

# LAND REFORM (LABOUR TENANTS) ACT 3 OF 1996

[ASSENTED TO 12 MARCH 1996]

[DATE OF COMMENCEMENT: 22 MARCH 1996]

*(Afrikaans text signed by the President)*

## **as amended by**

Land Restitution and Reform Laws Amendment Act 78 of 1996  
Land Restitution and Reform Laws Amendment Act 63 of 1997  
Land Affairs General Amendment Act 61 of 1998  
Land Restitution and Reform Laws Amendment Act 18 of 1999

Land Affairs General Amendment Act 11 of 2000  
Land Affairs General Amendment Act 51 of 2001

## **also amended by**

Mineral and Petroleum Resources Development Act 28 of 2002  
[with effect from a date to be proclaimed]

## **Regulations under this Act**

LABOUR TENANCY ARBITRATION RULES

## **ACT**

**To provide for security of tenure of labour tenants and those persons occupying or using land as a result of their association with labour tenants; to provide for the acquisition of land and rights in land by labour tenants; and to provide for matters connected therewith.**

WHEREAS the present institution of labour tenancy in South Africa is the result of racially discriminatory laws and practices which have led to the systematic breach of human rights and denial of access to land;

WHEREAS it is desirable to ensure the adequate protection of labour tenants, who are persons who were disadvantaged by unfair discrimination, in order to promote their full and equal enjoyment of human rights and freedoms;

WHEREAS it is desirable to institute measures to assist labour tenants to obtain security of tenure and ownership of land;

AND WHEREAS it is desirable to ensure that labour tenants are not further prejudiced;

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

## **CHAPTER I INTRODUCTORY PROVISIONS (ss 1-2)**

### **1 Definitions**

In this Act, unless the context indicates otherwise-

**'affected land'** means land in respect of which an application has been lodged in terms of section 17 (1);

**'applicant'** means-

(a) a labour tenant, an associate or his or her successor who has lodged an application in terms of section 17 (1) ; and

[Para. (a) substituted by s. 1 of Act 51 of 2001.]

(b) for the purposes of the award of land or a right in land to an applicant by the Court, any other person nominated by the applicant and approved by the Court;

[Definition of 'applicant' substituted by s. 32 of Act 63 of 1997.]

**'associate'** means a family member of a labour tenant, and any other person who has been nominated in terms of section 3 (4) as the successor of such labour tenant, or who has been nominated in terms of section 4 (1) to provide labour in his or her stead;

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

**'Director-General'** means the Director-General of the Department of Land Affairs or an officer-

(a) of that Department who; or

(b) in the service of a provincial government, who with the consent of the Premier of that province,

has been designated by the said Director-General either generally or in respect of a particular case, or in cases of a particular nature;

**'eviction'** includes the deprivation of a right of occupation or use of land;

**'family member'** means a labour tenant's grandparent, parent, spouse (including a partner in a customary union, whether or not the union is registered), or dependant;

**'farm'** means a portion or portions of agricultural land as defined in the Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970);

**'farmworker'** means a person who is employed on a farm in terms of a contract of employment which provides that-

(a) in return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some other form of remuneration, and not predominantly in the right to occupy and use land; and

(b) he or she is obliged to perform his or her services personally;

**'grazing land'** means farm land which is used to meet the feed requirements of livestock, and which the owner has set aside for that purpose or which has been used for that purpose with the permission of the owner;

**'labour tenant'** means a person-

(a) who is residing or has the right to reside on a farm;

(b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and

(c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm, including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3 (4) and (5), but excluding a farmworker;

**'Minister'** means the Minister of Land Affairs;

**'owner'** means the owner, as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937), of a farm, and where it occurs in the definition of 'labour tenant', includes his or her successors and predecessors in title;

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

**'Registrar'** means the relevant registrar of deeds as contemplated in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937);

**'right in land'** means any real or personal right in land, including a right to share cropping or grazing land;

**'the rules'** means rules made by the President of the Court.

## 2 Limitation of rights

(1) The rights conferred by this Act shall be subject to the provisions of any law providing for the expropriation of land or rights in land.

(2) In the event of expropriation of land which is occupied or used by a labour tenant or his or her associate, such labour tenant or his or her successor in title shall be entitled to just and equitable compensation as prescribed in the Constitution for the resulting loss of rights in land.

(3) Nothing in this Act shall affect the rights of any person, other than an owner, who is entitled to mine any land in terms of the Minerals Act, 1991 (Act 50 of 1991), or who is the holder of mineral rights.

**[NB: Sub-s. (3) has been amended by the deletion of the reference to mineral rights by s. 110 of the Mineral and Petroleum Resources Development Act 28 of 2002, a provision which will be put into operation by proclamation.]**

(4) A labour tenant shall be deemed to be an owner of land for the purposes of section 42 of the Minerals Act, 1991.

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

[Sub-s. (5) added by s. 33 of Act 63 of 1997.]

