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Government Gazette

REPUBLIC OF SOUTH AFRICA

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No. 13358

THE PRESIDENCY

No. 1507

5 July 1991

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

No. 112 of 1991:Upgrading of Land Tenure Rights Act, 1991.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

ACT

To provide for the upgrading and conversion into ownership of certain rights granted in respect of land; for the transfer of tribal land in full ownership to tribes; and for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 27 June 1991.)

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

Definitions

1. (1) In this Act, unless the context otherwise indicates—
 - (i) “Administrator”, in relation to any power, duty or function required to be exercised or performed —
 - (a) in respect of any township referred to in paragraph (b) of the definition of “formalized township” or which is situated on tribal land or land which at the commencement of this Act belongs to the South African Development Trust mentioned in section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), means the Minister of Development Aid; and
 - (b) in respect of any other township, means the Administrator of the province in which any such township is situated; (i)
 - (ii) “Deeds Act” means the Deeds Registries Act, 1937 (Act No. 47 of 1937); (ii)
 - (iii) “deeds registry” means a deeds registry as defined in section 102 of the Deeds Act; (xiv)
 - (iv) “erf”, in relation to a township, means any surveyed or any informally demarcated unit in the township or, if a general plan has been prepared for the township, any unit indicated on such general plan as an erf, plot or stand; (vii)
 - (v) “formalized township” means a township for which a general plan or general plans have been approved under a provision of any law and which—
 - (a) has been established or is deemed to have been established as a township under section 35 of the Black Communities Development Act, 1984 (Act No. 4 of 1984);
 - (b) has been established as a town under section 25 or 30 of the Black Administration Act, 1927 (Act No. 38 of 1927); or
 - (c) is for the purposes of Chapter 1 declared to be a formalized township under section 15(1); (viii)
 - (vi) “general plan” means a plan representing the relative positions and dimensions of two or more pieces of land; (iii)
 - (vii) “land tenure right” means any leasehold, deed of grant, quitrent or any other right to the occupation of land created by or under any law and, in relation to tribal land, includes any right to the occupation of such land under the indigenous law or customs of the tribe in question; (ix)
 - (viii) “Minister” means the Minister of Public Works and Land Affairs; (xii)
 - (ix) “Official Gazette” means the *Official* or *Provincial Gazette* of the province concerned; (xiii)
 - (x) “register of land rights”—
 - (a) in relation to a township in which a land tenure right mentioned in Schedule 1 or 2 has been granted in respect of any erf or other piece of land in the township in terms of a provision of any law, means the register compiled and written up in terms of a provision of any law as a record of the granting of such land tenure right in erven or other pieces of land in the township or, if such register has been compiled or updated for the township under section 18(1), the register so compiled or updated;

- (b) in relation to a township on tribal land in which a land tenure right has been granted in respect of any erf or other piece of land in the township under the indigenous law or customs of the tribe in question, means the register compiled under section 18(2) as a record of the granting of such land tenure right in erven or other pieces of land in the township; 5
- (c) in relation to a piece of land in respect of which a land tenure right mentioned in Schedule 1 or 2 has been granted under a provision of any law and which does not form part of a township, means the register compiled in terms of a provision of any law as a record of the granting of such land tenure right in such piece of land; (x) 10
- (xi) "title of land right", in relation to any erf or any other piece of land, means a deed executed under a provision of any law as proof of the registration of a land tenure right in respect of such erf or such piece of land in the name of a person; (xi) 15
- (xii) "township" means —
- (a) any piece of land which is subdivided into smaller units in such a manner that the units are accessible by means of streets or thoroughfares, whether the units have been surveyed or are informally demarcated; or 20
- (b) any settlement, whether surveyed as such or established in any informal manner; (iv)
- (xiii) "township owner" means the person who, by virtue of his ownership of the land on which a township is situated, is the owner of the erven and other pieces of land in the township or, if any of such erven or pieces of land have been transferred, is the owner of the remaining erven or pieces of land; (v) 25
- (xiv) "township register" means a register referred to in section 46(1) of the Deeds Act; (vi)
- (xv) "tribal land" means land— 30
- (a) in respect of which a tribe is the owner;
- (b) which is held in trust on behalf of a tribe; or
- (c) which has been allocated for the use of a tribe to the tribe by the State or the South African Development Trust mentioned in section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936); (xvii) 35
- (xvi) "tribal resolution", in relation to a tribe, means a resolution passed by the tribe in accordance with the indigenous law or customs of the tribe; (xvi)
- (xvii) "tribe" includes— 40
- (a) any community living and existing like a tribe; or
- (b) any part of a tribe living and existing as a separate entity. (xv)
- (2) For the purposes of this Act, any piece of land within the borders of a township which is not registrable in the township register of such township or, if a township register has not yet been opened, will not be so registrable, shall not be deemed to form part of the township. 45

