

## OFFICE OF THE PRESIDENT

No. 2011 25 November 1994

### NO. 22 OF 1994: RESTITUTION OF LAND RIGHTS ACT, 1994.

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

#### ACT

To provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

**WHEREAS** the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides for the restitution of a right in land to a person or community dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law;

**AND WHEREAS** legislation for this purpose is to be designed to promote the protection and advancement of persons, groups or categories of persons disadvantaged by unfair discrimination, in order to promote their full and equal enjoyment of rights in land:

(Afrikaans text signed by the President.) (Assented to 17 November 1994.)

**NOW THEREFORE BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

#### CHAPTER I

##### Introductory Provisions Definitions

1. In this Act, unless the context indicates otherwise-

(i) "claim" means any application lodged with the Commission in terms of this Act; (iii)

(ii) "claimant" includes a community; (iv)

(iii) "Commission" means the Commission on Restitution of Land Rights established by section 4; (ix)

(iv) "community" means any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group, and includes part of any such group; (v)

(v) "Court" means the Land Claims Court established by section 22; (vii)

(vi) "direct descendant" of a person includes the spouse or partner in a customary union of such person whether or not such customary union has been registered; (ii)

(vii) "Minister" means the Minister of Land Affairs or an officer in his or her department designated by him or her; (x)

(viii) "person" includes a community or part thereof; (xii)

(ix) "prescribed" means prescribed by or under this Act; (xiv)

(x) "public land" means all land owned by any organ of state as defined in section 233 of the Constitution, and includes land owned by a local authority, the Land Bank and any institution in which the State is the majority or controlling shareholder; (xi)

(xi) "right in land" means any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question; (xiii)

(xii) "Supreme Court" means the Supreme Court of South Africa referred to in section 101 of the Constitution; (viii)

(xiii) "the rules" means the rules made under sections 16 and 32; (i)

(xiv) "this Act" includes the rules and the regulations made under section 40. (vi)

#### Enforcement of claim for restitution

2. (1) A person shall be entitled to enforce restitution of a right in land if-

(a) he or she is a person or community contemplated in section 121(2) of the Constitution or a direct descendant of such a person; and

(b) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the Gazette.

(2) The date contemplated in subsection (1), shall be a date not earlier than the earliest of the dates contemplated in section 43.

(3) The date contemplated in section 121(2)(a) of the Constitution is 19 June 1913.

#### Claims against nominees

3. Subject to the provisions of this Act a person shall be entitled to claim title in land if such claimant or his, her or its antecedent-

(a) was prevented from obtaining or retaining title to the claimed land because of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2) of the Constitution had that subsection been in operation at the relevant time; and

(b) proves that the registered owner of the land holds title as a result of a transaction between such registered owner or his, her or its antecedents and the claimant or his, her or its antecedents, in terms of which such registered owner or his, her or its antecedents held the land on behalf of the claimant or his, her or its antecedents.

## **CHAPTER II**

### **Commission on Restitution of Land Rights**

#### **Establishment of Commission on Restitution of Land Rights**

4. (1) There is hereby established a commission to be known as the Commission on Restitution of Land Rights.
- (2) The Commission shall have a head office and such other offices, with such areas of jurisdiction, as the Minister may determine.
- (3) The Commission shall consist of a Chief Land Claims Commissioner appointed by the Minister, after inviting nominations from the general public, a Deputy Land Claims Commissioner similarly appointed and as many regional land claims commissioners as may be appointed by the Minister.
- (4) The Chief Land Claims Commissioner, the Deputy Land Claims Commissioner and a regional land claims commissioner, shall-
- (a) be fit and proper persons to hold such offices;
  - (b) be South African citizens; and
  - (c) have skills and knowledge relevant to the work of the Commission or such legal knowledge or qualifications as the Minister may deem necessary.
- (5) The Minister may terminate any appointment made under subsection (3)-
- (a) if he or she is satisfied that such appointed person no longer complies with the requirements of subsection (4); or
  - (b) if the appointed person requests the Minister in writing to terminate the appointment.