(6) For the purpose of establishing whether a person is a labour tenant, a court shall have regard to the combined effect and substance of all agreements entered into between the person who avers that he or she is a labour tenant and his or her parent or grandparent, and the owner or lessee of the land concerned.

[Sub-s. (6) added by s. 33 of Act 63 of 1997.]

## CHAPTER II RIGHT TO OCCUPY AND USE LAND (ss 3-15)

### 3 Right to occupy and use land

(1) Notwithstanding the provisions of any other law, but subject to the provisions of subsection (2), a person who was a labour tenant on 2 June 1995 shall have the right with his or her family members-

(a) to occupy and use that part of the farm in question which he or she or his or her associate was using and occupying on that date;

(b) to occupy and use that part of the farm in question the right to occupation and use of which is restored to him or her in terms of this Act or any other law.

[Sub-s. (1) substituted by s. 25 of Act 78 of 1996.]

(2) The right of a labour tenant to occupy and to use a part of a farm as contemplated in subsection (1) together with his or her family members may only be terminated in accordance with the provisions of this Act, and shall terminate-

(a) subject to the provisions of subsections (3) to (7), by the waiver of his or her rights;

(b) subject to the provisions of subsections (4) and (5), on his or her death;

(c) subject to the provisions of section 10, on his or her eviction; and

(d) on acquisition by the labour tenant of ownership or other rights to land or compensation in terms of Chapter III.

(3) A labour tenant shall be deemed to have waived his or her rights if he or she with the intention to terminate the labour tenant agreement-

(a) leaves the farm voluntarily; or

(b) appoints a person as his or her successor.

(4) If a labour tenant dies, becomes mentally ill or is unable to manage his or her affairs due to another disability or leaves the farm voluntarily without appointing a successor, his or her family may appoint a person as his or her successor and shall, within 90 days after being called upon in writing to do so by the owner, inform the owner of the person so appointed.

(5) A person who is not a family member of a labour tenant, may only be appointed as the successor to such labour tenant if he or she is acceptable to the owner, who may not unreasonably refuse such appointment.

(6) A labour tenant may, subject to subsection (7), waive his or her rights or a part of his or her rights if such waiver is contained in a written agreement signed by both the owner and the labour tenant.

(7) The terms of an agreement whereunder a labour tenant waives his or her rights or part of his or her rights in terms of subsection (6) shall not come into operation unless-

(a) the Director-General has certified that he or she is satisfied that the labour tenant 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) such terms are incorporated in an order of the Court or of an arbitrator appointed in terms of section 19.

#### **4 Provision of labour**

(1) A labour tenant may nominate another person, acceptable to the owner or the lessee of the farm in question, to provide labour in his or her stead.

(2) The owner or lessee shall not unreasonably refuse to accept the nomination of a person referred to in subsection (1).

(3) The conditions of service of a person who is obliged to provide labour to an owner or lessee in terms of this Act, may not be generally less favourable than the conditions applicable to farm workers in terms of the Basic Conditions of Employment Act, 1983 (Act 3 of 1983).

## ***Eviction of labour tenants and other persons***

### **5 Prohibition on eviction**

Subject to the provisions of section 13, a labour tenant or his or her associate may only be evicted in terms of an order of the Court issued under this Act.

[S. 5 substituted by s. 26 of Act 78 of 1996.]

### **6 Application for eviction**

(1) No person other than the owner may institute proceedings for the eviction of a labour tenant or his or her associate, unless the owner gives evidence under oath that he or she supports the institution of those proceedings.

(2) An owner shall not be under any duty, whether by reason of an agreement or for any other reason, to support the institution of proceedings referred to in subsection (1) by another person, and any provision of any agreement to the contrary shall be void.

### **7 Order for eviction**

(1) The Court shall have the power to make an order for the eviction of a labour tenant or his or her associate.

(2) No order for eviction in terms of section 5 shall be made unless it is just and equitable and-

(a) subject to the provisions of section 9 (1), the labour tenant has, contrary to the agreement between the parties, refused or failed to provide labour to the owner or lessee and, despite one calendar month's written notice having been given to him or her, still refuses or fails to provide such labour; or

(b) the labour tenant or his or her associate has committed such a material breach of the relationship between the labour tenant or associate and the owner or lessee, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship.

(3) If proceedings are instituted for the eviction of a labour tenant in terms of this section, the person instituting those proceedings may also ask for an order for the eviction of the associates of the labour tenant.

(4) If the Court is asked to make an order in terms of subsection (3), it shall make such order as it deems just and equitable under the circumstances.

### **8 Relocation of labour tenant for operational requirements of owner**

(1) An owner who requires the land used or occupied by a labour tenant or his or her associate for his or her own agricultural activities or for the purposes of any development which, in the opinion of the Court, is of public benefit, may institute proceedings in the Court for an order for the relocation of the labour tenant or associate.

(2) The Court shall not grant an order for relocation unless it is satisfied that greater hardship will be done to the owner or lessee if a labour tenant and his or her associates are not relocated, than will be done to the labour tenant and associates if they are relocated.

