
GENERAL NOTICE

NOTICE 503 OF 2013

The Minister for Rural Development and Land Reform hereby publishes The Restitution of Land Rights Amendment Bill, 2013 for public comment.

Members of the public are invited to submit to the Minister, within 30 days of publication of the notice in the Gazette, written comments to the following address:

By post to: The Director – General Rural Development and Land Reform
Attention: Mr Fanie Louw or Ms B R Naidoo
Private Bag X 833
Pretoria
0001

By fax to: 012 – 324 2118, and by e-mail to:
restitution2018@ruraldevelopment.gov.za; SLLouw@ruraldevelopment.gov.za/
BRNaidoo@ruraldevelopment.gov.za.

Hand delivered at: 184 Jeff Masemola Street, Pretoria, 0001 (Old Building).

Any inquiries in connection with the Restitution of Land Rights Amendment Bill, 2013 can be directed to Ms Tshepo Mahlaela at (012) - 312 8314.

Comments received after the closing date may not be considered.

REPUBLIC OF SOUTH AFRICA

RESTITUTION OF LAND RIGHTS AMENDMENT BILL

*(As introduced in the National Assembly
(proposed section 75); explanatory summary of Bill published in Government Gazette No.
..... of 2013)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

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 cut-off date for lodging a claim for restitution; to further regulate the appointment, tenure of office, remuneration and the terms and conditions of service of judges of the Land Claims Court; to make further provision for the advertisement of claims; to provide that the lodging of a fraudulent claim shall be an offence; to provide for additional factors which must be considered by the Court when considering whether to order restoration; to extend the Ministers powers of delegation; and to provide for matters connected therewith.

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

Amendment of section 2 of Act 22 of 1994

1. Section 2 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), (hereafter referred to as the principal Act) is hereby amended by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) the claim for such restitution is lodged not later than 31 December **[1998]** 2018.”

Amendment of section 11 of Act 22 of 1994

2. Section 11 of the principal Act is hereby amended by the substitution in subsection (1) for the words following paragraph (c) of the following words:

“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 the media circulating nationally and in the province in which the land in question is situated.”

Amendment of section 12 of Act 22 of 1994

3. Section 12 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] 2018.**”

Amendment of section 17 of Act 22 of 1994

4. Section 17 of the principal Act is hereby amended by the insertion after paragraph (d) of the following paragraph:

“(e) lodges a fraudulent claim in terms of this Act.”

Amendment of section 22 of Act 22 of 1994

5. Section 22 of the principal Act, is hereby amended—

(a) by the substitution for subsections (3), (4), (5) and (6) of the following subsections;

“(3) The Court consists of at least five judges and a Judge President, appointed by the President acting on the advice of the Judicial Service Commission, each of whom must be a judge of the High Court of South Africa.

(4) When the office of President of the Court is vacant, or when the President of the Court is temporarily unable to perform the functions of that office for any reason, the most senior judge of the Court must perform the functions of President of the Court.

(5) The President and any other judge of the Court is appointed for a fixed term determined by the President at the time of appointment and holds office until –

(a) the expiry of the term;

(b) the date the judge ceases to a judge of the High Court; or

(c) the judge resigns from the Court by giving written notice to the President.

(6) The tenure of office, the remuneration and the terms and conditions of service applicable to a judge of the High Court in terms of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), are not affected by the appointment and concurrent tenure of office of that judge who is appointed as a judge of the Court.”;

(b) by the deletion of subsection (7);

(c) by the substitution for subsection (8) of the following subsection:

“(8) In case of a vacancy in the office of the Judge President or judge of the Court or if there is sufficient reason the [President of the Republic] Minister of Justice and Constitutional Development may, after consultation with the Judge President of the Court, and in accordance with section 175(2) of the Constitution, appoint an acting judge of the Court for such term as [the] that [President of the Republic] Minister shall determine[: Provided that the Minister of Justice, after consultation with the President of the Court, may make such an appointment in respect of a term not exceeding one month].”.