#### **Meetings of Commission**

5. (1) The Commission shall meet at least three times each year.
- (2) Meetings of the Commission shall be held at the time and place determined by the Chief Land Claims Commissioner.
- (3) The majority of the members of the Commission shall form a quorum for a meeting of the Commission.
- (4) The decision of the majority of the members of the Commission present at any meeting thereof shall be a decision of the Commission: Provided that, in the event of an equality of votes, the Chief Land Claims Commissioner shall have a casting vote in addition to his or her deliberative vote.

#### **General functions of Commission**

6. (1) The Commission shall, at a meeting or through the Chief Land Claims Commissioner, a regional land claims commissioner or a person designated by any such commissioner-

(a) subject to the provisions of section 2, receive and acknowledge receipt of all claims for the restitution of rights in land lodged with it in terms of this Act;

(b) take reasonable Steps to ensure that claimants are assisted in the preparation and submission of claims;

(c) advise claimants of the progress of their claims at regular intervals and upon reasonable request;

(d) subject to the provisions of section 14, report to the Court on the terms of settlement in respect of successfully mediated claims;

(e) define any issues which may still be in dispute between the claimants and other interested parties with a view to expediting the hearing of claims by the Court; at regular intervals, take appropriate steps to make public information regarding the persons entitled to claim restitution of rights in land in terms of section 121 of the Constitution, the limitations imposed by section 2, and the manner in which claims may be lodged with the Commission.

(2) The Commission may, at a meeting or through the Chief Land Claims Commissioner, a regional land claims commissioner or a person designated by any such commissioner-

(a) monitor and make recommendations concerning the implementation of orders made by the Court under section 35;

(b) make recommendations or give advice to the Minister regarding the most appropriate form of alternative relief, if any, for those claimants who do not qualify for the restitution of rights in land in terms of this Act;

(c) refer questions of law and interpretation to the Court;

(d) ensure that priority is given to claims which affect a substantial number of persons, or persons who have suffered substantial losses as a result of dispossession or persons with particularly pressing needs;

(e) generally, do anything necessarily connected with or reasonably incidental to the expeditious finalisation of claims.

#### Delegation of powers and performance of functions

7. (1) The Commission may delegate any power conferred upon it by or under this Act to a subcommittee of the Commission or to a member of the Commission or to a person contemplated in section 8 or 9 subject to such directions or conditions as the Commission may give or determine from time to time: Provided that the powers referred to in section 6(2)(b), (c) and (d) may not be delegated.

(2) The Chief Land Claims Commissioner may delegate any power conferred upon him or her by or under this Act except the power of delegation to the Deputy Land Claims Commissioner or any regional land claims commissioner, either generally or with regard to a specific claim.

(3) If the Chief Land Claims Commissioner is absent or unable to perform any or all of his or her functions, the Deputy Land Claims Commissioner shall act in his or her stead and whilst the Deputy Land Claims Commissioner so acts, he or she shall perform all the functions of the Chief Land Claims Commissioner.

(4) A regional land claims commissioner may, instead of performing any function in any particular case, refer the matter to the Commission for the Commission to perform such function at a meeting contemplated in section 5.

## Performance of administrative work of Commission

8. (1) The administrative work incidental to the performance of the functions of the Commission shall be performed by officers appointed in terms of the provisions of section 15(3)(a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and designated in general or for a specific purpose by the Minister after consultation with the Commission.

(2) In making a designation in terms of subsection (1), the Minister and the Commission shall seek to ensure that the staff of the Commission shall be broadly representative of the South African population.

(3) Designated officers shall perform their functions under the control and supervision of the Chief Land Claims Commissioner or regional land claims commissioner,, as the case may be.

## Appointment of persons to assist Commission on ad hoc basis

9. (1) The Chief Land Claims Commissioner may from time to time-

(a) appoint one or more persons with particular knowledge or specific expertise relevant to the achievement of the Commission's objects to advise the Commission regarding any matter connected with the performance of its functions;

(b) appoint one or more persons with specific expertise in relation to dispute resolution to facilitate meetings of interested parties, mediate and settle disputes, and report to the Commission in writing on the outcome of such negotiations;

(c) request any government department, provincial administration, local authority or person in the service of the State, a province or local authority who has particular knowledge or specific expertise to advise the Commission regarding any matter connected with the performance of its functions.

