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GOVERNMENT GAZETTE

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PRESIDENT'S OFFICE

No. 1598. 28 November 1997

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

No. 62 of 1997: Extension of Security of Tenure Act, 1997

KANTOOR VAN DIE PRESIDENT

No. 1598. 28 November 1997

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

No. 62 van 1997: Wet op die Uitbreiding van Sekerheid van Verblyfreg, 1997.

GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

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;

*(Afrikaans text signed by the President.)
(Assented to 19 November 1997.)*

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

CHAPTER 1

Introductory provisions

Definitions

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

ALGEMENE VERDUIDELIKENDE NOTA:

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Om voorsiening te maak vir maatreëls om langtermynsekerheid van verblyfreg op grond met Staatshulp te fasiliteer; om die voorwaardes van verblyf op sekere grond te reël; om die voorwaardes waarop en omstandighede waaronder persone se reg om op grond te woon, beëindig kan word, te reël; en om die voorwaardes waarop en die omstandighede waaronder persone wie se verblyfreg beëindig is, vanaf grond uitgesit kan word, te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

NADEMAAL baie Suid-Afrikaners nie sekerheid het nie van verblyfreg ten opsigte van hulle wonings en die grond wat hulle gebruik en gevolglik blootgestel is aan onbillike uitsetting;

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

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

EN NADEMAAL dit wenslik is—

dat die reg die bereiking van langtermynsekerheid van verblyfreg vir okkuperders van grond deur die gesamentlike pogings van okkuperders, grondeienaars en regeringsliggame, waar moontlik, behoort te bevorder;

dat die reg die regte van okkuperders behoort uit te brei, en terselfdertyd behoorlike erkenning verleen aan die regte, pligte en regmatige belange van eienaars;

dat die reg die uitsetting van kwetsbare okkuperders vanaf grond op 'n billike wyse behoort te reël, en die reg van grondeienaars om by die hof vir 'n uitsettingsbevel aansoek te doen, in toepaslike omstandighede erken;

om te verseker dat okkuperders nie verder benadeel word nie;

(Afrikaanse teks deur die President geteken.)
(Goedgekeur op 19 November 1997.)

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

HOOFTUK I

Inleidende bepalings

5 Woordoms krywing

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

- (i) "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; (xvii)
- (ii) "Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (viii) 5
- (iii) "court" means a competent court having jurisdiction in terms of this Act; (x)
- (iv) "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; (iv) 10
- (v) "employee" means an employee in terms of the Labour Relations Act; (xx)
- (vi) "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; (xviii) 15
- (vii) "Land Claims Court" means the court established by section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); (vii)
- (viii) "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; (xi) 20
- (ix) "municipality" means a municipality in terms of section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (xii)
- (x) "occupier" means a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding— 25
 - (a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); and
 - (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 30
 - (c) a person who has an income in excess of the prescribed amount; (xiii)
- (xi) "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; (ii) 35
- (xii) "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; (xiv) 40
- (xiii) "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; (v) 45
- (xiv) "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; (xv)
- (xv) "prescribed" means prescribed by regulation; (xix) 50
- (xvi) "regulation" means a regulation made under this Act; (xvi)
- (xvii) "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— 55
 - (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 60
 - (c) the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active; (vi)

- (i) "beëindig" ook om toestemming aan 'n persoon om grond te okkupeer of te gebruik, in te trek; (xviii)
- (ii) "buite-terrein ontwikkeling" 'n ontwikkeling wat aan die okkupeerders daarvan 'n onafhanklike verblyfreg bied op grond wat deur iemand anders as die eienaar van die grond waarop hulle onmiddellik voor sodanige ontwikkeling gewoon het, besit word; (xi)
- (iii) "die Wet op Arbeidsverhoudinge" die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995); (xix)
- (iv) "Direkteur-generaal" die Direkteur-generaal van die Departement van Grondsake of 'n beampte van daardie Departement wat deur hom of haar in die algemeen of ten opsigte van 'n bepaalde geval, of in gevalle van 'n bepaalde aard, aangewys is; (iv)
- (v) "eienaar" die eienaar van die grond ten tyde van die betrokke handeling, late of optrede en, met betrekking tot die beoogde beëindiging van 'n verblyfreg deur 'n houer van mineraalregte, ook sodanige houer in soverre sodanige houer ingevolge 'n wet geregtig is om 'n verblyfreg of enige verwante regte ten opsigte van sodanige grond te verleen of te beëindig, of om 'n persoon wat sodanige grond okkupeer, uit te sit; (xiii)
- (vi) "geskikte alternatiewe akkommodasie" alternatiewe akkommodasie wat veilig en in die algemeen nie minder gunstig as die okkupeerders se vorige posisie is nie, met inagneming van die woonakkommodasie en grond vir landbougebruik wat voor uitsetting aan hulle beskikbaar was, en geskik is met inagneming van—
 - (a) die redelike behoeftes van al die okkupeerders in die betrokke huishouding vir woonakkommodasie, grond vir landbougebruik en dienste;
 - (b) hulle gesamentlike verdienstelikhedsvermoëns; en
 - (c) die behoefte om naby werksgeleenthede of ander ekonomiese aktiwiteite te woon indien hulle beoog om ekonomies aktief te wees; (xvii)
- (vii) "Grondeishof" die hof ingestel by artikel 22 van die Wet op Herstel van Grondregte, 1994 (Wet No. 22 van 1994); (vii)
- (viii) "Grondwet" die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996); (ii)
- (ix) "hierdie Wet" ook die regulasies; (xx)
- (x) "hof" 'n bevoegde hof met jurisdiksie ingevolge hierdie Wet; (iii)
- (xi) "Minister" die Minister verantwoordelik vir Grondsake of 'n beampte van die Departement van Grondsake wat deur die Minister in die algemeen of ten opsigte van 'n bepaalde geval, of in gevalle van 'n bepaalde aard, aangewys is: Met dien verstande dat die bevoegdhede in artikel 28 bedoel van sodanige aanwysing uitgesluit is; (viii)
- (xii) "munisipaliteit" 'n munisipaliteit ingevolge artikel 10B van die Oorgangswet op Plaaslike Regering, 1993 (Wet No. 209 van 1993); (ix)
- (xiii) "okkupeerder" 'n persoon wat woon op grond wat aan 'n ander persoon behoort en wat beskik oor, of op 4 Februarie 1997 of daarna beskik het oor, toestemming of 'n ander regsgeldige reg om so te doen, maar uitgesluit—
 - (a) 'n huurarbeider ingevolge die Wet op Grondhervorming (Huurarbeiders), 1996 (Wet No. 3 van 1996);
 - (b) 'n persoon wat die betrokke grond hoofsaaklik vir industriële, myn-, kommersiële of kommersiële boerderydoeleindes gebruik of beoog om dit aldus te gebruik, met inbegrip van 'n persoon wat self die grond bewerk en geen persoon wat nie 'n lid van sy of haar familie is in diens het of neem nie; en
 - (c) 'n persoon met 'n inkomste hoër as die voorgeskrewe bedrag; (x)
- (xiv) "op-terrein ontwikkeling" 'n ontwikkeling wat aan die okkupeerders daarvan 'n onafhanklike verblyfreg bied op grond wat deur hulle bewoon word of voorheen bewoon is; (xi)
- (xv) "persoon in beheer" 'n persoon wat ten tyde van die betrokke handeling, late of optrede, regsbevoegdheid het om toestemming aan 'n persoon te verleen om op die betrokke grond te woon; (xiv)
- (xvi) "regulasie" 'n regulasie uitgevaardig kragtens hierdie Wet; (xvi)
- (xvii) "toestemming" die uitdruklike of stilswyende toestemming van die eienaar of persoon in beheer van die betrokke grond, en met betrekking tot 'n beoogde beëindiging van die verblyfreg of uitsetting deur 'n houer van

- (xviii) "terminate" includes to withdraw consent to a person to occupy or use land;
(i)
- (xix) "the Labour Relations Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995); (iii)
- (xx) "this Act" includes the regulations. (ix) 5
- (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 10
- (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. 15

Application and implementation of Act

2. (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— 20
- (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. 25
- (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. 30

Consent to reside on land

3. (1) Consent to an occupier to reside on or use land shall only be terminated in accordance with the provisions of section 8. 35
- (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. 40
- (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. 45
- (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. 50
- (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.