CHAPTER 1

CONVERSION OF LAND TENURE RIGHTS INTO OWNERSHIP

Conversion of land tenure rights mentioned in Schedule 1

2. (1) Any land tenure right mentioned in Schedule 1 and which was granted in respect of— 50
- (a) any erf or any other piece of land in a formalized township for which a township register was already opened at the commencement of this Act, shall at such commencement be converted into ownership;
- (b) any erf or any other piece of land in a formalized township for which a township register is opened after the commencement of this Act, shall at the opening of the township register be converted into ownership; 55
- (c) any piece of land which is surveyed under a provision of any law and does not form part of a township, shall at the commencement of this Act be converted into ownership, 60

and as from such conversion the ownership of such erf or piece of land shall vest exclusively in the person who, according to the register of land rights in which that land tenure right was registered in terms of a provision of any law, was the holder of that land tenure right immediately before the conversion.

(2) (a) In order to give effect to subsection (1), the registrar of deeds concerned shall make the necessary entries and endorsements in respect of his registers and other documents, as well as in respect of any relevant documents produced to him. 5

(b) No transfer duty, stamp duty or other fees shall be payable in respect of any such entries and endorsements.

(3) For the purposes of subsection (2), the registrar of deeds may supplement the township register of the township concerned in accordance with the entries in any relevant register of land rights: Provided that if he is satisfied that any relevant register of land rights is suitable for use as part of the township register of the township concerned and he has endorsed the register of land rights on the obverse with words to that effect and so dated it, such register of land rights shall be deemed to form part of the township register of the township. 10 15

Conversion of land tenure rights mentioned in Schedule 2

3. (1) Any land tenure right mentioned in Schedule 2 and which was granted in respect of—

(a) any erf or any other piece of land in a formalized township for which a township register was or is opened either before or after the commencement of this Act; or 20

(b) any piece of land which is surveyed under a provision of any law and does not form part of a township,

shall, upon the submission by the owner of such erf or piece of land at the deeds registry of a certificate of ownership, on the form prescribed for that purpose under the Deeds Act and made out in the name of the person who is the holder of the relevant land tenure right, be converted into ownership by the registrar of deeds by the registration of such erf or piece of land in the name of such person. 25

(2) As from the registration of such erf or piece of land in the name of such person, the ownership of such erf or piece of land shall vest exclusively in such person. 30

(3) No provision of section 15 or 17 of the Deeds Act shall apply, and no transfer duty, stamp duty or other fee shall be payable, in respect of the transfer of ownership effected by such conversion. 35

(4) Notwithstanding the provisions of the Deeds Act, the registrar of deeds shall register the transfer of ownership of any erf or any piece of land under the circumstances referred to in subsection (1) by signing the certificate of ownership submitted at the deeds registry in terms of that subsection.

(5) When the registrar of deeds has registered the transfer of ownership of any erf or any piece of land in terms of subsection (4), he shall— 40

(a) make an entry of the transfer of ownership in the applicable township register or register of land rights in the deeds registry;

(b) file the signed certificate of ownership in the deeds registry in such manner as he may deem fit; and 45

(c) make a copy of the signed certificate of ownership available to the person who has submitted it under subsection (1), for delivery to the person to whom such erf or piece of land has been transferred.

Contents of land tenure rights mentioned in Schedule 1 pending conversion

4. (1) Notwithstanding anything to the contrary contained in any law but subject to subsections (2) and (3), a land tenure right mentioned in Schedule 1 and which has been granted in respect of any erf or any other piece of land in a formalized township for which a township register has not yet been opened shall bestow, pending the conversion thereof into ownership in terms of section 2(1)(b) as soon as a township register is opened, on the person who is, according to a register of land rights of the township, the holder thereof, all rights and powers as if he is the 50 55

owner of the erf or the land in respect of which the land tenure right has been granted.

(2) The provisions of subsection (1) shall not affect—

- (a) any condition, servitude, mortgage bond or other right registered against the title of the land on which the township concerned is situated; 5
- (b) any condition, servitude, mortgage bond or other right registered against the title of land right of the relevant erf or other piece of land; and
- (c) any condition in force in respect of the township concerned.

