
REPUBLIC OF SOUTH AFRICA

**LAND RESTITUTION AND
REFORM LAWS AMENDMENT
ACT**

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWET OP
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No , 1999

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.
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ACT

To amend the Restitution of Land Rights Act, 1994, so as to effect certain textual improvements; to amend the provisions regulating entitlement to restitution; to authorise the Deputy Land Claims Commissioner to act in the stead of the Chief Land Claims Commissioner if the office of the Chief Land Claims Commissioner is vacant; to make provision for the appointment of acting regional land claims commissioners under certain circumstances; to amend the requirements for the publication of the notice of a claim; to authorise any interested party to apply for the rescission or variation of an order of the Land Claims Court or the setting aside or variation of certain agreements; to do away with the need for a claim to be referred to the Court where the interested parties have reached agreement as to how a claim should be finalised and to authorise the Minister to make an award of a right in land, pay compensation and grant financial aid in such a case; to authorise regional land claims commissioners to refer claims to the Court; to extend the powers of the Court; to grant the Court in any interlocutory or preliminary hearing or pre-trial proceedings the discretion to decide upon the appointment of one or more assessors; to provide that a claimant may be awarded land, a portion of land or a right in land dispossessed from another claimant or the latter's ascendant where the Court is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land; to make provision for financial aid to a claimant who has entered into an agreement regarding the finalisation of a claim; to abolish the statutory mechanism providing for the waiving of rights contained in section 42D; to amend the Land Reform (Labour Tenants) Act, 1996, so as to empower an arbitrator and the Court to determine, prescribe or amend the terms on which a labour tenant occupies or uses land; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 22 of 1994, as amended by section 1 of Act 78 of 1996 and section 2 of Act 63 of 1997

1. Section 1 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “restoration of a right in land” of the following definition:

“ ‘restoration of a right in land’ means the return of a right in land or a portion of

land dispossessed after 19 June 1913 as a result of past racially discriminatory laws or practices;”.

Substitution of section 2 of Act 22 of 1994

2. The following section is hereby substituted for section 2 of the principal Act:

Entitlement to restitution

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2. (1) A person shall be entitled to restitution of a right in land if—
- (a) he or she is a person **[or community]** dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices **[or a direct descendant of such a person]; [and] or**
 - (b) it is a deceased estate dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or 10
 - (c) **[the claim for such restitution is lodged not later than 31 December 1998]** he or she is the direct descendant of a person referred to in paragraph (a) who has died without lodging a claim and has no ascendant who— 15
 - (i) is a direct descendant of a person referred to in paragraph (a); and
 - (ii) has lodged a claim for the restitution of a right in land; or
 - (d) it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; and 20
 - (e) the claim for such restitution is lodged not later than 31 December 1998. 20
- ~~[(1A)]~~(2) No person shall be entitled to restitution of a right in land if—
- (a) just and equitable compensation as contemplated in section 25(3) of the Constitution; or 25
 - (b) any other consideration which is just and equitable, calculated at the time of any dispossession of such right, was received in respect of such dispossession.
- (3) If a natural person dies after lodging a claim but before the claim is finalised and— 30
- (a) leaves a will by which the right or equitable redress claimed has been disposed of, the executor of the deceased estate, in his or her capacity as the representative of the estate, alone or, failing the executor, the heirs of the deceased alone; or
 - (b) does not leave a will contemplated in paragraph (a), the direct descendants alone, 35
- may be substituted as claimant or claimants.
- (4) If there is more than one direct descendant who have lodged claims for and are entitled to restitution, the right or equitable redress in question shall be divided not according to the number of individuals but by lines of succession.”. 40

Amendment of section 7 of Act 22 of 1994

3. Section 7 of the principal Act is hereby amended—

- (a) by the insertion after subsection (2) of the following subsections: 45
 - “(2A) The Director-General of Land Affairs may delegate any power conferred upon him or her by or under this Act except the power of delegation to any member of the Commission, any officer of the State or any person contemplated in section 9. 45
 - (2B) A regional land claims commissioner may in consultation with the Chief Land Claims Commissioner and the Director-General of Land Affairs delegate any power conferred upon him or her by or under this Act except the power of delegation to any other member of the Commission, any officer of the State or any person contemplated in section 9.”; 50