- mineraalregte, ook die uitdruklike of stilswyende toestemming van sodanige houer; (i)
- (xviii) "uitsit" om 'n persoon van die bewoning of gebruik van grond of toegang tot water wat ingevolge hierdie Wet met 'n verblyfreg verband hou teen sy of haar wil te ontnem, en het "uitsetting" 'n ooreenstemmende betekenis; (vi)
- (xix) "voorgeskryf" voorgeskryf by regulasie; (xv)
- (xx) "werknemer" 'n werknemer ingevolge die Wet op Arbeidsverhoudinge. (v)
- (2) Ten opsigte van onvervreemde Staatsgrond, onopgemete Staatsgrond of grond wat in die naam van die Staat, of 'n instelling of funksionaris wat bevoegdhede namens die Staat uitoefen, geregistreer is—
- (a) beteken "eienaar of persoon in beheer" ook 'n persoon wat, op aansoek op die voorgeskrewe wyse gedoen, deur die Direkteur-generaal, onderworpe aan die voorwaardes wat die Direkteur-generaal mag bepaal, as eienaar of persoon in beheer gesertifiseer is; en
- (b) is 'n sertifikaat wat heet ingevolge paragraaf (a) deur die Direkteur-generaal uitgereik te gewees het, *prima facie*-bewys van die bevoegdheid van die persoon wat daarin vermeld word om as eienaar of persoon in beheer van die betrokke grond op te tree, en is by oorlegging toelaatbaar as getuienis in 'n hof.

20 Toepassing en implementering van Wet

2. (1) Behoudens die bepalings van artikel 4 is hierdie Wet van toepassing op alle grond, uitgesluit grond geleë in 'n dorp wat ingevolge 'n wet gestig, goedgekeur of geproklameer is, of andersins as sodanig ingevolge 'n wet erken word, of deur so 'n dorp of dorpe omring word, maar met inbegrip van—
- (a) grond in sodanige dorp wat ingevolge 'n wet vir landboudoeleindes aangewys is; en
- (b) grond binne sodanige dorp wat na 4 Februarie 1997 gestig, goedgekeur, geproklameer of andersins erken is, slegs ten opsigte van 'n persoon wat onmiddellik voor sodanige stigting, goedkeuring, proklamering of erkenning 'n okkupeerder was.
- (2) Grond wat in siviele verrigtinge ingevolge hierdie Wet betrokke is, word, tensy die teendeel bewys word, geag binne die omvang van hierdie Wet te val.
- (3) Die Minister kan uit fondse vir daardie doel deur die Parlement bewillig en onderworpe aan sodanige voorwaardes wat hy of sy bepaal, fondse beskikbaar stel aan 'n ander persoon, liggaam of instelling wat hy of sy vir daardie doel erken het, ten einde die implementering van die regte by hierdie Wet verleen, te bevorder.

Toestemming om grond te okkupeer

3. (1) Toestemming aan 'n okkupeerder om op grond te woon of dit te gebruik, mag slegs ooreenkomstig die bepalings van artikel 8 beëindig word.
- (2) Indien 'n persoon wat op 4 Februarie 1997 op grond gewoon of dit gebruik het dit voorheen met toestemming gedoen het, en sodanige toestemming regmatig voor daardie datum ingetrek is—
- (a) word daardie persoon geag 'n okkupeerder te wees, mits hy of sy sedert die beëindiging van die toestemming aaneenlopend op daardie grond gewoon het; en
- (b) word die beëindiging van toestemming geag 'n geldige beëindiging van die verblyfreg ingevolge artikel 8 te wees, mits dit met inagneming van die bepalings van artikel 8 billik en regverdig was.
- (3) Vir die doeleindes van hierdie Wet is toestemming aan 'n persoon om op grond te woon afdoende ongeag of die okkupeerder, eienaar of persoon in beheer enige ander amptelike magtiging wat van regsweë vereis word, moet verkry vir sodanige bewoning.
- (4) Vir die doeleindes van siviele verrigtinge ingevolge hierdie Wet word 'n persoon wat aaneenlopend en openlik vir 'n tydperk van een jaar op grond gewoon het, geag toestemming te hê tensy die teendeel bewys word.
- (5) Vir die doeleindes van siviele verrigtinge ingevolge hierdie Wet word 'n persoon wat aaneenlopend en openlik vir 'n tydperk van drie jaar op grond gewoon het, geag met die medewete van die eienaar of persoon in beheer aldus te gewoon het.
- (6) Die bepalings van subartikels (4) en (5) is nie van toepassing nie op enige grond wat geregistreer is in die naam van of wat besit word deur die Staat, of 'n instelling of funksionaris wat bevoegdhede namens die Staat uitoefen.

CHAPTER II

Measures to facilitate long-term security of tenure for occupiers

Subsidies

4. (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— 5

- (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 10
- (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: 15

- (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; 20
- (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 25
- (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. 30

(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. 35

(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 40
- (b) the subsidy is paid to the provincial or local government 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.

(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. 45

(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 No. 4 of 1966). 50

(7) The provisions of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), shall not apply to land on which a development is undertaken in terms of this Act.

HOOFSTUK II

Maatreëls om langtermynsekerheid van verblyfreg vir okkupeerders te fasiliteer

Subsidies

4. (1) Die Minister moet, uit geld vir daardie doel deur die Parlement bewillig en
5 behoudens die voorwaardes wat die Minister in die algemeen mag voorskryf of in 'n
besondere geval mag bepaal, subsidies toeken—

- (a) om die beplanning en implementering van op-terrein en buite-terrein ontwikkelings te fasiliteer;
- 10 (b) om okkupeerders, voormalige okkupeerders en ander persone wat 'n behoefte aan langtermynsekerheid van verblyfreg het in staat te stel om grond of regte in grond te verkry; en
- (c) vir die ontwikkeling van grond wat ingevolge op-terrein of buite-terrein ontwikkelings geokkupeer word of geokkupeer staan te word.

(2) Wanneer die Minister die goedkeuring van 'n aansoek om 'n subsidie oorweeg,
15 en indien goedgekeur, die prioriteit wat aan sodanige aansoek verleen behoort te word, moet die Minister die mate waarin die aansoek aan die volgende maatstawwe voldoen, in ag neem:

- (a) Die ontwikkeling behels 'n onderlinge akkommodering van die belange van okkupeerders en eienaars;
- 20 (b) die ontwikkeling is kostedoeltreffend;
- (c) in die geval van 'n buite-terrein ontwikkeling in omstandighede waar die okkupeerders aangedui het dat hulle 'n op-terrein ontwikkeling verkies, is bevredigende redes verskaf waarom 'n op-terrein ontwikkeling nie 'n meer gepaste oplossing is nie;
- 25 (d) eienaars en okkupeerders het 'n redelike poging aangewend om 'n ontwikkeling te ontwerp wat voldoen aan die maatstawwe wat in paragrawe (a) en (b) beoog word;
- (e) die okkupeerders is die gades of afhanklikes van persone in artikel 8(4)(a) beoog; en
- 30 (f) daar is 'n dringende behoefte vir die ontwikkeling omrede okkupeerders uitgesit is of uitgesit staan te word:

Met dien verstande dat indien 'n aansoek deur of namens okkupeerders vir 'n buite-terrein ontwikkeling gedoen word, sodanige aansoek nie deur die blote afwesigheid van die ondersteuning van 'n eenaar, wat nie die eenaar van die grond waarop
35 die ontwikkeling onderneem staan te word, is nie, benadeel word nie.

