

REPUBLIC OF SOUTH AFRICA

RESTITUTION OF LAND RIGHTS (*GENERAL*) AMENDMENT BILL

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B - 2017]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Restitution of Land Rights Act, 1994, so as to amend the preamble, to amend a definition; to provide for the objects of the Act,

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

Substitution of preamble to Act 22 of 1994, as amended by section 1 of Act 63 of 1997

1. The following preamble is hereby substituted for the preamble to the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (hereinafter referred to as the principal Act):

“WHEREAS the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides for restitution of property or equitable redress to a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices;

AND WHEREAS legislative measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken to promote the achievement of equality;

AND WHEREAS many people in South Africa continue to live and work in places defined and influenced by past racially discriminatory laws and practices which were based on—

- racial inequality and injustice;
- segregation; and
- unsustainable settlement patterns;

AND WHEREAS it is the State's obligation to realise the constitutional imperatives in—

- section 25 of the Constitution, to ensure the protection of property rights including measures designed to foster conditions that enable citizens to gain access to land on an equitable basis;
- section 26 of the Constitution, to have the right of access to adequate housing which includes an equitable spatial pattern and sustainable human settlements;
- section 24 of the Constitution, to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures; and
- section 27(1)(b) of the Constitution to ensure that the State takes reasonable legislative measures, within its available resources, to achieve the progressive realisation of the right to sufficient food and water;

AND WHEREAS the State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities;

AND WHEREAS sustainable development of land requires the integration of social, economic and environmental considerations in both forward planning and ongoing land use management to ensure that development of land serves present and future generations;”.

Amendment of section 1 of Act 22 of 1994, as amended by section 1 of Act 78 of 1996, section 1 of Act 63 of 1997 and section 1 of Act 18 of 1999

2. Section 1 of the principal Act is hereby amended by the substitution for the definition of “community” of the following definition:

“ ‘community’ means any group of persons—

(a) whose rights in land [are] were, at the time of dispossession, derived from shared rules determining access to land held in common by such group[,] or who used land with a substantial degree of autonomy and cohesion, and includes part of any such group; and

(b) which at the time of the lodging of the claim—

(i) is still a distinct and cohesive group, taking into account the impact of the dispossession;

(ii) has a substantial degree of commonality with the community as it was at the time of the dispossession; and

(iii) may include individuals who were not members of the community at the time of the dispossession, provided that they—

(aa) have expressly or tacitly been accepted into the group in accordance with its written or unwritten constitutive rules; and

(bb) have membership of a traditional community, whether as defined in the Traditional Leadership and Governance Framework Act No. 41 of 2003 or otherwise, of which the group forms part does not on its own provide a sufficient basis for express or tacit acceptance into the group;”.

OR

Amendment of section 1 of Act 22 of 1994, as amended by section 1 of Act 78 of 1996, section 1 of Act 63 of 1997 and section 1 of Act 18 of 1999

2. Section 1 of the principal Act is hereby amended by the substitution for the definition of “community” of the following definition:

“ ‘community’ means any group of persons—

(a) whose rights in land **[are]** were, at the time of dispossession, derived from shared rules determining access to land held in common by such group[,] or used the land with a substantial degree of autonomy and cohesion, and includes part of any such group;

(b) which at the time of the lodging of the claim—

(i) is still sufficiently cohesive to constitute a community or part of a community, taking into account the impact of the dispossession;

(ii) has a substantial degree of commonality with the community as it was at the time of the dispossession;

(iii) may include individuals who were not members of the community at the time of the dispossession or direct descendants of such members, but only where they can demonstrate that they have been voluntarily accepted into the community by those who were members at the

time of the dispossession and their direct descendants;
and

(iv) whose connection to the community is not dependent on membership of a traditional community or tribal authority as defined in the Bantu Authorities Act of 1951; and

(c) which, in the case of a court award or settlement agreement involving the transfer of land, at the time of the transfer of the land—

(i) who consists of members of, or is mandated by, the community at the time of the lodgement of its claim taking into account—

(A) any changes in circumstances caused by the delay between the lodgement of the claim and the transfer of the land; and

(B) the accommodation of certain members by way of instruments of alternative redress available to such members.

