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PRESIDENT'S OFFICE

No. 1057. 26 June 1996

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

No. 31 of 1996: Interim Protection of Informal Land Rights Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1057. 26 Junie 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 31 van 1996: Wet op die Tussentydse Beskerming van Informele Grondregte, 1996.

ACT

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

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

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

Definitions

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

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

(ii) "community" means any group or portion of a group of persons whose rights to land are derived from shared rules determining access to land held in common by such group; (i)

(iii) "informal right to land" means—

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

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

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

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

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

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

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

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

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

but does not include—

(e) any right or interest of a tenant, labour tenant, sharecropper or employee if such right or interest is purely of a contractual nature; and

(f) any right or interest based purely on temporary permission granted by the owner or lawful occupier of the land in question, on the basis that such permission may at any time be withdrawn by such owner or lawful occupier; (ii)

WET

Om voorsiening te maak vir die tydelike beskerming van sekere regte en belange in grond wat nie andersins behoorlik deur wet beskerm word nie; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die President geteken.)
(Goedgekeur op 21 Junie 1996.)

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

Woordomskrywing

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

(i) "gemeenskap" enige groep persone of enige gedeelte van 'n groep persone wie se regte tot grond spruit uit gedeelde reëls wat toegang bepaal tot grond wat gemeenskaplik deur sodanige groep gehou word; (ii)

(ii) "informele reg tot grond"—

(a) die gebruik van, okkupasie van, of toegang tot grond ingevolge—

(i) 'n stam-, gewoonte- of inheemse reg of gebruik van 'n stam;

(ii) die gewoonte, gebruik of administratiewe praktyk in 'n bepaalde gebied of gemeenskap, waar die betrokke grond te eniger tyd gevestig was in—

(aa) die Suid-Afrikaanse Ontwikkelingstrust ingestel by artikel 4 van die Ontwikkelingstrust en Grond Wet, 1936 (Wet No. 18 van 1936);

(bb) die regering van enige gebied waarvoor 'n wetgewende vergadering ingevolge die Grondwet van die Selfregerende Gebiede, 1971 (Wet No. 21 van 1971), ingestel is; of

(cc) die regerings van die voormalige Republieke van Transkei, Bophuthatswana, Venda en Ciskei;

(b) die reg of belang in grond van 'n begunstigde kragtens 'n trustooreenkoms ingevolge waarvan die trustee 'n liggaam of funksionaris by of kragtens 'n Parlementswet ingestel of aangestel of die bekleër van 'n openbare amp is;

(c) voordelige okkupasie van grond vir 'n aaneenlopende tydperk van minstens vyf jaar voor 31 Desember 1997; of

(d) die gebruik of okkupasie deur 'n persoon van 'n erf asof hy of sy, ten opsigte van daardie erf, die houer is van 'n reg vermeld in Bylae 1 of 2 by die Wet op die Opgradering van Grondbesitregte, 1991 (Wet No. 112 van 1991), alhoewel hy of sy nie formeel in 'n register van grondregte as die houer van die reg in geskil opgeteken is nie,

maar uitgesluit—

(e) enige reg of belang van 'n huurder, huurarbeider, deelsaaier of werknemer indien sodanige reg of belang geheel en al van 'n kontraktuele aard is; en

(f) enige reg of belang wat geheel en al gebaseer is op tydelike toestemming verleen deur die eienaar of regmatige okkupeerder van die betrokke grond, op die grondslag dat sodanige toestemming te eniger tyd deur sodanige eienaar of regmatige okkupeerder teruggetrek kan word; (iii)

(iv) "Minister" means the Minister of Land Affairs; (iii)
(v) "person" includes a community or a part thereof; (iv)
(vi) "prescribed" means prescribed by or under this Act; (vii)
(vii) "tribe" includes—
(a) any community living and existing like a tribe; and
(b) any part of a tribe living and existing as a separate entity. (v)