(3) Indien die persone wat deur 'n ontwikkeling bevoordeel staan te word reeds geïdentifiseer is, word 'n subsidie nie toegeken nie tensy die Minister oortuig is dat die ontwikkeling vir die meerderheid van die volwassenes aanvaarbaar is.

(4) Die Minister kan vir die doeleindes van hierdie artikel by wyse van 'n
40 ooreenkoms met 'n provinsiale regering of 'n munisipaliteit, of 'n persoon of liggaam wat hy of sy vir daardie doel erken, subsidies toeken waar—

- (a) 'n provinsiale of plaaslike regering of sodanige persoon of liggaam 'n ontwikkeling fasiliteer, implementeer of onderneem of ooreenkoms met 'n derde party om dit te fasiliteer, te implementeer of te onderneem; of
- 45 (b) die subsidie aan die provinsiale regering of 'n munisipaliteit of sodanige persoon of liggaam betaal word ten einde daardie regering of liggaam in staat te stel om die ontwikkeling te fasiliteer, te implementeer of te onderneem of ooreen te kom met 'n derde party om dit te fasiliteer, te implementeer of te onderneem.

50 (5) Geen hereregte is betaalbaar ten opsigte van enige transaksie vir die verkryging van grond ingevolge hierdie artikel of ten opsigte van enige transaksie vir die verkryging van grond wat deur 'n subsidie ingevolge hierdie artikel gefinansier word nie.

(6) 'n Potensiële begunstigde van 'n ontwikkeling kan vir 'n behuisingssubsidie soos
55 bepaal ingevolge artikels 10A, 10B, 10C en 10D van die Behuisingswet, 1966 (Wet No. 4 van 1966), aansoek doen.

(7) Die bepalinge van die Wet op die Onderverdeling van Landbougrond, 1970 (Wet No. 70 van 1970), is nie op grond waarop 'n ontwikkeling ingevolge hierdie Wet onderneem word van toepassing nie.

CHAPTER III

Rights and duties of occupiers and owners

Fundamental rights

5. 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— 5

- (a) human dignity;
- (b) freedom and security of the person;
- (c) privacy;
- (d) freedom of religion, belief and opinion and of expression; 10
- (e) freedom of association; and
- (f) freedom of movement,

with due regard to the objects of the Constitution and this Act.

Rights and duties of occupier

6. (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. 15

(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— 20

- (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 25
 - (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; 30
- (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; 35
- (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; 40
- (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. 45

(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. 50

HOOFSTUK III

Regte en pligte van okkupeerders en eienaars

Fundamentele regte

5. Behoudens beperkinge wat in 'n oop en demokratiese samelewing gebaseer op menswaardigheid, gelykheid en vryheid, redelik en regverdigbaar is, het 'n okkupeerder, 'n eienaar en 'n persoon in beheer die reg tot—
- (a) menswaardigheid;
 - (b) vryheid en sekerheid van die persoon;
 - (c) privaatheid;
 - 10 (d) vryheid van godsdiens, oortuiging en mening en van uitdrukking;
 - (e) vryheid van assosiasie; en
 - (f) vryheid van beweging,
- met behoorlike inagneming van die doelstellings van die Grondwet en hierdie Wet.

Regte en pligte van okkupeerder

- 15 6. (1) 'n Okkupeerder het, behoudens die bepalinge van hierdie Wet, die reg om grond waarop hy of sy op of na 4 Februarie 1997 gewoon het en wat hy of sy op of na daardie datum gebruik het, te bewoon en te gebruik, en het die reg tot toegang tot die dienste waartoe, hetsy uitdruklik of stilswyend, met die eienaar of persoon in beheer ooreengekom is.
- 20 (2) Sonder om afbreuk te doen aan die algemeenheid van die bepalinge van artikel 5 en subartikel (1), en afgeweeë teen die regte van die eienaar of persoon in beheer, het 'n okkupeerder die reg—
- (a) tot sekerheid van verblyfreg;
 - (b) om *bona fide*-besoekers op redelike tye en vir redelike tydperke te ontvang;
 - 25 Met dien verstande dat—
 - (i) die eienaar of persoon in beheer redelike voorwaardes wat normaalweg op besoekers wat sodanige grond betree van toepassing is, kan opleë ten einde lewe of eiendom te beskerm of om die onbehoorlike ontwrigting van werksaamhede op die grond te voorkom; en
 - 30 (ii) die okkupeerder aanspreeklik is vir enige handeling, late of optrede van enige van sy of haar besoekers wat skade aan ander veroorsaak terwyl so 'n besoeker op die grond is, indien die okkupeerder deur die doen van redelike stappe sodanige skade kon voorkom het;
 - (c) om pos of ander kommunikasie te ontvang;
 - 35 (d) tot 'n gesinslewe in ooreenstemming met die kultuur van daardie familie: Met dien verstande dat hierdie reg nie van toepassing is nie ten opsigte van enkelgeslag-akkommodasie wat voorsien word in hostelle wat voor 4 Februarie 1997 opgerig is;
 - (e) om nie toegang tot water geweier of ontnem te word nie; en
 - 40 (f) om nie toegang tot onderrig- of gesondheidsdienste geweier of ontnem te word nie.
- (3) 'n Okkupeerder mag nie—
- (a) 'n ander persoon wat die grond okkupeer opsetlik en onwettiglik benadeel nie;
 - 45 (b) opsetlik en onwettiglik wesenlike skade aan die eiendom van die eienaar of persoon in beheer aanrig nie;
 - (c) betrokke wees by optrede wat ander wat die grond of ander grond in die omgewing wettiglik okkupeer, bedreig of intimideer nie; of
 - (d) ongemagtigde persone in staat stel of help om nuwe wonings op die betrokke
 - 50 grond op te rig nie.
- (4) 'n Persoon het die reg om sy of haar familiegrafe op grond wat aan 'n ander persoon behoort, te besoek en in stand te hou, onderhewig aan enige redelike voorwaarde opgelê deur die eienaar of persoon in beheer van sodanige grond ten einde lewe of eiendom te beskerm of om die onbehoorlike ontwrigting van werksaamhede op
- 55 die grond te voorkom.

Rights and duties of owner

7. (1) The owner or person in charge of land 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. 5

(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. 10

(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

15

Termination of right of residence and eviction**Termination of right of residence**

8. (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— 20

- (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; 25
- (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. 30

(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. 35

(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. 40

(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, 45

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). 50

Regte en pligte van eienaar

7. (1) Die eienaar of persoon in beheer kan 'n dier wat gewoonlik of werklik in die sorg van 'n okkupeerder is en oortree, laat vang en laat wegneem na 'n skut ooreenkomstig die bepalings van 'n toepaslike wet, indien die eienaar of persoon in 5 beheer die okkupeerder minstens 72 uur kennis gegee het om die dier van die plek waar dit oortree, te verwyder en die okkupeerder versuim het om dit te doen: Met dien verstande dat die eienaar of persoon in beheer redelike stappe mag doen om te verhoed dat die dier gedurende daardie 72 uur skade veroorsaak.

(2) 'n Eienaar of persoon in beheer mag nie 'n okkupeerder benadeel indien een van 10 die redes vir die benadeling die vorige, huidige of verwagte uitoefening van 'n wettige reg is nie.

(3) Indien daar in enige verrigtinge ingevolge subartikel (2) bewys word dat die gevolg van die optrede waaroor gekla word die benadeling van die okkupeerder is soos in daardie subartikel uiteengesit, word, tensy die teendeel bewys word, geag dat die 15 benadeling veroorsaak is vir een van die redes in subartikel (2) bedoel.

