

# EXTENSION OF SECURITY OF TENURE ACT 62 OF 1997

[ASSENTED TO 19 NOVEMBER 1997]

[DATE OF COMMENCEMENT: 28 NOVEMBER 1997]

*(Afrikaans text signed by the President)*

**as amended by**

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

Land Affairs General Amendment Act 61 of 1998

Land Affairs General Amendment Act 11 of 2000

Land Affairs General Amendment Act 51 of 2001

## ACT

**To provide for measures with State assistance to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and to regulate the conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land; and to provide for matters connected therewith.**

WHEREAS many South Africans do not have secure tenure of their homes and the land which they use and are therefore 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 discriminatory laws and practices;

AND WHEREAS it is desirable- that the law should promote the achievement of long-term security of tenure for occupiers of land, where possible through the joint efforts of occupiers, land owners, and government bodies; that the law should extend the rights of occupiers, while giving due recognition to the rights, duties and legitimate interests of owners; that the law should regulate the eviction of vulnerable occupiers from land in a fair manner, while recognising the right of land owners to apply to court for an eviction order in appropriate circumstances; to ensure that occupiers are not further prejudiced;

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

### CHAPTER 1 INTRODUCTORY PROVISIONS (ss 1-3)

#### 1 Definitions

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

**'consent'** means express or tacit consent of the owner or person in charge of the land in question, and in relation to a proposed termination of the right of residence or eviction by a holder of mineral rights, includes the express or tacit consent of such holder;

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

**'court'** means a competent court having jurisdiction in terms of this Act, including a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act 74 of 1996);

[Definition of 'court' substituted by s. 20 (a) of Act 61 of 1998.]

**'Director-General'** means the Director-General of the Department of Land Affairs or an officer of that Department who has been designated by the said Director-General either generally or in respect of a particular case, or in respect of cases of a particular nature;

**'employee'** means an employee in terms of the Labour Relations Act;

**'established practice'** means a practice in terms of which the owner or person in charge or his or her predecessor in title routinely gave permission to people residing on the land to bury deceased members of their family on that land in accordance with their religion or cultural belief;

[Definition of 'established practice' inserted by s. 6 (b) of Act 51 of 2001.]

**'evict'** means to deprive a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence in terms of this Act, and **'eviction'** has a corresponding meaning;

**'Land Claims Court'** means the court established by section 22 of the Restitution of Land Rights Act, 1994 (Act 22 of 1994);

**'Minister'** means the Minister responsible for Land Affairs or an officer of the Department of Land Affairs who has been designated by the Minister either generally or in respect of a particular case, or in respect of cases of a particular nature: Provided that the powers referred to in section 28 shall be excluded from any such designation;

**'municipality'** means a municipality in terms of section 10 of the Local Government Transition Act, 1993 (Act 209 of 1993);

**'occupier'** means a person residing on land which belongs to another person, and who has or [sic] on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding-

(a) .....

[Para. (a) substituted by s. 20 (b) of Act 61 of 1998 and deleted by s. 6 (a) of Act 51 of 2001.]

(b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and

(c) a person who has an income in excess of the prescribed amount\*;

**'off-site development'** means a development which provides the occupants thereof with an independent tenure right on land owned by someone other than the owner of the land on which they resided immediately prior to such development;

**'on-site development'** means a development which provides the occupants thereof with an independent tenure right on land on which they reside or previously resided;

**'owner'** means the owner of the land at the time of the relevant act, omission or conduct, and includes, in relation to the proposed termination of a right of residence by a holder of mineral rights, such holder in so far as such holder is by law entitled to grant or terminate a right of residence or any associated rights in respect of such land, or to evict a person occupying such land;

**'person in charge'** means a person who at the time of the relevant act, omission or conduct had or has legal authority to give consent to a person to reside on the land in question;

**'prescribed'** means prescribed by regulation;

**'regulation'** means a regulation made under this Act;

**'suitable alternative accommodation'** means alternative accommodation which is safe and overall not less favourable than the occupiers' previous situation, having regard to the residential accommodation and land for agricultural use available to them prior to eviction, and suitable having regard to-

(a) the reasonable needs and requirements of all of the occupiers in the household in question for residential accommodation, land for agricultural use, and services;

(b) their joint earning abilities; and

(c) the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active;

**'terminate'** includes to withdraw consent to a person to occupy or use land;

**'the Labour Relations Act'** means the Labour Relations Act, 1995 (Act 66 of 1995);

**'this Act'** includes the regulations.

(2) In respect of unalienated State land, unsurveyed State land, or 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'** includes 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 the conditions that the Director-General may determine; and

(b) a certificate purporting to have been issued by the Director-General in terms of paragraph (a) 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 in evidence on its production in a court.

