on the effective date, and
- (b) between the effective date and the commencement of this Act vacated land or was evicted for any reason or by any process,

may institute proceedings in the court for an order in terms of subsection (3).

(3) The court may in proceedings in terms of subsection (1) or (2) make an order, subject to such conditions as it may impose -

- (a) for the reinstatement of the person concerned on such terms as it deems just;
- (b) for the payment of compensation, having regard to the provisions of section 11;
- (c) for the payment of punitive damages, having regard to the circumstances of the case; and
- (d) for costs.

(4) Where the person referred to in subsection (2) was evicted in terms of an order of a court -

- (a) the proceedings shall be instituted within one year of the commencement of this Act; and

(b) the court shall in addition to any other factors which it deems just and equitable, take into account -

(i) whether the order of eviction would have been granted if the proceedings had been instituted after the commencement of this Act; and

(ii) whether the person ordered to be evicted was effectively represented in those proceedings, either by himself or herself or by another person.

Pending proceedings

13. The provisions of sections 4, 5, 6, 7, 8, 9(2) and 10 shall apply to proceedings pending in any court at the commencement of this Act.

Urgent proceedings for eviction

14. Notwithstanding the other provisions of this Act, the owner or person in charge of land may make urgent application for the removal of an occupier from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that person if it is satisfied that -

(a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not removed from the land;

(b) there is no other effective remedy available; and

(c) the likely hardship to the owner, person in charge or other affected person if an order is not granted, exceeds the likely hardship to the occupier against whom the order is sought, if an order for removal is granted.

CHAPTER III

Measures to facilitate long-term security of tenure for occupiers

Advances or subsidies

15.(1) The Minister shall grant advances or subsidies for on-site and off-site developments which provide long-term tenure security for occupiers.

(2) The advances or subsidies referred to in subsection (1) shall be made from moneys appropriated by Parliament for that purpose, and be granted, subject to the conditions the Minister may determine,

(a) to facilitate the planning of on-site and off-site developments;

(b) for the acquisition of land or rights in land by occupiers; and

(c) for the development of land occupied or to be occupied by occupiers in terms of on-site or off-site developments.

(3) The Minister shall give priority to applications where -

- (a) the development entails a mutual accommodation of the interests of occupiers and owners;
- (b) the development is cost-effective;
- (c) in the case of an off-site development under circumstances where the occupiers have indicated that they would prefer an on-site development, satisfactory reasons have been provided why an on-site development would not be a more appropriate solution;
- (d) owners and occupiers have made a reasonable attempt to devise a development which satisfies subparagraphs (a) and (b);
- (e) there is an urgent need for the development because occupiers have been evicted or are about to be evicted:

Provided that where an application is made by or on behalf of occupiers, it shall not be prejudiced by reason only of the absence of support from an owner.

(4) Advances or subsidies may also, subject to conditions which the Minister may determine, be applied to the acquisition of land or rights in land by former occupiers and persons who have been evicted from land in terms of the provisions of section 7 or 8.

(5) Where the persons intended to benefit from a development have been identified, a subsidy or advance shall not be granted unless the development is acceptable to them.

(6) The Minister may for the purposes set out in this section make advances and subsidies through an agreement with a provincial or local government, where -

- (a) a local or provincial government will undertake or contract for the undertaking of an on-site or off-site development;
- (b) the advance or subsidy is paid to the provincial or local government to enable it to undertake or contract for the undertaking of an on-site or off-site development;
- (c) the local or provincial government will make funds available for the purposes set out in this section.

(7) Transfer duty shall not be payable in terms of the Transfer Duty Act, 1949 (Act No. 40 of 1949) in respect of any transaction for the acquisition of land in terms of this section or in respect of any transaction for the acquisition of land which is financed, either wholly or partially, by a subsidy in terms of this section.

(8) The Minister may expropriate land for the purpose of facilitating any development contemplated in this section.

(9) In the event of expropriation, compensation shall be paid as prescribed by the Constitution.

(10) The provisions of sections 6 to 11 and 13 to 23 of the Expropriation Act, 1975 (Act No. 63 of 1975) shall *mutatis mutandis* apply to the expropriation of land in terms of this section, and any

reference in that Act to "the Minister" shall be construed as a reference to the Minister for Agriculture and Land Affairs.

CHAPTER IV

Miscellaneous provisions

Powers of court

16.(1) A court may, in addition to other powers set out in this Act -

- (a) direct how the order of the court shall be carried out, including the setting of time limits for the implementation of such orders;
- (b) make such orders for costs as it deems just.

Magistrate's courts

17.(1) A magistrate's court -

- (a) shall have jurisdiction in respect of proceedings for eviction or reinstatement, and prosecutions in terms of this Act; and
- (b) shall be competent to grant interdicts in terms of this Act.

(2) Civil appeals from the magistrate's courts in terms of this Act shall lie to the Land Claims Court.

Land Claims Court

18.(1) The Land Claims Court shall have jurisdiction in terms of this Act throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power to grant interlocutory orders and interdicts, and shall have the same powers in relation to matters falling within its jurisdiction as are possessed by a provincial division of the Supreme Court in civil proceedings, including powers in relation to any contempt of the court.

(2) The Land Claims Court shall have the same powers as the Supreme Court to review an act, omission or decision of any functionary acting under this Act, and shall exercise those powers to the exclusion of the provincial and local divisions of the Supreme Court.

Mediation

19.(1) The Director-General may, on such conditions as he or she may determine, appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle disputes in terms of this Act: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on such conditions as may be determined by the Director-General.

(2) A person appointed in terms of subsection (1) who is not in the full-time service of the State may, from moneys appropriated by Parliament for that purpose, be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance for the services performed by him or her.

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

Offences

20.(1) No person shall evict an occupier from land other than in accordance with the provisions of this Act.

(2) No person shall wilfully obstruct or interfere with an official in the employ of the State or a mediator in the performance of his or her duties under this Act.

(3) Any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years, or to both such fine and such imprisonment.

(4) A person whose rights or interests have been prejudiced by a contravention of subsection (1) shall have the right to institute a private prosecution of the alleged offender.

Amendment of section 1 of Act 6 of 1959

21. Section 1 of the Trespass Act, 1959 (Act No. 6 of 1959), is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) For the purposes of this Act an occupier of land referred to in the Extension of Security Act, 1997, and his or her bona fide guests or visitors shall be deemed to have lawful reason to enter and be upon such land."