HOOFTUK IV**Beëindiging van verblyfreg en uitsetting****Beëindiging van verblyfreg**

8. (1) Behoudens die bepalings van hierdie artikel kan 'n okkupeerder se verblyfreg 20 op enige wettige grond beëindig word, mits sodanige beëindiging regverdig en billik is met inagneming van alle tersaaklike faktore en in die besonder—

- (a) die billikheid van 'n ooreenkoms, bepaling in 'n ooreenkoms of wetsbepaling of ander regsreël waarop die eienaar of persoon in beheer hom of haar beroep;
- 25 (b) die optrede van die partye wat tot die beëindiging gelei het;
- (c) die belange van die partye, met inbegrip van die vergelykende ontbering aan die eienaar of persoon in beheer, die betrokke okkupeerder en enige ander okkupeerder indien die verblyfreg beëindig word of nie beëindig word nie;
- (d) die aanwesigheid van 'n redelike verwagting dat die ooreenkoms waaruit die 30 verblyfreg voortspruit na die tydsverloop daarvan hernu sal word; en
- (e) die billikheid van die prosedure wat deur die eienaar of persoon in beheer gevolg is, met inbegrip van die vraag of die okkupeerder voldoende geleentheid gebied was of moes gebied gewees het om verhoër te word voordat die besluit geneem is om die verblyfreg te beëindig.

35 (2) Indien 'n okkupeerder 'n werknemer is wie se verblyfreg slegs uit 'n diensooreenkoms voortspruit, kan die verblyfreg beëindig word indien die okkupeerder uit die diens bedank of ooreenkomstig die bepalings van die Wet op Arbeidsverhoudinge ontslaan word.

(3) 'n Dispuut oor die vraag of 'n okkupeerder se diens beëindig is soos in subartikel 40 (2) beoog, word ooreenkomstig die bepalings van die Wet op Arbeidsverhoudinge hanteer, en die beëindiging tree in werking wanneer 'n dispuut oor die beëindiging in ooreenstemming met daardie Wet besleg is.

(4) Die verblyfreg van 'n okkupeerder wat vir 10 jaar op die betrokke grond of enige ander grond wat aan die eienaar behoort, gewoon het en—

- 45 (a) die ouderdom van 60 jaar bereik het; of
 - (b) 'n werknemer of voormalige werknemer van die eienaar of persoon in beheer is en as gevolg van swak gesondheid, besering of ongeskiktheid nie in staat is om arbeid aan die eienaar of persoon in beheer te verskaf nie,
- kan nie beëindig word nie tensy sodanige okkupeerder 'n verbreking soos beoog in 50 artikel 10(1)(a), (b) of (c) begaan het: Met dien verstande dat vir doeleindes van hierdie subartikel die blote versuim of weiering om arbeid te verskaf nie sodanige verbreking uitmaak nie.

(5) By die afsterwe van 'n okkupeerder in subartikel (4) beoog, kan die verblyfreg van 'n okkupeerder wat sy of haar gade of afhanklike was slegs beëindig word indien 55 12 maande skriftelike kennis gegee is dat die grond ontruim moet word, tensy so 'n gade of afhanklike 'n verbreking soos beoog in artikel 10(1) gepleeg het.

(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 section 8(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.

Limitation on eviction

9. (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.

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

10. (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

(6) Enige beëindiging van die verblyfreg van 'n okkupeerder om die okkupeerder te verhoed om regte ingevolge hierdie artikel te verkry, is nietig.

(7) Indien 'n okkupeerder se verblyfreg ingevolge hierdie artikel beëindig is, of die okkupeerder 'n persoon is wat ingevolge artikel 8(5) 'n verblyfreg het—

- 5 (a) kan die okkupeerder en die eienaar of persoon in beheer ooreenkom dat die bedinge en voorwaardes waarkragtens die okkupeerder onmiddellik voor sodanige beëindiging op die grond gewoon het, op enige tydperk tussen die datum van beëindiging en die datum van uitsetting van die okkupeerder van toepassing is; of
- 10 (b) kan die eienaar of persoon in beheer verrigtinge in 'n hof instel om billike bedinge en voorwaardes van verdere verblyf te bepaal, met inagneming van die inkomste van al die okkuperders in die huishouding.

Beperking op uitsetting

9. (1) Ondanks die bepalinge van enige ander wet, kan 'n okkupeerder slegs
15 ingevolge 'n hofbevel kragtens hierdie Wet uitgereik, uitgesit word.

(2) 'n Hof kan 'n bevel vir die uitsetting van 'n okkupeerder verleen indien—

- (a) die okkupeerder se verblyfreg ingevolge artikel 8 beëindig is;
 - (b) die okkupeerder nie die grond ontruim het nie binne die tydperk van kennisgewing wat deur die eienaar of persoon in beheer gegee is;
 - 20 (c) daar aan die voorwaardes vir 'n uitsettingsbevel ingevolge artikel 10 of 11 voldoen is; en
 - (d) die eienaar of persoon in beheer, na die beëindiging van die verblyfreg—
 - (i) die okkupeerder;
 - (ii) die munisipaliteit in wie se jurisdiksiegebied die betrokke grond geleë
25 is; en
 - (iii) die hoof van die betrokke provinsiale kantoor van die Departement van Grondsake, ter inligting,
- minstens twee kalendermaande kennis gegee het van die voorneme om 'n uitsettingsbevel te verkry, welke kennisgewing die voorgeskrewe besonderhede moet bevat en die gronde moet uiteensit waarop die uitsetting gebaseer
30 word: Met dien verstande dat, indien 'n kennisgewing van 'n aansoek aan 'n hof na beëindiging van die verblyfreg aan die okkupeerder, die munisipaliteit en die hoof van die betrokke provinsiale kantoor van die Departement van Grondsake minstens twee maande voor die datum van die aanvang van die
35 aanhoor van die aansoek gegee is, dit geag word dat aan hierdie paragraaf voldoen is.

Bevel vir uitsetting van persoon wat op 4 Februarie 1997 okkupeerder was

10. (1) 'n Bevel kan verleen word vir die uitsetting van iemand wat op 4 Februarie
1997 'n okkupeerder was indien—

- 40 (a) die okkupeerder 'n verbreking van artikel 6(3) begaan het en die hof oortuig is dat die oortreding wesenlik is en dat die okkupeerder dit nie herstel het nie;
 - (b) die eienaar of persoon in beheer voldoen het aan die bepalinge van enige ooreenkoms in verband met die okkupeerder se reg van verblyf op die grond en sy of haar pligte van regsweë nagekom het, terwyl die okkupeerder 'n
45 wesenlike en billike bepaling van 'n ooreenkoms verbreek het, alhoewel hy of sy redelikerwys in staat was om daaraan te voldoen, en nie die gebrek herstel het nie ondanks die feit dat skriftelike kennis van een kalendermaand aan hom of haar gegee is om dit te doen;
 - (c) die okkupeerder so 'n wesenlike verbreking van die verhouding tussen hom of haar en die eienaar of persoon in beheer gepleeg het, dat dit nie prakties
50 moontlik is om dit, hetsy in die geheel of op 'n wyse wat redelikerwys die verhouding kan herstel, te herstel nie; of
 - (d) die okkupeerder—
 - (i) 'n werknemer is of was wie se verblyfreg uitsluitlik uit sodanige
55 diens voortspruit; en
 - (ii) vrywilliglik bedank het in omstandighede wat nie op konstruktiewe ontslag ingevolge die Wet op Arbeidsverhoudinge neerkom nie.
- (2) Behoudens die bepalinge van subartikel (3), indien geen van die omstandighede

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; 5
 - (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, 10
- 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— 15
- (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 20 occupiers shall be exposed if an order for eviction is or is not granted.

