

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
COMMUNAL LAND RIGHTS
BILL**

[B 67—2003]

*(As agreed to by the Portfolio Committee on Agriculture and Land Affairs
(National Assembly))*

[B 67A—2003]

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AMENDMENTS AGREED TO

COMMUNAL LAND RIGHTS BILL
[B 67—2003]

CLAUSE 1

1. On page 4, in line 39, to omit the definition of ‘**land administration committee**’ and to substitute “ ‘**land administration committee**’ means a land administration committee established in terms of section 21;”.
2. On page 4, in line 47, after “tenure” to insert “or other”.

CLAUSE 4

1. On page 5, in line 43, to omit Clause 4 and to substitute:
 4. (1) A community or person is entitled, to the extent and in the manner provided for in this Act and within the available resources of the State, either to tenure which is legally secure or to comparable redress if the tenure of land of such community or person is legally insecure as a result of past racially discriminatory laws or practices.
 - (2) An old order right held by a married person is, despite any law, practice, usage or registration to the contrary, deemed to be held by all spouses in a marriage in which such person is a spouse, jointly in undivided shares irrespective of the matrimonial property regime applicable to such marriage and must, on confirmation or conversion in terms of section 18(3), be registered in the names of all such spouses.
 - (3) A woman is entitled to the same legally secure tenure, rights in or to land and benefits from land as is a man, and no law, community or other rule, practice or usage may discriminate against any person on the ground of the gender of such person.

CLAUSE 6

1. On page 6, in line 38, after “such land;” to omit “and”.
2. On page 6, in line 48, to omit “(iv)” and substitute “(c)”.

CLAUSE 12

1. On page 7, from line 26, to omit Clause 12 and to substitute:
 12. (1) The Minister may, on application by the holder of an old order right which is insecure as contemplated in section 25(6) of the Constitution and which cannot be made legally secure, determine an award of comparable redress to such holder.
 - (2) An award in terms of subsection (1) may comprise—
 - (a) land other than the land to which the applicable old order right relates or a right in such other land;
 - (b) compensation in money or in any other form; or
 - (c) a combination of land or a right in land contemplated in paragraph (a) and compensation contemplated in paragraph (b).
 - (3) The provisions of section 18, read with the necessary changes, apply to a determination in terms of this section.

CLAUSE 14

1. On page 7, in line 42, to omit paragraph (a) and to substitute:
 - “(a) the nature and extent of all—
 - (i) constitutional and human;
 - (ii) old order and other land and tenure; and
 - (iii) competing or conflicting;
 rights, interests and tenure of land, whether legally secure or not which are or may be affected by such enquiry;”.
2. On page 7, in line 43, to omit “interest” and to substitute “interests”.
3. On page 8, in line 5, to omit paragraph (g) and to substitute:
 - (g) the measures required to ensure compliance with section 4 and to promote gender equality in the allocation, registration and exercise of new order rights;
4. On page 8, in line 9, to omit “.” and substitute “;”.
5. On page 8, after line 9, to insert “and must endeavour to resolve any dispute relating to land and rights in or to land, and a report on such matters must be submitted to the Minister.”.

CLAUSE 16

1. On page 8, in line 17, after “in”, to insert “the appropriate national, regional and local media and in”.

CLAUSE 17

1. On page 8, in line 23, to omit subsection (1), and to substitute:
 - (1) A land rights enquirer must conduct a land rights enquiry in the prescribed manner, which must be open and transparent and must afford the communities and persons who may be affected by such enquiry an opportunity to participate in such enquiry.
 - (2) A land rights enquirer must adopt measures to ensure that decisions made by a community are in general the informed and democratic decisions of the majority of the members of such community who are 18 years of age or older and are present or represented by a proxy at a community meeting of which adequate notice of not less than 21 days was given.
 - (3) A land rights enquiry report contemplated in section 14(2) must—
 - (a) include recommendations in respect of the matters which require determinations to be made by the Minister;
 - (b) prior to being submitted to the Minister, be made available on adequate notice for inspection by any interested community or person who must be afforded an opportunity to make representations in relation to any matter relevant to such enquiry; and
 - (c) be submitted to the Minister together with any such representations and supporting documents for her or his consideration.

CLAUSE 18

1. On page 8, in line 34, to omit subsection (1) and to substitute:
 - (1) If the Minister, having received a report by a land rights enquirer is satisfied that the requirements of this Act have been met, she or he must, subject to subsections (4) and (5) and having regard to—
 - (a) such report;
 - (b) all relevant law including customary law and law governing spatial planning, local government and agriculture;
 - (c) the old order rights of all affected right holders;
 - (d) the need to provide access to land on an equitable basis; and
 - (e) the need to promote gender equality in respect of land,
 make a determination as contemplated in subsections (2) and (3).
2. On page 8, in line 42, after “Minister” to omit “may” and to substitute “must”.
3. On page 8, in line 42, to omit “subsection (4)” and to substitute “subsections (4) and (5)”.
4. On page 9, in line 1, after “a” to insert “comparable”.
5. On page 9, after line 26, to insert:
 - (5) The Minister may not make a determination in terms of this section which relates to land and a right in or to land which is directly affected by a dispute until such dispute is resolved by mediation, other alternative traditional or non-traditional dispute resolution mechanism or by a court, and must adopt measures to ensure that such dispute is resolved.

CLAUSE 19

1. On page 9, in line 31, after “manner” to insert “, to which the provisions of section 17(1) and (2) read with the necessary changes apply,”.
2. On page 9, in line 33, after “communal land” to insert “by the community as land owner within the framework of law governing spatial planning and local government”.
3. On page 9, in line 40, after “rules” to insert “and she or he must refer such application to the Board having jurisdiction in the area for a report on the suitability of such rules”.
4. On page 9, in line 44, after “requirements” to omit “of” and to substitute “and intention of the Constitution and”.
5. On page 9, in line 47, after “requirements” to insert “and intention”.

CLAUSE 20

1. On page 9, in line 54, to omit “prescribed”.

CLAUSE 22

1. On page 10, in line 25, after “community” to insert “in the prescribed manner”.

CLAUSE 24

1. On page 10, in line 48, to omit “ownership and administrative”.
2. On page 10, in line 48, after “powers” to insert “and duties”.
3. On page 10, in line 48, after “by” to insert “this Act and”.
4. On page 11, in line 17, after “by” to insert “or under”.

CLAUSE 26

1. On page 11, in line 39, to omit subparagraph (i).
2. On page 11, in line 41, after “disabilities;” to omit “and”.
3. On page 11, in line 43, to omit “.” and to insert “; and”.
4. On page 11, after line 43, to insert the following subparagraph
(iv) one must represent the interest of female-headed households.
5. On page 11, in line 44, to omit subsection (3) and to substitute:
(3) In appointing members of a Board, the Minister must—
(a) have due regard to the required knowledge of land, land tenure, old and new order rights and the required capabilities, including relevant skills, expertise and experience;
(b) ensure that at least a third of the Board members are women.
6. On page 12, in line 32, to omit paragraph (a) and to substitute:
(a) advise the Minister and advise and assist a community generally and in particular with regard to matters concerning sustainable land ownership and use, the development of land and the provision of access to land on an equitable basis;

SCHEDULE

1. On page 16, in line 16, after “old” to insert “and new”.

LONG TITLE

In the fifth line of the long title, after “administration of communal land” to insert “by communities”.

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