Insertion of section 1A in Act 22 of 1994

3. The following section is hereby inserted in the principle Act after section 1:

Objects of Act

1A. (1) The objects of this Act are to—

(a) provide for a programme for the restitution of land rights and the implementation of section 25(7) of the Constitution as part

of a uniform, effective and comprehensive system of land reform and planning for the Republic;

- (b) redress the injustices of the past;
- (c) provide enduring benefits and livelihoods for land claimants whose rights in land are restored to them;
- (d) provide for the sustainable and efficient use of land restored to claimants;
- (e) provide for transparent, accountable and efficient governance structures, inclusive decision-making and tenure equity and security in relation to land restored to claimants; and
- (f) ensure that the interests, needs, values and sources of knowledge, including traditional knowledge, of all interested and affected parties, are given due consideration and respect.

(2) The Commission, the Minister and any other competent authority must advance the objects set out in subsection (1) when taking any decision under this Act.

Amendment of section 2 of Act 22 of 1994, as amended by section 2 of Act 78 of 1996, section 2 of Act 63 of 1997 and section 2 of Act 18 of 1999

4. Section 2 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) the claim for such restitution is lodged not later than [31 December 1998] 30 June 2029;”.

Amendment of section 6 of Act 22 of 1994, as amended by section 3 of Act 78 of 1996 and section 5 of Act 63 of 1997

5. Section 6 of the principal Act is hereby amended by—

(a) the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) monitor and make recommendations concerning—

- (i) the implementation of orders made by the Court under section 35;
- (ii) the implementation of agreements entered into under sections 14 and 42D;
- (iii) the provision of financial aid to claimants by the Minister under section 42C;
- (iv) the acquisition of rights in land under section 42E;
- (v) the efficiency and effectiveness of steps taken under sections 35(3) and 42D(2) to ensure equitable access to land and the accountability of legal entities holding land on behalf of community claimants;”; and

(b) the addition of the following subsections:

“(4) Where the regional land claims commissioner having jurisdiction, the Minister, a party to an agreement, or a group of members of a claimant community has reason to believe that an order of the Court or an agreement contemplated in section 14(3) or section 42D, or parts of it, or the continued implementation of such an order or agreement or parts of it, will—

- (a) defeat the achievement of the objects of this Act;
- (b) undermine the rights of members, or groups of members, to equity of access to an award of restoration of land or compensation; or
- (c) fail to provide for sustainable occupation or use of land,

he or she may on reasonable notice to interested parties, apply to the Court for such relief as may be just and equitable which may include an interdict or the amendment of the agreement or order or the prohibition of its continued implementation or otherwise.

(5) (a) The Commission shall establish and keep a Register which shall be known as the National Land Restitution Register.

(b) The Commission shall enter into the Register the details of all land restitution claims from the date of the commencement of the Restitution of Land Rights Amendment Act, 2014.

(c) The Commission shall keep the Register up to date and the Register shall be open to the public and published on the internet.

(d) The Commission shall annually report to the Court and to Parliament about the steps it has taken to update the register and invite recommendations with regard to any further measures which should be taken.

(6) The Commission shall annually report to the Court and to Parliament and invite their recommendations on the following matters:

(a) its activities in terms of this Act;

(b) its targets for the investigation, settlement and referral to the Court of claims;

(c) its progress in the investigation, settlement and referral of claims;

(d) the information emanating from the monitoring required by section 6(2)(a) of the Act;

(e) the appointment of regional land claims commissioners in terms of section 4(3) of the Act;