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

11. (1) If it was an express, material and fair term of the consent granted to an occupier to reside on land, 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. 25

(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. 30

(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; 35
- (d) the reason for the proposed eviction;
- (e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.

Further provisions regarding eviction

12. (1) A court that orders the eviction of an occupier shall— 40

- (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— 45

- (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. 50

in subartikel (1) bedoel van toepassing is nie, kan 'n hof 'n bevel vir die uitsetting verleen slegs indien die hof oortuig is dat geskikte alternatiewe akkommodasie vir die betrokke okkupeerder beskikbaar is.

- (a) geskikte alternatiewe akkommodasie nie binne 'n tydperk van nege maande na die datum van beëindiging van sy of haar verblyfreg ingevolge artikel 8 vir die okkupeerder beskikbaar is nie;
 - (b) die eienaar of persoon in beheer die woning wat deur die okkupeerder bewoon is, verskaf het; en
 - (c) die effektiewe voortsetting van enige onderneming van die eienaar of persoon in beheer ernstig benadeel sal word tensy die woning beskikbaar is vir okkupasie deur 'n ander persoon wat in diens is van, of in diens geneem staan te word deur, die eienaar of persoon in beheer,
- kan 'n hof 'n uitsettingsbevel ten opsigte van die okkupeerder en enige ander okkupeerder wat in dieselfde woning as hy of sy woon en wie se toestemming om daar te woon in die geheel van sy of haar verblyfreg afhanklik is, verleen indien dit regverdig en billik is om dit te doen, met inagneming van—
- (i) die pogings wat die eienaar of persoon in beheer en die okkupeerder onderskeidelik aangewend het om geskikte alternatiewe akkommodasie vir die okkupeerder te bekom; en
 - (ii) die belange van die partye, met inbegrip van die vergelykende ontbering waaraan die eienaar of persoon in beheer, die okkupeerder en die oorblywende okkupeerders blootgestel sal word indien 'n uitsettingsbevel verleen of nie verleen word nie.

Bevel vir uitsetting van persoon wat na 4 Februarie 1997 okkupeerder word

11. (1) Indien die beëindiging van die toestemming op 'n bepaalde of bepaalbare datum 'n uitdruklike, wesenlike en billike bepaling van die toestemming was wat aan 'n okkupeerder verleen is om op die betrokke grond te woon, kan 'n hof by beëindiging van die toestemming weens tydsverloop 'n bevel verleen vir die uitsetting van enige persoon wat na 4 Februarie 1997 'n okkupeerder van die betrokke grond geword het, indien dit billik en regverdig is om sodanige bevel te verleen.
- (2) 'n Hof kan in omstandighede anders as dié in subartikel (1) beoog, 'n uitsettingsbevel verleen ten opsigte van enige persoon wat na 4 Februarie 1997 'n okkupeerder geword het indien hy oortuig is dat dit regverdig en billik is om dit te doen.
- (3) In die oorweging daarvan of dit regverdig en billik is om 'n uitsettingsbevel ingevolge hierdie artikel te verleen, moet die hof—
 - (a) die tydperk wat die okkupeerder op die betrokke grond gewoon het;
 - (b) die billikheid van die bepaling van 'n ooreenkoms tussen die partye;
 - (c) die vraag of geskikte alternatiewe akkommodasie aan die okkupeerder beskikbaar is;
 - (d) die rede vir die beoogde uitsetting; en
 - (e) die afweging van die belange van die eienaar of persoon in beheer, die okkupeerder en die oorblywende okkupeerders op die grond,
 in ag neem.

Verdere bepalinge betreffende uitsetting

12. (1) 'n Hof wat die uitsetting van 'n okkupeerder beveel, moet—
 - (a) 'n regverdige en billike datum bepaal waarop die okkupeerder die grond moet ontruim; en
 - (b) die datum bepaal waarop 'n uitsettingsbevel uitgevoer kan word indien die okkupeerder nie op die datum in paragraaf (a) beoog die grond ontruim het nie.
- (2) In die bepaling van 'n regverdige en billike datum, moet die hof alle tersaaklike faktore in ag neem, met inbegrip van—
 - (a) die billikheid van die bepaling van 'n ooreenkoms tussen die partye;
 - (b) die afweging van die belange van die eienaar of persoon in beheer, die okkupeerder en die oorblywende okkupeerders op die grond; en
 - (c) die tydperk wat die okkupeerder op die betrokke grond gewoon het.

(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

(5) A court may, on good cause shown, vary any term or condition of an order for eviction made by it. 10

(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).

Effect of order for eviction

13. (1) If a court makes an order for eviction in terms of this Act— 15

(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; 20

(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; 25

(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 No. 3 of 1983) the Labour Relations Act or a determination made in terms of the Wage Act, 1957 (Act No. 5 of 1957); and 30

(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 35

(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; 40

(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 45

(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. 50

(3) 'n Hof kan, op versoek van die betrokke balju, 'n persoon magtig om die balju by te staan om 'n bevel vir uitsetting, sloping of verwydering uit te voer onderworpe aan die voorwaardes oor die uitvoering daarvan wat die hof bepaal: Met dien verstande dat die balju te alle tye gedurende sodanige uitsetting, sloping of verwydering

5 teenwoordig moet wees.

(4) 'n Bevel vir die uitsetting van 'n okkupeerder ingevolge artikel 10 of 11 is onderworpe aan die bepalings en voorwaardes ten opsigte van verdere verblyf wat deur die hof, met inagneming van die inkomste van al die okkupeerders in die huishouding, bepaal word.

10 (5) 'n Hof kan, by oorlegging van grondige redes, 'n bepaling of voorwaarde van 'n uitsettingsbevel deur hom verleen, wysig.

(6) Ondanks die bepalings van artikels 10 en 11 beveel 'n hof nie die uitsetting van 'n okkupeerder nie indien dit van mening is dat een van die doelstellings van sodanige beoogde uitsetting is om die okkupeerder te verhoed om regte ingevolge artikel 8(4) te

15 verkry.

Gevolg van uitsettingsbevel

13. (1) Indien 'n hof 'n uitsettingsbevel ingevolge hierdie Wet verleen—

(a) moet die hof die eienaar of persoon in beheer beveel om vergoeding te betaal wat billik en regverdig is vir strukture opgerig en verbeteringe aangebring deur die okkupeerder en enige staande oeste deur die okkupeerder aangeplant, met behoorlike inagneming van alle tersaaklike faktore, met inbegrip daarvan of—

(i) die verbeteringe of oeste met die instemming van die eienaar of persoon in beheer aangebring of aangeplant was;

25 (ii) die verbeteringe vir die okkupeerder nodig of bruikbaar was; en

(iii) 'n skriftelike ooreenkoms tussen die okkupeerder en die eienaar of persoon in beheer, aangegaan voordat verbeteringe aangebring is, bepaal dat die okkupeerder nie op vergoeding vir verbeteringe in daardie ooreenkoms gespesifiseer, geregtig is nie;

30 (b) moet die hof die eienaar of persoon in beheer beveel om enige uitstaande lone en verwante bedrae wat ingevolge die Wet op Basiese Diensvoorwaardes, 1983 (Wet No. 3 van 1983), die Wet op Arbeidsverhoudinge of 'n vasstelling ingevolge die Loonwet, 1957 (Wet No. 5 van 1957), verskuldig is, te betaal; en

35 (c) kan die hof die eienaar of persoon in beheer beveel om die okkupeerder 'n billike geleentheid te bied om—

(i) strukture en verbeteringe deur die okkupeerder en sy of haar voorgangers opgerig of aangebring, af te breek en materiaal wat so herwin is, te verwyder; en

40 (ii) staande oeste, waarop hy of sy geregtig is, op te pas totdat dit reg is om geoes te word en daarna af te oes en te verwyder.