Amendment of Act 52 of 1951

22. The Prevention of Illegal Squatting Act, 1951 (Act No. 52 of 1951), is hereby amended -

- (a) by the deletion of sections 1, 2, 3, 3A, 3B, 3D, 4(3), 5, 6E, 6F and 11B; and
- (b) by the substitution for subsection (1) of section 4 of the following subsection:

"(1) Any person who directly or indirectly receives or solicits payment of any moneys or other consideration as a fee or charge, or other payment connected whether directly or indirectly with the arrangement or organization of the occupation of any land or buildings [in contravention of the provisions of section 1 or of any order or instruction issued under section 5] without the permission of the owner or the lawful occupier of such land or building or controls or exercises any degree of authority in connection with such occupation as aforesaid, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment, and the Court convicting such person shall order

any such moneys or other consideration that may have been seized and made available to be confiscated, and the said moneys and the proceeds of such other consideration shall thereupon be paid into the State Revenue Fund."

Amendment of section 2 of Act 3 of 1996

23. Section 2 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), is hereby amended by the insertion after subsection (4) of the following subsection:

"(5) If in any proceedings it is proved that a person falls within subparagraphs (a), (b) and (c) of the definition of "labour tenant", that person shall be presumed not to be a farmworker unless and until the contrary is proved."

Insertion of section 13A in Act 3 of 1996

24. The Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), is hereby amended by the insertion after section 13 of the following section:

"Proceedings instituted in other court

13A. In any proceedings in a court other than the Court for the eviction of a person from land, that court shall stop the proceedings and refer the matter to the Court unless the first-mentioned court is satisfied that the person concerned is not a labour tenant in terms of this Act."

Amendment of section 27 of Act 3 of 1996

25. Section 27 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), is hereby amended by the insertion after subsection (3) of the following subsection:

"(4) Any such subsidy may include the cost of any cadastral survey of the land acquired or to be acquired by the labour tenant, the compilation of any plan or diagram that may be required, valuation fees and the conveyancing fees necessary for the transfer of the land to the labour tenant."

Amendment of section 31 of Act 3 of 1996

26. Section 31 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), is hereby amended by the substitution for subsections (1) and (2) of the following subsections respectively:

"(1) The [Minister shall in consultation with the] Minister of Justice shall in consultation with the Minister [compile] establish a panel of persons from whom arbitrators shall be appointed in terms of section 19(2)(b) and in terms of other land laws which require the appointment of arbitrators.

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

III and IV] land matters and the resolution of disputes which require to be resolved in terms of the law in question."

Amendment of section 38 of Act 3 of 1996

27. Section 38 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), is hereby amended by the substitution for subsections (2) and (3) of the following subsections respectively:

"(2) The Minister may direct that any **[transfer duty,]** stamp duty or fees in respect of -

- (a) the preparation and approval of survey diagrams; or
- (b) the transfer of land; or
- (c) the registration of servitudes,

in terms of this Act, shall be defrayed in full or in part from money appropriated by Parliament for that purpose.

(3) The Minister may, in consultation with the Minister of Finance, direct that no **[transfer duty or]** stamp duty contemplated in subsection (2) shall be paid in respect of a particular transaction under this Act."

Insertion of sections 38A and 38B in Act 3 of 1996

28. The Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), is hereby amended by the insertion after section 38 of the following sections:

"Transfer duty not payable

38A. Transfer duty shall not be payable in respect of the acquisition of land or a right in land in terms of this Act.

Endorsement of title deed

38B. The rights of a labour tenant to land in terms of section 3 of this Act may be noted by endorsement against the title deed of the owner of such land by the Registrar of Deeds."

Subsequent owners and persons in charge of land

29.(1) The rights of an occupier shall, subject to the provisions of this Act, be binding on successive owners and persons in charge of the land concerned.

(2) Consent given by the owner or person in charge shall be binding on his or her successor as if he or she had given it.

Waiver of rights

30. The waiver by an occupier of his or her rights under this Act shall be of no legal force or effect, unless -

- (a) it is contained in a document signed by the occupier, and the Director-General has certified that he or she is satisfied that the occupier had full knowledge of the nature and extent of his or her rights as well as the consequences of the waiver of such rights; or
- (b) it is incorporated in an order of the court.

Regulations

31.(1) The Minister may make regulations regarding -

- (a) any matter required or permitted to be prescribed in terms of this Act;
- (b) institutional arrangements for the implementation of this Act for any province or magisterial district;
- (c) all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2)(a) The Minister may make regulations to give effect to the rights and duties set out in section 4.

(b) No regulation may be made under this subsection unless the Minister has first published a notice in the *Gazette* stating that he or she is contemplating making such regulations, stating the general import of the regulations which are contemplated, and inviting comments and proposals on the contents of the contemplated regulations.

(3) The Minister may make different regulations for different areas or for different classes of occupiers.

Short Title

32. This Act shall be called the Extension of Security of Tenure Act, 1997.

KENNISGEWING 285 VAN 1997**DEPARTEMENT VAN GRONDSAKE****WET OP DIE UITBREIDING VAN SEKERHEID VAN
BESITREG, 1997.****PRETORIA, 4 FEBRUARIE 1997**

Die Departement van Grondsake publiseer hiermee die Konsepwetsontwerp op die Uitbreiding van Sekerheid van Besitreg vir publieke kennisname en kommentaar.

Kommentaar moet gestuur word aan die: Direkteur Generaal, Departement van Grondsake, Privaatsak X833, Pretoria, 0001, vir die aandag van mnr Jan Truter, verkieslik voor of op 14 Februarie 1997.