(2) A person appointed in terms of subsection (1) who is not in the full-time service of the State may, from moneys appropriated by Parliament for this purpose, be paid such remuneration and allowances in respect of the services performed by him or her as may be determined by the Minister in consultation with the Minister of Finance.

## Lodgement of claims

10. (1) Any person or the representative of any community who is of the opinion that he or she or the community which he or she represents is entitled to claim restitution of a right in land as contemplated in section 121 of the Constitution, may lodge such claim, which shall include a description of the land in question and the nature of the right being claimed, on the form prescribed for this purpose by the Chief Land Claims Commissioner under section 16.

(2) The Commission shall make claim forms available at all its offices.

(3) If a claim is lodged on behalf of a community the basis on which it is contended that the person submitting the form represents such community, shall be declared in full and any appropriate resolution or document supporting such contention shall accompany the form at the time of lodgement: Provided that the regional land claims commissioner having jurisdiction in respect of the land in question may permit such resolution or document to be lodged at a later stage.

## Procedure after lodgement of claim

11. (1) If the regional land claims commissioner having jurisdiction is satisfied that-

(a) the claim has been lodged in the prescribed manner;

(b) the claim is not precluded by the provisions of section 2(l);

(c) the claim is not frivolous or vexatious; and

(d) no order has been made by the Court in terms of section 35 in respect of rights relating to that land, 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 which the land in question is situated.

(2) The regional land claims commissioner concerned may, on such conditions as he or she may determine, condone the fact that a claim has not been lodged in the prescribed manner.

(3) A frivolous or vexatious claim may be dismissed by the regional land claims commissioner concerned.

(4) If the regional land claims commissioner decides that the criteria set out in paragraphs (a), (b), (c) and (d) of subsection (1) have not been met, he or she shall advise the claimant accordingly, and of the reasons for such decision.

(5) If an order has been made by the Court as contemplated in section 35 the claimant may, subject to the provisions of section 2(l), make application to the Court for permission to lodge a claim in respect of that land.

(6) Immediately after publishing the notice referred to in subsection (1), the regional land claims commissioner shall-

(a) advise any other party which, in his or her opinion, might have an interest in the claim; and

(b) direct the relevant Registrar, as contemplated in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), for the area in which the land in question is situated to note in his or her records the fact that a claim for restitution of a right in the land has been instituted in terms of this Act.

(7) Once a notice has been published in respect of any land and a temporary note has been made in the records as contemplated in subsection (6)(b)-

(a) no person may in an improper manner obstruct the passage of the claim;

(b) no claimant who was resident on the land in question at the date of commencement of this Act may be evicted from the said land without the written authority of the Chief Land Claims Commissioner;

(c) no person shall in any manner whatsoever remove or cause to be removed, destroy or cause to be destroyed or damage or cause to be damaged, any improvements upon the land without the written authority of the Chief Land Claims Commissioner;

(d) no claimant or other person may enter upon and occupy the land without the permission of the owner or lawful occupier.

(8) The regional land claims commissioner may, at any time after the publication of a notice contemplated in subsection (1), if he or she has reason to believe that any improvement on the land is likely to be

removed, damaged or destroyed or that any person resident on such land may be adversely affected as a result of the publication of such notice, authorise any person contemplated in section 8 or 9 to enter upon such land for the purpose of drawing up an inventory of any assets on the land, a list of persons employed or resident on the land, or a report on the agricultural condition of the land and of any excavations, mining or prospecting thereon.

#### Commission's power of investigation

12. (1) The Commission may, through a member of the Commission or any person authorised thereto in writing, in order to carry out its functions-

(a) conduct an investigation;

(b) demand from any person including any government department such particulars, documents and information as may be necessary in connection with any investigation;

(c) by notice in writing, addressed and delivered by a member of the staff of the Commission or a sheriff to any person, direct such person, in relation to an investigation, to appear before a member of the Commission at a time and place mentioned in such notice and to produce to such member all documents or objects in the possession or custody or under the control of such person and which are relevant to that investigation.