(3) No provision, irrespective of whether it is contained in any law or registered against the title or title of land right referred to in subsection (2), shall be of force in respect of any land tenure right referred to in subsection (1), in so far as such provision— 10

- (a) has placed any restriction on the period for which the land tenure right concerned was granted;
- (b) has placed any restriction, other than by virtue of an agreement to which the holder of such land tenure right was a party, on the capacity of the holder to alienate, bequeath, let, hypothecate or otherwise deal with such land tenure right as if he is the owner; 15
- (c) has placed any restriction on the transfer of such land tenure right to, or on the possession, use or occupation of the relevant erf or other piece of land by, any person of a particular population or ethnic group or who is not of a particular population or ethnic group; or 20
- (d) has imposed any obligation on the holder of such land tenure right to pay any royalty or similar periodic levy to the township owner for the continued existence of such land tenure right. 25

Continuation of title conditions, servitudes, mortgage bonds, etc.

5. (1) Ownership vested in any erf or any piece of land by virtue of any conversion in terms of section 2 or 3 shall, subject to subsections (2) and (3), be subject to—

- (a) any condition, servitude, mortgage bond or other right registered immediately before such conversion— 30
 - (i) in the case of any erf or any other piece of land in a township, against the title of the land on which the township is situated;
 - (ii) in the case of any piece of land which does not form part of a township, against the title of that land; and 35
- (b) any condition, servitude, mortgage bond or other right registered immediately before such conversion against the title of land right of such erf or piece of land.

(2) Ownership vested in any erf or any piece of land by virtue of any conversion in terms of section 2 or 3, shall not be subject to a provision of any condition, servitude, mortgage bond or other right referred to in subsection (1), in so far as such provision— 40

- (a) placed any restriction on the period for which the land tenure right concerned was granted;
- (b) placed any restriction, other than by virtue of an agreement to which the holder of such land tenure right was a party, on the capacity of the holder to alienate, bequeath, let, hypothecate or otherwise deal with such land tenure right; 45
- (c) placed any restriction on the transfer of such land tenure right to, or on the possession, use or occupation of such erf or piece of land by, any person of a particular population or ethnic group or who is not of a particular population or ethnic group; or 50
- (d) imposed any obligation on the holder of such land tenure right to pay any royalty or similar periodic levy to the person who was the owner of such erf or piece of land for the continued existence of such land tenure right. 55

(3) (a) If a mortgage bond has been registered over the land on which a formalized township referred to in section 2(1)(a) or (b) or 3(1)(a) is situated, the mortgage bond shall lapse in respect of those erven and other pieces of land in the township in respect of which ownership is vested by virtue of any conversion in terms of section 2 or 3. 60

(b) Paragraph (a) shall not affect the continuation of such mortgage bond in

respect of erven and other pieces of land in the township concerned which are not affected by any conversion in terms of section 2 or 3.

Effect of Act

6. (1) The provisions of any law governing the registration and transfer of any land tenure right mentioned in Schedule 1 shall— 5
- (a) as from the commencement of this Act, no longer apply in respect of any township referred to in section 2(1)(a) or in respect of any erf or any other piece of land in such township;
 - (b) as from the opening of a township register for a township referred to in section 2(1)(b), no longer apply in respect of the township for which the township register is opened or in respect of any erf or any other piece of land in such township; or 10
 - (c) as from the commencement of this Act, no longer apply in respect of any land which does not form part of a township.
- (2) As from the discontinuation of the provisions of any law in terms of subsection (1) relating to any township or piece of land referred to in that subsection, any authorization in any such law for the granting of any land tenure right mentioned in Schedule 1 in respect of any erf or other piece of land in such township or in respect of such piece of land, shall be construed as authorization for the granting of ownership in respect of any such erf or piece of land. 15 20
- (3) Property transactions in any township referred to in section 2(1)(a) or (b) shall—
- (a) in the case of the transfer of any erf or any other piece of land of which the township owner is immediately after the commencement of this Act or the opening of the township register, as the case may be, still the owner, be disposed of in accordance with section 3(1)(a), if any land tenure right mentioned in Schedule 2 has been granted in respect thereof, or in accordance with section 13, if any such land tenure right has not been granted in respect thereof; and 25
 - (b) in the case of any other transfer of erven and other pieces of land in any such township, be disposed of in accordance with the Deeds Act. 30
- (4) Property transactions with reference to any land which does not form part of a township shall—
- (a) in the case of the transfer of such piece of land in respect of which any land tenure right referred to in Schedule 2 has been granted, be disposed of in accordance with section 3(1)(b); or 35
 - (b) in the case of any other transfer, be disposed of in accordance with the Deeds Act.
- (5) (a) Notwithstanding anything to the contrary contained in the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987), no grazing rights shall as from the commencement of this Act be granted to any owner or registered occupier as defined in section 1 of the said Act. 40
- (b) The provisions of paragraph (a) shall not affect any grazing rights granted to any owner or registered occupier prior to the commencement of this Act.