## 2 Application and implementation of Act

(1) Subject to the provisions of section 4, this Act shall apply to all land other than land in a township established, approved, proclaimed or otherwise recognised as such in terms of any law, or encircled by such a township or townships, but including-

(a) any land within such a township which has been designated for agricultural purposes in terms of any law; and

(b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after 4 February 1997, in respect only of a person who was an occupier immediately prior to such establishment, approval, proclamation or recognition.

(2) Land in issue in any civil proceedings in terms of this Act shall be presumed to fall within the scope of the Act unless the contrary is proved.

(3) The Minister may, from moneys appropriated by Parliament for that purpose and subject to such conditions as he or she may determine, make funds available to another person, body or institution which he or she has recognised for that purpose, to promote the implementation of the rights conferred by this Act.

### **3 Consent to reside on land**

- (1) Consent to an occupier to reside on or use land shall only be terminated in accordance with the provisions of section 8.
- (2) If a person who resided on or used land on 4 February 1997 previously did so with consent, and such consent was lawfully withdrawn prior to that date-
- (a) that person shall be deemed to be an occupier, provided that he or she has resided continuously on that land since consent was withdrawn; and
  - (b) the withdrawal of consent shall be deemed to be a valid termination of the right of residence in terms of section 8, provided that it was just and equitable, having regard to the provisions of section 8.
- (3) For the purposes of this Act, consent to a person to reside on land shall be effective regardless of whether the occupier, owner or person in charge has to obtain some other official authority required by law for such residence.
- (4) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of one year shall be presumed to have consent unless the contrary is proved.
- (5) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of three years shall be deemed to have done so with the knowledge of the owner or person in charge.
- (6) The provisions of subsections (4) and (5) shall not be applicable to any land held by or registered in the name of the State or an institution or functionary exercising powers on behalf of the State.

## **CHAPTER II MEASURES TO FACILITAT LONG-TERM SECURITY OF TENURE FOR OCCUPIERS (s 4)**

### **4 Subsidies**

- (1) The Minister shall, from moneys appropriated by Parliament for that purpose and subject to the conditions the Minister may prescribe in general or determine in a particular case, grant subsidies-
- (a) to facilitate the planning and implementation of on-site and off-site developments;
  - (b) to enable occupiers, former occupiers and other persons who need long-term security of tenure to acquire land or rights in land; and
  - (c) for the development of land occupied or to be occupied in terms of on-site or off-site developments.
- (2) In deciding whether to approve an application for a subsidy, and if so, the priority to be given to that application, the Minister shall have regard to the extent to which an application complies with the following criteria:
- (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 complies with the criteria contemplated in paragraphs (a) and (b);

(e) the occupiers are the spouses or dependants of persons contemplated in section 8 (4) (a); and

(f) 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 for an off-site development, such an application shall not be prejudiced by reason only of the absence of support from an owner who is not the owner of the land on which the development is to take place.

(3) Where the persons who are intended to benefit from a development have been identified, a subsidy shall not be granted unless the Minister has been satisfied that the development is acceptable to a majority of the adults concerned.

(4) The Minister may, for the purposes of this section, grant subsidies through an agreement with a provincial government or a municipality, or a person or body which he or she has recognised for that purpose, where-

(a) a provincial government or a municipality or such person or body will facilitate, implement or undertake or contract with a third party for the facilitation, implementation or undertaking of a development; or

(b) the subsidy is paid to the provincial government or a municipality or such person or body to enable it to facilitate, implement or undertake or contract with a third party for the facilitation, implementation or undertaking of a development.

[Para. (b) substituted by s. 21 (c) of Act 61 of 1998.]

(5) No transfer duty shall be payable 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 by a subsidy in terms of this section.

(6) A potential beneficiary of a development may apply for a housing subsidy as provided for in terms of sections 10A, 10B, 10C and 10D of the Housing Act, 1966 (Act 4 of 1966).

