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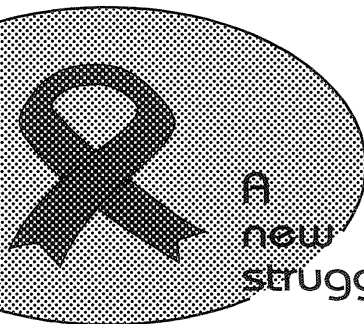
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NELSPRUIT, 9 NOVEMBER 2012

No. 2111

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us all



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struggle

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GENERAL NOTICE

NOTICE 388 OF 2012

MPUMALANGA DEPARTMENT OF HUMAN SETTLEMENTS

Publication of Mpumalanga Eradication, Prevention and Control of Informal Settlements Bill, 2012

The Member of the Executive Council for Human Settlements intends to introduce the above named Bill in the Mpumalanga Provincial Legislature. Copies of the Bill may also be obtained from the Department of Human Settlements at the address mentioned below as well as in our regional offices: Gert Sibande District Offices, 68 Fourie Street, Ermelo AND Stand No 27, Diepgezeit Main Road (opposite eMbulane Hospital) Elukwatini. eHlanzeni District Offices, Kaeweldorp building, corner Emnotweni and Cascade Close, Nelspruit.

Interested persons and institutions are invited to submit written representation on the Bill within 21 (twenty one) days from the date of this publication to:

The Director: Legal Services

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MPUMALANGA ERADICATION, PREVENTION AND CONTROL OF INFORMAL SETTLEMENTS BILL, 2012

To provide for the systematic eradication of informal settlements in the Province of Mpumalanga, to provide for the prevention of the *emergence and* re-emergence of informal settlements; to provide for the upgrading and control of existing Informal Settlements through the Upgrading of Informal Settlements Programme; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS it is necessary to promote the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions and further, to ensure the eradication and prevention of informal settlements conditions

AND WHEREAS it is desirable to introduce measures which seek to eradicate, prevent and control informal settlements in a manner that promotes and protects the housing construction programmes of the Provincial Government

BE IT THEREFORE ENACTED by the Mpumalanga Provincial Legislature as follows:-

[1] Definitions

In this Act any word or expression to which a meaning has been assigned in the Prevention of Illegal Eviction from the Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), must, unless clearly inappropriate, bear that meaning, and unless the context indicates otherwise-

“Annual report” means a report prepared by a municipality detailing the plans, progress; obstacles, and other related matters pertaining to the elimination and administration of Informal settlements in its area of jurisdiction.

“Building” means a structure, in whatever form constructed in an unlawfully occupied land or a structure so unlawfully occupied for residential purposes;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“Department” means the Mpumalanga Provincial Department of Human Settlements responsible for the provision of Human Settlements in the Province;

“Financial year” means the period from 1 April in any year to 31 March of the following year;

“**Gazette**” means the official Provincial Gazette of Mpumalanga;

“**Informal settlement**” means an unplanned and unapproved area occupied by unlawful occupants for temporary or permanent residential purposes, which is without formal amenities,

“**Informal Settlements Officer**” means the informal settlements officer as designated or appointed in terms of section 10 of this Act.

“**Information system**” means the Housing Subsidy System responsible for the management of beneficiary status or any upgraded system or any other similar system.

“**integrated development**” planning means planning by a municipality in accordance with a plan envisaged in section 25 of the Local Government: Municipal System Act, 2000 (Act No. 32 of 2000), and integrated development plan has a corresponding meaning;

“**Municipality**” a municipality contemplated in section 155 of the Constitution, 1996, and established by sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998’

“**Departmental official**”; means an official appointed in terms of the Public Service Act, whether temporary, permanently or as a consultant.

“**Municipal Official**” means an official appointed by a municipality whether permanently, temporary or as a consultant

“**Prevention of Illegal Eviction from and Unlawful Occupation of Land Act**” means the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998);

“**the owner**” means a person who has or at the relevant time had, the legal authority to give permission to a person to enter or reside upon any land or building or an appointed representative;

“**Province**” means the Province of Mpumalanga as contemplated in section 103 of the Constitution, 1996;

“**Provincial Government**” means the Provincial Government of the Province of Mpumalanga;

“**Housing Code**” means the Housing Code referred to in the National Housing Act approved by the Minister of Human Settlements

“**provincial housing development fund**” means the provincial housing development fund contemplated in section 12(2) of the Housing Act, 1997 (Act No. 107 of 1997);

“**Provincial Legislature**” means the Legislature of the Province of Mpumalanga;

“**Responsible Member of the Executive Council**” means the Member of the Executive Council of the Mpumalanga Province responsible for Human Settlements;

“**Informal Settlements upgrading programme**” means one of the Department of Human settlement’s programme aimed at the upgrading of informal settlements.