Cancellation of certain servitudes and restrictive conditions relating to formalized townships 45

7. (1) The Administrator may by notice in the *Official Gazette* cancel—
- (a) any servitude registered against the title of the land on which a formalized township is situated and which in his opinion is not being utilized beneficially or, as a result of the township situated on such land, cannot be utilized; or 50
 - (b) any restrictive condition so registered or otherwise operative in respect of such land, 55
- if he is of the opinion that any such servitude or condition is inconsistent with, or undesirable with reference to, the use or occupation or the further development or subdivision of such land as a township.
- (2) A cancellation under subsection (1) shall take effect—
- (a) in the case of any township for which a township register has been opened, 60 days after the date of publication of the notice; or

(b) in the case of any township for which a township register has not yet been opened, 60 days after the date of publication of the notice or, if the township register is not yet opened after the expiry of the said period, at the opening of the township register.

(3) The Administrator may at any time before any cancellation is effected in terms of subsection (2) withdraw by notice in the *Official Gazette* a notice under subsection (1), or the cancellation of any particular servitude or condition specified therein. 5

(4) A notice under subsection (1) shall specify the fact that a cancellation specified in the notice shall take effect 60 days after the date of publication of the notice or at the opening of the township register, as the case may be, as well as that such cancellation may be withdrawn prior to the expiry of the said period or prior to the opening of the register, as the case may be. 10

(5) Subsection (1) shall not be construed as authorizing the cancellation of any registered right to minerals over the land concerned. 15

(6) The cancellation of a servitude or condition registered against the title of the land on which a township is situated under this section shall, in the case of a township for which a township register has been opened, also be effectual in respect of any title of an erf or other piece of land in the township against which such servitude or condition is registered. 20

(7) (a) In order to give effect to subsections (1) and (6), the registrar of deeds concerned shall make the necessary entries and endorsements in respect of his registers and other documents, as well as in respect of any relevant documents produced to him.

(b) No stamp duty or other fees shall be payable in respect of any such entries and endorsements. 25

Compensation in respect of cancelled servitudes and conditions

8. (1) Any person who has suffered any damage as a result of the cancellation of a servitude or restrictive condition under section 7(1) or (6) may, within a period of three years after such cancellation has taken effect, claim compensation for his damage from the Administrator. 30

(2) The Administrator shall compensate the claimant for his damage, if any, in the amount agreed upon by the Administrator and the claimant, or failing such agreement, in the amount determined by arbitration, in which case the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), shall apply *mutatis mutandis*. 35

(3) If any person other than the State was the township owner at the time of the relevant cancellation and the Administrator exercises his powers under subsection (2) after consultation with such person, the Administrator may recover from such person any amount paid by him as compensation to any claimant in terms of that subsection. 40

Opening of township registers in respect of certain formalized townships

9. (1) (a) The Administrator may in respect of any formalized township for which a township register has not been opened at the commencement of this Act or any township which is declared to be a formalized township under section 15(1) apply to the registrar of deeds for the opening of a township register for any such township. 45

(b) If the land on which the township is situated is not State-owned land, the person who is the owner of the land on which the township is situated may make an application referred to in paragraph (a) to the registrar of deeds.

(2) The registrar of deeds shall open a township register in respect of a township referred to in subsection (1) if he is satisfied that all relevant legal and other requirements for the opening of the register have been complied with. 50

(3) At the opening of a township register of a township referred to in section 15(1), the ownership of portions indicated on the general plan as public places shall vest—

(a) in a case where the township is situated within the area of jurisdiction of a local authority, in the local authority; and 55

(b) in other cases, in the Administrator in trust for a local authority until a local authority is established for the township or the township is incorporated in the area of jurisdiction of a local authority, whereupon it shall vest in such local authority, and the registrar of deeds shall make an entry of such vesting in the documents under his control or which are produced to him, in such manner as he may deem necessary.

Arrangements by Administrator to facilitate opening of township registers

10. (1) The Administrator shall take all steps necessary to enable the registrar of deeds to open a township register in respect of any formalized township for which a township register has not been opened.

(2) The steps referred to in subsection (1) shall include steps—

(a) to comply on behalf of a township owner or person referred to in section 11(1)(a) or (b), and with or without the consent or authorization of such township owner or person, with the provisions of that section;

(b) to apply on behalf of the relevant township owner, and with or without the consent or authorization of that township owner, for the opening of a township register in terms of section 9(1), or to comply with any relevant legal or other requirement for the opening of the township register; and

(c) to require the relevant township owner or other person to deliver to the Administrator any relevant title deed, diagram or other document in the possession or under the control of that township owner or person.