(7) The provisions of any law regulating the subdivision of land shall not apply to land on which a development is undertaken in terms of this Act.

[Sub-s. (7) substituted by s. 21 (d) of Act 61 of 1998.]

### **CHAPTER III RIGHTS AND DUTIES OF OCCUPIERS AND OWNERS (ss 5-7)**

#### **5 Fundamental rights**

Subject to limitations which are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, an occupier, an owner and a person in charge shall have the right to-

(a) human dignity;

(b) freedom and security of the person;

(c) privacy;

(d) freedom of religion, belief and opinion and of expression;

(e) freedom of association; and

(f) freedom of movement, with due regard to the objects of the Constitution and this Act.

#### **6 Rights and duties of occupier**

(1) Subject to the provisions of this Act, an occupier shall have the right to reside on and use the land on which he or she resided and which he or she used on or after 4 February 1997, and to have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly.

(2) Without prejudice to the generality of the provisions of section 5 and subsection (1), and balanced with the rights of the owner or person in charge, an occupier shall have the right-

(a) to security of tenure;

(b) to receive *bona fide* visitors at reasonable times and for reasonable periods: Provided that-

(i) the owner or person in charge may impose reasonable conditions that are normally applicable to visitors entering such land in order to safeguard life or property or to prevent the undue disruption of work on the land; and

(ii) the occupier shall be liable for any act, omission or conduct of any of his or her visitors causing damage to others while such a visitor is on the land if the occupier, by taking reasonable steps, could have prevented such damage;

(c) to receive postal or other communication;

(d) to family life in accordance with the culture of that family: Provided that this right shall not apply in respect of single sex accommodation provided in hostels erected before 4 February 1997;

(dA) to bury a deceased member of his or her family who, at the time of that person's death, was residing on the land on which the occupier is residing, in accordance with their religion or cultural belief, if an established practice in respect of the land exists;

[Para. (dA) inserted by s. 7 (a) of Act 51 of 2001.]

(e) not to be denied or deprived of access to water; and

(f) not to be denied or deprived of access to educational or health services.

(3) An occupier may not-

(a) intentionally and unlawfully harm any other person occupying the land;

(b) intentionally and unlawfully cause material damage to the property of the owner or person in charge;

(c) engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; or

(d) enable or assist unauthorised persons to establish new dwellings on the land in question.

(4) Any person shall have the right to visit and maintain his or her family graves on land which belongs to another person, subject to any reasonable condition imposed by the owner or person in charge of such land in order to safeguard life or property or to prevent the undue disruption of work on the land.

(5) The family members of an occupier contemplated in section 8 (4) of this Act shall on his or her death have a right to bury that occupier on the land on which he or she was residing at the time of his or her death, in accordance with their religion or cultural belief, subject to any reasonable conditions which are not more onerous than those prescribed and that may be imposed by the owner or person in charge.

[Subs. (5) added by s. 7 (b) of Act 51 of 2001.]

## **7 Rights and duties of owner**

(1) The owner or person in charge may have a trespassing animal usually or actually in the care of an occupier impounded and removed to a pound in accordance with the provisions of any applicable law, if the owner or person in charge has given the occupier at least 72 hours' notice to remove the animal from the place where it is trespassing and the occupier has failed to do so: Provided that the owner or person in charge may take reasonable steps to prevent the animal from causing damage during those 72 hours.

[Sub-s. (1) substituted by s. 22 of Act 61 of 1998.]

(2) An owner or person in charge may not prejudice an occupier if one of the reasons for the prejudice is the past, present or anticipated exercise of any legal right.

(3) If it is proved in any proceedings in terms of subsection (2), that the effect of the conduct complained of is to prejudice an occupier as set out in that subsection, it shall be presumed, unless the contrary is proved, that such prejudice was caused for one of the reasons referred to in subsection (2).

## **CHAPTER IV TERMINATION OF RIGHT OF RESIDENCE AND EVICTION (ss 8-15)**

### **8 Termination of right of residence**

(1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to-

(a) the fairness of any agreement, provision in an agreement, 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 to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;

(d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and

(e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.

(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.

(3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act.

(4) The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years and-

(a) has reached the age of 60 years; or

(b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge, may not be terminated unless that

occupier has committed a breach contemplated in section 10 (1) (a), (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.