- (b) by the substitution for subsection (3) of the following subsection:
 “(3) If the office of the Chief Land Claims Commissioner is vacant or if the Chief Land Claims Commissioner is absent or unable to perform any or all of his or her functions, the Deputy Land Claims Commissioner shall act in his or her stead and whilst the Deputy Land Claims Commissioner so acts, he or she shall perform all the functions of the Chief Land Claims Commissioner.”; and 5
- (c) by the insertion after subsection (3) of the following subsection:
 “(3A) If the office of a regional land claims commissioner is vacant or if a regional land claims commissioner is absent or unable to perform any or all of his or her functions, an acting regional land claims commissioner appointed by the Minister shall act in his or her stead and whilst the acting regional land claims commissioner so acts, he or she shall perform all the functions of the regional land claims commissioner.”. 10

Amendment of section 11 of Act 22 of 1994, as amended by section 5 of Act 78 of 1996 and section 7 of Act 63 of 1997 15

4. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) If the regional land claims commissioner having jurisdiction is satisfied that— 20
 (a) the claim has been lodged in the prescribed manner;
 (b) the claim is not precluded by the provisions of section 2 [(1) or (1A)]; and
 (c) the claim is not frivolous or vexatious [and],
 [(d) **no order has been made by the Court in terms of section 35 in respect of rights relating to that land**]
 he or she shall cause notice of the claim to be published in the *Gazette* and shall take steps to make it known in the district in which the land in question is situated.”; 25
- (b) by the substitution for subsection (4) of the following subsection: 30
 “(4) If the regional land claims commissioner decides that the criteria set out in paragraphs (a), (b) and (c) [and (d)] of subsection (1) have not been met, he or she shall advise the claimant accordingly, and of the reasons for such decision.”;
- (c) by the substitution for subsection (5) of the following subsection: 35
 “(5) (a) If after an order has been made by the Court as contemplated in section 35 [in respect of a right or rights in land, no person may lodge a] or an agreement has been entered into as contemplated in section 14(3) or 42D, it is shown that another claim was lodged in terms of this Act in respect of [that] the land [without the leave of the Court] to which the order or agreement relates, any interested party may apply to the Court for the rescission or variation of such order or the setting aside or variation of such agreement. 40
 (b) The Court may grant such an application, subject to such terms and conditions as it may determine, or make any other order it deems fit.”; 45
 and
- (d) by the insertion after subsection (5) of the following subsection:
 “(5A) Where an appeal is pending in respect of an order of the Court contemplated in section 35, an application for the rescission or variation of such order under subsection (5) shall be made to the Constitutional Court or the Supreme Court of Appeal, as the case may be.”. 50

Amendment of section 11A of Act 22 of 1994, as inserted by section 6 of Act 78 of 1996

- 5. Section 11A of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:** 55
 “(2) Where during the investigation of a claim by the Commission the regional

land claims commissioner having jurisdiction has reason to believe that any of the criteria set out in paragraphs (a), (b) and (c) [and (d)] of section 11(1) have not been met, he or she shall publish in the *Gazette* and send by registered post to—”.

Amendment of section 14 of Act 22 of 1994, as amended by section 7 of Act 78 of 1996 and section 10 of Act 63 of 1997

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6. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) If upon completion of an investigation by the Commission in respect of specific claim—

(a) the parties to any dispute arising from the claim agree in writing that it is not possible to settle the claim by mediation and negotiation; 10

(b) the regional land claims commissioner certifies that it is not feasible to resolve any dispute arising from such claim by mediation and negotiation; or

[(c) the parties to any dispute arising from such claim reach agreement as to how the claim should be finalised and the regional land claims commissioner is satisfied that such agreement is appropriate; or] 15

(d) the regional land claims commissioner is of the opinion that the claim is ready for hearing by the Court, 20

the [Chief Land Claims Commissioner] regional land claims commissioner having jurisdiction shall certify accordingly and refer the matter to the Court.”;

(b) by 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 the regional land claims commissioner having jurisdiction certifies in writing that he or she is satisfied with the agreement and that 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.”; 25 30

(c) by the insertion after subsection (3) of the following subsection:

“(3A) If the regional land claims commissioner having jurisdiction is of the opinion that—

(i) a question of law arising out of the agreement needs to be resolved; 35

(ii) there is doubt as to whether or not all parties who have an interest in the claim are parties to the agreement;

(iii) there is doubt as to the validity of the agreement or any part of it;