“**Status report**” means a report on the status of informal settlements within each municipality submitted to the department;

“**this Act**” includes any regulations made under section 13 of this Act;

“**Alternative area**” means land acquired by a municipality for temporary accommodation or settlement of persons who are removed from an informal settlement.

[2.] Application of Act

- (1) This Act applies to all people residing in informal settlements and pertains to matters relating to the prevention and eradication of illegal and unlawful occupation of land in the Province.
- (2) This Act emanates from the Prevention of Illegal Eviction and Unlawful Occupation of Land Acts and in the event that there are any provisions which are contradicting, the principal Act shall apply to the extent of the contradicting provision.
- (3) Applies to all illegal occupants of land, building and government built houses approved for specific beneficiaries who have been dully approved.

[3] Objects of Act

- [1] The objects of this Act are –
- (a) to prevent the formation of informal settlements,
 - (b) to promote the co-operation of all affected parties in the prevention of informal settlements;
 - (c) To priorities the department’s programme of informal settlements upgrading in the elimination and prevention of informal settlements,
 - (d) to monitor the performance of the Province in the elimination and preventions of informal settlements;
 - (e) to fulfil the mandate of the Constitution and the Housing Act in realising each citizen’s right to adequate housing and better life for all in the Province.
 - (f) To meaningfully engage with all affected parties in the management and monitoring of the prevention of informal settlements in the province
 - (g) To regulate all matters relating to the elimination and prevention of informal settlements.
 - (h) To prevent the illegal occupation of Government Built houses approved for specific individuals who have applied and approved through the Government Information System applicable.

[4] Prohibition of unlawful occupation and unlawful eviction

- (1) No person may occupy any land or building without the consent of the owner or person in charge of such land or building. The building shall include the Government built house built for an applicant who has been approved by the Government's information system
- (2) No person may arrange for the invasion of land or building for an individual or group of persons with the intention of soliciting financial gain or any form of favour.
- (3) If an owner becomes aware of illegal occupation of his or her land or building s/he must follow legal proceedings against the illegal occupant and shall not unilaterally, illegally and forcefully remove the occupant/s from such unlawful occupiers without following legal proceedings.
- (4) The legal proceedings shall be those as set out in the Prevention of Illegal Eviction Act
- (5) Any person who contravenes subsection (1) & (2) may be evicted from such land or building after following the procedure set out in sections 4,5 or 6 of Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.

[5] Prohibition on use of substandard accommodation for financial benefit and notice for eviction to owner

- (1) No person, owner or person in charge of a building or structure shall permit the use such building or structure or land for accommodation purpose whether for financial gain or a specific favour in return for such permission if:-
 - (a) The building or structure is not approved for human utilization by the appropriate building inspection body,
 - (b) The person is not the owner,
 - (c) The building is in a state of disrepair
 - (d) The building or property poses a danger to the occupants
 - (e) The building does not conform to the provisions of the Occupation Health and Safety Act (Act 85 of 1993)
 - (f) The building does not have the necessary running water supply and ablution facilities.
- (2) If a municipality within whose area of jurisdiction a building or structure referred to falls must give a notice to the owner or person in charge thereof to upgrade or refurbish the land or building, within three months,

- (3) If the owner or person in charge of the land, building or structure fails to comply with the notice referred to in subsection 2, the municipality must institute legal proceedings for the eviction of the occupants of such building or structure as provided for in section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.

[6] Responsibilities of members of the public in need of shelter

- (1) Any person who is in need of housing shall:-
- (a) ensure that his or her name is recorded in the waiting list of the relevant Municipal Database
 - (b) be alert and be kept abreast of any new and proposed housing developments within the jurisdiction of his municipality and others,
 - (c) Be always aware and ready with the relevant documentation required for qualification of a house in terms of the Department's qualification criteria,
 - (d) Avoid in any manner to participate in land or building invasion

[7] Steps to prevent unlawful occupation by land owners or persons in charge

- (1) An owner or person in charge of vacant land or building must, within twelve months of the commencement of this act, take reasonable steps, which include but are not limited to-
- (a) The erection of perimeter fence around such vacant land or building;
 - (b) The posting of security personnel; or
 - (c) Any other reasonable preventative measure, to prevent the unlawful occupation of such vacant land or building.
- (2) In the event that the owner or person in charge of vacant land or building fails to comply with subsection (1), a municipality within whose area of jurisdiction the vacant land or building falls must give written notice to the owner or person in charge thereof to, within 30 days of receipt of such notice-
- (a) Comply with the provisions of subsection (1); or
 - (b) Give reasons for failure to comply.
- (3) The failure by the owner or person in charge of vacant of land or building to comply with the notice issued in terms of subsection (2) constitutes an offence.