(3) On making an order for relocation the Court shall order the owner to pay to the labour tenant and his or her associates compensation to ensure that they are not unfairly prejudiced by any such relocation.

(4) No order for relocation made in terms of this section may be executed before the owner has paid the compensation which is due in terms of subsection (3).

(5) If the owner has not, within one year after an order for relocation was carried out, used the land in question for the proposed agricultural activities or development submitted to the Court, the labour tenant or his or her associate may institute proceedings in the Court for the reinstatement of his or her right to occupy and use that land.

(6) The Court may, on the hearing of proceedings instituted in terms of subsection (5), make such order as it deems just and equitable.

### **9 Limitations on eviction**

(1) A labour tenant who-

(a) has attained the age of 60 years, or as a result of disability is unable personally to provide labour to the owner or lessee; and

[Para. (a) substituted by s. 2 of Act 51 of 2001.]

(b) has not nominated a person to provide labour in his or her stead in terms of section 4, shall not be evicted on the grounds referred to in section 7 (2) (a).

(2) On the death of a labour tenant who has retained the right to occupy the farm in terms of the provisions of subsection (1), all his or her associates may be given 12 calendar months' notice to leave the farm.

(3) If the rights of any owner are unfairly prejudiced by the operation of this section, he or she may apply to the Court for equitable relief and the Court may make such order as it deems just and equitable under the circumstances.

### **10 Effect of order for eviction**

(1) If the Court makes an order for eviction in terms of section 7 -

(a) the Court shall order the owner to pay compensation to the extent that it is just and equitable; and

(b) the Court may order the owner to give the labour tenant a fair opportunity to-

(i) demolish such structures and improvements as were erected by the labour tenant and his or her associates or predecessors, and to remove materials so salvaged; and

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

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

(a) the replacement value of such structures and improvements;

(b) the value of materials which the labour tenant may remove;

(c) the value of materials supplied by the owner or his or her predecessors for the erection of such structures and improvements;

(d) if the labour tenant has not been given the opportunity to remove the crop, the value of the crop; and

(e) the circumstances which gave rise to the eviction, including the conduct of the parties.

(3) No order for eviction made in terms of section 7 may be executed before the owner has paid the compensation which is due in terms of subsection (1).

## **11 Notice of intended eviction**

- (1) An owner who intends to evict a person in terms of the provisions of this Chapter, shall give the labour tenant and the Director-General not less than two calendar months' written notice of his or her intention to obtain an order for eviction.
- (2) The notice referred to in subsection (1) shall, in addition to any prescribed particulars, also contain the grounds on which such intended eviction is based.
- (3) The Director-General shall during the period referred to in subsection (1) convene a meeting between the labour tenant and the owner in order to attempt to mediate a settlement of the dispute between the labour tenant and owner.

## **12 Reinstatement**

- (1) A person who-
- (a) in terms of section 3 would have had a right to occupy and use land if the provisions of this Act had been in force on 2 June 1995; and
  - (b) between 2 June 1995 and the commencement of this Act vacated a farm or was for any reason or by any process evicted, may institute proceedings in the Court for an order of reinstatement of such rights.
- (2) The Court may, subject to such conditions as the Court may impose, make an order-
- (a) that a person referred to in subsection (1) be regarded as a labour tenant or his or her associate for the purposes of this Act;
  - (b) for the reinstatement of a labour tenant or his or her associate on such terms as it deems just;
  - (c) for the payment of compensation, having regard to the provisions of section 10; and
  - (d) for costs.
- (3) Where the person referred to in subsection (1) 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;
  - (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.

## **13 Proceedings in other courts**

- (1) The provisions of sections 7 to 10 shall apply to proceedings pending in any court at the commencement of this Act.
- (1A) With the exception of issues concerning the definition of 'occupier' in section 1 (1) of the Extension of Security of Tenure Act, 1997 (Act 62 of 1997), if an issue arises in a case in a magistrate's court or a High Court which requires that court to interpret or apply this Act and-
- (a) no oral evidence has been led, such court shall transfer the case to the Court and no further steps may be taken in the case in such court;
  - (b) any oral evidence has been led, such court shall decide the matter in accordance with the provisions of this Act.

[Sub-s. (1A) amended by s. 6 of Act 11 of 2000.]

(2) Any decision or order made by a magistrate's court in proceedings referred to in subsection (1) or (1A), shall in its entirety be subject to appeal to the Court if any of the grounds of appeal relates to the application or interpretation of this Act in such decision or order.

(3) The Court shall have exclusive jurisdiction to hear any appeal contemplated in subsection (2), notwithstanding the provisions of any other law to the contrary.

[S. 13 substituted by s. 34 of Act 63 of 1997.]

#### **14 Eviction pending application for acquisition of rights in land**

No labour tenant may be evicted while an application by him or her in terms of Chapter III is pending: Provided that the Court may order eviction if it is satisfied that special circumstances exist which make it fair, just and equitable to do so, taking all the circumstances into account.