WETSONTWERP

Om die omstandighede waaronder persone se reg om grond te okkupeer beëindig kan word, te reël; om die omstandighede waaronder persone wie se reg tot okkupasie beëindig is vanaf grond uitgesit kan word, te reël; om die voorwaardes van okkupasie van grond te reël; om voorsiening te maak vir maatreëls waardeur langtermyn sekerheid van besitreg vir sodanige persone gefasiliteer word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

NADEMAAL baie Suid-Afrikaners nie sekerheid van besitreg ten opsigte van hulle huise en grond het nie;

NADEMAAL persone wat nie sekerheid ten opsigte van die besit van hulle huise en grond het nie, vatbaar is vir onbillike uitsetting;

NADEMAAL onbillike uitsettings ernstige ontbering, konflik en maatskaplike onstabiliteit tot gevolg het;

NADEMAAL hierdie situasie gedeeltelik deur rasgebaseerde diskriminerende wette en gebruike van die verlede veroorsaak is;

NADEMAAL dit wenslik is dat die reg behoorlike erkenning verleen aan die regmatige regte en belange van eienaars en okkupeerders van grond;

NADEMAAL dit wenslik is dat die reg die uitsetting van okkupeerders vanaf grond op 'n billike wyse behoort te reël;

NADEMAAL dit wenslik is dat die reg die bereiking van langtermyn sekerheid van besitreg vir okkupeerders deur die gesamentlike pogings van okkupeerders, eienaars en regeringsliggame, waar moontlik, behoort te bevorder;

EN NADEMAAL dit wenslik is om te verseker dat okkupeerders nie verder benadeel word nie:

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:-

HOOFSTUK I

Inleidende bepalinge

Woordomskrywing

1.(1) In hierdie Wet, tensy uit die samehang anders blyk, beteken -

- (i) "**Direkteur-generaal**" die Direkteur-generaal van die Departement van Grondsake of 'n beampte van daardie Departement wat deur hom of haar in die algemeen of ten opsigte van 'n bepaalde geval, of in gevalle van 'n bepaalde aard, aangewys is; (i)

- (ii) "**effektiewe datum**" die datum waarop die Wetsontwerp op die Uitbreiding van Besitreg, 1997, vir die eerste keer in die *Staatsskoerant* vir algemene kennisname en kommentaar gepubliseer is; (ii)
- (iii) "**eienaar**" of "**persoon in beheer**" die persoon wat ten tye van die handeling, versuim of gedrag waarna verwys word, die eienaar of die persoon in beheer van die betrokke grond was, na gelang van die geval; (ix)
- (iv) "**Grondeisehof**" die Grondeisehof ingestel by artikel 22 van die Wet op Herstel van Grondregte, 1994 (Wet No. 22 van 1994); (iv)
- (v) "**Minister**" die Minister vir Landbou en Grondsake; (v)
- (vi) "**nie op-terrein ontwikkeling**" 'n ontwikkeling op grond, anders as die grond wat onmiddellik voor sodanige ontwikkeling deur die betrokke okkupeerder of okkupeerders geokkupeer word, en ten opsigte waarvan die okkupeerders langtermyn sekerheid van besitreg bekom; (vii)
- (vii) "**okkupeerder**" 'n persoon wat op grond wat aan 'n ander persoon behoort, woon en wat beskik oor, of op die effektiewe datum beskik het oor, die stilswyende of uitdruklike instemming van die eienaar of persoon in beheer om op sodanige grond te woon, maar uitgesluit -
 - (a) 'n huurarbeider bedoel in artikel 1 van die Wet op Grondhervorming (Huurarbeiders), 1996 (Wet No. 3 van 1996);
 - (b) 'n persoon wat die betrokke grond hoofsaaklik vir industriële-, myn-, kommersiële- of kommersiële boerdery doeleindes gebruik of beoog om dit aldus te gebruik; (vi)
- (viii) "**op-terrein ontwikkeling**" 'n ontwikkeling op grond wat huidiglik deur okkupeerders geokkupeer word of voorheen deur hulle geokkupeer is, en ten opsigte waarvan hulle langtermyn sekerheid van besitreg bekom; (viii)
- (ix) "**uitsit**" om 'n persoon deur middel van geweld of onwettige handeling of dreigement tot onwettige handeling van die okkupasie of gebruik van grond te ontnem, en het "**uitsetting**" 'n ooreenstemmende betekenis. (iii)

(2) In die geval van grond wat in die naam van die Staat of 'n instelling of funksionaris wat bevoegdhede namens die Staat uitoefen, geregistreer is, -

- (a) beteken "**eienaar of persoon in beheer**" 'n persoon wat, op aansoek op die voorgeskrewe wyse gedoen, deur die Direkteur-generaal, onderworpe aan sodanige voorwaardes wat die Direkteur-generaal kan bepaal, as eienaar of persoon in beheer gesertifiseer is; en
- (b) is 'n sertifikaat wat na bewering ingevolge hierdie subartikel deur die Direkteur-generaal uitgereik is, *prima facie* bewys van die bevoegdheid van die persoon wat daarin vermeld word om as eienaar of persoon in beheer van die betrokke grond op te tree, en is by oorlegging toelaatbaar in die hof.

Toepassing van Wet

2.(1) Behoudens die bepalings van subartikel (2) is hierdie Wet op alle grond, uitgesluit 'n dorp wat ingevolge 'n wet gestig, goedgekeur of geproklameer is, of andersins as sodanig ingevolge

'n wet erken word, maar met inbegrip van grond in sodanige dorp wat ingevolge 'n wet vir landboudoeleindes aangewys is, van toepassing.

(2) Die wysigings in artikels 21, 22 en 23 van hierdie Wet bedoel, is regdeur die Republiek van toepassing.

(3) In siviele verrigtinge ingevolge hierdie Wet word die betrokke grond, tensy die teendeel bewys word, geag binne die omvang van die relevante bepalings van hierdie Wet te ressorteer.

Instemming om grond te okkupeer of te gebruik

3.(1) Vir die doeleindes van hierdie Wet, is die stilswyende of uitdruklike instemming van die eienaar of persoon in beheer vir die okkupasie of gebruik van die betrokke grond, afdoende ongeag of enige ander amptelike magtiging vir sodanige okkupasie of gebruik vereis word.

(2) In enige uitsettingsverrigtinge gebaseer op die afwesigheid van instemming van die eienaar of persoon in beheer, moet die afwesigheid van sodanige instemming gepleit en bewys word.

(3) Indien 'n persoon wat grond op die effektiewe datum geokkupeer of gebruik het dit voorheen met die instemming van die eienaar of persoon in beheer geokkupeer of gebruik het, en sodanige instemming is voor die effektiewe datum ingetrek, -

- (a) word die persoon wat daardie grond geokkupeer of gebruik het, geag 'n okkupeerder ingevolge hierdie Wet te wees, mits hy of sy sedert verlening van sodanige instemming aaneenlopend op daardie grond gewoon het; en
- (b) word die intrekking van instemming deur die eienaar of persoon in beheer geag 'n geldige intrekking van instemming ingevolge artikel 6 te wees.