(2) Die vergoeding in subartikel (1) beoog, moet deur 'n hof as synde billik en regverdig bepaal word, met inagneming van—

45 (a) die koste vir die okkupeerder om sodanige strukture en verbeteringe te vervang ten einde dit in dieselfde toestand wat dit voor die uitsetting was, te plaas;

(b) die waarde van materiaal wat die okkupeerder kan verwyder;

(c) die vraag of enige materiaal in paragraaf (b) bedoel of enige bydrae deur die eienaar of persoon in beheer, verskaf is as deel van die voordele wat aan die okkupeerder of sy of haar voorgangers in ruil vir enige teenprestasie voorsien is; en

50 (d) indien die okkupeerder nie die geleentheid gegun is om die oes te verwyder nie, die waarde van die oes verminder met die waarde van 'n bydrae deur die eienaar of persoon in beheer ten opsigte van die aanplanting en instandhouding van die oes.

55 (3) Geen uitsettingsbevel ingevolge artikel 10 of 11 verleen, mag uitgevoer word alvorens die eienaar of persoon in beheer die vergoeding wat ingevolge subartikel (1) verskuldig is, betaal het nie: Met dien verstande dat 'n hof toestemming vir uitsetting kan verleen onderhewig aan bevredigende waarborge vir sodanige betaling.

Restoration of residence and use of land and payment of damages

14. (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 5
- (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— 10

- (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; 15
- (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; 20
- (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— 25

- (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 30
 - (ii) whether the person ordered to be evicted was effectively represented in those proceedings, either by himself or herself or by another person.

Urgent proceedings for eviction

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15. 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; 40
- (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 45
- (d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.

CHAPTER V**Dispute resolution and courts****Pending proceedings**

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16. 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.

Herstel van verblyf en gebruik van grond en betaling van skadevergoeding

14. (1) 'n Persoon wat in stryd met die bepalings van hierdie Wet uitgesit is, kan verrigtinge by 'n hof instel vir 'n bevel ingevolge subartikel (3).

(2) 'n Persoon wat—

- 5 (a) die reg sou gehad het om grond ingevolge artikel 6 te bewoon indien die bepalings van hierdie Wet op 4 Februarie 1997 in werking was; en
(b) tussen 4 Februarie 1997 en die inwerkingtreding van hierdie Wet om enige rede of ingevolge enige proses uitgesit is,
kan verrigtinge by die hof vir 'n bevel ingevolge subartikel (3) instel.

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

- (a) vir die herstel van die verblyf op en die gebruik van die grond deur die betrokke persoon op sodanige voorwaardes as wat die hof regverdig ag;
15 (b) vir die herstel, herbou of vervanging van 'n gebou, struktuur, installasie of saak wat vreedsaam deur die persoon onmiddellik voor sy of haar uitsetting geokkupeer of gebruik is, vir sover dit gedurende of na sodanige uitsetting beskadig, gesloop of vernietig is;
(c) vir die herstel van enige dienste waartoe die okkupeerder ingevolge artikel 6 'n reg gehad het;
20 (d) vir die betaling van vergoeding beoog in artikel 13;
(e) vir die betaling van skadevergoeding met inbegrip van, maar nie beperk nie tot, skadevergoeding vir lyding of ongerief deur die uitsetting veroorsaak; en
(f) met betrekking tot koste.

(4) Indien die persoon in subartikel (2) beoog ingevolge 'n hofbevel uitgesit is—

- 25 (a) moet die verrigtinge in subartikel (1) beoog binne een jaar vanaf die inwerkingtreding van hierdie Wet ingestel word; en
(b) moet die hof, benewens enige ander faktore wat die hof billik en regverdig ag, in ag neem—
(i) of die uitsettingsbevel toegestaan sou gewees het indien die verrigtinge
30 na die inwerkingtreding van hierdie Wet ingestel was; en
(ii) of die persoon op wie die uitsettingsbevel gerig is op 'n doeltreffende wyse in daardie verrigtinge verteenwoordig was, hetsy deur homself of haarself of deur 'n ander persoon.

Dringende verrigtinge vir uitsetting

35 15. 'n Eienaar of persoon in beheer kan, ondanks enige ander bepaling van hierdie Wet, 'n dringende aansoek om die verwydering van 'n okkupeerder vanaf die betrokke grond bring hangende die uitslag van 'n geding om 'n finale bevel, en die hof kan 'n bevel vir die verwydering van daardie persoon verleen indien die hof oortuig is dat—

- 40 (a) daar 'n werklike en dreigende gevaar van wesenlike besering of skade aan enige persoon of eiendom bestaan indien die okkupeerder nie onmiddellik van die grond af verwyder word nie;
(b) daar geen ander doeltreffende remedie beskikbaar is nie;
(c) die waarskynlike ontbering vir die eienaar of enige ander geaffekteerde
45 persoon indien 'n bevel vir verwydering nie verleen word nie, groter is as die waarskynlike ontbering vir die okkupeerder teen wie die bevel aangevra word, indien 'n bevel vir verwydering verleen word; en
(d) voldoende reëlins getref is vir die herstel van 'n persoon wat uitgesit is indien 'n finale bevel nie verleen word nie.

HOOFTUK V

50 **Geskilbeslegting en howe**

Hangende verrigtinge

16. Die bepalings van artikels 5, 6, 7, 8, 9, 10, 11, 12, 13 en 15 is van toepassing op uitsettingsverrigtinge wat by die inwerkingtreding van hierdie Wet in 'n hof hangende is.

Choice of court

17. (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 situate, 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 situate. 5

(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), may make rules to govern the procedure in the High Court and the magistrates' courts in terms of this Act. 10

(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.

Powers of court

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18. 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.

Magistrates' courts

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19. (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. 25

(2) Civil appeals from magistrates' courts in terms of this Act shall lie to the Land Claims Court. 30

(3) Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before 31 December 1999, 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; 35
- (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:

Provided that before the Court makes any order in terms of paragraph (b) or (c), it shall give the parties an opportunity to make written submissions, and may give the parties an opportunity to make oral submissions, in that regard. 40

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

Land Claims Court

20. (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— 45

- (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 50

Keuse van hof

17. (1) 'n Party kan, behoudens die bepalings van artikels 19 en 20, verrigtinge instel in die landdroshof in wie se jurisdiksiegebied die betrokke grond geleë is, of die Grondeishof.

5 (2) Indien al die partye tot verrigtinge daartoe instem, kan verrigtinge in enige afdeling van die Hoë Hof ingestel word in wie se jurisdiksiegebied die betrokke grond geleë is.

(3) Die Reëlsraad vir Geregshowe ingestel by artikel 2 van die Wet op die Reëlsraad vir Geregshowe, 1985 (Wet No. 107 van 1985), kan reëls maak om die prosedure in die 10 Hoë Hof en landdroshowe ingevolge hierdie Wet te reël.

(4) Totdat reëls van die hof vir die landdroshowe ingevolge subartikel (3) gemaak is, geld die prosedurereëls wat toegepas word in siviele gedinge en aansoeke in 'n Hoë Hof *mutatis mutandis* ten opsigte van enige verrigtinge in 'n landdroshof ingevolge hierdie Wet.

15 Bevoegdhede van hof

18. 'n Hof kan, benewens ander bevoegdhede in hierdie Wet uiteengesit—

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

20 Landdroshowe

19. (1) 'n Landdroshof—

- (a) het jurisdiksie ten opsigte van—
 - (i) verrigtinge vir uitsetting of herstel; en
 - (ii) strafregtelike verrigtinge ingevolge hierdie Wet; en
- 25 (b) is bevoeg om—
 - (i) interdikte ingevolge hierdie Wet te verleen; en
 - (ii) verklarende bevele ten opsigte van die regte van 'n party ingevolge hierdie Wet te maak.