(5) On the death of an occupier contemplated in subsection (4), the right of residence of an occupier who was his or her spouse or dependant may be terminated only on 12 calendar months' written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10 (1).

(6) Any termination of the right of residence of an occupier to prevent the occupier from acquiring rights in terms of this section, shall be void.

(7) If an occupier's right to residence has been terminated in terms of this section, or the occupier is a person who has a right of residence in terms of subsection (5) -

(a) the occupier and the owner or person in charge may agree that the terms and conditions under which the occupier resided on the land prior to such termination shall apply to any period between the date of termination and the date of the eviction of the occupier; or

(b) the owner or person in charge may institute proceedings in a court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the occupiers in the household.

[Sub-s. (7) substituted by s. 23 of Act 61 of 1998.]

## **9 Limitation on eviction**

(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) A court may make an order for the eviction of an occupier if-

(a) the occupier's right of residence has been terminated in terms of section 8;

(b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;

(c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and

(d) the owner or person in charge has, after the termination of the right of residence, given-

(i) the occupier;

(ii) the municipality in whose area of jurisdiction the land in question is situated; and

(iii) the head of the relevant provincial office of the Department of Land Affairs, for information purposes, not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.

(3) For the purposes of subsection (2) (c), the Court must request a probation officer contemplated in section 1 of the Probation Services Act, 1991 (Act 116 of 1991), or an officer of the department or any other officer in the employment of the State, as may be determined by the Minister, to submit a report within a reasonable period-

(a) on the availability of suitable alternative accommodation to the occupier;

(b) indicating how an eviction will affect the constitutional rights of any affected person, including the rights of the children, if any, to education;

(c) pointing out any undue hardships which an eviction would cause the occupier; and

(d) on any other matter as may be prescribed.

[Sub-s. (3) added by s. 10 of Act 11 of 2000.]

### **10 Order for eviction of person who was occupier on 4 February 1997**

(1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if-

(a) the occupier has breached section 6 (3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;

(b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar month's notice in writing to do so;

(c) 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

(d) the occupier-

(i) is or was an employee whose right of residence arises solely from that employment; and

(ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act.

(2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, a court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.

(3) If-

(a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;

(b) the owner or person in charge provided the dwelling occupied by the occupier; and

(c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge, a court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to-

(i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and

(ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.

## **11 Order for eviction of person who becomes occupier after 4 February 1997**

(1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, a court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.

[Sub-s. (1) substituted by s. 25 (a) of Act 61 of 1998.]

(2) In circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.

(3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to-

- (a) the period that the occupier has resided on the land in question;
- (b) the fairness of the terms of any agreement between the parties;
- (c) whether suitable alternative accommodation is available to the occupier;
- (d) the reason for the proposed eviction; and

[Para. (d) substituted by s. 25 (c) of Act 61 of 1998.]

(e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.

## **12 Further provisions regarding eviction**

(1) A court that orders the eviction of an occupier shall-

- (a) determine a just and equitable date on which the occupier shall vacate the land; and
- (b) determine the date on which an eviction order may be carried out if the occupier has not vacated the land on the date contemplated in paragraph (a).

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

- (a) the fairness of the terms of any agreement between the parties;
- (b) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land; and
- (c) the period that the occupier has resided on the land in question.

(3) A court may, at the request of the sheriff in question, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal, subject to the conditions determined by the court as to the execution thereof: Provided that the sheriff shall at all times be present during such eviction, demolition or removal.

(4) Any order for the eviction of an occupier in terms of section 10 or 11 shall be subject to reasonable terms and conditions for further residence which may be determined by the court, having regard to the income of all of the occupiers in the household.

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

(6) Notwithstanding the provisions of sections 10 and 11, the court shall not order the eviction of an occupier if it is of the opinion that one of the purposes of such intended eviction is to prevent the occupier from acquiring rights in terms of section 8 (4).