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

Notwithstanding the other provisions of this Chapter, an owner or lessee may make urgent application for the removal of any person from the farm 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 damage to the owner or lessee or his or her property if the person concerned is not removed from the farm;

(b) there is no other effective remedy available to the owner or lessee; and

(c) the likely harm to the owner or lessee if an order for removal is not granted, exceeds the likely harm to the person against whom the order is sought, if an order for removal is granted;

(d) adequate arrangements have been made for the reinstatement of any person so removed, if the final order is not granted.

[Para. (d) added by s. 3 of Act 51 of 2001.]

#### **15A Offences**

(1) No person shall remove or evict a labour tenant or an associate 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 a 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 prosecutor with jurisdiction that he or she intends to do so; and

(c) the 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 Director of Public Prosecutions with jurisdiction in respect of the area of the court concerned, 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 Director of Public Prosecutions contemplated in paragraph (i) shall be barred from prosecuting except with the leave of the court concerned.

[S. 15A inserted by s. 4 of Act 51 of 2001.]

### **CHAPTER III**

#### **ACQUISITION OF OWNERSHIP OR OTHER RIGHTS IN LAND BY LABOUR TENANT (ss 16-28)**

##### **16 Right to acquire land**

(1) Subject to the provisions of this Act, a labour tenant or his or her successor may apply for an award of-

(a) the land which he or she is entitled to occupy or use in terms of section 3;

(b) the land which he or she or his or her family occupied or used during a period of five years immediately prior to the commencement of this Act, and of which he or she or his or her family was deprived contrary to the terms of an agreement between the parties;

(c) rights in land elsewhere on the farm or in the vicinity which may have been proposed by the owner of the farm; and

(d) such servitudes of right of access to water, rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which he or she enjoys or has previously enjoyed as a labour tenant,

or such other compensatory land or rights in land and servitudes as he or she may accept in terms of section 18

(5): Provided that the right to apply to be awarded such land, rights in land and servitudes shall lapse if no application is lodged with the Director-General in terms of section 17 on or before 31 March 2001.

[Sub-s. (1) amended by s. 7 of Act 11 of 2000.]

(2) The terms of an agreement whereunder a labour tenant waives the rights conferred on him or her by this section shall not come into operation unless-

(a) the Director-General has certified that he or she is satisfied that the labour tenant 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) such terms are incorporated in an order of the Court or an arbitrator appointed in terms of section 19.

## 17 Notice of application and initial procedure

(1) An application for the acquisition of land and servitudes referred to in section 16 shall be lodged with the Director-General.

(2) On receiving an application in terms of subsection (1), the Director-General shall-

(a) forthwith give notice of receipt of the application to the owner of the land and to the holder of any other registered right in the land in question;

(b) in the notice to the owner, draw his or her attention to the contents of this section and section 18;

(c) cause a notice of the application to be published in the *Gazette*; and

(d) call upon the owner by written request, to furnish him or her within 30 days-

(i) with the names and addresses of the holders of all unregistered rights in the land in question, together with a copy of any document in which such rights are contained, or if such rights are not contained in any document, full particulars thereof;

(ii) with any documents or information in respect of the land in question and the rights in such land as the Director-General may reasonably require.

(3) A notice in terms of subsection (2) (a) or (d), may be given by way of registered mail or through service in the manner provided for the service of summons in the Rules of Court made in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944), read with section 6 (3) of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985).

(4) The owner of affected land shall within one calendar month of receipt of the notice referred to in subsection (2) (a), inform the Director-General in writing-

(a) whether he or she admits or denies that the applicant is a labour tenant within the meaning of this Act; and

(b) if he or she denies that the applicant is a labour tenant, the grounds on which he or she does so.

[Sub-s. (4) amended by s. 27 of Act 78 of 1996.]

(5) If the owner fails to inform the Director-General within the period referred to in subsection (4) that he or she denies that the applicant is a labour tenant, the applicant shall be presumed to be a labour tenant, unless the contrary is proved.

[Sub-s. (5) substituted by s. 35 of Act 63 of 1997.]

(6) If the owner does not inform the Director-General within the period referred to in subsection (4) that he or she admits that the applicant is a labour tenant, the Director-General shall, at the request of either party, refer the application to the Court.

(7) Any person whose rights are affected by the application shall have the right to participate in the proceedings before the arbitrator and the Court, in the manner provided in the rules.

(8) Should the owner, without good reason, fail to give to the Director-General any information or documents requested in terms of subsection (2) (d) within 30 days of receipt of a written request-

(a) the Court may order him or her to do so;

(b) the Court may make an order for costs against him or her; and

(c) he or she shall be liable for any loss which the Director-General or the applicant or any person may suffer as result of such failure, and the Court may, on application by the affected person concerned, give judgement against him or her for such loss.

## **18 Resolution of claim by agreement**

(1) An owner of affected land, who informs the Director-General in terms of section 17 (4) that he or she admits that the applicant is a labour tenant may, within one calendar month after the date of such admission, submit to the Director-General proposals as to an equitable means of disposing of the application, including but not limited to the acquisition by the labour tenant of rights in land elsewhere on that farm or in the vicinity, or payment to the labour tenant of compensation in lieu of the acquisition of such land.