(2) Any person directed to produce documents or objects in terms of subsection (1)(c) shall not be compelled to produce any document or object which could be used in evidence against him or her in a criminal trial.

(3) If a claimant is not able to provide all the information necessary for the adequate submission or investigation of a claim, the regional land claims commissioner concerned shall direct an officer contemplated in section 8 to take all reasonable steps to have this information made available.

(4) If at any stage during the course of an investigation by the Commission, the Chief Land Claims Commissioner is of the opinion that the resources of the Commission or the Court would be more effectively utilised if all claims for restitution in respect of the land, or area or township in question, were to be investigated at the same time, he or she shall cause to be published in the Gazette and in such other manner as he or she deems appropriate, a notice advising potential claimants of his or her decision and inviting them, subject to the provisions of section 2(1), to lodge claims within a period specified in such notice.

(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 three years after the date fixed in terms of section 2(1)(b).

#### Mediation

13. (1) If at any stage during the course of the Commission's investigation it becomes evident that-

(a) there are two or more competing claims to a particular right in land;

(b) in the case of a community claim, there are competing groups within the claimant community making resolution of the claim difficult;

(c) where the land which is subject to the claim is not state-owned land, the owner or holder of rights in such land is opposed to the claim; or

(d) there is any other issue which might usefully be resolved through mediation and negotiation, the Chief Land Claims Commissioner may direct the parties concerned to attempt to settle their dispute through a process of mediation and negotiation.

(2) (a) A direction contemplated in subsection (1) shall be made in a written notice specifying the time when and the place where such process is to start.

(b) The Chief Land Claims Commissioner shall appoint a mediator to chair the first meeting between the parties: Provided that the parties may at any time during the course of mediation or negotiation by agreement appoint another person to mediate the dispute.

(3) A person appointed by the Chief Land Claims Commissioner in terms of subsection (2)(b) shall either be an officer contemplated in section 8 who is a fit and proper person to conduct such a process of mediation and negotiation or an independent mediator contemplated in section 9(1)(b).

(4) All discussions taking place and all disclosures and submissions made during the mediation process shall be privileged, unless the parties agree to the contrary.

#### Referral of claims to Court

14. (1) If upon completion of an investigation by the Commission-

(a) the parties to any dispute arising from the claim agree in writing that it is not possible to settle the claim by mediation and negotiation;

(b) the regional land claims commissioner certifies that it is not feasible to resolve any dispute arising from such claim by mediation and negotiation;

(c) the parties to any dispute arising from such claim reach agreement as to how the claim should be finalised and the regional land claims commissioner is satisfied that such agreement is appropriate; or

(d) the regional land claims commissioner is of the opinion that the claim is ready for hearing by the Court, the Chief Land Claims Commissioner shall certify accordingly and refer the matter to the Court.

(2) Any claim referred to the Court as a result of a situation contemplated in subsection (1)(a), (b) or (d) shall be accompanied by a document-

(a) setting out the results of the Commission's investigation into the merits of the claim;

(b) reporting on the failure of any party to accede to mediation;

(c) containing a list of the parties who ought to have the right to make representations to the Court in respect of the claim; and

(d) setting out the Commission's recommendation as to the most appropriate manner in which the claim can be resolved.

(3) A referral made as a result of an agreement contemplated in subsection (1)(c) shall be accompanied by a



document setting out the results of the Commission's investigation into the merits of the claim and a copy of the relevant deed of settlement together with a request signed by the parties concerned and endorsed by the Chief Land Claims Commissioner requesting that such agreement be made an order of Court.

(4) If the Chief Land Claims Commissioner is not satisfied that a settlement referred to in subsection (1)(c) is appropriate, he or she shall refer the matter to the Court for a hearing in accordance with subsection (1)(d).

(5) Any interested party shall be entitled, upon payment of the prescribed fee, to copies of the documents contemplated in this section, including the submissions of other interested parties in relation to any matter contemplated in this section.