### **13 Effect of order for eviction**

(1) If a court makes an order for eviction in terms of this Act-

(a) the court shall order the owner or person in charge to pay compensation for structures erected and improvements made by the occupier and any standing crops planted by the occupier, to the extent that it is just and equitable with due regard to all relevant factors, including whether-

(i) the improvements were made or the crops planted with the consent of the owner or person in charge;

(ii) the improvements were necessary or useful to the occupier; and

(iii) a written agreement between the occupier and the owner or person in charge, entered into prior to the making of improvements, provides that the occupier shall not be entitled to compensation for improvements identified in that agreement;

(b) the court shall order the owner or person in charge to pay any outstanding wages and related amounts that are due in terms of the Basic Conditions of Employment Act, 1983 (Act 3 of 1983) the Labour Relations Act or a determination made in terms of the Wage Act, 1957 (Act 5 of 1957); and

(c) the court may order the owner or person in charge to grant 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; and

(ii) tend standing crops to which he or she is entitled until they are ready for harvesting, and then to harvest and remove them.

(2) The compensation contemplated in subsection (1) shall be determined by the court as being just and equitable, taking into account-

(a) the cost to the occupier of replacing such structures and improvements in the condition in which they were before the eviction;

(b) the value of materials which the occupier may remove;

(c) whether any materials referred to in paragraph (b) or contributions by the owner or person in charge were provided as part of the benefits provided to the occupier or his or her predecessors in return for any consideration; and

(d) if the occupier has not been given the opportunity to remove a crop, the value of the crop less the value of any contribution by the owner or person in charge to the planting and maintenance of the crop.

(3) No order for eviction made in terms of section 10 or 11 may be executed before the owner or person in charge has paid the compensation which is due in terms of subsection (1): Provided that a court may grant leave for eviction subject to satisfactory guarantees for such payment.

### **14 Restoration of residence and use of land and payment of damages**

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

(2) A person who-

(a) would have had a right to reside on land in terms of section 6 if the provisions of this Act had been in force on 4 February 1997; and

(b) was evicted for any reason or by any process between 4 February 1997 and the commencement of this Act, may institute proceedings in a court for an order in terms of subsection (3).

(3) In proceedings in terms of subsection (1) or (2) the court may, subject to the conditions that it may impose, make an order-

(a) for the restoration of residence on and use of land by the person concerned, on such terms as it deems just;

(b) for the repair, reconstruction or replacement of any building, structure, installation or thing that was peacefully occupied or used by the person immediately prior to his or her eviction, in so far as it was damaged, demolished or destroyed during or after such eviction;

(c) for the restoration of any services to which the person had a right in terms of section 6;

(d) for the payment of compensation contemplated in section 13;

(e) for the payment of damages, including but not limited to damages for suffering or inconvenience caused by the eviction; and

(f) for costs.

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

(a) the proceedings contemplated in subsection (1) shall be instituted within one year of the commencement of this Act; and

(b) the court shall in addition to any other factor 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.

### **15 Urgent proceedings for eviction**

(1) Notwithstanding any other provision of this Act, the owner or person in charge may make urgent application for the removal of any occupier from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that occupier 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 forthwith removed from the land;

(b) there is no other effective remedy available;

(c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the occupier 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 the final order is not granted.

(2) The owner or person in charge shall beforehand give reasonable notice of any application in terms of this section to the municipality in whose area of jurisdiction the land in question is situated, and to the head of the relevant provincial office of the Department of Land Affairs for his or her information.

[Sub-s. (2) added by s. 26 of Act 61 of 1998.]

## **CHAPTER V DISPUTE RESOLUTION AND COURTS (ss 16-23)**

### **16 Pending proceedings**

The provisions of sections 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15 shall apply to proceedings for eviction pending in any court at the commencement of this Act.

### **17 Choice of court**

(1) A party may, subject to the provisions of sections 19 and 20, institute proceedings in the magistrate's court within whose area of jurisdiction the land in question is situated, or the Land Claims Court.

(2) If all the parties to proceedings consent thereto, proceedings may be instituted in any division of the High Court within whose area of jurisdiction the land in question is situated.

(2A) A Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act 74 of 1996), may, in proceedings arising out of that Act -

(a) decide whether a person is an occupier as defined in section 1;

(b) make an order for eviction under this Act and shall have all powers necessary or reasonably incidental thereto;

(c) where it finds that a person has unlawfully obtained consent to reside on land under any of the circumstances mentioned in section 2 (2) (a) to (g) of the Special Investigating Units and Special Tribunals Act, 1996, exclude such person from the application of the provisions of this Act.