(2) The Director-General shall forthwith give notice of any proposal referred to in subsection (1), and a copy thereof, to the applicant.

(3) The Director-General may appoint a mediator to assist the applicant and the owner to discuss any such proposal and to arrive at an agreed resolution of the application.

(4) If an agreed resolution is not reached within one calendar month after receipt by the applicant of notice of the proposal, the applicant may continue with his or her original application: Provided that the applicant shall not be obliged to wait for the expiration of a calendar month if the proposal was submitted to the Director-General later than the period referred to in subsection (1).

(5) No agreement for the settlement of any application shall be of any effect unless the Director-General has certified that he or she is satisfied that it is reasonable and equitable, or unless it is incorporated in an order of the Court in terms of this Act.

(6) The Director-General may submit any agreement certified by him or her in terms of subsection (5), to the Court.

[Sub-s. (6) substituted by s. 36 of Act 63 of 1997.]

(7) If-

(a) the owner does not submit proposals in terms of subsection (1); or

(b) the applicant rejects a proposal in terms of subsection (4); or

(c) the parties reach an agreement but the Director-General is not satisfied that it is reasonable and equitable,

the Director-General shall, at the request of any party, refer the application to the Court and inform the other parties that he or she has done so.

(8) The parties may, within 30 days of the referral of the application to the Court, make a joint recommendation to the Court as to who should be appointed as the arbitrator.

(9) Any nomination referred to in subsection (8) shall be in writing, signed by all the parties, and submitted to the President of the Court.

[Sub-s. (9) substituted by s. 28 of Act 78 of 1996.]

## **19 Hearing of application by Court or referral to arbitration**

(1) On referral of an application by the Director-General, the President of the Court or a judge of the Court nominated by him or her may direct either that the application be heard by the Court or that it be referred to arbitration.

(2) If the matter is referred to arbitration, the President of the Court or a judge of the Court nominated by him or her, shall appoint an arbitrator to hear the application and may give such directions as he or she considers appropriate as to the procedure to be followed.

(3) The President of the Court or the judge nominated by him or her may appoint as arbitrator-

(a) a person nominated by the parties in terms of section 18 (8); or

(b) a person on the panel of arbitrators referred to in section 31,

but shall not be obliged to appoint a person nominated by the parties.

[S. 19 amended by s. 29 of Act 78 of 1996 and substituted by s. 37 of Act 63 of 1997.]

## **20 Arbitration proceedings**

(1) The President of the Court may make rules to govern the procedure to be followed in arbitrations.

(2) The rules referred to in subsection (1) shall be published in the *Gazette*.

(3) Notwithstanding anything to the contrary in this Act or in the rules referred to in subsection (1), the arbitrator may-

(a) allow the allegations contained in any form or document to be amended;

(b) if it appears that any party has been incorrectly or defectively cited, correct such error or defect, or order the substitution of a party;

(c) join any other person on such conditions as the arbitrator deems fit;

(d) make an order consolidating the disputes pending in separate proceedings;

(e) admit any evidence which he or she considers cogent and relevant to the matter being heard by him or her, whether or not such evidence would be admissible in a court of law;

(f) call as a witness any person who in his or her opinion may be able to give evidence which will be relevant to the decision on any matter;

(g) put questions to the parties or their witnesses on any matter relevant to the application, make such enquiries as he or she considers necessary or expedient, inspect any thing or any property to the extent that he or she deems necessary, and in any other reasonable manner act inquisitorially;

(h) rely on his or her own expert knowledge or experience in any relevant field;

(i) propose compromise settlements or agreements for the disposal of the whole or portion of the issues in dispute; and

(j) make such interim decisions or awards as he or she considers just:

Provided that the rules of natural justice shall at all times be observed.

(4) Any party may be represented by a person of his or her choice at the arbitration proceedings.

(5) The arbitrator shall keep such record of the proceedings as he or she considers necessary and desirable: Provided that an arbitrator shall not be required to have the proceedings recorded on tape.

(6) The arbitrator shall make a determination and submit that determination and a written report to the Court.

(7) The parties in any proceedings before the arbitrator shall be furnished with a copy of the determination and report referred to in subsection (6).

(8) A report from the arbitrator shall on its production constitute rebuttable evidence of the facts established by him or her.

## **21 Proceedings before Court**

(1) The Court may make the determination of an arbitrator referred to in section 20 (6), an order of the Court with or without such technical variations as may be appropriate.

(2) If the Court proposes to make any technical variation to the determination submitted by any arbitrator, it shall give the parties to the proceedings notice of such intention, and before making such variation, it shall receive and consider any comments from the parties, in the manner provided in the rules.