HOOFSTUK II

Reg van okkupeerders om grond te okkupeer en te gebruik

Regte en pligte van okkupeerders

4.(1) 'n Okkupeerder het, behoudens die bepalings van hierdie Wet, die reg om grond wat hy of sy op die effektiewe datum of daaropvolgend met die uitdruklike of stilswyende instemming van die eienaar of persoon in beheer geokkupeer het, te okkupeer

(2) Behoudens die bepalings van hierdie Wet en beperkings wat in 'n oop en demokratiese gemeenskap gebaseer op menswaardigheid, gelykheid en vryheid, billik en geregverdig is, het 'n okkupeerder die reg tot -

- (a) sekerheid van besitreg;
- (b) menswaardigheid;
- (c) vryheid van beweging;
- (d) vryheid van assosiasie, met inbegrip van die reg om besoekers te ontvang; en
- (e) 'n gesinslewe.

(3) 'n Okkupeerder mag nie -

- (a) onredelikerwys skade aan die eiendom van die eienaar of persoon in beheer aanrig nie;
- (b) onredelikerwys inbreuk maak op die gebruik van die grond deur die eienaar of persoon in beheer nie;
- (c) ongemagtigde persone in staat stel of help om nuwe wonings op die betrokke grond op te rig nie.

(4) 'n Persoon het die reg om sy of haar familiegrafe op grond ten opsigte waarvan hierdie Wet van toepassing is, te enige redelike tyd te besoek en in stand te hou.

(5) In die uitleg van die ander bepalings van hierdie Wet, neem 'n hof die regte en pligte in hierdie artikel bedoel, in ag.

Beperking op uitsetting

5.(1) Ondanks die bepalings van enige ander wet, kan 'n okkupeerder slegs ingevolge 'n hofbevel krachtens hierdie Wet uitgereik, uitgesit word.

(2) 'n Uitsettingsbevel kan verleen word indien -

- (a) die okkupeerder se reg tot okupasie ingevolge artikel 6 beëindig is en daar aan die voorwaardes vir 'n uitsettingsbevel ingevolge artikel 7 of 8 voldoen is; of
- (b) daar aan die vereistes van artikel 14 voldoen is.

Beëindiging van okkupasiereg

6.(1) Indien 'n okkupeerder se reg om grond te okkupeer uit 'n diensooreenkoms voortspruit, kan die okkupasiereg beëindig word indien die diensooreenkoms wettiglik beëindig word.

(2) Indien 'n okkupeerder se okkupasiereg uit 'n vaste termyn ooreenkoms voortspruit, kan die okkupasiereg beëindig word wanneer die vaste termyn verstryk, behalwe indien die okkupeerder 'n redelike verwagting het dat die ooreenkoms by verstryking van die vaste termyn hernu sal word.

(3) 'n Okkupeerder se okkupasiereg kan op enige ander wettige grond beëindig word, mits sodanige beëindiging of intrekking met inagneming van alle relevante faktore en in die besonder -

- (a) die billikheid van 'n ooreenkoms, kontraktuele bepaling of wetsbepaling waarop die eienaar of persoon in beheer steun;
- (b) die gedrag van die partye wat tot die beëindiging gelei het;
- (c) die belange van die partye, met inbegrip van die vergelykbare ontbering wat aan die eienaar of persoon in beheer en okkupeerder aangerig sal word indien die okkupasiereg beëindig word of nie beëindig word nie;
- (d) die billikheid van die prosedure wat deur die eienaar of persoon in beheer gevolg is, met inbegrip van die vraag of hy of sy die okkupeerder **voldoende**

geleentheid gebied het om voordat die besluit geneem is om die okkupasie te beëindig, vertoë te rig,

regverdig en billik is.

(4) Indien die instemming van 'n eienaar of persoon in beheer tot die okkupasie of gebruik van grond deur 'n okkupeerder voorwaardelik is aan die instemming wat hy of sy aan 'n ander persoon verleen het, kan die eienaar of persoon in beheer die eersbedoelde persoon se okkupasiereg beëindig indien hy of sy regsgeldiglik die tweede persoon se okkupasiereg beëindig.

(5) Die instemming van die eienaar of persoon in beheer tot die okkupasie of gebruik van grond deur 'n okkupeerder kan nie ingetrek word nie behalwe op die gronde in hierdie artikel uiteengesit.

Bevel vir uitsetting van persoon wat op effektiewe datum okkupeerder was

7.(1) Hierdie artikel is van toepassing op enige persoon wat op die effektiewe datum die betrokke grond geokkupeer het.

(2) Indien 'n okkupeerder se okkupasiereg ingevolge die bepalings van artikel 6 beëindig is, kan die eienaar of persoon in beheer verrigtinge by die hof vir 'n uitsettingsbevel instel.

(3) Die hof kan 'n uitsettingsbevel teen 'n okkupeerder toestaan, indien -

- (a) die okkupeerder 'n billike aanbod vir ander lewensvatbare en bekostigbare akkommodasie weier en daar, met inagneming van die ewewig van die belange van die eienaar of persoon in beheer en die okkupeerder, en die moontlikheid om deur middel van 'n op-terrein ontwikkeling sekerheid van besitreg te voorsien, geen toepaslike alternatief vir sodanige uitsetting is nie; of
- (b) die okkupeerder deur sy of haar doelbewuste handeling of versuim 'n wesenlike bepaling van 'n ooreenkoms verbreek het wat die kansellasie van sy of haar okkupasiereg regverdig, en nie die gebrek herstel het nie ondanks die feit dat skriftelike kennis van een kalendermaand aan hom of haar gegee is om so te doen; of
- (c) die okkupeerder 'n persoon wat die grond of aanliggende grond okkupeer, of sy of haar eiendom, doelbewus en kwaadwillig benadeel of beskadig; of
- (d) die okkupeerder so 'n wesenlike verbreking van die verhouding tussen hom of haar en die eienaar of persoon in beheer gepleeg het, dat dit nie prakties moontlik is om dit, hetsy in die geheel of op 'n wyse wat redelikerwys die verhouding kan herstel, te herstel nie; of
- (e) die okkupeerder ongemagtigde persone in staat gestel of gehelp het om nuwe wonings op die grond op te rig, en die hof tevrede is dat dit regverdig en billik is om 'n uitsettingsbevel te verleen.

(4) Die hof kan die opskorting van 'n uitsettingsbevel vir 'n tydperk wat die hof in die omstandighede regverdig en billik ag, gelas met inagneming van alle relevante faktore, met inbegrip van -

- (a) hoe lank die okkupeerder op die betrokke grond gewoon het;

- (b) die beskikbaarheid van ander billike en bekostigbare akkommodasie aan die okkupeerder in dieselfde gebied; en
- (c) die ewewig van belange van die eienaar of persoon in beheer en die okkupeerder.