[Sub-s. (2A) added by s. 27 of Act 61 of 1998.]

(2B) A Special Investigating Unit established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act 74 of 1996), may investigate any matter relevant to the exercise by a Special Tribunal of the powers mentioned in subsection (2A).

[Sub-s. (2B) added by s. 27 of Act 61 of 1998.]

(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), may make rules to govern the procedure in the High Court and the magistrates' courts in terms of this Act.

(4) Until such time as rules of court for the magistrates' courts are made in terms of subsection (3), the rules of procedure applicable in civil actions and applications in a High Court shall apply *mutatis mutandis* in respect of any proceedings in a magistrate's court in terms of this Act.

## **18 Powers of court**

A court may, in addition to other powers set out in this Act-

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

## **19 Magistrates' courts**

(1) A magistrate's court-

- (a) shall have jurisdiction in respect of-
  - (i) proceedings for eviction or reinstatement; and
  - (ii) criminal proceedings in terms of this Act; and
- (b) shall be competent-
  - (i) to grant interdicts in terms of this Act; and
  - (ii) to issue declaratory orders as to the rights of a party in terms of this Act.

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

(3) Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the *Gazette*, shall be subject to automatic review by the Land Claims Court, which may-

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

[Sub-s. (3) amended by s. 28 of Act 61 of 1998 and by s. 11 (a) of Act 11 of 2000.]

(4) The provisions of subsection (3) shall not apply to a case in which an appeal has been noted by an occupier.

(5) Any order for eviction contemplated in subsection (3) shall be suspended pending the review thereof by the Land Claims Court.

[Sub-s. (5) added by s. 11 (b) of Act 11 of 2000.]

## **20 Land Claims Court**

(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-

- (a) to decide any constitutional matter in relation to this Act;
- (b) to grant interlocutory orders, declaratory orders and interdicts;

- (c) to review an act, omission or decision of any functionary acting or purporting to act in terms of this Act; and
- (d) to review an arbitration award in terms of the Arbitration Act, 1965 (Act 42 of 1965), in so far as it deals with any matter that may be heard by a court in terms of this Act.

(2) Subject to sections 17 (2) and 19 (1), the Land Claims Court shall have the powers set out in subsection (1) to the exclusion of any court contemplated in section 166 (c), (d) or (e) of the Constitution.

[Sub-s. (2) substituted by s. 12 of Act 11 of 2000.]

(3) If in any proceedings in a High Court at the date of the commencement of this Act that Court is required to interpret this Act, that Court shall stop the proceedings if no oral evidence has been led and refer the matter to the Land Claims Court.

[Sub-s. (3) substituted by s. 29 of Act 61 of 1998.]

(4) The President of the Land Claims Court may make rules -

- (a) to govern the procedure in the Land Claims Court in terms of this Act; and
- (b) to govern the procedure for the automatic review of orders for eviction in terms of section 19 (3).

[Sub-s. (4) substituted by s. 29 of Act 61 of 1998.]

## **21 Mediation**

(1) A party may request the Director-General to appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act.

(2) The Director-General may, on the conditions that he or she may determine, appoint a person referred to in subsection (1): Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the Director-General may determine.

(3) 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 services performed by him or her.

(4) 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.

## **22 Arbitration**

(1) If the parties to a dispute in terms of this Act refer the dispute to arbitration in terms of the Arbitration Act, 1965 (Act 42 of 1965), they may appoint as arbitrator a person from the panel of arbitrators established in terms of section 31 (1) of the Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996).

(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 services performed by him or her.

(3) If the parties appoint as arbitrator a person who is not on the panel of arbitrators referred to in subsection (1), the Director-General may approve the payment to such arbitrator of the remuneration and allowances referred to in subsection (2), on the conditions that the Director-General may determine.

## **23 Offences**

- (1) No person shall evict an occupier except on the authority of an order of a competent court.
- (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 a provision of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- (4) Any 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.
- (5) The provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall apply to a private prosecution in terms of this Act: Provided that if-
- (a) the person prosecuting privately does so through a person entitled to practise as an advocate or an attorney in the Republic;
  - (b) the person prosecuting privately has given written notice to the public prosecutor with jurisdiction that he or she intends to do so; and
  - (c) the public prosecutor has not, within 14 days of receipt of such notice, stated in writing that he or she intends to prosecute the alleged offence, then-
    - (i) the person prosecuting privately shall not be required to produce a certificate issued by the Attorney-General stating that he or she has refused to prosecute the accused;
    - (ii) the person prosecuting privately shall not be required to provide security for such action;
    - (iii) the accused shall be entitled to an order for costs against the person prosecuting privately, if-
      - (aa) the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal; and
      - (bb) the court finds that such prosecution was unfounded or vexatious; and
    - (iv) the Attorney-General shall be barred from prosecuting except with the leave of the court concerned.