(3) The Administrator may recover any costs incurred by him in connection with anything done by him on behalf of a township owner or person under subsection (2), from that township owner or person.

Directions as to opening of township registers

11. (1) The registrar of deeds shall not open any township register in respect of a township referred to in section 9(1), unless a certificate of rights to minerals has been taken out in favour of—

(a) the township owner, in respect of all rights to minerals held by him under the same title as the title by which he is the registered owner of the land on which the township is situated;

(b) any person who is the holder of, or who is entitled to, the rights to minerals referred to in section 71(2)*bis(a)* of the Deeds Act, if such certificate has not yet been issued.

(2) For the purposes of section 9(2)—

(a) any general plan approved by or under any law other than the Land Survey Act, 1927 (Act No. 9 of 1927), shall be deemed to be a general plan approved under the Land Survey Act, 1927; and

(b) the township owner or the person in whom the rights to minerals in respect of the land vests, if that township owner or person is not the Administrator, shall be deemed to have consented to the opening of the township register.

Conditions of land use

12. (1) If a township is declared to be a formalized township under section 15(1), the Administrator may by notice in the *Official Gazette* impose conditions in respect of such township for the regulation of the use of the erven and other pieces of land in the township.

(2) Conditions imposed under subsection (1)—

(a) shall not be registered against the title of the land on which the township is situated or against the title of any erf or other piece of land in the township;

(b) may be amended or withdrawn by the Administrator by like notice prior to or after the opening of a township register for the township.

(3) The Administrator shall exercise the powers conferred upon him by this section after consultation with the relevant community in such manner as he may deem the most suitable.

(4) Any condition referred to in this section shall lapse as from the date on which a town planning scheme or a zoning scheme becomes applicable in respect of the township concerned.

Shortened registration procedures relating to certain erven and land transferred by township owner 5

13. (1) If a township owner, with reference to any formalized township, intends to transfer ownership in respect of any erf or any other piece of land in respect of which no land tenure right has been granted, he may do so by submitting a certificate of ownership, on the form prescribed for that purpose under the Deeds Act and made out in the name of the transferee, at the deeds registry for the registration of such erf or piece of land in the name of the transferee. 10

(2) Ownership in respect of any erf or any piece of land registered in terms of subsection (1) shall be subject to any condition, servitude or other right registered upon such registration against the title of the land on which the township concerned is situated. 15

(3) No provision of section 15 or 17 of the Deeds Act shall apply, and no transfer duty, stamp duty or other fee shall be payable, in respect of the transfer of ownership of any erf or any piece of land in terms of subsection (1).

(4) Notwithstanding the provisions of the Deeds Act, the registrar of deeds shall register the transfer of ownership of any erf or any piece of land under the circumstances referred to in subsection (1) by signing the certificate of ownership submitted at the deeds registry in terms of that subsection. 20

(5) When the registrar of deeds has registered the transfer of ownership of any erf or any piece of land in terms of subsection (4), he shall—

- (a) make an entry of the transfer of ownership of any such erf or piece of land in the township register; 25
- (b) file the signed certificate of ownership in the deeds registry in such manner as he may deem fit; and
- (c) make a copy of the signed certificate of ownership available to the township owner for delivery to the person to whom any such erf or piece of land has been transferred. 30

Correction of township registers by registrar of deeds

14. (1) If any entry in a township register of any formalized township is manifestly incorrect, the registrar of deeds having custody and control of that township register may correct the error upon application by any interested person. 35

(2) The provisions of section 2(2) shall *mutatis mutandis* apply in respect of any such correction.

CHAPTER 2

FORMALIZING OF TOWNSHIPS

Declaration of townships to be formalized townships 40

15. (1) The Minister may by notice in the *Gazette* declare a township specified in the notice to be a formalized township for the purposes of Chapter 1.

(2) The Minister shall not declare any township to be a formalized township under subsection (1) unless—

- (a) a general plan in respect of any such township has been approved under the relevant provision of any law; 45
- (b) a land tenure right mentioned in Schedule 1 or 2 has been granted in respect of any erf or any other piece of land in any such township; and
- (c) if any such township is situated on tribal land, the tribe in question has requested the Minister by means of a tribal resolution to take steps to 50

declare any such township to be a formalized township with a view to converting the land tenure rights granted to individuals in respect of erven and other pieces of land in any such township into ownership.