[8] Role of municipality

- (1) A municipality must
 - (a) Take reasonable measures within its available resources to achieve the progressive realisation of the right as contained in section 26 of the Constitution [Act 108 Of 1996]
 - (b) Promote safe and healthy living conditions to ensure the eradication of existing informal settlements and the prevention of new informal settlements
 - (c) Consult with the following persons on appropriate measures for the eradication of informal settlement conditions
 - (i) the traditional authority, on land falling within the traditional authority's area of jurisdiction;
 - (ii) the farm owner or the person in charge, in the case of land regulated by the Extension of Security of Tenure Act, 1997 (Act No 62 of 1997) and
 - (iii) the owner or communal owners in the case of land regulated by the Communal Property Associations Act (Act No 28 of 1996), the Land Reform: Provision of Land and Assistance Act, 1993 (Act No 126 of 1993) or the Communal Land Rights Act, 2004 (Act No 11 of 2004) and
 - (d) Reasonably engaged with occupiers of an informal settlement regarding the manner in which that informal settlement is to be dealt with.
- (2) A municipality may identify or acquire land within its area of jurisdiction for the purpose of establishing a transit area to be used as temporary accommodation for persons who are evicted from informal settlements, pending the acquisition of alternative land for adequate housing
- (3) A municipality in acquiring the land referred to in subsection (2) must ensure that such land is-
 - (i) Suitable for accommodation with basic service infrastructure
 - (ii) Within the proximity of learning institutions,
 - (iii) In reasonable proximity to an economic centre, and
 - (iv) Accessible to public transport
- (4) A transit area referred to in subsection (2) may not serve as temporary accommodation for a period exceeding six months.

(9) Informal settlements eradication program

- (1) the municipal manager of a local municipality must develop an informal settlements eradication programme to prevent escalation of informal settlements within its area of jurisdiction
- (2) the programme referred to in subsection (1) must-
 - (a) provide for the manner of dealing with informal settlements and include reasonable engagement procedures to be adopted in relation to informal settlements occupiers
 - (b) provide for solutions when dealing with informal settlements which include temporary accommodation for use as transit areas and permanent allocation of housing,
 - (c) cover existing tenure arrangements, including areas managed by traditional authorities, and
 - (d) prescribe any other measures to prevent informal settlements

(10) Informal settlements officer

- [1] The municipal manager of a local municipality must-
 - (a) designate or appoint an official as the Informal Settlements Officer to manage and control informal settlements within the jurisdiction of such a municipality, and/or
 - (b) may designate or appoint other officials to assist the Informal Settlements Officer in the execution of his or her duties

(11) Powers and functions of informal settlements officer

- [1] The informal settlement officer must-
 - (a) identify the location and extent of informal settlements within the local municipality
 - (b) determine the origin of and conditions prevailing in each informal settlements
 - (c) monitor and control all informal settlements and take necessary steps too prevent incremental growth or further informal settlements
 - (d) keep a register of all the occupiers who reside in each informal settlements and record in such a register the information as prescribed
 - (e) ensure that all occupiers in an informal settlements who are in need of housing are registered in the municipal database and the Department's waiting list for housing allocation

- (f) educate occupiers of informal settlements about the contents of this Act
- (g) promote liaison and communication with local communities in order to obtain their co-operation in the prevention of informal settlements, and
- (h) perform any other duty or function which may be necessary to ensure the prevention of or proper management and control of informal settlements.

[12] Role of the responsible Member of the Executive Council

- (1) Subject to the provisions of the Housing Act, 1997 (Act No. 107 of 1997), the responsible Member of the Executive Council must promote and facilitate the provision of adequate housing and other amenities throughout the Province within the framework of the national policy on housing development.
- (2) The Member of the Executive Council must, within five months after the end of the financial year, table in the Provincial Legislature a consolidated report based on the annual reports submitted by municipalities in terms of section 13
- (3) The report referred to in subsection (2) must, amongst other things, set out-
 - (a) the progress made by municipalities in eliminating informal settlements, as well as the improvements made in the living conditions of the persons residing within the area of jurisdiction of each municipality;
 - (b) the challenges, if any, encountered by municipalities in the implementation of their slum elimination programmes, as well as the solutions proposed by the responsible Member of the Executive Council to overcome such challenges;
 - (c) the number of subsidies planned and used in support of the eradication of Informal Settlements
 - (d) any other information which the responsible Member of the Executive Council may wish to bring to the attention of the Provincial Legislature in relation to the provincial programme for the elimination of informal settlements.

