

REPUBLIC OF SOUTH AFRICA

**RESTITUTION OF LAND RIGHTS  
AMENDMENT BILL**

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Private Member's Bill

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*[MNGUNI, PJ (MP)]*

## GENERAL EXPLANATORY NOTE:

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

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# BILL

To amend the Restitution of Land Rights Act, 1994, **so as to amend certain definitions, 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 create certain offences; to extend the Minister's powers of delegation; 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 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 –

(a) By the substitution for the definition of “claim” of the following definition:  
“claim” means

- (i) Any claim for restitution of a right in land lodged with the Commission in terms of this Act before 31 December 1998; and after the date referred to in Section 16A the definition shall extend to a claim lodged in terms of the Restitution of Land Rights Amendment Act, 2014 (Act No 15 of 2014) and this Act;
- (ii) Any application lodged not later than 31 December 1998 with the registrar of the Court in terms of Chapter 111A for the purposes of claiming restitution of a right in land; and after the date referred to in Section 16A the definition shall extend to an application lodged with the registrar in terms of Chapter 111A;
- (iii) By the substitution for the definition of “claimant” of the following definition: “claimant” means any person who has lodged a claim not later than 31 December 1998; and after the date referred to in Section 16A the

definition shall extend to a claim lodged in terms of the Restitution of Land Rights Amendment Act, 2014 (Act No 15 of 2014) and this Act;

**Amendment of section 2 of Act 22 of 1994**

2. Section 2 of the principal Act is hereby amended –

- (a) by the substitution of the following words  
“Subject to Section 16A, a person shall be entitled to restitution of a rights in land if –“
- (b) 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]** 30 June 2021.”.

**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**

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

- (a) by the deletion in subsection (1) of the full stop at the end of paragraph (f) and the insertion of the expression ”; and” at the end of that paragraph;
- (b) by the insertion in subsection (1) after paragraph (f) of the following paragraph:  
“(g) ensure, subject to section 16A, that claims lodged not later than 31 December 1998 are finalised before processing the claims lodged in terms of the Restitution of Land Rights Amendment Act, 2014 (Act No 15 of 2014) and in terms of this Restitution of Land Rights Amendment Act”; and
- (c) by the insertion after subsection (1) of the following subsection:  
“(1A) (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 subject to the Promotion of Access to Information Act, 2000 (Act No 2 of 2000).”.

**Amendment of section 12 of Act 22 of 1994**

4. 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] 30 June 2021.’’.

#### **Insertion of Section 16 A in Act 22 of 1994**

5. The following section is hereby inserted after section 16 of the principal Act:

#### **“Processing of new claims”**

16A (1) Upon the finalisation or referral to Court of all claims lodged not later than 31 December 1998, the Chief Land Claims Commissioner shall certify in writing that such claims have been finalised or referred to Court, and shall publish a Notice in the Gazette stating the date on which the Commission shall start processing claims lodged in terms of the Restitution of Land Rights Amendment Act, 2014 and Restitution of Land Rights Amendment Act, 2018.

#### **Substitution of section 17 of Act 22 of 1994**

6. The following section is hereby substituted for section 17 of the principal Act:

#### **“Offences and penalties**

17. (1) Any person who—

- (a) contravenes the provisions of section 11(7)(a), (aA), (b), (c) or (d);
- (b) having been directed to appear before a member of the Commission and to produce documents or objects in terms of section 12(1)(c), fails to appear at the specified time and place or to produce such documents or objects;
- (c) hinders or obstructs the Commission in the performance of its functions;
- (d) prevents or attempts to prevent a duly authorised officer contemplated in section 8, or a person or organisation appointed in terms of section 9, from performing a function in terms of this Act;
- (e) prevents, obstructs or unduly influences a claimant or any other person from pursuing his or her rights provided for in this Act, shall be guilty of an offence and liable on conviction to **[a fine or to] imprisonment for a period not exceeding [three] six months or to an appropriate fine determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).**

(2) Any person who lodges a claim with the intention of defrauding the state shall be guilty of an offence and liable on conviction to a fine or imprisonment or both, determined in respect of the offence of fraud.’’.