(5) Die hof kan beslis of 'n bepaling van 'n ooreenkoms of 'n verbreking van die verhouding wesenlik is, en is nie in hierdie verband gebonde aan die bepalings van 'n ooreenkoms tussen die partye nie.

(6) Die hof kan die eiser of applikant in verrigtinge ingevolge hierdie artikel magtig om sodanige verrigtinge van tyd tot tyd te hernu.

(7) 'n Persoon wat verrigtinge ingevolge hierdie artikel instel, moet binne een week 'n afskrif van die dagvaarding of aansoek aan die Direkteur-generaal voorlê.

Bevel vir uitsetting van persoon wat na effektiewe datum okkupeerder word

8.(1) Hierdie artikel is van toepassing op enige persoon wat eers na die effektiewe datum 'n okkupeerder van die betrokke grond geword het.

(2) Indien 'n okkupeerder se okkupasiereg ingevolge die bepalings van artikel 6 beëindig is, kan die eienaar of persoon in beheer verrigtinge by die hof vir 'n uitsettingsbevel instel.

(3) Indien die verstryking van die instemming op 'n bepaalde of bepaalbare datum 'n wesenlike en inherente bepaling van die instemming was wat aan die okkupeerder verleen is om die betrokke grond te okkupeer, moet die hof 'n uitsettingsbevel toestaan.

(4) Die hof kan in omstandighede anders as die in subartikel (3) bedoel, 'n uitsettingsbevel toestaan indien dit regverdig en billik is om so 'n bevel toe te staan.

(5) Die hof kan die opskorting van 'n uitsettingsbevel vir 'n tydperk wat die hof in die omstandighede regverdig en billik ag, gelas.

(6) In die bepaling van wat ingevolge subartikels (4) en (5) regverdig en billik is, moet die hof alle relevante faktore in ag neem, met inbegrip van -

- (a) hoe lank die okkupeerder op die betrokke grond gewoon het;
- (b) die beskikbaarheid van ander billike en bekostigbare akkommodasie aan die okkupeerder in dieselfde gebied; en
- (c) die ewewig van belange van die eienaar of persoon in beheer en die okkupeerder.

(7) Die hof kan, met behoorlike inagneming van die werklike aard van 'n ooreenkoms, beslis of 'n bepaling van 'n ooreenkoms wesenlik en inherent is, en is nie in hierdie verband gebonde aan die bepalings van 'n ooreenkoms tussen die partye nie.

(8) Die hof kan die eiser of applikant in verrigtinge ingevolge hierdie artikel magtig om sodanige verrigtinge van tyd tot tyd te hernu.

(9) 'n Persoon wat verrigtinge ingevolge hierdie artikel instel, moet binne een week 'n afskrif van die dagvaarding of aansoek aan die Direkteur-generaal voorlê.

Kennisgewing van voorgenome uitsetting

9.(1) Die hof verleen nie 'n uitsettingsbevel ingevolge artikel 7 of 8 nie, tensy die eienaar of persoon in beheer skriftelike kennis van twee kalendermaande van sy of haar voorneme om die hof te versoek om sodanige bevel te verleen aan die okkupeerder en Direkteur-generaal gee het.

(2) Die Direkteur-generaal kan 'n bemiddelaar aanstel om te poog om die geskil te bemiddel.

(3) Die kennisgewing in subartikel (1) bedoel, moet benewens enige voorgeskrewe besonderhede ook die gronde vir die voorgenome uitsetting uiteensit.

Verbod op uitsetting

10.(1) 'n Okkupeerder wat vir 20 jaar op die betrokke grond woon en -

- (a) die ouderdom van 55 bereik het; of
- (b) 'n voormalige werknemer van die eienaar of persoon in beheer is en as gevolg van 'n gebrek nie in staat is om arbeid aan die eienaar of persoon in beheer te voorsien nie,

word nie op die gronde bedoel in artikel 7(3)(a) uitgesit nie.

(2) By die afsterwe van 'n okkupeerder wat die reg behou het om ingevolge die bepalings van subartikel (1) grond te okkupeer, kan sy of haar gade en afhanklikes nie op die gronde in artikel 7(3)(a) uiteengesit, uitgesit word nie, tensy hulle skriftelike kennis van 12 kalendermaande gegee is om te grond te verlaat.

(3) Indien die hof, ondanks die ander bepalings van hierdie artikel, van mening is dat die regte van die eienaar of persoon in beheer deur die toepassing van hierdie artikel onredelik benadeel word, kan die hof sodanige regshulp verleen as wat die hof in die omstandighede billik ag.

(4) Geen persoon kan die okkupasiereg van 'n okkupeerder beëindig of 'n okkupeerder uitsit nie, indien een van die oogmerke van sodanige beëindiging of uitsetting is om die okkupeerder te verhoed om regte ingevolge hierdie artikel te verkry.

(5) 'n Persoon wat die bepalings van subartikel (4) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met die strawwe in artikel 20 bedoel.

Gevolg van uitsettingsbevel

11.(1) Indien die hof 'n uitsettingsbevel ingevolge artikel 7 of 8 verleen -

- (a) moet die hof die eienaar beveel om vergoeding wat regverdig en billik is te betaal vir strukture opgerig en verbeterings aangebring deur die okkupeerder en enige oeste deur die okkupeerder aangeplant;
- (b) kan die hof die eienaar gelas om die okkupeerder 'n billike geleentheid te bied om -
 - (i) strukture en verbeterings deur die okkupeerder en sy of haar voorgangers opgerig of aangebring, af te breek en materiaal wat so herwin is te verwyder;

- (ii) 'n oes, waarop hy of sy geregtig is, op te pas totdat dit ryp is en daarna af te oes en te verwyder.

(2) In die bepaling van regverdigde en billike vergoeding moet die hof alle relevante faktore in ag neem, met inbegrip van -

- (a) die vervangingswaarde van die strukture en verbeterings;
- (b) die waarde van materiaal wat die okkupeerder kan verwyder;
- (c) die waarde van materiaal deur die eienaar of sy of haar voorgangers verskaf vir die oprigting van die strukture en verbeterings;
- (d) indien die okkupeerder nie die geleentheid gegun is om die oes te verwyder nie, die waarde van die oes.