- (f) advice given to claimants on the progress of their claims in terms of section 6(1)(c);
- (g) the acquisition of alternative land for purposes of restitution in terms of section 42E;
- (h) the appointment of persons to assist the Commission in terms of section 9;
- (i) the provision of legal representation to claimants in terms of section 29(4);
- (j) the extent to which any disputes have been successfully resolved in terms of section 13;
- (k) the number of referrals to Court and confirmation of agreements under section 14 and the effectiveness of these referral and confirmation proceedings;
- (l) the annual estimates of expenditure under section 20, in respect of the following obligations of the Commission and the Minister:

 - (i) the staffing of the Commission;
 - (ii) appointments under section 9;
 - (iii) mediators in terms of section 13;
 - (iv) legal representation under section 29(4);
 - (v) land acquisition by the Minister in terms of sections 14, 35 and 42E;
 - (vi) financial aid in terms of section 42C; and
 - (vii) any other expenditure to be incurred by, or on behalf of, the Commission.

- (8) The public shall be invited to make written representations on the report and address the relevant Parliamentary portfolio committee on the manner in which the Commission has performed its functions.
- (9) The chapter 9 institutions shall be requested to participate in the Parliamentary portfolio committee discussion on the performance of the Commission.”.

Amendment of section 12 of Act 22 of 1994, as amended by section 8 Act 63 of 1997

6. Section 1 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) No claim in respect of a matter contemplated in subsection (4) shall be lodged after the expiry of the period specified in the said notice: Provided that the Commission may allow a claimant on good cause shown, to lodge a claim after the expiry of such period, but not later than **[31 December 1998]** 30 June 2029.”.

Amendment of section 14 of Act 22 of 1994, as amended by section 7 of Act 7 of 1996, section 10 of Act 63 of 1997 and section 6 of Act 18 of 1999

7. Section 14 of the principal Act is hereby amended by—

- (a) the substitution for subsection (3) of the following subsection:

“(3) If **[in the course of an investigation by the Commission]** the interested parties enter into a written agreement as **[to how the claim should be finalised and]** contemplated in section 42D, the regional land claims commissioner having jurisdiction **[certifies in writing that he or she is satisfied with the agreement and that]** must refer the agreement **[ought not to be referred]** to the Court, **[the agreement shall be effective only from the date of such certification or such later date as may be provided for in the agreement]** unless the matter is already before Court.”; and

- (b) the insertion after subsection (3A) of the following subsections:

“(3B) The Commission must place all settlement agreements concluded in terms of subsection (3) before the Court for confirmation.

(3C) The Court may confirm a settlement agreement concluded in terms of subsection (3) on being satisfied that:

- (a) it complies with the requirements of the Act;
- (b) it is consistent with the objects of the Act and the factors set out in section 33;
- (c) it can be implemented within a reasonable time;
- (d) any provisions with regard to compensation for the current owners or holders of other rights in the land are consistent with section 25(3) of the Constitution;
- (e) no provisions unduly benefit any party or any other person; and
- (f) if the claimant is a community, any provisions with regard to the manner in which the rights are to be held in terms of section 35(3) or section 42D(2) ensure that the holder of the rights is accountable to community members and that community members are in a position to enforce their rights under the agreement, including the possible amendment of constituting documents of the holder to ensure achievement of the objects of the holder entity, the community claimant and this Act.”.

Amendment of section 22 of Act 22 of 1994, as amended by section 1 of Act 84 of 1995, section 10 of Act 78 of 1996, section 13 of Act 63 of 1997, section 7 of Act 18 of 1999 and section 4 of Act 11 of 2000

8. Section 22 of the principle Act is hereby amended by—

(a) the substitution in subsection (1) for paragraph (cE) of the following paragraph:

“(cE) to determine any matter involving the validity, enforceability interpretation or implementation of an agreement contemplated in

section 14(3)[, **unless**] or section 42D, even if the agreement provides otherwise;” and

(b) the insertion in subsection (1) after paragraph (cE) of the following paragraphs:

“(cF) to direct the parties to any agreement under section 14(3) or section 42D to amend the agreement;

(cG) to direct the holder of a right contemplated in section 35(2)(c), section 35(3) or section 42D to amend its constituting instrument or constitution to better achieve the objects of the Act and provide for exit of members and group of members;

(cH) to recommend that the Minister exercise his or her powers in terms section 42C and 42E in relation to any restitution award or settlement agreement;

(cI) to consider reports of the Commission and the Minister and to issue recommendations with regard to the better achievement of the objects of this Act;”.