[13] Regulations by the Member of the Executive Committee.

- (1) The Member of the Executive Council may, by notice in the Gazette, make regulations or issue guidelines not inconsistent with this Act or any national legislation regarding-
 - (a) The upgrading of informal settlements within the Province;
 - (b) The contents of the status and annual reports to be submitted by municipalities to the responsible Member of the Executive Council in terms of the Act;

- (c) The prerequisites for the financing of any projects adopted by municipalities to upgrade or relocate informal settlements within the Province;
 - (d) The administration of any funds that the Provincial Government may advance to the municipalities for the purpose of financing their slum eradication programmes;
 - (e) The acquisition of any suitable land or building identified by a municipality for the relocation of persons living in a slum or informal settlement; and
 - (f) Any administrative or procedural matter necessary to give effect to the provisions of this Act.
- (2) The Member of the Executive Council may by regulation made in terms of subsection (1) declare a contravention of, or failure to comply with, any specific regulation hereof an offence.

[14] Delegations by the responsible Member of the Executive Committee.

- (1) The responsible Member of the Executive Council may delegate to an officer, employee or functionary in the department any power or duty conferred on the Member of the Executive Council by this Act, except-
- (a) The power to make regulations referred to in section 20; and
 - (b) The duty to table the consolidated report in the Provincial Legislature in terms of section 15;
- (2) A delegation referred to in subsection (1)-
- (a) Must be in writing;
 - (b) Does not prohibit the responsible Member of the Executive from exercising that power or performing that duty; and
 - (c) May at any time be withdrawn or amended in writing by the responsible Member of the Executive Council.

[15] Powers and functions of responsible Member of Executive Council

- (1) For the purposes of section 16, the responsible Member of the Executive Council must-
- (a) ensure that any Informal settlements elimination programme adopted by a municipality is consistent with-
 - (i) The objectives of the provincial policy in respect of housing development; and

- (ii) The multi-year plan for the execution of national and provincial housing programmes in the Province
 - (b) Monitor the progress made by municipalities in their programmes for the eradication of informal settlements within their respective areas of jurisdiction;
 - (c) Co-ordinate informal settlements elimination and related activities in the Province;
 - (d) Take all reasonable and necessary steps to support municipalities in their progressive elimination of informal settlements; and
 - (e) Administer the provincial housing programme and may, for this purpose, in accordance with that programme and the prescripts contained in the Provincial Housing Code, approve-
 - (i) Any project that is recommended by a municipality to upgrade and improve an informal settlement within its area of jurisdiction;
 - (ii) [any project adopted by a municipality to relocate persons living in an informal settlement within its area of jurisdiction; or
 - (iii) the financing of the projects referred to in subparagraph (i) and (ii) out of money paid into the Housing Fund and
 - (iv) Set aside a budget for informal settlement upgrading.
- (2) The responsible Member of the Executive Council may, generally, do everything which is necessary or expedient to achieve the objects of this Act referred to in section 3 and to perform the duties and carry out his or her functions referred to in subsection (1)

[16] Right of municipalities to expropriate land

- (1) Subject to the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975), the Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974), or any other law, a municipality may expropriate any land or right in land, whether temporarily or otherwise, required by it for the purpose of establishing a transit area or alternatively, for permanent settlement of persons who are removed or evicted from a slum.

[17] Municipal by-laws

- (1) A municipal council may, subject to the Constitution and national legislation, adopt by-laws not inconsistent with this Act to give effect to its slum elimination programme and the provisions of this Act.

[18] Offences

- (1) Any person who unlawfully interferes with the reasonable measures adopted by an owner or person in charge of vacant land or building to prevent the unlawful occupation of such vacant land or building commits an offence.

[19] Penalties

- (1) Any person convicted of an offence in terms of section 18, and other offences provided for in this Act, is liable to a fine not exceeding R 20 000.00 or imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

[20] Short title

- (1) This Act is called the Mpumalanga Eradication, Prevention and Control of Informal Settlements, 2012

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