(6) The Court shall not make any order in terms of section 35 unless the Commission has, in respect of the claim in question, acted in accordance with the provisions of this section.

(7) If a claim has not been referred to the Court within nine months from the date of its lodgement, the regional land claims commissioner concerned shall report in writing to the Commission, giving the reasons for the delay.

#### Certificate of feasibility

15. (1) Upon referral of a claim contemplated in section 121(2) of the Constitution to the Court in terms of section 14, the Chief Land Claims Commissioner shall request the Minister to certify whether-

(a) in the case of land contemplated in section 123(1)(a) of the Constitution, restoration of the right in question is feasible;

(b) in the case of land contemplated in section 123(1)(b) of the Constitution, acquisition of the right in question is feasible.

(2) Upon referral of a claim for an order contemplated in section 123(3)(a) of the Constitution to the Court in terms of section 14, the Chief Land Claims Commissioner shall request the Minister to certify whether it is feasible to designate alternative state-owned land.

(3) If the Minister certifies under subsection (1) that restoration or acquisition is not feasible, the Chief Land Claims Commissioner shall forthwith request the Minister to certify whether it is feasible to designate alternative state-owned land.

(4) When submitting a request contemplated in subsections (1), (2) or (3), the Chief Land Claims Commissioner shall advise the Minister as to whether or not restoration, acquisition or designation is feasible in the case in question.

(5) All interested parties shall be given the opportunity to make submissions to the Minister on the question of feasibility.

(6) In considering whether restoration or acquisition by the State is feasible in terms of subsection (1), the Minister shall, in addition to any other factor, take into account-

(a) whether the zoning of the land in question has since the dispossession been altered and whether the land has been transformed to such an extent that it is not practicable to restore the right in question;

(b) any relevant urban development plan;

- (c) any other matter which makes the restoration or acquisition of the right in question unfeasible; and
  - (d) any physical or inherent defect in the land which may cause it to be hazardous for human habitation.
- (7) In considering whether designation of alternative state-owned land is feasible in terms of subsections (2) and (3), the Minister shall, in addition to any other factor, take into account-
- (a) what land is owned by the State, in particular land which is situated in the area in which the dispossession took place; and
  - (b) the suitability of such land to meet the needs of the claimant.
- (8) Nothing in this section shall be construed to mean that the Minister shall be required or entitled to consider whether restoration, acquisition or designation is just or desirable.
- (9) The Minister shall issue the relevant certificate of feasibility, or refuse to do so, within 30 days of receipt of a request, and the Chief Land Claims Commissioner or the regional land claims commissioner concerned shall communicate the Minister's decision to every person affected by it.
- (10) The decision of the Minister shall be subject to review by the Court, the hearing of which review may, at the discretion of the Court, be conducted at the same time as the hearing of the claim in question.
- (11) The decision of the Minister in respect of the issue of a certificate of feasibility, and the reasons for such decision, shall be public documents.
- (12) If the Minister certifies in terms of subsection (2) or (3) that it is feasible to designate alternative state-owned land he or she may make such designation at the same time or at any time thereafter.

#### Rules regarding procedure of Commission

16. (1) After consultation with the Minister, the Chief Land Claims Commissioner may make rules regarding-

- (a) any matter which, in terms of this Chapter, is required or permitted to be prescribed;
- (b) the filing of claims;
- (c) any steps which may be taken to give public notice of claims and notice to persons who have an interest in any matter under investigation by the Commission;
- (d) the giving of notice to parties to attend a meeting for the purpose of mediating or negotiating the settlement of disputes;
- (e) the giving of notice to parties and public notices giving notice that the Commission will consider any related claims in respect of specific land, a neighbourhood or township within a stipulated period; the order of preference to be given to claims or categories of claims in order to achieve the result contemplated in section 6(2)(d); and
- (g) generally, with regard to any other matter which he or she considers it necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

(2) The generality of subsection (1) shall not be limited by the preceding sections of this Chapter.