Amendment of section 29 of Act 22 of 1994, as amended by section 16 of Act 78 of 1996

9. Section 29 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) **[Where a party can not afford to pay for legal representation itself, the]** The Chief Land Claims Commissioner may, in his or her discretion and after taking into account the relevant circumstances, including whether the claimant is able to afford legal representation, take steps to arrange legal representation for such party, either through the State legal aid system or, if necessary, at the expense of the Commission in any proceedings under this Act.”.

Amendment of section 33 of Act 22 of 1994, as amended by section 13 of Act 63 of 1997

10. Section 33 of the principle Act is hereby amended by—

(a) the substitution for the words preceding paragraph (a) of the following words:

“In considering its decision in any particular matter the Court shall have regard to the objects set out in section 1A of the Act, read together with the following factors:”;

(b) the substitution of paragraph (cA) of the following paragraph:

“(cA) if restoration of a right in land is claimed, the feasibility of such restoration, having regard to:

- (i) the nature of the land and the surrounding area at the time of the dispossession;
- (ii) the manner in which the land was used at the time of the dispossession;
- (iii) the changes which have taken place on the land and in the surrounding area since the dispossession;
- (iv) any physical or inherent defects in the land;
- (v) land use planning measures relating to the land;
- (vi) the number of people who are intending to settle on the land;
- (vii) the intended use of the land;
- (viii) the extent to which the land can support those people intending to use or settle on it;
- (ix) the institutional and financial support to be made available for the intended use of the land; and
- (x) any of the factors set out elsewhere in this section to be taken into account in a decision of the Court which are applicable, provided that the cost of acquiring the land shall not be taken into consideration for purposes of feasibility;” and

(c) the substitution of paragraph (eC) of the following paragraph:

“(eC) in the case of an order for equitable redress in the form of financial compensation, changes over time in the value of money, provided that the financial compensation must:

- (i) seek to place the claimant in the position in which he or she would have been if no dispossession had taken place and should be of an equivalent value to an order for restoration of the dispossessed rights;
- (ii) take into account the impact of the dispossession and the costs of re-establishing livelihoods; and
- (iii) ensure fairness between, and within, different classes of claimants.”.

Amendment of section 35 of Act 22 of 1994, as amended by section 20 of Act 78 of 1996, section 25 of Act 63 of 1997, section 9 of Act 18 of 1999 and section 1 of Act 48 of 2003

11. Section 35 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the State to grant the claimant an appropriate right in alternative [**state-owned**] land and, where necessary, order the [**State to designate it**] Minister to purchase, acquire or expropriate it in terms of section 42E.;
and

(b) the addition of the following subsections:

“(13) Any transfer of land pursuant to an order under this section or an award in terms of an agreement under section 42D, shall be executed within twelve months of such order or the date on which the agreement is made an order of this Court.

(14) Where at the commencement of the Restitution of Land Rights Amendment Act, 2017 [ie THE AMENDMENT BILL OF 2017], the transfer of land pursuant to an order under this section or an award in terms of an agreement under section 42D was outstanding for a period

of longer than twelve months, transfer must be executed within twelve months of such commencement.

- (15) The Court may of its own accord or on the application of any interested party, including the Registrar of Deeds, extend the twelve month period referred to in subsections (13) and (14) for good reason.”.

Amendment of section 38B of Act 22 of 1994, as inserted by section 29 of Act 63 of 1997 and amended by section 10 of Act 18 of 1999

- 12.** Section 38B of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Notwithstanding anything to the contrary contained in this Act, any person who or the representative of any community which is entitled to claim restitution of a right in land and has lodged a claim not later than **[31 December 1998]** 30 June 2029 may apply to the Court for restitution of such right: Provided that leave of the Court to lodge such application shall first be obtained if—“.

