

REPUBLIC OF SOUTH AFRICA

RESTITUTION OF LAND RIGHTS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill;
Bill published in Government Gazette No. 25217 of 25 July 2003)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 42—2003]

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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 empower the Minister of Land Affairs to purchase, acquire in any other manner or expropriate land, a portion of land or a right in land for the purpose of the restoration or award of such land, portion of land or right in land to a claimant or for any other land reform purpose; and to provide for matters connected therewith.

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

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 and section 9 of Act 18 of 1999

1. Section 35 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 deletion of subsections (5) and (5A). 5

Amendment of section 42A of Act 22 of 1994, as inserted by section 30 of Act 63 of 1997

2. Section 42A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) Where, in terms of this Act, **[the Court orders the State to acquire or expropriate]** land is acquired or expropriated in order to restore or award the land to a claimant, **[the claimant shall become owner thereof on the date of such acquisition or expropriation]** such land vests in the State, which must transfer it to the claimant.” 15

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

3. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d). 20

Insertion of section 42E in Act 22 of 1994

4. The following section is hereby inserted in the principal Act after section 42D:
“**Acquisition of land, portion of land or right in land for land reform purposes**”

42E. (1) The Minister may purchase, acquire in any other manner or expropriate land, a portion of land or a right in land for the purpose of restoring or awarding such land, portion of land or right in land to a claimant in terms of this Act or for any other land reform purpose.

(2) Subject to this Act, the Expropriation Act, 1975 (Act No. 63 of 1975), shall with the necessary changes apply to an expropriation under this Act and any reference to the Minister of Public Works in that Act, must be construed as a reference to the Minister for the purpose of such expropriation. 5

(3) Where the Minister expropriates land, a portion of land or a right in land under this Act, the amount of compensation and the time and manner of payment shall be determined either by agreement or by the Court in accordance with section 25(3) of the Constitution. 10

(4) The rules of the Court made under section 32 shall govern the procedure of the Court in the determination of compensation in terms of subsection (3).”

Short title

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5. This Act is called the Restitution of Land Rights Amendment Act, 2003.

MEMORANDUM ON THE OBJECTS OF THE RESTITUTION OF LAND RIGHTS AMENDMENT BILL, 2003

1. BACKGROUND

In terms of the Presidential directive, the Commission on Restitution of Land Rights has till the end of 2005 to finalise all land claims. Up to now the emphasis has been on the settlement of urban claims. It is now, however, imperative that the process of settling rural claims be accelerated.

In 1999 the present procedure whereby land claims could be resolved by way of settlement agreements outside the Land Claims Court in terms of section 42D of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (hereinafter referred to as "the Restitution Act"), was introduced by the Land Restitution and Reform Laws Amendment Act, 1999 (Act No. 18 of 1999). The current provisions granting the Minister, with the agreement of all interested parties, powers to acquire or expropriate land for the purpose of restitution of rights in land without the necessity of an order of the Court are found in sections 35(5A) and 42D(1)(d) of the Restitution Act and are insufficient.

The provisions of the Restitution Act regarding acquisition or expropriation of land without recourse to the Court are unsatisfactory and delay the restitution process.

It is clear from section 42D(1)(d) of the Restitution Act that in the absence of an order of the Court the power of the Minister to acquire or expropriate land for restitution purposes is limited to circumstances where an agreement has been reached between "the parties who are interested in the claim" (see the introductory portion of section 42D(1)). In a case where a landowner is therefore not willing to sell, it means, in effect, that in the absence of an order of the Court the Minister will only be able to expropriate if agreement is reached with the landowner as one of the interested parties that the land is to be expropriated.

There is no reason why the Minister should be forced to obtain the agreement of all the interested parties in terms of section 42D(1) if land is needed for restitution purposes.

A further problem which arises from the current provisions of the Restitution Act is that although the land may originally be intended for restitution purposes subsequent events may indicate that the land should rather be used for other land reform purposes. This is provided for in section 6(2)(b) of the Restitution Act.

2. OBJECTS OF BILL

The aim of the Restitution of Land Rights Amendment Bill, 2003, is to address the issues outlined in paragraph 1.

In terms of the proposed section 42E of the Restitution Act, inserted by clause 4 of the Bill, the Minister of Land Affairs will be authorised to purchase, acquire in any other manner or expropriate land or a right in land for the purpose of a restitution award or for any land reform purpose.

The proposed section 42E(2) provides that the Expropriation Act, 1975 (Act No. 63 of 1975), will, with the necessary changes, apply to all expropriations under the Restitution Act.

The constitutional rights of the landowner or holder of the right in land whose property or right is expropriated are protected by the new section 42E(3) of the Restitution Act. It is expressly provided that section 25(3) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), must be complied with. The amount of the compensation paid for the land and the time and manner of payment must therefore be just and equitable.

3. FINANCIAL IMPLICATIONS FOR STATE

It is not possible at this stage to determine the exact financial implications for the State. The amendments may have additional financial implications should the Minister decide to expropriate.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

Consultations were held with and comments received from the following institutions or persons:

Department of Justice and Constitutional Development
 Department of Provincial and Local Government
 Department of Public Works
 National Department of Agriculture
 National Department of Housing
 National Treasury
 Directors-General of the provinces
 Centre for Applied Legal Studies, Wits University
 Programme for Land and Agrarian Studies, University of the Western Cape
 Centre for Human Rights
 Johannesburg Attorneys' Association
 Centre for Legal Rural Studies
 Association for Rural Advancement
 Law Society of South Africa
 Black Lawyers Association
 Phillip du Toit Incorporated
 South African Law Commission
 Land Claims Court
 Constitutional Court
 Judge President of the High Court of South Africa (Transvaal Provincial Division)
 Legal Resources Centre: Cape Town, Johannesburg and Pretoria
 National House of Traditional Leaders
 National Land Committee
 Nkuzi Development Association
 South African Banking Council
 Land and Agricultural Bank of South Africa
 First National Bank–Rural
 South African Chamber of Mines
 South African Chamber of Business
 Afrikaanse Handelsinstituut
 National African Federated Chamber of Commerce
 South African Human Rights Commission
 South African National Non-Governmental Organisation Coalition
 Itireleng Development and Educational Project
 South African Property Owners Association
 Surplus People Project
 Agri South Africa
 Transvaal Agricultural Union
 National African Farmers Union
 Grain South Africa
 South African Communist Party
 Orde Boerevolk
 Congress of Traditional Leaders of South Africa
 Freedom Front
 African National Congress
 Democratic Alliance
 New National Party
 Congress of South African Trade Unions
 United Democratic Movement
 Willie du Toit, Waterval, Steynsburg
 Marietta van Vuuren
 Landbouweekblad
 Rapport
 Beeld
 Sowetan
 Pretoria News
 Mail and Guardian
 Business Day
 The Star

Sunday Times
South African Broadcasting Corporation
Reuters
Radio Sonder Grense

5. CONSTITUTIONAL IMPLICATIONS

None.

6. COMMUNICATION IMPLICATIONS

The Commission on Restitution of Land Rights will inform relevant stakeholders through a concerted publicity drive of the amendment, once enacted.

7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Land Affairs are of the view that this 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.

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