(3) Rules made under the provisions of subsection (1) shall be published in the Gazette.

#### Offences and penalties

17. Any person who-

(a) contravenes the provisions of section 11(7)(a), (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 appointed in terms of section 9, from performing a function in terms of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

#### Limitation of liability

18. The Commission, members of the Commission, any person appointed under section 9 or any officer contemplated in section 8, shall not be liable in respect of any act or omission in good faith while performing a function in terms of any provision of this Act.

#### Expenditure of Commission

19. (1) All expenditure in connection with the performance of the Commission's functions shall be defrayed from moneys appropriated by Parliament for such purpose.

(2) A person appointed in terms of section 4(3) who is not in the full-time service of the State may, from moneys appropriated by Parliament for such purpose, be paid such remuneration and allowances in respect of services performed in connection with the functions of the Commission, as may be determined by the Minister in consultation with the Minister of Finance.

#### Annual estimates of expenditure

20. The estimates of expenditure in respect of each financial year shall, after being prepared by the Chief Land Claims Commissioner or an official contemplated in section 8(1) and designated by the Chief Land Claims Commissioner, be submitted, not later than the first day of August of the preceding financial year to the Director-General of Land Affairs, who shall be the accounting officer.

#### Annual report

21. The Commission shall annually not later than the first day of June submit to Parliament a report on all its activities during the previous year, up to 31 March.

### **CHAPTER III**

#### **The Land Claims Court**

##### Land Claims Court

22. (1) There shall be a court of law to be known as the Land Claims Court which, in addition to the powers contemplated in section 123 of the Constitution, shall have the power-

- (a) to determine restitution of any right in land in accordance with this Act;
  - (b) to determine compensation in terms of this Act;
  - (c) in respect of a claim in terms of section 3, to determine the person entitled to ownership;
  - (d) to determine all other matters which require to be determined in terms of sections 121, 122 and 123 of the Constitution.
- (2) The Court shall have jurisdiction throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and interdicts.
- (3) There shall be a President of the Court, who shall be appointed by the President of the Republic, acting on the advice of the Judicial Service Commission.
- (4) The President of the Republic may, after consultation with the President of the Court and the Judicial Service Commission, appoint additional judges of the Court.
- (5) The President of the Court and the additional judges of the Court may be appointed for a fixed term.
- (6) A judge of a provincial or local division of the Supreme Court may be seconded to serve as a judge of the Court.

#### Qualifications of judges of Court

23. No person shall be qualified to be appointed President of the Court or a judge of the Court unless he or she-

- (a) is a South African citizen;
- (b) is a fit and proper person to be a judge of the Court; and
- (c) (i) is a judge of the Supreme Court or is qualified to be admitted as an advocate or attorney and has, for a cumulative period of at least ten years, practised as an advocate or an attorney or lectured in law at a university; or
- (ii) by reason of his or her training and experience, has expertise in the fields of law and land matters relevant to the application of this Act and the law of the Republic.

#### Law of procedure and rules

24. Until such time as rules of Court are made in terms of section 32, the rules of procedure applicable in civil actions and applications in a provincial division of the Supreme Court shall apply mutatis mutandis in respect of any proceedings in the Court.

#### Holding of office

25. The provisions of section 104 of the Constitution with regard to the making of an oath or solemn affirmation and the removal or suspension of judges shall apply to judges and assessors of the Court.

#### Remuneration and conditions of employment of judges

26. A judge of the Court shall receive such remuneration and shall, subject to section 22(5), be appointed subject to such conditions of employment as may be prescribed by or under the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), and his or her remuneration shall, subject to the provisions of section 7(4) of the said Act, not be reduced during his or her continuance in office.

#### Appointment of assessors

27. (1) The Court shall be assisted by assessors appointed by the Minister after inviting nominations from the general public.

(2) No person shall be appointed as an assessor of the Court unless he or she, in the opinion of the Minister, has skills and knowledge relevant to the work of the Court: Provided that it shall not be a requirement of appointment that an assessor shall have any legal qualifications.