#### **Amendment of section 22 of Act 22 of 1994**

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

(a) by the substitution for subsections (3), (4), (5), (6) and (7) of the following subsections:

- “(3) The Court shall consist of a Judge President and so many judges as may be determined by the President.
- (4) The Judge President and judges of the Court, each of whom must be a judge of the High Court of South Africa, are appointed by the President acting on the advice of the Judicial Service Commission.
- (5) When the office of the Judge President of the Court is vacant, or when the Judge President of the Court is temporarily unable to perform the functions of that office for any reason, the longest serving judge of the Court must perform the functions of Judge President of the Court.
- (6) The Judge 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 be a judge of the High Court; or
- (c) the judge resigns from the Court by giving written notice to the President, whichever occurs first.
- (7) 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.”; and

(b) 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].**”

#### **Insertion of section 22A in Act 22 of 1994**

**8.** The following section is hereby inserted after section 22 of the principal Act:

#### **“Transitional arrangements**

**22A.** A judge of a High Court who, on the date of commencement of the Restitution of Land Rights Amendment Act, 2014, was seconded to the Land Claims Court in

terms of section 26A, becomes a judge of the Court except where such a judge indicates, in writing to the Secretary of the Judicial Service Commission, that he or she does not wish to hold a concurrent appointment as a judge of the Court.’’.

**Repeal of section 23 of Act 22 of 1994**

9. Section 23 of the principal Act is hereby repealed.

**Repeal of section 26 of Act 22 of 1994**

10. Section 26 of the principal Act is hereby repealed.

**Repeal of section 26A of Act 22 of 1994**

11. Section 26A of the principal Act is hereby repealed.

**Amendment of section 38B of Act 22 of 1994**

12. 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 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 2021 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**

13. Section 38D of the principal Act is hereby amended by the substitution in (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]** 30 June 2021.”.

**Amendment of section 42D of Act 22 of 1994**

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

(a) by 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]** read with Section 16 A, 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:”; and

(b) 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]** 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**

15. This Act is called the Restitution of Land Rights Amendment Act, 2018.

# MEMORANDUM ON THE OBJECTS OF THE RESTITUTION OF LAND RIGHTS AMENDMENT BILL, 2013

## 1. OBJECTS OF THE BILL

1.1 The Restitution of Land Rights Amendment Bill, 2017 (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 30 June 2021; to criminalise the lodgement of a fraudulent claim; to further regulate the appointment, tenure of office, remuneration and the terms and conditions of service of judges of the Land Claims Court and to further amend certain provisions which are aimed at 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 rights in land must be lodged by no later than 31 December 1998. Due to a number of challenges experienced in the application of the restitution programme, and in order to align it to the broad goals of the National Development Plan: Vision 2030 (2012), this programme was evaluated. The evaluation indicated that deserving persons and communities dispossessed of rights in land as a result of past racially discriminatory laws and practices, did not participate in the 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 individuals were forcibly removed from their land as a result of racially discriminatory laws and practices implemented after 19 June 1913 between 1960 and 1982. It has been argued that this figure excludes dispossessions that were caused by betterment planning and homeland consolidation. When dispossessions that took place as a result of betterment and homeland consolidations (which also included dispossessions of rights in land held by white people) during the same period are taken into account the figure could be closer to 7.5 million, whilst less than 80 000 claims for restitution were lodged with the CRLR before the cut-off date of 31 December 1998. These figures do not take into account the fact that some of the dispossessions of rights in land, particularly in urban areas, did not involve the physical removal of people.

2.4 The Restitution of Land Rights Amendment Act, 2014 (Act No 22 of 1994) (“the Amendment Act”) had sought to reopen the lodgement of land claims for the period of 5 years ending on 30 June 2019. On the 28 July 2016 the Constitutional Court declared that Parliament failed to satisfy its obligation to facilitate public involvement

in accordance with section 72 (1) (a) of the Constitution when it passed the Restitution of Land Rights Amendment Act, 1994; and declared the Amendment Act invalid for that reason.