Deletion of section 23 of Act 22 of 1994

6. Section 23 of the principal Act is hereby deleted.

Deletion of section 26 of Act 22 of 1994

7. Section 26 of the principal Act is hereby deleted.

Deletion of section 26A of Act 22 of 1994

8. Section 26A of the principal Act is hereby deleted.

Amendment of section 33 of Act 22 of 1994

9. Section 33 of the principal Act is hereby amended by the substitution for paragraph (cA) of the following paragraph:

- “(cA) if restoration of a right in land is claimed –
- (i) the feasibility and cost of such restoration; and
 - (ii) the ability of the claimant to use the land productively;”.

Amendment of section 38B of Act 22 of 1994

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

“(1) Notwithstanding anything to the contrary contained in this Act, any person who or the representative of a community which is entitled to claim restitution of a right in land and has lodged a claim not later than 31 December [1998] 2018 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

11. Section 38D of the principal Act is hereby amended by the substitution in subsection (2) 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~~] 2018. “.

Amendment of section 42D of Act 22 of 1994

12. 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 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~~] 2018 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 (1) of the following subsection:

“(2A) In considering a decision to enter into an agreement contemplated in subsection (1), the Minister must have regard to the factors set out in section 33.”;
and

(c) 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~~] sections 42C and 42E to the Director-General of Rural Development and Land Reform, [~~or~~] any other officer of the State or to the Chief Land Claims Commissioner or a regional land claims commissioner.”.

Short title

13. This Act is called the Restitution of Land Rights Amendment Act, 2013.

EXPLANATORY MEMORANDUM ON THE DRAFT RESTITUTION OF LAND RIGHTS AMENDMENT BILL, 2013

1. OBJECTS OF THE BILL

- 1.1 The Restitution of Land Rights Amendment Bill, 2013 (hereinafter referred to as the Bill), proposes certain amendments to the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (hereinafter referred to as the Act), to extend the date for lodging a claim for restitution to 18 June 2018; to further regulate the appointment, tenure of office, remuneration and the terms and conditions of service of judges of the Land Claims Court and the further amend certain provisions which are aimed and promoting the effective implementation of the Act .

2. DISCUSSION OF THE BILL

- 2.1 Section 2(1) of the Act *inter alia* provides that a claim for the restitution of land must be lodged by no later than 31 December 1998. Due to a number of problems experienced in the application of the restitution programme, this programme was evaluated. The evaluation indicated that the programme has been thwarted by a number of limitation which resulted in various categories of persons and communities whose rights in land were taken as a result of colonisation and apartheid laws being excluded from the restitution process. The following three categories were identified as being excluded by the restitution laws and programme, i.e. those who could not lodge claims by the cut-off date of 31 December 1998, those dispossessed before 1913, and those dispossessed through betterment planning schemes and not allowed to lodge their claims by the Commission on Restitution of Land Rights (CRLR).
- 2.2 The evaluation further indicated that the research methodology that informed the restitution process was poor; that verification systems of the CRLR were inadequate, that the window period that was provided to lodge claims was too short and that the communication campaign to inform citizens about the requirement to lodge claims did not reach every corner of the country.