(3) If the Director-General submits to the Court an agreement in terms of section 18 (6)-

(a) the Court may make such agreement an order of the Court with or without such technical variations as may be appropriate;

(b) and, if the Court proposes to make any technical variations to the agreement, it shall give the parties to the agreement notice of such intention, and before making such variation, it shall receive and consider any comments from the parties, in the manner provided in the rules.

## **22 Powers of arbitrator and Court**

(1) An arbitrator and the Court may dismiss an application referred to in section 16: Provided that the arbitrator and the Court shall not dismiss an application if it is found by the arbitrator or the Court, or if it is not in dispute, that the applicant is a labour tenant.

(2) The Court may order that land or a right in land, held by an owner of affected land, be awarded to the applicant.

[Sub-s. (2) amended by s. 38 (a) of Act 63 of 1997.]

(3) The Court may, instead of or in addition to making an order for the award of land or a right in land held by the owner of affected land, order that land or a right in land held by another person (including the State) who is willing to have such land or right in land awarded to the applicant, be awarded to such applicant.

[Sub-s. (3) amended by s. 38 (a) and (b) of Act 63 of 1997.]

(4) The Court may make an order or award, and an arbitrator may make a determination, on the following matters:

(a) Whether the applicant is a labour tenant, if that is in dispute;

(b) the nature, location and extent of any land or right in land which is to be awarded to an applicant, which may include undivided shares in grazing land;

(c) such servitudes of access to water or rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which the applicant or the owner of the affected land enjoys or has previously enjoyed;

(d) the compensation to be paid by the applicant to the owner of affected land or to a person other than the owner whose rights are affected by the determination, order or award;

(e) the manner and period of payment of compensation;

(f) compensation which shall be paid to the applicant in lieu of the award of land or a right in land; and

[Para. (f) amended by s. 38 (b) of Act 63 of 1997.]

(g) other matters which, in the opinion of the arbitrator or the Court, need to be regulated by an order or award of the Court, or by a determination of an arbitrator.

(5) In determining the nature of the order which is to be made the Court shall have regard to-

(a) the desirability of assisting labour tenants to establish themselves on farms on a viable and sustainable basis;

(b) the achievement of the goals of this Act;

(c) the requirements of equity and justice;

(d) the willingness of the owner of affected land and the applicant to make a contribution, which is reasonable and within their respective capacities, to the settlement of the application in question; and

(e) the report and any determination made by an arbitrator appointed in terms of section 19 (1) (a).

### **23 Owner's right to compensation**

(1) The owner of affected land or any other person whose rights are affected shall be entitled to just and equitable compensation as prescribed by the Constitution for the acquisition by the applicant of land or a right in land.

(2) The amount of compensation shall, failing agreement, be determined by the arbitrator or the Court.

(3) Compensation shall, failing agreement, be paid in such manner and within such period as the arbitrator or the Court may determine as just and equitable.

### **24 Failure to pay compensation**

(1) If the applicant does not make any payment due in terms of section 23, the owner of the affected land may give the applicant written notice to make such payment.

(2) If the applicant fails to make the payment within three calendar months of receipt of the notice referred to in subsection (1), the owner of the affected land may apply to the Court for an order to declare the previous order of the arbitrator or the Court null and void.

(3) The Court may, after hearing an application in terms of subsection (2), make such order as it deems just and equitable: Provided that the previous order made by the arbitrator or the Court shall not be declared null and void unless the owner of the affected land and any other person who has received compensation from the applicant in respect of the affected land has paid or has given security for the payment of the amounts which he or she has received from the applicant and the Minister, respectively.

### **25 Land subject to mortgage bonds or deeds of sale**

(1) If any land awarded under this Chapter is encumbered by a registered mortgage bond or subject to a deed of sale, the applicant shall not pay to the owner of the affected land any part of the compensation money except on terms agreed to by the owner and the mortgagee or buyer, or in accordance with an order of the Court in terms of subsection (2).

(2) If the owner of the affected land and the mortgagee or buyer fail to conclude an agreement in terms of subsection (1), the Court may within a reasonable time make an order giving directions as to the payment of the compensation money.

(3) An order in terms of subsection (2) may be made by the Court of its own accord after affording the interested parties a hearing or on application by-

- (a) the applicant referred to in subsection (1);
- (b) the owner of the affected land;
- (c) the mortgagee;
- (d) the buyer; or
- (e) the Department of Land Affairs.

[S. 25 substituted by s. 39 of Act 63 of 1997.]

### **26 Advances or subsidies**

(1) The Minister shall, from moneys appropriated by Parliament for that purpose, grant advances or subsidies-

- (a) for the acquisition of land or rights in land by labour tenants; and
- (b) for the development of land occupied or to be occupied by labour tenants.

(2) The advances or subsidies referred to in subsection (1) may be applied to the acquisition by labour tenants of affected land, or any other land, and of any right in such land.

### **27 Application for advance or subsidy**

(1) A labour tenant, who has a right to acquire land in terms of this Act, may apply to the Minister for an advance or subsidy referred to in section 26.