(3) 'n Uitsettingsbevel ingevolge artikel 7 of 8 verleen, word nie uitgevoer nie indien die eienaar nie die vergoeding wat ingevolge subartikel (1) verskuldig is, betaal het nie, behalwe indien die hof, onderworpe aan die verskaffing van bevredigende waarborge vir die betaling van vergoeding, sodanige instemming verleen het.

Herstel en skade

12. (1) 'n Okkupeerder wat strydig met die bepalings van hierdie Wet uitgesit is, kan verrigtinge by die hof vir 'n bevel ingevolge subartikel (3) instel.

(2) 'n Persoon wat -

- (a) die reg sou gehad het om grond ingevolge artikel 4 te bewoon en te gebruik indien die bepalings van hierdie Wet op die effektiewe datum in werking was; en
- (b) tussen die effektiewe datum en die inwerkingtreding van hierdie Wet grond ontruim het of om enige rede of ingevolge enige proses uitgesit is,

kan verrigtinge by die hof vir 'n bevel ingevolge subartikel (3) instel.

(3) Die hof kan in verrigtinge ingevolge subartikel (1) of (2) en behoudens sodanige voorwaardes wat die hof bepaal, 'n bevel verleen -

- (a) vir die herstel van die betrokke persoon op sodanige voorwaardes as wat die hof regverdig ag;
- (b) vir die betaling van vergoeding met inagneming van die bepalings van artikel 11;
- (c) vir die betaling van bestraffende skadevergoeding met inagneming van die omstandighede van die geval; en
- (d) met betrekking tot koste.

(4) Indien die persoon in subartikel (2) bedoel ingevolge 'n hofbevel uitgesit is -

- (a) moet die verrigtinge binne een jaar vanaf die inwerkingtreding van hierdie Wet ingestel word; en

- (b) moet die hof, benewens enige ander faktore wat die hof regverdig en billik ag, in ag neem -
- (i) of die uitsettingsbevel toegestaan sou gewees het indien die geding na die inwerkingtreding van hierdie Wet aanhangig gemaak sou word; en
- (ii) of die persoon op wie die uitsettingsbevel gerig is op 'n doeltreffende wyse in daardie verrigtinge verteenwoordig was, hetsy deur homself of haarself of deur 'n ander persoon.

Hangende gedinge

13. Die bepalings van artikels 4, 5, 6, 7, 8, 9(2) en 10 is van toepassing op gedinge wat by die inwerkingtreding van hierdie Wet in enige hof hangend is.

Dringende verrigtinge vir uitsetting

14. 'n Eienaar of persoon in beheer van grond kan, ondanks die ander bepalings van hierdie Wet, 'n dringende aansoek om die verwydering van 'n okkupeerder vanaf die grond bring al is die uitslag van 'n geding om 'n finale bevel nog hangende, en die hof kan 'n bevel vir die verwydering van daardie persoon verleen indien die hof tevrede is dat -

- (a) daar 'n werklike en dreigende gevaar van wesenlike besering of skade aan enige persoon of eiendom bestaan indien die okkupeerder nie vanaf die grond verwyder word nie;
- (b) daar geen ander doeltreffende remedie beskikbaar is nie; en
- (c) die waarskynlike skade aan die eienaar, persoon in beheer of ander geaffekteerde persoon indien sodanige bevel nie verleen word nie, groter is as die waarskynlike skade aan die okkupeerder teen wie die bevel aangevra word, indien 'n bevel vir verwydering verleen word.

HOOFSTUK III

Maatreëls ter fasilitering van langtermyn sekerheid van besitreg vir okkupeerders

Voorskotte of subsidies

15.(1) Die Minister moet voorskotte of subsidies toeken vir op-perseel en nie op-perseel ontwikkelings wat langtermyn sekerheid van besitreg aan okkupeerders sal voorsien.

(2) Die voorskotte en subsidies in subartikel (1) bedoel, word uit geld vir daardie doel deur die Parlement bewillig en behoudens die voorwaardes wat die Minister bepaal, toegeken vir -

- (a) die fasilitering van die beplanning van op-terrein en nie op-terrein ontwikkelings;
- (b) die verkryging van grond of regte in grond deur okkupeerders; en
- (c) die ontwikkeling van grond wat deur okkupeerders ingevolge op-terrein of nie op-terrein ontwikkelings geokkupeer word of geokkupeer staan te word.

(3) Die Minister moet voorkeur verleen aan aansoeke waar -

- (a) die ontwikkeling die belange van okkuperders en eienaars gesamentlik akkommodeer;
- (b) die ontwikkeling koste-effektief is;
- (c) in die geval van 'n nie op-terrein ontwikkeling in omstandighede waar die okkuperders aangedui het dat hulle 'n op-terrein ontwikkeling verkies, bevredigende redes verskaf is vir die rede waarom 'n op-terrein ontwikkeling nie 'n meer toepaslike oplossing is nie;
- (d) eienaars en okkuperders 'n redelike poging aangewend het om 'n ontwikkeling te ontwerp wat aan die bepalings van subparagrafe (a) en (b) voldoen;
- (e) daar 'n dringende behoefte vir die ontwikkeling is omrede okkuperders uitgesit is of uitgesit staan te word:

Met dien verstande dat indien 'n aansoek deur of namens okkuperders gedoen word, sodanige aansoek nie deur die afwesigheid van die eienaar se ondersteuning daarvan benadeel word nie.

(4) Voorskotte of subsidies kan ook, onderworpe aan die voorwaardes wat die Minister bepaal, aangewend word vir die verkryging van grond of regte in grond deur voormalige okkuperders en persone wat ingevolge die bepalings van artikel 7 of 8 vanaf grond uitgesit is.

(5) Waar die persone wat deur 'n ontwikkeling bevoordeel staan te word reeds geïdentifiseer is, word 'n subsidie of voorskot nie toegeken nie tensy die ontwikkeling vir hulle aanvaarbaar is.

(6) Die Minister kan, kragtens 'n ooreenkoms met 'n provinsiale of plaaslike regering, voorskotte of subsidies vir die doeleindes in hierdie artikel uiteengesit, toeken waar -

- (a) 'n plaaslike of provinsiale regering 'n op-terrein of nie op-terrein ontwikkeling onderneem of daarvoor kontrakteer;
- (b) die voorskot of subsidie aan die provinsiale of plaaslike regering betaal word ten einde daardie regering in staat te stel om die op-terrein of nie op-terrein ontwikkeling te onderneem of te kontrakteer;
- (c) die plaaslike of provinsiale regering fondse vir die doeleindes in hierdie artikel uiteengesit, beskikbaar stel.