- 2.3 It is estimated that at least 3.5 million people were forcibly removed from their land as a result of colonialisation and apartheid laws implemented after 19 June 1913 in the post Second World War period. It has been argued that this figure excludes dispossessions that were caused by betterment planning. The estimates in the White Paper on Land Reform, 1996 had excluded dispossessions caused by the implementation of betterment planning policies as the White Paper had envisaged that such dispossessions would not be addressed through the land restitution programme. When dispossessions that took place as a result of betterment and homeland consolidations (which have resulted in claims by whites) are taken into account the figure could be closer to 7.5 million, whilst less than 80 000 claims for restitution were lodged before the cut-off date of 31 December 1998.
- 2.4 Dispossessions that took place prior to 19 June 1913 are excluded from the land restitution programme by section 25 (7) of the Constitution which requires that redress can only be provided for dispossessions that took place after 19 June 1913. Research is being done to determine the exact scope and quantity of such excluded persons dispossessed before 1913. The dispossessions of land before 19 June 1913 as a result of state action will be dealt with separately.
- 2.5 Having regard to the above it has therefore been decided to amend section 2 (1) (e) of the Act, in Clause 1 of the Bill to extend the date for the lodging of claims for restitution to 31 December 2018.
- 2.6 In clause 2 of the Bill it is proposed that section 11 of the Act be amended to provide that the details of a claim must be published in the media circulating nationally and in the province in which the land is situated.
- 2.7 In clause 4 of the Bill it is proposed that section 17 of the Act be amended to make the lodging of a fraudulent claim an offence.
- 2.8 Chapter III of the Act, provides for the establishment the Land Claims Court, and sections 22 (3), (4), (5), (6), (7), (8) and (9), 23, 26, and 26A of the Act deals with appointment, tenure of office, remuneration and the terms and conditions of service of judges of the Land Claims Court.

2.9 Experience has shown that the current requirements for the appointment, tenure of office, remuneration and terms of service of judges of the Land Claims Court are cumbersome and time consuming which often leads to vacancies in the office of judges of the Court.

2.10 In clause 5 of the Bill it is proposed that section 22 of the Act—

- (a) be amended by substituting subsection 3 providing for the appointment by the President acting on the advice of the Judicial Services Commission, of at least five judges and a Judge President for a fixed term, each of whom must be a judge of the High Court of South Africa. Currently section 22 (3), (4) and (5) provides that the number of judges is determined by the President after consultation with the Judicial Services Commission and the President of the Court and that judges may be appointed for a fixed term;
- (b) be amended by substituting subsection 4 providing that in the event that the office of the Judge President is vacant or if the Judge President is temporarily unable to perform the functions of that office, it will no longer be necessary for the President to designate another judge to act as President of the Court [section 22 (7)], but that the senior judge of the Court must perform the functions of the Judge President;
- (c) be amended by substituting subsection 5 providing for the circumstances under which a judge of the Court vacates office. Currently the Act is silent on this issue;
- (d) be amended by substituting subsection 6 providing that the tenure of office, the remuneration and the terms and conditions of service applicable to a judge of the High Court are not affected by the appointment and tenure of office of that judge who is appointed as a judge of the Court. Currently the remuneration of judges of the Court is regulated by section 26 of the Act. This section is being deleted as all judges of the Court must be a judge of the High Court of South Africa whose conditions of service are regulated by the Judges' Remuneration and Conditions of Employment Act, 2001;
- (e) be amended by the deletion of subsection (7); and
- (f) be amended in subsection (8) providing for the appointment of an acting judge of the court in the case of a vacancy or any other sufficient reason by the Minister after consultation with the President of the

Court, for such term as the Minister may determine. Currently an acting judge can only be appointed by the President for a term exceeding one month and by the Minister of Justice for a term not exceeding one month.

2.11 In clauses 6, 7 and 8 of the Bill it is proposed that sections 23, 26 and 26A of the Act be deleted as the matters dealt with in these sections are now dealt with by the proposed amendments to section 22 of the Act.

2.12 In clauses 3, 10, 11 and 12 of the Bill it is proposed that sections 12, 38b, 38D, and 42D of the Act be amended by amending the reference to 31 December 1998 to 18 June 2018. These amendments are a direct consequence of the amendment of the cut-off date for lodging a claim for restitution in section 2 (1) (e) of the Act. Clause 12 furthermore proposes that section 42D of the Act be amended to extend the Ministers powers of delegation.

2.13 in clause 9 of the Bill it is proposed that section 33 of the Act be amended to provide that the cost of the land as well as the claimants ability to use the land productively must be factors to be taken into account by the Court in considering its decision.

2.15 Clause 13 contains the short title of the Bill.