Assistance by Minister to formalize townships

16. (1) Subject to the provisions of subsection (2) and the availability of moneys and personnel, the Minister shall in respect of a township in which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land, take in conjunction with the community residing in such township such steps as may be necessary to declare such township to be a formalized township. 5

(2) Subsection (1) shall not be applicable in respect of any township situated on tribal land unless the tribe in question has requested the Minister by means of a tribal resolution to take steps to declare any such township to be a formalized township with a view to converting the land tenure rights granted to individuals in respect of erven and other pieces of land in any such township into ownership. 10

Surveying

17. (1) If a township in which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land has not been surveyed, the Minister may from moneys appropriated for that purpose by Parliament—

(a) in conjunction with the community residing in such township, cause the layout of such township to be rearranged and cause such adjustments to be effected to the layout thereof as he may deem necessary; 20

(b) cause the land on which such township is situated, including such township itself, to be surveyed and cause a diagram and general plan to be prepared; and

(c) cause such diagram and general plan to be submitted to the surveyor-general for his approval. 25

(2) If the land on which the township is situated is not State-owned land, the Minister may take the steps contemplated in subsection (1) with or without the consent or authorization of the owner of the land.

Updating and compilation of registers of land rights

18. (1) If the Minister is of the opinion that the register of land rights of a township in respect of which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land has not been written up or properly written up, he may designate any person to compile a register of land rights for the township or to update the existing register and to rectify or supplement errors and omissions, as the case may be. 35

(2) If the Minister receives a request from a tribe in terms of section 16(2) in respect of any township on tribal land in which the individual erven or other pieces of land are occupied or utilized by individuals and their families under the indigenous law or customs of that tribe, he may designate any person to compile a register of land rights in respect of any such township. 40

(3) If a township referred to in subsection (1) or (2) has not been surveyed, the functions contemplated in that subsection shall not be performed before the survey of such township has commenced.

(4) Any register of land rights compiled or updated under subsection (1) or (2) shall, as to its shape, form and contents, be compiled or updated in accordance with the legal and administrative requirements applicable to a township register. 45

(5) Any person designated under subsection (1) or (2) shall in the compilation or updating of a register of land rights—

(a) satisfy himself that the property descriptions in the register or which he makes in the register correspond with those descriptions on the general plan of the township concerned prepared in terms of section 17(1)(b); 50

(b) ascertain the identity of the person who at the relevant time is physically and beneficially the holder of the land tenure right in each relevant erf or other piece of land in the township; 55

(c) consider any representations made to him either orally or in writing by

any person who lays claim to be registered in the register as the holder of a land tenure right.

(6) In order to gather information which is necessary or expedient in compiling or updating a register of land rights for the township concerned, any person designated under subsection (1) or (2) may—

(a) question any person who in his opinion may have relevant information available;

(b) require any person to deliver to him forthwith, or to submit to him at such time and place as may be determined by him, any register, permit, certificate, title of land right or other document in the possession or under the control of any such person and which in his opinion contains relevant information;

(c) examine any such register, permit, certificate, title of land right or document or make an extract therefrom or a copy thereof;

(d) for the purposes of paragraph (a), (b) or (c), at any reasonable time enter upon any erf or other land in the township concerned.

(7) Any person designated under subsection (1) or (2) may in the performance of his functions be accompanied by such persons as he under the circumstances of any particular case may deem necessary.

(8) The Minister shall issue to a person designated under subsection (1) or (2) proof in writing of his designation, and such person shall in the performance of his functions under this section produce, at the request of any person affected by such functions, such proof to the latter person.

(9) (a) Any person aggrieved by an entry made by a person designated under subsection (1) or (2) in a register of land rights, may within 30 days after he became aware of the entry appeal in writing against such entry to the Minister.

(b) The Minister may, after he has considered the grounds of the appeal and the reasons of the person designated under subsection (1) or (2) for such entry —

(i) either in whole or in part, allow the appeal, and direct such person to alter such entry or to substitute for it any other entry which such person in the Minister's opinion ought to have made; or

(ii) dismiss the appeal.

(c) The Minister shall cause a person who lodged an appeal with him to be notified in writing of his decision on the appeal.

CHAPTER 3

35

MISCELLANEOUS

Legal capacity of tribe to obtain property

19. (1) Any tribe shall be capable of obtaining land in ownership and, subject to subsection (2), of selling, exchanging, donating, letting, hypothecating or otherwise disposing of it.

(2) Land obtained by any tribe by virtue of section 20 shall not during a period of ten years as from the commencement of this Act be sold, exchanged, donated, let or otherwise allocated by that tribe to any person who is not a member of that tribe, except on the authority of consent granted by a competent court.