(2) In determining the amount and conditions of any advance or subsidy to be granted in terms of subsection (1), the Minister shall have regard *inter alia* to the desirability of assisting labour tenants to purchase land in accordance with any order granted by the Court.

(3) Advances or subsidies referred to in section 26 may also, subject to such conditions as the Minister may determine, be applied to the acquisition of land or rights in land by former labour tenants, associates and persons who have been required to leave a farm in accordance with the provisions of section 9 (2) : Provided that such applications were lodged prior to 31 March 2001.

[Sub-s. (3) substituted by s. 5 of Act 51 of 2001.]

### **28 Notes of orders of Court**

(1) After all compensation due in terms of section 23 (2) has been paid by the applicant, the order of the Court referred to in section 21 (1) or (3) (a) may be lodged with the Registrar in the prescribed manner to be noted in his or her registers in respect of the land unit of which the affected land forms part, and in respect of all land units against and in favour of which servitudes have been awarded.

(2) Any land awarded to the applicant and real rights in respect of any servitudes awarded to the applicant shall vest in the applicant released from all mortgage bonds when the order of the Court is noted against the registers of the land concerned as referred to in subsection (1).

[Sub-s. (2) substituted by s. 40 of Act 63 of 1997.]

(3) Should the owner or any person holding a right in affected land sell or otherwise dispose of such land or his or her right in such land before any proceedings pending in the Court have been finalised and before any order which the Court may have made has been noted in the registers of the Registrar in terms of subsection (1), all his or her rights and obligations in respect of such proceedings and in respect of any order of the Court shall devolve upon his or her successors in title.

## **CHAPTER IV THE COURT AND ARBITRATORS (ss 29-35)**

### **29 Jurisdiction**

The 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 all such powers in relation to matters falling within its jurisdiction as are possessed by a provincial division of the Supreme Court having jurisdiction in civil proceedings at the place where the affected land is situated, including the powers of such a division in relation to any contempt of the Court.

### **30 Application of provisions of Restitution of Land Rights Act**

(1) The provisions of sections 22, 24, 25, 28, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28J, 28K, 28L, 28M, 28N, 29, 30, 31, 32, 37 and 38 of the Restitution of Land Rights Act, 1994 (Act 22 of 1994), shall apply *mutatis mutandis* to the performance by the Court of its functions in terms of this Act: Provided that the reference to the Commission on Restitution of Land Rights in section 32 (3) of the said Act shall for the purposes of this Act be deemed to be a reference to the Director-General.

[Sub-s. (1) substituted by s. 30 of Act 78 of 1996.]

(2) Any party may appear before the Court either in person or represented by an advocate or attorney.

### **31 Panel of arbitrators**

(1) The Minister shall in consultation with the Minister of Justice compile a panel of persons from whom arbitrators shall be appointed in terms of section 19 (3) (b).

[Sub-s. (1) substituted by s. 41 of Act 63 of 1997.]

(2) An arbitrator shall be a person who, by virtue of his or her training or experience, has skills and knowledge relevant to land matters and the resolution of disputes.

[Sub-s. (2) substituted by s. 41 of Act 63 of 1997.]

(3) An arbitrator who is not in the full-time employ of the State shall, from moneys appropriated by Parliament for that purpose, be paid such remuneration and allowances for the services performed by him or her as may be determined by the Minister in consultation with the Minister of Finance.

### **32 Powers of review**

The Court shall have the same powers as the Supreme Court to review an act, omission or decision of any functionary acting in terms of this Act or purporting to act in terms of this Act or of any court in respect of proceedings contemplated in section 13 or of any arbitrator in respect of proceedings taking place before him or her in terms of section 33 (3), and shall exercise such powers to the exclusion of the provincial and local divisions of the Supreme Court.

### **33 Additional powers of arbitrator and Court**

(1) An arbitrator or the Court may, in addition to the power to make other orders in terms of this Act-

(a) order that the land and servitudes contemplated in section 16 shall be subject to indigenous law and custom;

(b) order that land, used commonly or jointly by the applicant, the owner and any other person, be registered in undivided shares in the name of the owner, the labour tenant and other persons specified by the arbitrator or the Court;

(c) determine conditions which must be fulfilled before land may be registered in the name of a labour tenant;

(d) if a labour tenant is required to make any payment before the land is registered in his or her name, determine the time for and method of such payment;

(e) direct how the orders of the arbitrator or the Court shall be carried out, including the setting of time limits for the implementation of such orders;

(eA) determine, prescribe or amend the terms on which a labour tenant occupies or uses land;

[Para. (eA) inserted by s. 13 of Act 18 of 1999.]

(eB) in proceedings for the eviction of a person averred to be a labour tenant where it is not proved that such person is a labour tenant, make such order as it deems just.

[Para. (eB) inserted by s. 8 of Act 11 of 2000.]

(f) make such orders for costs as it deems just.

(2) The Court shall have jurisdiction and the necessary or reasonably incidental powers to determine any justiciable dispute which arises from the provisions of this Act.