(3) An assessor shall receive such remuneration and be entitled to such vacation and other benefits as may be determined by the Minister of Justice in consultation with the Minister of Finance and the President of the Court.

#### Seat and hearings of Court

28. (1) The seat or seats of the Court shall be determined by the Minister of Justice in consultation with the President of the Court.

(2) The Court may notwithstanding the provisions of subsection (1) conduct hearings at any other place in the Republic with a view to making the Court accessible to claimants.

(3) Hearings of the Court shall be presided over by a single judge unless the President of the Court or in his or her absence the most senior available judge decides to the contrary.

(4) At least one assessor shall participate at the hearing of any disputed case.

(5) At every hearing, a participating assessor shall have a vote equal to that of a judge hearing the matter, except in relation to questions of law: Provided that decisions in respect of the matters referred to in sections 33 and 34(6) shall be deemed not to be questions of law: Provided further that in the event of an equality of votes the presiding judge shall have a casting vote in addition to his or her deliberative vote.

#### Locus standi and legal representation

29. (1) Any party listed in the document referred to in section 14(2), or any interested party in relation to an application in terms of section 34, may appear before the Court, either in person or represented by an advocate or attorney: Provided that the State shall have the right to be heard in all cases and that a person or community not listed in the document referred to in section 14(2) may apply to the Court for permission to appear before it.

(2) Where a party can not afford to pay for legal representation itself, the Chief Land Claims Commissioner may take steps to arrange legal representation for such party, either through the State legal aid system or, if necessary, at the expense of the Commission.

## Admissibility of evidence

30. (1) The Court may admit any evidence, including oral evidence, which it considers relevant and cogent to the matter being heard by it, whether or not such evidence would be admissible in any other court of law.

(2) Without derogating from the generality of the foregoing subsection, it shall be competent for any party before the Court to adduce-

(a) hearsay evidence regarding the circumstances surrounding the dispossession of the land right or rights in question and the rules governing the allocation and occupation of land within the claimant community concerned at the time of such dispossession; and

(b) expert evidence regarding the historical and anthropological facts relevant to any particular claim.

(3) The Court shall give such weight to any evidence adduced in terms of subsections (1) and (2) as it deems appropriate.

## Pre-trial conference

31. (1) The Court may, at its own instance or at the request of any party before it, at any stage prior to the hearing of a matter convene a pre-trial conference of the parties with a view to clarifying the issues in dispute, identifying those issues on which evidence will be necessary and, in general, expediting a decision on the claim in question.

(2) The Court may, after the holding of such a pre-trial conference, issue such orders and directions as to the procedure to be followed before and during the trial as it deems appropriate.

## Rules governing procedure

32. (1) The President of the Court may make rules to govern the procedure of the Court, including rules providing for the circumstances under which oral evidence may be submitted to the Court.

(2) The rules contemplated in subsection (1) shall be published in the Gazette.

(3) Notwithstanding anything to the contrary in this Act or in the rules contemplated in subsection (1)-

(a) the Court may, at any stage after a claim has been referred to it, refer the claim back to the Commission with directives as to matters which are to be investigated and reported on by the Commission; and

(b) the Court may conduct any part of any proceedings on an informal or inquisitorial basis.

(4) The rules contemplated in subsection (1) shall make provision for the expeditious hearing of an application in terms of section 34.

## Factors to be taken into account by Court

33. In considering its decision in any particular matter, excluding the review of a decision in terms of section 15, the Court shall, in addition to the matters referred to in sections 121, 122 and 123 of the Constitution, have regard to the following factors:

(a) The desirability of providing for restitution of rights in land or compensation to people who were dispossessed of their rights in land as a result of or in pursuance of racially based discriminatory laws;

- (b) the desirability of remedying past violations of human rights;
- (c) the requirements of equity and justice;
- (d) the desirability of avoiding major social disruption;
- (e) any provision which already exists, in respect of the land in question in any matter, for that land to be dealt with in a manner which is designed to achieve the goals contemplated in section 8(3)(a) of the Constitution; any other factor which the Court may consider relevant and consistent with the spirit and objects of the Constitution and in particular the provisions of section 8 of the Constitution.