- 2.5 The Constitutional Court effectively gave Parliament until 27 July 2018 to pass a new law that would re-open the lodgement of claim. The present Bill seeks to re-open the lodgement of land claims for a further period of three years, and to comply with the requirements of the Constitutional Court judgment.
- 2.6 Disposessions 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 disposessions that took place after 19 June 1913 (the date when the Natives Land Act 27 of 1913 was promulgated). Research is being done to determine the exact scope and quantity of such excluded persons dispossessed before 1913. Exceptions to the 1913 Natives Land Act cut-off date will be dealt with separately.
- 2.7 One of the issues before the Constitutional Court was the impact of the claims lodged in terms of the Amendment Act to those lodged before 31 December 1998. The Bill proposes that the Commission first finalise all the claims lodged before 31 December 1998 before processing the claims lodged in terms of the Amendment Act and those that will be lodged once the Bill is signed into law. The Bill separates the lodgement of the claim from the processing of the claims.
- 2.8 The Bill will therefore allow new claims to be lodged, but they will not be processed until the claims lodged by 31 December 1998 have been finalised. The effect of the amendments is that the rights accorded to a claimant will only extend to the new claims from a date the Chief Land Claims Commissioner certifies in writing and publishes in the Government Gazette a notice that all claims lodged before 31 December 1998 have been finalised.
- 2.9 In clause 2 of the Bill it is proposed that section 2(1)(e) of the Act be amended to extend the date for the lodging of claims for restitution to 30 June 2021 (a three year extension).
- 2.10 In clause 3 of the Bill provision is made for the Commission to ensure that claims lodged by 31 December 1998 are finalised first before processing new claims. The Commission is also required to establish a register where particulars of claims are to be inserted, which will be open to the public.
- 2.11 Clause 4 contains consequential amendments relating to the change of date of the lodgement of claims.
- 2.12 Clause 5 of the Bill inserts a new provision requiring the Chief Land Claims Commissioner to certify in writing and publish in the Government Gazette that all claims lodged not later than 31 December 1998 have been finalised, and that new claims shall be processed from that date. The rights of a claimant will only extend to new claimants from the date of the publication of the notice.

- 2.13 In clause 6 of the Bill it is proposed that section 17 of the Act be amended to create two additional offences by a person who:
- (a) obstructs, unduly influences, misleads or engages in any conduct which is designed to prevent, compromise or obstruct any claimant from pursuing his or her rights provided for in this Act;
  - (b) lodges a claim with the sole intention of defrauding the state.
- 2.14 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.
- 2.15 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.
- 2.16 Clause 7 of the Bill proposes to amend section 22 of the Act by the substitution for subsections (3), (4), (5), (6) and (7) of redrafted subsections which streamline the provisions and by amending subsection (8) to provide for the appointment of an acting Judge of the Court in the case of a vacancy or for any other sufficient reason, by the Minister of Justice and Constitutional Development after consultation with the President of the Court, for such term as the Minister of Justice and Constitutional Development may determine. Currently an acting judge may only be appointed by the President of the Republic for a term determined by the President of the Republic and by the Minister of Justice and Constitutional Development for a term not exceeding one month.
- 2.17 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.
- 2.18 Clause 8 of the Bill inserts a new clause 22A which provides for the position of the current permanent judges of the land Claims Court.
- 2.19 In clauses 9, 10 and 11 of the Bill it is proposed that sections 23, 26 and 26A of the Act be repealed as the matters dealt with in these sections are now dealt with by the proposed amendments to section 22 of the Act.
- 2.20 The proposed amendments relating to Judges were proposed by the Department of Justice and Constitutional Development and agreed to by the Minister of Justice and Constitutional Development, the Chief Justice as well as the judges of the Land claims Court.

2.21 In clauses 12, 13 and 14 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 30 June 2021 (a five year extension). 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 14 furthermore proposes that section 42D of the Act be amended to extend the Minister's powers of delegation.

2.22 Clause 15 contains the short title of the Bill.

### **3. FINANCIAL IMPLICATIONS FOR STATE**

It is not possible to determine what the financial implications would be as a result of extending the period for the lodging of a claim for restitution to 30 June 2021, as this will be directly influenced by the number of claims lodged as well as the extent of such claims.

### **4. DEPARTMENTS/BODIES/PERSONS CONSULTED**

The Departments of Justice and Constitutional Development; Rural Development and Land Reform; Commission on Restitution of Land Rights; and National Treasury were consulted during the processes leading to the signing into law of the Amendment Act.

### **5. CONSTITUTIONAL IMPLICATIONS**

None.

### **6. COMMUNICATION IMPLICATIONS**

To be undertaken by the Department of Rural Development and Land Reform.

### **7. PARLIAMENTARY PROCEDURE**

7.1. The Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

7.2. It is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No.41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.