(3) Consent in terms of subsection (2) shall not be granted unless the court is satisfied—

(a) that the relevant disposal is authorized by a tribal resolution;

(b) that the relevant disposal is not in conflict with the interests of the members of the tribe; and

(c) that satisfactorily alternative residence is available for persons residing on the land concerned, if the relevant disposal results in those persons waiving their right to the occupation of such land.

Transfer of tribal land to a tribe

20. (1) A tribe may request the Minister to transfer tribal land the control of which vests in the tribe to the tribe in ownership.

(2) If the land has been surveyed and the Minister is of the opinion that the request is feasible, he shall forthwith take steps to transfer the land concerned to the tribe in question. 5

(3) If the land has not been surveyed or the Minister has any doubt as to the feasibility of the request, he shall designate any person to investigate the feasibility of the request and to submit a report and recommendation to him in regard thereto. 10

(4) Any person designated under subsection (3) may for the purposes of his investigation—

- (a) gather such information as he may deem necessary;
- (b) hear or receive representations from any person;
- (c) question any person who in his opinion may have relevant information available; 15
- (d) by agreement between interested parties, settle any difference as to the land which forms the subject of the investigation, or the boundaries of such land;
- (e) determine the boundaries of such land or, if they cannot be determined, establish them in consultation with interested parties; 20
- (f) at any reasonable time enter upon such land or any contiguous land.

(5) Any person designated under subsection (3) may in the performance of his functions be accompanied by such persons as he under the circumstances of any particular case may deem necessary. 25

(6) The Minister shall issue to a person designated under subsection (3) proof in writing of his designation, and such person shall in the performance of his functions under this section produce, at the request of any person affected by such functions, such proof to the latter person.

(7) If after receipt of a report and recommendation referred to in subsection (3), the Minister is of the opinion that the request is feasible or partially feasible, he shall cause the land to be surveyed, if such land or any portion thereof which may in the opinion of the Minister be transferred has not been surveyed, and forthwith take steps to transfer such land or such portion to the tribe in question. 30

(8) If after receipt of a report and recommendation referred to in subsection (3), the Minister is of the opinion that the request is not feasible, he shall cause the tribe in question to be notified in writing of the reasons for his decision not to accede to such request. 35

(9) No transfer duty, stamp duty or other fees shall be payable in respect of any transfer in terms of subsection (2) or (7). 40

(10) For the purposes of this section "surveyed" means surveyed under a provision of any law.

Legal presumptions

21. (1) Whenever in any judicial proceedings the question arises—

- (a) whether a particular resolution passed or purporting to have been passed with reference to any tribal land, or any township on tribal land, is a tribal resolution or not, a certificate signed or purporting to have been signed by any person who alleges therein that he is the magistrate of the district in which any such tribal land or township is situated and that the resolution in question is a tribal resolution shall, on production of such certificate at any such proceedings by any person, be accepted as *prima facie* proof of the facts alleged therein; or 45
- (b) whether a person with a particular name is the holder of a land tenure right mentioned in Schedule 1 or 2 in respect of a particular erf or piece of land, a certificate signed or purporting to have been signed by any person who alleges therein that he is lawfully in control of the register of land rights in which such land tenure right is registered and that a person with a name specified in the certificate is entered in such register as the 50

holder of such land tenure right in respect of that particular erf or piece of land shall, on production of such certificate at any such proceedings by any person, be accepted as *prima facie* proof of the facts alleged therein.

Transfer of certain offices to Department of Public Works and Land Affairs 5

22. (1) Subject to the provisions of section 25, the State President may by proclamation in the *Gazette*, and as from a date determined in the proclamation, transfer any office—

(a) for the registration of land tenure rights mentioned in Schedule 1; or
(b) which renders surveying services, 10
and which has been established in the Department of Development Aid or in any department under the control of the government of a self-governing territory, to the Department of Public Works and Land Affairs.

(2) As from the date specified in a proclamation under subsection (1)—

(a) the control of an office so specified, and all registers, books, plans, diagrams, records and other documents relating to the affairs of such office, shall vest in the Director-General: Public Works and Land Affairs; and 15

(b) the officers and employees attached to such office shall, subject to subsection (3), perform their functions as if they were seconded to the Department of Public Works and Land Affairs. 20

(3) (a) Any officer or employee referred to in subsection (2) and who is an officer or employee in the public service may be dealt with in accordance with the Public Service Act, 1984 (Act No. 111 of 1984).