(7) Geen hereregte is ingevolge die Wet op Hereregte, 1949 (Wet No. 40 van 1949) betaalbaar ten opsigte van enige transaksie vir die verkryging van grond ingevolge hierdie artikel of ten opsigte van enige transaksie vir die verkryging van grond wat, hetsy in die geheel of gedeeltelik, deur 'n subsidie ingevolge hierdie artikel gefinansier word nie.

(8) Die Minister kan vir die doel om enige ontwikkeling in hierdie artikel beoog, te fasiliteer, grond oteien.

(9) In die geval van onteiening, word vergoeding betaal soos deur die Grondwet bepaal.

(10) Die bepalings van artikels 6 tot 11 en 13 tot 23 van die Onteieningswet, 1975 (Wet No. 63 van 1975), is *mutatis mutandis* op die onteiening van grond ingevolge hierdie artikel van toepassing, en 'n verwysing in daardie Wet na "die Minister" word uitgelê as 'n verwysing na die Minister vir Landbou en Grondsake.

HOOFSTUK IV**Diverse bepalings****Bevoegdhede van hof**

16.(1) 'n Hof kan, benewens ander bevoegdhede in hierdie Wet uiteengesit, -

- (a) gelas hoe die bevel van die hof uitgevoer moet word, met inbegrip van die bepaling van sperdatums vir die implementering van sodanige bevele;
- (b) die kostebevele maak wat die hof regverdig ag.

Landdroshowe

17.(1) 'n Landdroshof -

- (a) het jurisdiksie ten opsigte van verrigtinge vir uitsetting of herstel en vervolgings ingevolge hierdie Wet; en
- (b) is bevoeg om interdikte ingevolge hierdie Wet te verleen.

(2) Siviele appëlle vanaf landdroshowe ingevolge hierdie Wet word deur die Grondeishof aangehoor.

Grondeishof

18.(1) Die Grondeishof het ingevolge hierdie Wet regdeur die Republiek jurisdiksie en het al die bykomende bevoegdhede wat noodsaaklikerwys of redelikerwys verband hou met die verrigting van sy werksaamhede ingevolge hierdie Wet, met inbegrip van die bevoegdheid om tussentydse bevele en interdikte toe te staan, en het alle bevoegdhede ten opsigte van aangeleenthede wat binne sy jurisdiksie val as wat 'n provinsiale afdeling van die Hooggeregshof ten opsigte van siviele gedinge het, met inbegrip van die bevoegdhede ten opsigte van minagting van die hof.

(2) Die Grondeishof het dieselfde bevoegdhede as die Hooggeregshof om 'n handeling, versuim of besluit van enige funksionaris wat kragtens hierdie Wet optree, te hersien en oefen daardie bevoegdhede tot uitsluiting van die provinsiale en plaaslike afdelings van die Hooggeregshof uit.

Bemiddeling

19.(1) Die Direkteur-generaal kan, op sodanige voorwaardes wat hy of sy bepaal, een of meer persone met kundigheid in geskilbeslegting aanstel om vergaderings van belanghebbende partye te fasiliteer en te poog om geskille ingevolge hierdie Wet te bemiddel en te skik: Met dien verstande dat die partye te eniger tyd, by ooreenkoms, 'n ander persoon kan aanstel om vergaderings te fasiliteer of 'n geskil te bemiddel, op sodanige voorwaardes as wat die Direkteur-generaal kan bepaal.

(2) 'n Persoon ingevolge subartikel (1) aangestel, wat nie in die heeltidse diens van die Staat is nie, word uit geld vir daardie doel deur die Parlement bewillig, die vergoeding en toelaes vir dienste deur hom of haar gelewer, betaal wat die Minister in oorleg met die Minister van Finansies bepaal.

(3) Alle besprekings, onthullings en voorleggings wat gedurende die bemiddelingsproses plaasvind of gedoen word, is geprivilegeerd tensy die partye anders ooreenkom.

Misdrywe

20.(1) Geen persoon kan 'n okkupeerder anders as in ooreenstemming met die bepalings van hierdie Wet vanaf grond uitsit nie.

(2) Geen persoon mag 'n amptenaar in diens van die Staat of 'n bemiddelaar opsetlik hinder in of inmeng met die verrigting van sy of haar pligte kragtens hierdie Wet nie.

(3) 'n Persoon wat die bepalings van subartikel (1) of (2) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens twee jaar, of met beide sodanige boete en sodanige gevangenisstraf.

(4) 'n Persoon wie se regte of belange deur 'n oortreding van subartikel (1) benadeel is, het die reg om die beweerde oortreder privaatregtelik te vervolg.

Wysiging van artikel 1 van Wet 6 van 1959

21. Artikel 1 van die Wet op Oortreding, 1959 (Wet No. 6 van 1959), word hierby gewysig deur die volgende subartikel na subartikel (1) in te voeg:

"(1A) Vir die doeleindes van hierdie Wet word 'n okkupeerder van grond soos bedoel in die Wet op die Uitbreiding van Sekerheid van Besitg, 1997, en sy of haar bona fide gaste of besoekers geag 'n regsgeldige rede te hê om sodanige grond te betree en daarop te wees."

Wysiging van Wet 52 van 1951

22. Die Wet op die Voorkoming van Onregmatige Plakkery, 1951 (Wet No. 52 van 1951), word hierby gewysig -

(a) deur artikels 1, 2, 3, 3A, 3B, 3D, 4(3), 5, 6E, 6F en 11B te skrap; en

(b) deur subartikel (1) van artikel 4 deur die volgende subartikel te vervang:

"(1) Iemand wat direk of indirek betaling van gelde of ander vergoeding by wyse van fooie of koste of ander betaling in verband, hetsy direk of indirek, met die reëling of organisering van die okkupasie van grond of 'n gebou **[wat in stryd is met die bepalings van artikel 1 of met 'n bevel of instruksie kragtens artikel 5 uitgereik]** sonder die instemming van die eienaar of regmatige okkupeerder van sodanige grond of gebou, ontvang of daarom vra, of sodanige okkupasie soos voormeld beheer, of 'n mate van gesag in verband daarmee uitoefen, is aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens R10 000 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met sowel sodanige boete as sodanige gevangenisstraf, en die hof wat so 'n persoon veroordeel, moet beveel dat sodanige gelde of ander vergoeding as wat in beslag geneem en beskikbaar gestel mag wees, verbeurd verklaar word, en bedoelde gelde en die opbrengs van sodanige ander vergoeding word daarop in die Staatsinkomstefonds gestort."