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

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

Deprivation of informal rights to land

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

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

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

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

Sales and other dispositions subject to informal rights

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

Regulations

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

Application and duration of Act

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

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

Short title

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

(iii) "Minister" die Minister van Grondsake; (iv)
(iv) "persoon" ook 'n gemeenskap of deel daarvan; (v)
(v) "stam" ook—
(a) 'n gemeenskap wat soos 'n stam leef en bestaan; en
(b) 'n gedeelte van 'n stam wat as 'n afsonderlike entiteit leef en bestaan; (vii)
(vi) "voordelige okkupasie" die okkupasie van grond deur 'n persoon asof hy of sy die eienaar daarvan is, sonder geweld, openlik en sonder die instemming van die geregistreerde eienaar daarvan; (i)
(vii) "voorgeskryf" voorgeskryf by of kragtens hierdie Wet. (vi)

(2)*(a)* Hierdie Wet verleen nie aan die houer van 'n saaklike reg tot grond enige regte bo en behalwe die wat hy of sy in daardie grond hou nie.

(b) Die houer van 'n informele reg in grond word geag 'n eienaar van grond vir die doeleindes van artikel 42 van die Mineraalwet, 1991 (Wet No. 50 van 1991), te wees.

Ontneming van informele regte in grond

2.(1) Behoudens die bepalings van subartikel (4) en die bepalings van die Onteieningswet, 1975 (Wet No. 63 van 1975), of enige ander wet wat voorsiening maak vir die onteiening van grond of regte in grond, word geen persoon van enige informele reg tot grond ontneem sonder sy of haar instemming nie.

(2) Indien grond op 'n gemeenskaplike wyse gehou word, kan 'n persoon, behoudens subartikel (4), ooreenkomstig die gewoonte en gebruik van daardie gemeenskap van sodanige grond of reg in grond ontneem word.

(3) Indien die ontneming van 'n reg in grond ingevolge subartikel (2) die gevolg is van 'n vervreemding van die grond of 'n reg in grond deur die gemeenskap, moet die gemeenskap toepaslike vergoeding aan enige persoon wat van 'n informele reg tot grond as gevolg van sodanige vervreemding ontneem word, betaal.

(4) Vir die doeleindes van hierdie artikel word die gewoonte en gebruik van 'n gemeenskap geag die beginsel dat 'n besluit om enige sodanige reg te vervreem slegs geneem kan word deur 'n meerderheid van die houers van sodanige regte teenwoordig of verteenwoordig by 'n vergadering wat byeengeroep is vir die doel om sodanige vervreemding te oorweeg en waarvan hulle voldoende kennis gegee is, en waarin hulle 'n redelike geleentheid gehad het om deel te neem, in te sluit.

Verkope en ander beskikkings onderhewig aan informele regte

3. Behoudens die bepalings van artikel 2, is enige verkoop van of ander beskikking oor enige grond onderhewig aan enige bestaande informele regte in daardie grond.

Regulasies

4. Die Minister kan regulasies maak oor alle aangeleenthede wat nodig of wenslik is om voor te skryf ten einde die doelstellings van hierdie Wet te bereik.

Toepassing en duur van Wet

5. (1) Hierdie Wet bind alle persone, met inbegrip van die Staat.

(2) Die bepalings van hierdie Wet verval op 31 Desember 1997: Met dien verstande dat die Minister te enige tyd alvorens sodanige bepalings verval, by kennisgewing in die *Staatskoerant* die toepassing van sodanige bepalings vir 'n tydperk van hoogstens 12 maande kan verleng: Met dien verstande voorts dat enige sodanige kennisgewing in die Parlement ter Tafel gelê word, en indien die Parlement by besluit sodanige kennisgewing afkeur, daardie kennisgewing verval, maar sonder afbreuk aan die geldigheid van enigiets ingevolge sodanige kennisgewing gedoen voordat dit aldus verval het.

Kort titel

6. Hierdie Wet heet die Wet op die Tussentydse Beskerming van Informele Grondregte, 1996.