(2A) At the instance of any interested person, including a person who avers that he or she is a labour tenant, irrespective as to whether or not such person has lodged an application in terms of section 17, the Court may determine whether a person is a labour tenant.

[Sub-s. (2A) inserted by s. 5 of Act 61 of 1998.]

(3) The President of the Court or a judge of the Court nominated by him or her may determine that proceedings for the eviction of any person which have been instituted in or transferred to the Court shall take place before an arbitrator appointed by him or her.

[Sub-s. (3) substituted by s. 42 of Act 63 of 1997.]

(4) If the President of the Court or a judge of the Court makes a determination in terms of subsection (3) the arbitrator so appointed shall have all of the powers of the Court in relation to those proceedings.

(5) Any decision, order or determination made by an arbitrator in terms of this Act shall be subject to appeal to the Court in the manner provided in the rules.

### **34 Application to Court for further directives or orders**

A party who is of the opinion that an order of an arbitrator or the Court has not been fully or timeously complied with, may make application to the Court for the issue of further directives or orders.

### **35 Effect of order of Court**

For the purposes of the Deeds Registries Act, 1937 (Act 47 of 1937), an order of the Court shall have the same force as an order of the Supreme Court.

[S. 35 substituted by s. 31 of Act 78 of 1996.]

## **CHAPTER V MISCELLANEOUS PROVISIONS (ss 36-43)**

### **36 Mediation**

(1) The Director-General may appoint one or more persons with expertise in relation to dispute resolution to facilitate meetings of interested parties, and to attempt to mediate and settle a dispute: Provided that the parties may at any time during the course of mediation or negotiation, by agreement, appoint another person to mediate the dispute.

(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.

### **37 Provision of technical information to parties**

The Director-General shall take reasonable steps to ensure that, at the request of interested parties to applications lodged or to be lodged in terms of section 17 (1), cadastral and other technical information is made available.

### **38 Deeds registration**

(1) As soon as possible after an order of the Court has been noted by the Registrar in his or her registers in respect of the land units concerned, the Director-General shall-

(a) cause any diagrams necessary for the registration of a deed of transfer of the awarded land and the registration of a notarial deed of the awarded servitudes to be prepared and approved by the relevant Surveyor-General;

(b) cause a deed of transfer of any land awarded to the applicant to be registered in terms of section 31 of the Deeds Registries Act, 1937 (Act 47 of 1937), which section shall *mutatis mutandis* apply: Provided that-

(i) all references to "transferee" shall be deemed to be references to the applicant;

(ii) all references to "notice of expropriation" shall be deemed to be references to the relevant order of the Court containing the award;

(iii) the Director-General may perform all functions and sign all documents required in terms of section 32 of the Deeds Registries Act to achieve the registration of a deed of transfer of the land on behalf of the applicant;

(c) cause a deed of cession of any awarded servitude to be registered in favour of the applicant in terms of section 32 of the Deed Registries Act, 1937, which section shall *mutatia mutandis* apply, provided that-

(i) all references to "cessionary" shall be deemed to be references to the applicant;

(ii) all references to "notice of expropriation" shall be deemed to be references to the relevant order of the Court containing the award;

(iii) the Director-General may perform all functions and sign all documents required in terms of section 32 of the Deeds Registries Act to achieve registration of the servitude on behalf of the applicant;

(2) The Minister may direct that any 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 stamp duty contemplated in subsection (2) shall be paid in respect of a particular transaction under this Act.

[S. 38 substituted by s. 43 of Act 63 of 1997.]

### **38A Transfer duty not payable**

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

[S. 38A inserted by s. 44 of Act 63 of 1997.]

### **39 Attachment of or other prejudice to right to claim right in land**

The right of a labour tenant to apply for an award of land or a right in land in terms of this Act-

(a) shall not be capable of being attached in terms of an order of any court or in terms of section 55 of the Land Bank Act, 1944 (Act 13 of 1944);

(b) shall not be affected by an agreement entered into in terms of section 38 of the Agricultural Credit Act, 1966 (Act 28 of 1966); and

(c) shall not be regarded as an asset in terms of the Insolvency Act, 1936 (Act 24 of 1936).

[S. 39 amended by s. 32 of Act 78 of 1996.]

### **40 Non-application of certain laws**

If the Court or an arbitrator orders, or if the Director-General certifies in terms of section 18 (5), that any land or right in land or servitude be awarded to an applicant, the land in question shall not be subject to any law regulating the subdivision of land.

[S. 40 substituted by s. 45 of Act 63 of 1997 and by s. 9 of Act 11 of 2000.]

### **41 Regulations**

The Minister may make regulations regarding-

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

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

#### **42 Delegation of powers**

(1) The Minister may, either in general or in a particular case or in cases of a particular nature, delegate any power conferred upon him or her by or under this Act, except the powers conferred upon him or her by section 41, to any officer of the Department of Land Affairs.

(2) A delegation under subsection (1) shall not prevent the Minister from exercising the power himself or herself.

#### **43 Short title**

This Act shall be called the Land Reform (Labour Tenants) Act, 1996.

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