(iv) there is doubt as to the feasibility of the implementation of the agreement; 40

(v) the agreement does not comply with section 42D(2);

(vi) the agreement is not just and equitable in respect of any party;

(vii) the agreement is contrary to any provision of the Act;

(viii) the authority of any signatory is in doubt; 45

(ix) the agreement is vague or contradictory;

(x) the parties to the agreement agree that it is desirable that the agreement be made an order of Court;

(xi) the agreement ought to be referred to the Court for any other good reason, 50

he or she may refer the matter to the Court.”;

(d) by the substitution for subsection (4) of the following subsection:

“(4) A referral under subsection (3A) shall be accompanied by a copy of the relevant deed of settlement and a report containing—

(a) concise information about the background to the claim and the settlement; 55

- (b) information necessary for the Court to establish whether or not it has jurisdiction;
- (c) the reasons for the referral of the matter to the Court; and
- (d) the regional land claims commissioner's recommendations, if any, as to how the matter should be dealt with."; and
- (e) by the addition to subsection (6) of the following proviso:
“: Provided that the Court may, on good cause shown, condone any noncompliance with the provisions of this section.”.

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 and section 13 of Act 63 of 1997

7. Section 22 of the principal Act is hereby amended—
- (a) by the insertion in subsection (1) after paragraph (cD) 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 the agreement provides otherwise;”; and
 - (b) by the addition to subsection (2) of the following paragraph:
“(c) the power to decide any issue either in terms of this Act or in terms of any other law, which is not ordinarily within its jurisdiction but is incidental to an issue within its jurisdiction, if the Court considers it to be in the interests of justice to do so.”.

Amendment of section 28 of Act 22 of 1994, as amended by section 14 of Act 78 of 1996 and section 18 of Act 63 of 1997

8. Section 28 of the principal Act is hereby amended by the substitution in subsection (4) for subparagraph (ii) of the proviso of the following subparagraph:
“(ii) any interlocutory or preliminary hearing or pre-trial proceedings, unless the Court decides otherwise;”.

Amendment of section 35 of Act 22 of 1994, as amended by section 20 of Act 78 of 1996 and section 25 of Act 63 of 1997

9. Section 35 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the proviso to paragraph (a) of the following proviso:
“: Provided that the claimant shall not be awarded land, a portion of land or a right in land dispossessed from another claimant or the latter's ascendant, unless—
 - (i) such other claimant is or has been granted restitution of a right in land or has waived his or her right to **[restitution]** restoration of the right in land concerned”; or
 - (ii) the Court is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land”;
 - (b) by the substitution for subsection (3) of the following subsection:
“(3) An order contemplated in subsection (2)(c) shall be subject to such conditions as the Court considers necessary to ensure that all the **[dispossessed]** members of the dispossessed community **[concerned]** shall have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including **[a woman and]** a tenant, and which ensures the accountability of the person who holds the land or compensation on behalf of the community to the members of such community.”;
 - (c) by the substitution for subsection (5) of the following subsection:
“(5) If—
 - (a) the Court orders the State to; or

(b) in terms of an agreement contemplated in section 42D, the State must,

expropriate land, a portion of land or a right in land in order to restore or award it to a claimant, the Minister shall expropriate such land, portion of land or right in land in accordance [mutatis mutandis] with [the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975): Provided that the owner of such land or right shall be entitled to the payment of just and equitable compensation, determined either by agreement or by the Court according to the principles laid down in section 25(2) and (3) of the Constitution: Provided further that the procedure to be followed by the Court in the determination of such compensation shall be as provided in sections 24 and 32 of this Act] subsection (5A).”; and

(d) by the insertion after subsection (5) of the following subsection:

“(5A) The Minister has the power pursuant to an order of the Court under section 35(1) or an agreement in terms of section 42D, to expropriate land, a portion of land or a right in land in order to restore or award it to a claimant, mutatis mutandis in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), and may perform the functions of the Minister of Public Works in terms of that Act: Provided that the owner of such land, portion of land or right in land shall be entitled to just and equitable compensation, determined either by agreement or by the Court as prescribed by the Constitution, with due regard to the provisions of section 12(3), (4) and (5) of the Expropriation Act, 1975: Provided further that the rules of the Court made under section 32 shall govern the procedure of the Court in the determination of such compensation.”.