Wysiging van artikel 2 van Wet 3 van 1996

23. Artikel 2 van die Wet op Grondhervorming (Huurarbeiders), 1996 (Wet No. 3 van 1996), word hierby gewysig deur die volgende subartikel na subartikel (4) by te voeg:

"(5) Indien in enige verrigtinge dit bewys word dat 'n persoon binne die omvang van subparagrafe (a), (b) en (c) van die woordskrywing van "huurarbeider" val, word sodanige persoon geag nie 'n plaasarbeider te wees nie tensy en totdat die teendeel bewys word."

Invoeging van artikel 13A in Wet 3 van 1996

24. Die Wet op Grondhervorming (Huurarbeiders), 1996 (Wet No. 3 van 1996), word hierby gewysig deur die volgende artikel na artikel 13 in te voeg:

"Verrigtinge ingestel in ander hof"

13A. In enige verrigtinge vir die uitsetting van 'n persoon vanaf grond ingestel in 'n hof anders as die Hof, moet daardie hof die verrigtinge staak en die aangeleentheid na die Hof verwys tensy eersbedoelde hof tevrede is dat die betrokke persoon nie 'n huurarbeider ingevolge hierdie Wet is nie."

Wysiging van artikel 27 van Wet 3 van 1996

25. Artikel 27 van die Wet op Grondhervorming (Huurarbeiders), 1996 (Wet No. 3 van 1996), word hierby gewysig deur die volgende subartikel na subartikel (3) by te voeg:

"(4) Enige sodanige subsidie moet insluit die koste van 'n kadastrale opmeting van die grond deur die huurarbeider verkry of verkry staan te word, die voorbereiding van enige plan of kaart wat vereis kan word, waarderingsfooie en die oordragkoste nodig vir die oordrag van die grond aan die huurarbeider."

Wysiging van artikel 31 van Wet 3 van 1996

26. Artikel 31 van die Wet op Grondhervorming (Huurarbeiders), 1996 (Wet No. 3 van 1996), word hierby gewysig deur subartikels (1) en (2) onderskeidelik deur die volgende subartikels te vervang:

"(1) Die Minister [moet in oorleg met die Minister] van Justisie moet in oorleg met die Minister 'n paneel van persone saamstel waaruit arbiters ingevolge artikel 19(2)(b) en ingevolge ander grond verwante wetgewing wat die aanstelling van arbiters vereis, aangestel word."

"(2) 'n Arbitrator moet 'n persoon wees wat, as gevolg van sy of haar opleiding of ondervinding, oor bekwaamhede en kennis beskik wat relevant is tot [die geskilpunte wat ingevolge Hoofstukke III en IV besleg moet word] grondaangeleenthede en die beslegting van geskille wat vereis om deur die betrokke wet opgelos te word."

Wysiging van artikel 38 van Wet 3 van 1996

27. Artikel 38 van die Wet op Grondhervorming (Huurarbeiders), 1996 (Wet No. 3 van 1996), word hierby gewysig deur subartikels (2) en (3) onderskeidelik deur die volgende subartikels te vervang:

"(2) Die Minister kan gelas dat enige **[hereregte,]** seëlregte of fooie ten opsigte van -

- (a) die opstel en goedkeuring van landmeterdiagramme; of
- (b) die oordrag van grond; of
- (c) die registrasie van serwitute,

ingevolge hierdie Wet, ten volle of gedeeltelik bestry word uit fondse deur die Parlement vir daardie doel bewillig.

(3) Die Minister kan, in oorleg met die Minister van Finansies, gelas dat geen **[hereregte of]** seëlregte beoog in subartikel (2) ten opsigte van 'n bepaalde oordrag kragtens hierdie Wet betaalbaar is nie."

Invoeging van artikels 38A en 38B in Wet 3 van 1996

28. Die Wet op Grondhervorming (Huurarbeiders), 1996 (Wet No. 3 van 1996), word hierby gewysig deur die volgende artikels na artikel 38 in te voeg:

"Hereregte nie betaalbaar

38A. Geen hereregte is betaalbaar ten opsigte van die verkryging van grond of 'n reg in grond ingevolge hierdie Wet nie.

Endossering van titelakte

38B. Die reg van 'n huurarbeider op grond ingevolge artikel 3 van hierdie Wet kan aangeteken word by wyse van endossering van die titelakte van die eienaar van sodanige grond deur die Registrateur."

Opvolgende eienaars en persone in beheer van grond

29.(1) Die regte van 'n okkupeerder is, behoudens die bepalings van hierdie Wet, bindend op opvolgende eienaars en persone in beheer van die betrokke grond.

(2) Instemming deur die eienaar of persoon in beheer verleen, bind sy of haar opvolger asof laasbedoelde dit verleen het.

Afstanddoening van regte

30. Die afstanddoening deur 'n okkupeerder van sy of haar regte kragtens hierdie Wet is van nul en gener waarde nie, tensy -

- (a) dit in 'n dokument wat deur die okkupeerder onderteken is, vervat is en die Direkteur-generaal gesertifiseer het dat hy of sy tevrede is dat die okkupeerder volle kennis gedra het van die aard en omvang van sy of haar regte sowel as die gevolge van die afstanddoening van sodanige regte; of
- (b) dit in 'n hofbevel vervat is.

Regulasies

31. Die Minister kan regulasies maak oor -

- (a) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet of kan word;
- (b) institusionele reëlings vir die implementering van hierdie Wet in enige provinsie of landdrostdistrik;
- (c) alle aangeleenthede wat redelikerwys nodig of wenslik is om voor te skryf ten einde die doelstellings van hierdie Wet te bereik.

(2)(a) Die Minister kan regulasies maak om aan die regte en pligte in artikel 4 uiteengesit, krag te verleen.

(b) 'n Regulasie kragtens hierdie subartikel kan slegs gemaak word indien die Minister vooraf 'n kennisgewing in die *Staatskoerant* gepubliseer het waarin hy of sy te kenne gee dat hy of sy sodanige regulasies oorweeg, die algemene belang van die beoogde regulasies uiteensit, en kommentaar en voorstelle ten opsigte van die inhoud van die beoogde regulasies uitnooi.

(3) Die Minister kan verskillende regulasies vir verskillende gebiede of vir verskillende klasse van okkupeerders maak.

Kort titel

32. Hierdie Wet heet die Wet op die Uitbreiding van Sekerheid van Besitreg, 1997.

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