(b) Any officer or employee referred to in subsection (2) and who is an officer or employee in the government service of a self-governing territory may be transferred to the Department of Public Works and Land Affairs in accordance with the Public Service Act, 1981, as if he is a member of the public service: Provided— 25

(i) that such transfer shall not be effected without his consent; and 30
(ii) that such transfer shall not be effected under conditions which are less favourable than the conditions applicable to him as a member of the government service concerned.

Offences and penalties

23. Any person who— 35

(a) hinders or obstructs any person designated under section 18(1) or (2) or 20(3) in the performance of his functions under this Act;

(b) refuses or fails to answer to the best of his ability any question put to him by any such person in the performance of his functions under this Act; or 40

(c) refuses or fails to comply to the best of his ability with any request made by any such person in the performance of his functions under this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months.

Amendment of Schedules 1 and 2 45

24. (1) Subject to the provisions of section 25, the State President may by proclamation in the *Gazette*—

(a) amend Schedule 1 by the addition of any leasehold, deed of grant or quitrent created by any law of a self-governing territory and specified in the proclamation; 50

(b) amend Schedule 2 by the addition of any land tenure right specified in the proclamation.

(2) If the State President adds to Schedule 1 any leasehold, deed of grant or quitrent under subsection (1)(a), a reference in this Act to its commencement, with reference to any such leasehold or deed of grant or quitrent, shall, except 55

where it is clearly inappropriate, be construed as a reference to the commencement of the relevant proclamation under that subsection.

Application of Act in self-governing territories

25. (1) The State President may, after consultation with the cabinet of a self-governing territory as referred to in section 29 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), and by proclamation in the *Gazette*, declare this Act to be applicable in such territory. 5

(2) In applying this Act in a self-governing territory under subsection (1), a reference in this Act—

(a) to the Administrator or to the Minister, as the case may be, shall be construed as a reference to the Minister of the self-governing territory to whom the Chief Minister of the self-governing territory has assigned the administration of this Act; 10

(b) to the *Official Gazette* shall be construed as a reference to the *Official Gazette* of the self-governing territory; 15

(c) to the State or to State-owned land shall be construed as a reference to the government of the self-governing territory or to land of which the ownership vests in that government, respectively;

(d) to the commencement of this Act shall be construed as a reference to the commencement of the relevant proclamation under that subsection. 20

(3) (a) As from the date on which this Act is declared under subsection (1) to be applicable in a self-governing territory, the Land Survey Act, 1927 (Act No. 9 of 1927), the Deeds Act, any regulation or other enactment issued under the said Acts and any amendment of the said Acts or any such regulation or enactment shall be of force and effect in such territory to the exclusion of any corresponding act, regulation or enactment in force in such territory. 25

(b) Anything done in terms of a provision of any such corresponding act, regulation or enactment and which is permitted or required to be done in terms of a provision of the Land Survey Act, 1927, the Deeds Act or any regulation or other enactment issued thereunder, as the case may be, shall be deemed to have been done in terms of the latter provision. 30

Short title and commencement

26. This Act shall be called the Upgrading of Land Tenure Rights Act, 1991, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. 35

Schedule 1**LEASEHOLDS, DEEDS OF GRANT AND QUITRENTS**

1. Any deed of grant or any right of leasehold as defined in regulation 1 of Chapter 1 of the Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proclamation No. R.293 of 1962).
2. Any quitrent title as defined in regulation 1 of the Black Areas Land Regulations, 1969 (Proclamation No. R.188 of 1969).
3. Any right of leasehold as defined in section 1 (1) of the Black Communities Development Act, 1984 (Act No. 4 of 1984).
4. Any right of leasehold within the meaning of the Conversion of Certain Rights to Leasehold Act, 1988 (Act No. 81 of 1988).
5. Deed of grant rights or rights of leasehold as defined in regulation 1(1) of the Regulations concerning Land Tenure in Towns, 1988 (Proclamation No. R.29 of 1988).
6. Deed of grant rights or rights of leasehold within the meaning of the Regulations for the Disposal of Trust Land in Towns, 1988 (Government Notice No. R.402 of 1988).

Schedule 2**RIGHTS TO THE OCCUPATION OF LAND**

1. Any permission granted in terms of regulation 5(1) of the Irrigation Schemes Control Regulations, 1963 (Proclamation No. R.5 of 1963), to occupy any irrigation and residential allotment.
2. Any permission to occupy any allotment within the meaning of the Black Areas Land Regulations, 1969 (Proclamation No. R.188 of 1969).
3. Any right of occupation granted to any registered occupier as defined in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987).
4. Any right to the occupation of tribal land granted under the indigenous law or customs of the tribe in question.