## **CHAPTER VI MISCELLANEOUS PROVISIONS (ss 24-30)**

### **24 Subsequent owners**

- (1) The rights of an occupier shall, subject to the provisions of this Act, be binding on a successor in title of an owner or person in charge of the land concerned.
- (2) Consent contemplated in this Act given by the owner or person in charge of the land concerned shall be binding on his or her successor in title as if he or she or it had given it.

### **25 Legal status of agreements**

- (1) The waiver by an occupier of his or her rights in terms of this Act shall be void, unless it is permitted by this Act or incorporated in an order of a court.

(2) A court shall have regard to, but not be bound by, any agreement in so far as that agreement seeks to limit any of the rights of an occupier in terms of this Act.

(3) Notwithstanding the provisions of subsections (1) and (2), if an occupier vacates the land concerned freely and willingly, while being aware of his or her rights in terms of this Act, he or she shall not be entitled to institute proceedings for restoration in terms of section 14.

## **26 Expropriation Act**

(1) Without derogating from the powers that a Minister may exercise under the Expropriation Act, 1975 (Act 63 of 1975), the Minister may for the purposes of any development in terms of this Act, exercise equivalent powers to the powers that such other Minister may exercise under the Expropriation Act, 1975.

(2) Notwithstanding the provisions of the Expropriation Act, 1975, the owner of the land in question shall be given a hearing before any land is expropriated for a development in terms of this Act.

(3) In the event of expropriation, compensation shall be paid as prescribed by the Constitution, with due regard to the provisions of section 12 (3), (4) and (5) of the Expropriation Act, 1975.

(4) Any right in land which derives from the provisions of this Act will be capable of expropriation in accordance with the provisions of any applicable legislation.

## **27 Trespass Act, 1959**

Nothing in this Act shall affect the rights of an owner or person in charge in terms of the Trespass Act, 1959 (Act 6 of 1959).

## **28 Regulations and guidelines**

(1) The Minister may make regulations regarding-

(a) general conditions for the granting of subsidies in terms of section 4;

(b) the form and manner of service of notices in terms of this Act;

(c) any other matter required or permitted to be prescribed in terms of this Act;

(d) criteria for the recognition of persons, bodies or institutions in terms of sections 2 (3) and 4 (4); and

(e) generally, all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) The Minister may make different regulations for different areas in accordance with the circumstances in those areas.

(3) The Minister may by notice in the *Gazette*-

(a) issue guidelines in respect of the procedures to be followed in terms of this Act and to provide assistance to parties who may become involved in a dispute related to matters that fall within this Act; and

(b) amend or withdraw any guideline contemplated in paragraph (a).

## 29 Amendment of laws

(1) The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof.

(2) The provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 shall not apply to an occupier in respect of land which he or she is entitled to occupy or use in terms of this Act.

[Sub-s. (2) substituted by s. 11 (2) of Act 19 of 1998.]

## 30 Short title

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

### Schedule LAWS AMENDED

(Section 29)

No. and year of law	Short title	Extension of amendment
Act 6 of 1959	Trespass Act, 1959	1. Amendment of section 1 by the insertion after subsection (1) of the following subsection:
		'(1A) A person who is entitled to be on land in terms of the Extension of Security of Tenure Act, 1997, shall be deemed to have lawful reason to enter and be upon such land.'
		2. Amendment of section 2 by the insertion of the following subsection:
		'(2) A court which convicts any person under subsection (1) may make an order for the summary ejection of such person from the land concerned: Provided that an occupier who has a right of residence or right to use land in terms of the Extension of Security of Tenure Act, 1997, shall not be ejected in terms of this subsection from land in respect of which he or she has such a right.'
		3. Insertion of section 3A:
		'Application of Act 3A. This Act shall apply throughout the Republic.'

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