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

10. 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:

“(1) 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 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 42C of Act 22 of 1994, as inserted by section 30 of Act 63 of 1997 and amended by section 4 of Act 61 of 1998

11. Section 42C of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may from money appropriated by Parliament for this purpose and on such conditions as he or she may determine, grant an advance or a subsidy for the development or management of, or to facilitate the settlement of persons on, land which is the subject of an order of the Court in terms of this Act or an [award] agreement in terms of section 14(3) or 42D, to—

(a) any claimant to whom restoration or the award of a right in land has been ordered;

(b) any [person] claimant who has [waived any or all of his or her rights to relief in terms of] entered into an agreement contemplated in section 14(3) or 42D;

(c) any person resettled as a result of an order of the Court.”.

Substitution of section 42D of Act 22 of 1994, as inserted by section 30 of Act 63 of 1997

12. The following section is hereby substituted for section 42D of the principal Act:

“Powers of Minister in case of certain agreements

- 42D.** (1) If the Minister is satisfied that a claimant is entitled to restitution of a right in land in terms of section 2, and that **[person has entered]** the claim for such restitution was lodged not later than 31 December 1998, he or she may enter into an agreement [in terms of which he or she has waived any or all of his or her rights to relief under this Act, the Minister may, after consultation with the Commission and on such conditions as he or she may determine—] with the parties who are interested in the claim providing for one or more of the following:
- (a) The award to the claimant of land, a portion of land or any other right in land [and, where necessary, acquire such land, portion of land or other right in land]: Provided that the claimant shall not be awarded land, a portion of land or a right in land dispossessed from another claimant or the latter’s ascendant, unless—
- (i) such other claimant is or has been granted restitution of a right in land or has waived his or her right to restoration of the right in land in question; or
- (ii) the Minister is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land; [or]
- (b) **[pay]** the payment of compensation to such **[person]** claimant; **[or]**
- (c) **[make]** both an award and **[pay]** payment of compensation to such [person] claimant;
- (d) the acquisition or expropriation by the State of such land, portion of land or other right in land;
- (e) the manner in which the rights awarded are to be held or the compensation is to be paid or held; or
- (f) such other terms and conditions as the Minister considers appropriate.
- (2) **[Expenditure in connection with the exercise of the powers conferred by subsection (1) shall be defrayed from moneys appropriated by Parliament for that purpose.]** If the claimant contemplated in subsection (1) is a community, the agreement must provide for all the members of the dispossessed community to have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including a tenant, and which ensures the accountability of the person who holds the land or compensation on behalf of such community to the members of the community.
- (3) The Minister may delegate any power conferred upon him or her by subsection (1) or section 42C to the Director-General of Land Affairs or any other officer of the State or to a regional land claims commissioner.
- (4) The Director-General of Land Affairs may with the consent of the Minister delegate to any officer of the State or a regional land claims commissioner any power delegated to the Director-General under subsection (3).
- (5) Any delegation under subsection (3) or (4) may be made either in general or in a particular case or in cases of a particular nature and on such conditions as may be determined by the Minister or the Director-General of Land Affairs, as the case may be, and the Minister or the Director-General is not thereby divested of any power so delegated.
- (6) Expenditure in connection with the exercise of the powers conferred by subsection (1) shall be defrayed from moneys appropriated by Parliament for that purpose.
- (7) The provisions of subsections (1) to (6) and section 42C shall apply *mutatis mutandis* in respect of an agreement entered into before the commencement of the Land Restitution and Reform Laws Amendment Act, 1999, in terms of which a claimant has waived any or all of his or her rights to relief under this Act.”

Amendment of section 33 of Act 3 of 1996, as amended by section 42 of Act 63 of 1997 and section 5 of Act 61 of 1998

13. Section 33 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), is hereby amended by the insertion in subsection (1) after paragraph (e) of the following paragraph:

“(eA) determine, prescribe or amend the terms on which a labour tenant occupies or uses land;”.

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Transitional provision

14. All proceedings which were pending before a court upon the date of promulgation of this Act, must be disposed of in accordance with section 2 of the principal Act as substituted by section 2 of this Act, unless the interests of justice require otherwise.

Short title and commencement

15. (1) This Act shall be called the Land Restitution and Reform Laws Amendment Act, 1999.

(2) The provisions of sections 2, 3 and 4 shall be deemed to have come into operation on 2 December 1994.

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