(2) Siviele appëlle vanaf landdroshowe ingevolge hierdie Wet word deur die 30 Grondeishof aangehoor.

(3) 'n Uitsettingsbevel deur 'n landdroshof ingevolge hierdie Wet verleen ten opsigte van verrigtinge op of voor 31 Desember 1999 ingestel, is onderworpe aan outomatiese hersiening deur die Grondeishof, welke hof—

- (a) sodanige bevel in die geheel of gedeeltelik kan bevestig;
- 35 (b) sodanige bevel in die geheel of gedeeltelik tersyde kan stel;
- (c) sodanige bevel in die geheel of gedeeltelik kan vervang; of
- (d) die saak na die landdroshof kan terugverwys tesame met riglyne om met enige aangeleentheid te handel op sodanige wyse as wat die Grondeishof goeddink:

40 Met dien verstande dat voordat die hof 'n bevel ingevolge paragraaf (a), (b) of (c) maak, die hof die partye die geleentheid moet bied om ten opsigte daarvan skriftelike verhoë te rig, en die hof die partye die geleentheid kan bied om mondelinge verhoë te lewer.

(4) Die bepalings van subartikel (3) is nie van toepassing nie op 'n saak ten opsigte 45 waarvan 'n appël deur die okkupeerder aangeteken is.

Grondeishof

20. (1) Die Grondeishof het ingevolge hierdie Wet regdeur die Republiek jurisdiksie en het al die bykomende bevoegdhede wat noodsaaklikerwys of redelikerwys verband hou met die verrigting van sy werksaamhede ingevolge hierdie Wet, met inbegrip van 50 die bevoegdheid—

- (a) om 'n grondwetlike aangeleentheid met betrekking tot hierdie Wet te oorweeg;
- (b) om tussentydse bevele, verklarende bevele en interdikte toe te staan;
- 55 (c) om 'n handeling, late of beslissing van 'n funksionaris wat ingevolge hierdie Wet optree of voorgee om ingevolge hierdie Wet op te tree, te hersien; en

(d) to review an arbitration award in terms of the Arbitration Act, 1965 (Act No. 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 the provisions of section 17(2), 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. 5

(3) If in any proceedings in a High Court at the date of 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.

(4) The President of the Land Claims Court may make rules to govern the procedure in the Land Claims Court in terms of this Act. 10

Mediation

21. (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. 15

(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. 20

(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. 25

Arbitration

22. (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 No. 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 No. 3 of 1996). 30

(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. 35

Offences

23. (1) No person shall evict an occupier except on the authority of an order of a competent court. 40

(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. 45

(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 No. 51 of 1977), shall apply to a private prosecution in terms of this Act: Provided that if— 50

(a) the person prosecuting privately does so through a person entitled to practise as an advocate or an attorney in the Republic;

- (d) om 'n arbitrasietoekenning ingevolge die Wet op Arbitrasie, 1965 (Wet No. 42 van 1965), in soverre dit handel oor 'n aangeleentheid wat ingevolge hierdie Wet deur 'n hof aangehoor mag word, te hersien.
- (2) Behoudens die bepalings van artikel 17(2) het die Grondeishof die bevoegdhede in subartikel (1) uiteengesit tot uitsluiting van enige hof beoog in artikel 166(c), (d) of (e) van die Grondwet.
- (3) Indien van 'n Hoë Hof in enige verrigtinge in daardie Hof by die datum van inwerkingtreding van hierdie Wet vereis word om hierdie Wet te interpreteer, moet so 'n Hof die verrigtinge staak en die aangeleentheid na die Grondeishof verwys.
- 10 (4) Die President van die Grondeishof kan reëls maak ten einde die prosedure in die Grondeishof ingevolge hierdie Wet te reël.

Bemiddeling

21. (1) 'n Party kan die Direkteur-generaal versoek om een of meer persone met kundigheid in geskilbeslegting aan te stel om vergaderings van belanghebbende partye te fasiliteer en te poog om 'n geskil ingevolge hierdie Wet te bemiddel en te skik.
- (2) Die Direkteur-generaal kan, op die voorwaardes wat hy of sy bepaal, 'n persoon in subartikel (1) bedoel, aanstel: Met dien verstande dat die partye te eniger tyd, by ooreenkomste, 'n ander persoon kan aanstel om, op die voorwaardes wat die Direkteur-generaal bepaal, vergaderings te fasiliteer of 'n geskil te bemiddel.
- 20 (3) 'n Persoon wat ingevolge subartikel (1) aangestel word en wat nie in die heeltidse diens van die Staat is nie, kan uit geld vir daardie doel deur die Parlement bewillig, die besoldiging en toelaes vir dienste deur hom of haar gelewer, betaal word wat die Minister in oorleg met die Minister van Finansies bepaal.
- (4) Alle besprekings, onthullings en voorleggings wat gedurende die bemiddelings-
25 proses plaasvind of gedoen word, is geprivilegeerd tensy die partye anders ooreenkom.

Arbitrasie

22. (1) Indien die partye tot 'n geskil ingevolge hierdie Wet die geskil ingevolge die Wet op Arbitrasie, 1965 (Wet No. 42 van 1965), vir arbitrasie verwys, kan vanuit die paneel van arbiters wat ingestel is ingevolge artikel 31(1) van die Wet op Grondher-
30 vorming (Huurarbeiders), 1996 (Wet No. 3 van 1996), 'n persoon as arbiter aangestel word.
- (2) 'n Persoon ingevolge subartikel (1) aangestel, wat nie in die heeltidse diens van die Staat is nie, word uit geld vir daardie doel deur die Parlement bewillig, die vergoeding en toelaes vir dienste deur hom of haar gelewer, betaal wat die Minister in
35 oorleg met die Minister van Finansies bepaal.
- (3) Indien die partye 'n persoon as arbiter aanstel wat nie op die paneel van arbiters bedoel in subartikel (1) is nie, kan die Direkteur-generaal, op die voorwaardes wat hy of sy bepaal, die betaling aan sodanige arbiter van die vergoeding en toelaes in subartikel (2) bedoel, goedkeur.

40 Misdrywe

23. (1) Geen persoon mag 'n okkupeerder anders as op gesag van 'n bevel van 'n bevoegde hof uitsit nie.
- (2) Geen persoon mag 'n amptenaar in diens van die Staat of 'n bemiddelaar opsetlik hinder in of inmeng met die uitvoering van sy of haar pligte kragtens hierdie Wet nie.
- 45 (3) 'n Persoon wat 'n bepaling van subartikel (1) of (2) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete, of gevangenisstraf vir 'n tydperk van hoogstens twee jaar, of met beide sodanige boete en sodanige gevangenisstraf.
- (4) 'n Persoon wie se regte of belange deur 'n oortreding van subartikel (1) benadeel
50 is, het die reg om 'n private vervolging teen die beweerde oortreder in te stel.
- (5) Die bepalings van die Strafproseswet, 1977 (Wet No. 51 van 1977), is ten opsigte van 'n private vervolging ingevolge hierdie Wet van toepassing: Met dien verstande dat indien—
- (a) die persoon wat privaat vervolgt dit doen deur middel van 'n persoon wat
55 geregig is om in die Republiek as 'n advokaat of prokureur te praktiseer; en

- (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

Subsequent owners

24. (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.

Legal status of agreements

25. (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.

Expropriation Act

26. (1) Without derogating from the powers that a Minister may exercise under the Expropriation Act, 1975 (Act No. 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.