Amendment of section 38D of Act 22 of 1994, as inserted by section 29 of Act 63 of 1997

- 13.** Section 38D of the principal Act is hereby amended by the substitution in subsection (1) for the words following paragraph (c) of the following words:

“Provided that the Court may allow a claimant or applicant on good cause shown, to lodge such a claim or application after the expiry of such period, but not later than **[31 December 1998]** 30 June 2029.”.

Amendment of section 42D of Act 22 of 1994, as inserted by section 30 of Act 63 of 1997, substituted by section 12 of Act 18 of 1999 and amended by section 4 of Act 48 of 2003

- 14.** Section 42D of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) **[If]** Subject to section 14(3), if the Minister is satisfied that a claimant is entitled to restitution of a right in land in terms of section 2, and that the claim for such restitution was lodged not later than [31 December 1998] 30 June 2029, he or she may enter into an agreement with the parties who are interested in the claim providing for one or more of the following:”;

(b) the insertion after subsection (3) of the following subsection:

“(1A) In considering a decision to enter into an agreement contemplated in subsection (1), the Minister shall have regard to the objects of the Act and the factors set out in section 33.”;

(c) by the substitution for subsection (3) of the following subsection:

“(3) The Minister may delegate any power conferred upon him or her by subsection (1) **[or]**, section 42C or section 42E to —

(a) the Director-General of **[Land Affairs or any other officer of the State]** Rural Development and Land Reform;

(b) the Chief Land Claims Commissioner; or

(c) **[to]** a regional land claims commissioner.”.

Insertion of Chapter 5 in Act 22 of 1994

15. The following Chapter is hereby inserted in the principal Act after section 42F:

“CHAPTER 5

POSITIVE OBLIGATIONS ON THE STATE

The Minister is responsible for the implementation of court awards and settlement agreements

42G (1) The Minister is required to report to the Commission and the Court on—

- (a) the planning by the national sphere departments for the efficient and sustainable execution of their legislative and executive powers insofar as they relate to restitution and land reform; and
 - (b) the making, implementation and review of policies necessary to achieve the objectives of restitution, including the measures designed to monitor and support other spheres of government in the performance of their land reform and land development functions;
- (2) All government departments must—
- (a) provide their sector inputs and comply with any other prescribed requirements during the preparation or amendment of land reform implementation frameworks;
 - (b) ensure that the requirements of any law relating to restitution and land reform are met timeously; and
 - (c) ensure that their policies and procedures are clearly set out in order to inform and empower land claimants and beneficiaries.
- (3) The Commission, the Court and the Minister shall take account of any applicable district land reform implementation framework established in terms of the **National Land Reform Framework Act X of 2017** in their decision making in order to promote the objects of this Act and the coordination of functions of organs of state;
- (4) The Commission, the Court and the Minister shall be required to notify the relevant municipalities of any land claims in which claimants are granted rights in land for purposes of inclusion in district land reform implementation frameworks.

Short title and commencement

16. (1) This Act is called the Restitution of Land Rights Amendment Act, 2017

(2) Except for sections 4, 6, 12 13 and 14(a), this Act comes into operation on a date fixed by the President by proclamation in the Gazette.

(3) Sections 4, 6, 12 13 and 14(a) 3(b) comes into operation only after the Minister has satisfied the President that—

- (a) all claims lodged have been researched and the Commission has filed the necessary reports;
- (b) all claims which have been referred to the Court have been determined;
- (c) all settlement agreements concluded in terms of sections 14 and 42D of the Act have been confirmed by the Court;
- (d) the Director-General has made provision for the finalisation of all claims which have been settled but the settlement agreements have not been fully implemented and adequate steps have been taken to ensure that;
- (e) the necessary budgetary provisions have been made for these claims;
- (f) the institutional and technical resources required for the implementation of the settlement awards within a reasonable time-frame are available; and
- (g) where support for the settlement and development of successful claimants is required, appropriate plans are in place and the required support, both financial and developmental, is available.