

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 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. “.

Substitution of section 17 of Act 22 of 1994

4. 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) unlawfully 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 on conviction to **[a fine or to]** imprisonment for a period not less than **[exceeding three]** five months or to an appropriate fine determined in terms of applicable legislation.

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

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), (6) and (7) of the following subsections;

“(3) The Court consists of a Judge President and so many judges as may be determined by the President.

(4) The Judge President and judges of the Court are 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.

(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.

(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.”.

(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 7A in Act 22 of 1994

6. The following section is hereby inserted after section 7 of the principal Act:

“Transitional arrangements

7A. A judge of a Superior Court who, on the date of commencement of this Act, 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.

Deletion of section 23 of Act 22 of 1994

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

Deletion of section 26 of Act 22 of 1994

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

Deletion of section 26A of Act 22 of 1994

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

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]** 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.