- (b) die persoon wat privaat vervolg skriftelike kennis aan die staatsaanklaer wat juridiksie het, gegee het dat hy of sy van voorneme is om privaat te vervolg;
en
- 5 (c) die staatsaanklaer nie binne 14 dae vanaf ontvangs van sodanige kennisgewing skriftelik aangedui het dat hy of sy van voorneme is om die beweerde misdryf te vervolg nie,
- dan—
- (i) word daar nie van die persoon wat privaat vervolg, vereis om 'n sertifikaat deur die Prokureur-generaal uitgereik, voor te lê wat meld dat hy of sy
- 10 geweier het om die beskuldigde te vervolg nie;
- (ii) word nie van die persoon wat privaat vervolg vereis om sekuriteit vir sodanige aksie te voorsien nie;
- (iii) is die beskuldigde geregtig op 'n kostebevel teen die persoon wat privaat vervolg indien—
- 15 (aa) die aanklag teen die beskuldigde afgewys word of die beskuldigde vrygespreek word of 'n beslissing ten gunste van die beskuldigde op appèl gegee word; en
- (bb) die hof bevind dat sodanige vervolging ongegrond of kwelsugtig was;
en
- 20 (iv) is die Prokureur-generaal belet om, behalwe met verlof van die betrokke hof, te vervolg.

HOOFSTUK VI

Diverse bepalings

Opvolgende eienaars

- 25 24. (1) Die regte van 'n okkupeerder is, behoudens die bepalings van hierdie Wet, bindend op die regsopvolger van 'n eienaar of persoon in beheer van die betrokke grond.
- (2) Toestemming in hierdie Wet beoog wat deur die eienaar of persoon in beheer van grond verleen is, bind sy of haar regsopvolger asof laasbedoelde dit verleen het.

30 Regskrag van ooreenkomste

25. (1) Die afstanddoening deur 'n okkupeerder van sy of haar regte ingevolge hierdie Wet is nietig tensy dit deur hierdie Wet toegelaat word of in 'n hofbevel vervat is.
- (2) 'n Hof moet 'n ooreenkoms, vir sover sodanige ooreenkoms poog om enige van
- 35 die regte van 'n okkupeerder ingevolge hierdie Wet te beperk, in ag neem, maar is nie daaraan gebonde nie.
- (3) Ondanks die bepalings van subartikels (1) en (2) is 'n okkupeerder nie geregtig om verrigtinge vir herstel ingevolge artikel 14 in te stel nie indien hy of sy, welbewus van sy of haar regte ingevolge hierdie Wet, die betrokke grond vrywilliglik ontruim het.

40 Onteieningswet

26. (1) Sonder om afbreuk te doen aan die bevoegdhede wat 'n Minister kragtens die Onteieningswet, 1975 (Wet No. 63 van 1975), kan uitoefen, kan die Minister vir die doeleindes van enige ontwikkeling ingevolge hierdie Wet die ekwivalente bevoegdhede uitoefen wat so 'n ander Minister kragtens die Onteieningswet, 1975, mag uitoefen.
- 45 (2) Ondanks die bepalings van die Onteieningswet, 1975, moet die eienaar van die betrokke grond aangehoor word voordat enige grond vir 'n ontwikkeling ingevolge hierdie Wet onteien word.
- (3) In die geval van onteiening word vergoeding betaal soos deur die Grondwet voorgeskryf, met behoorlike inagneming van die bepalings van artikel 12(3), (4) en (5)
- 50 van die Onteieningswet, 1975.
- (4) 'n Reg in grond wat voortspruit uit die bepalings van hierdie Wet is vatbaar vir onteiening in ooreenstemming met die bepalings van 'n toepaslike wet.

Trespass Act, 1959

27. Nothing in this Act shall affect the rights of an owner or person in charge in terms of the Trespass Act, 1959 (Act No. 6 of 1959).

Regulations and guidelines

28. (1) The Minister may make regulations regarding— 5
- (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 10
 - (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*— 15
- (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). 20

Amendment of laws 20

29. (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 Squatting Act, 1951 (Act No. 52 of 1951) 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. 25

Short title

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

Wet op Oortreding, 1959

27. Die bepalings van hierdie Wet raak nie die regte nie van 'n eienaar of persoon in beheer ingevolge die Wet op Oortreding, 1959 (Wet No. 6 van 1959).

Regulasies en riglyne

- 5 28. (1) Die Minister kan regulasies maak oor—
- (a) die algemene voorwaardes vir die toestaan van subsidies ingevolge artikel 4;
 - (b) die vorm en wyse vir die dien van kennisgewings ingevolge hierdie Wet;
 - (c) enige ander aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet of kan word;
- 10 (d) maatstawwe vir die erkenning van persone, liggame of instansies ingevolge artikels 2(3) en 4(4); en
- (e) in die algemeen alle aangeleenthede wat redelikerwys nodig of wenslik is om voorgeskryf te word ten einde die doelstellings van hierdie Wet te bereik.
- (2) Die Minister kan verskillende regulasies vir verskillende gebiede in ooreenstem-
- 15 ming met die omstandighede in daardie gebiede maak.
- (3) Die Minister kan by kennisgewing in die *Staatskoerant*—
- (a) riglyne uitreik ten opsigte van die prosedures wat ingevolge hierdie Wet gevolg moet word en ten einde bystand te verleen aan partye wat betrokke kan raak by 'n geskil wat verband hou met aangeleenthede wat binne hierdie
- 20 Wet val; en
- (b) 'n riglyn bedoel in paragraaf (a) wysig of intrek.

Wysiging van wette

29. (1) Die wette in die Bylae vermeld, word hierby gewysig in die mate in die derde kolom daarvan aangedui.
- 25 (2) Die bepalings van die Wet op die Voorkoming van Onregmatige Plakkery, 1951 (Wet No. 52 van 1951), is nie van toepassing nie op 'n okkupeerder ten opsigte van grond wat hy of sy ingevolge hierdie Wet geregtig is om te okkupeer of te gebruik.

Kort titel

30. Hierdie Wet heet die Wet op die Uitbreiding van Sekerheid van Verblyfreg, 1997.

SCHEDULE**Laws amended
(Section 29)**

No. and year of law	Short title	Extension of amendment
Act No. 6 of 1959	Trespass Act, 1959	1. Amendment of section 1 by the insertion after subsection (1) of the following subsection: <u>“(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.”</u> 2. Amendment of section 2 by the insertion of the following subsection: <u>“(2) A court which convicts any person under subsection (1) may make an order for the summary ejectment 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.”</u> 3. Insertion of section 3A: “Application of Act <u>3A. This Act shall apply throughout the Republic.”</u>

BYLAE

Wette gewysig
(Artikel 29)

No. en jaar van wet	Kort titel	Omvang van wysiging
Wet No. 6 van 1959	Wet op Oortreding, 1959	1. Wysiging van artikel 1 deur na subartikel (1) die volgende subartikel in te voeg: “(1A) ’n Persoon wat ingevolge die Wet op die Uitbreiding van Sekerheid van Verblyfreg, 1997, geregtig is om op grond teenwoordig te wees, word geag wettige redes te hê om sodanige grond te betree en daarop te wees.”. 2. Wysiging van artikel 2 deur die volgende subartikel in te voeg: “(2) ’n Hof wat ’n persoon kragtens subartikel (1) skuldig bevind, kan ’n bevel vir die summiere uitsetting van sodanige persoon vanaf die betrokke grond verleen: Met dien verstande dat ’n okkuperder wat ingevolge die Wet op die Uitbreiding van Sekerheid van Verblyfreg, 1997, ’n verblyfreg of ’n reg het om grond te gebruik, nie ingevolge hierdie subartikel uitgesit word vanaf grond ten opsigte waarvan hy of sy sodanige reg het nie.”. 3. Invoeging van artikel 3A: “Toepassing van Wet 3A. Hierdie Wet is regdeur die Republiek van toepassing.”.