#### Ruling by Court on restoration before final determination of claim

34. (1) Any national, provincial or local government body may, in respect of land which is owned by it or falls within its area of jurisdiction, make application to the Court for an order that the land in question or any rights in it shall not be restored to any claimant or prospective claimant.

(2) Notice of any such application shall be given to the Commission, which shall investigate and submit a report to the Court on the desirability of making an order referred to in subsection (1).

(3) Any party making an application to the Court in terms of subsection (1) shall, at its own expense, take such steps as the relevant regional land claims commissioner may direct in order to bring the application to the attention of other persons who may have an interest therein, in order that they may make submissions to and appear before the Court on the hearing of the application.

(4) The regional land claims commissioner concerned shall take such further steps as he or she deems appropriate to bring the application to the attention of persons who may have an interest.

(5) After hearing an application contemplated in subsection (1), the Court may-

- (a) dismiss the application; or
- (b) order that when any claim in respect of the land in question is finally determined, the rights in the land in question, or in part of the land, or certain rights in the land, shall not be restored to any claimant.

(6) The Court shall not make an order in terms of subsection (5)(b) unless it is satisfied that-

- (a) it is in the public interest that the rights in question should not be restored to any claimant; and
- (b) the public or any substantial part thereof will suffer substantial prejudice unless an order is made in terms of subsection (5)(b) before the final determination of any claim.

(7) If the Court makes an order in terms of subsection (5) (b), the regional land claims commissioner shall direct the relevant Registrar to remove any note made in his or her records in terms of section 11(6)(b).

(8) Any order made in terms of subsection (5)(b) shall be binding on all claimants to the rights in question, whether such claim is lodged before or after the making of the order.

#### Court orders

35. (1) A person in whose favour an order contemplated in section 123(3)(c) of the Constitution has been made may, instead of accepting such alternative relief, within 30 days after the date on which the order was made, apply in writing to the Minister to be registered as a preferential claimant to benefit from any State support programme for housing and the allocation and development of rural land.

(2) The Court may in addition to the orders contemplated in section 123 of the Constitution-

(a) determine conditions which must be fulfilled before a right in land can be restored or granted to a claimant;

(b) if a claimant is required to make any payment before the right in question is restored or granted, determine the amount to be paid and the manner of payment, including the time for payment;

(c) if the claimant is a community, determine the manner in which the rights are to be held or the compensation is to be paid or held;

(d) recommend to the Minister that a claimant be given priority access to State resources in the allocation and development of housing and land in the appropriate development programme;

(e) give any other directive as to how its orders are to be carried out, including the setting of time limits for the implementation of its orders; make an order in respect of compensatory land granted at the time of the dispossession of the land in question;

(g) make such orders for costs as it deems just.

(3) An order contemplated in subsection (2)(c) shall be subject to such conditions as the Court considers necessary to ensure that all the dispossessed members of the community concerned shall have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including a woman and a tenant, and which ensures the accountability of the person who holds the land or compensation on behalf of the community to the members of such community.

(4) The Court's power to order the restitution of a right in land or to grant a right in alternative state-owned land shall include the power to adjust the nature of the right previously held by the claimant, and to determine the form of title under which the right may be held in future.

(5) If the Court orders the State to expropriate land or a right in land in order to restore it to a claimant, the Minister shall expropriate such land or right in accordance, mutatis mutandis, with the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975): Provided that the owner of such land or right shall be entitled to the payment of just and equitable compensation, determined either by agreement or by the Court according to the principles laid down in section 28(3) of the Constitution: Provided further that the procedure to be followed by the Court in the determination of such compensation shall be as provided in sections 24 and 32 of this Act.

(6) In making any award of land, the Court may direct that the rights of individuals to that land shall be determined in accordance with the procedures set out in the Distribution and Transfer of Certain State Land Act, 1993 (Act No. 119 of 1993).

(7) An order of the Court shall have the same force as an order of the Supreme Court for the purposes of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(8) Upon making an order, the Court shall direct the Registrar concerned to remove any temporary note entered in his or her records in respect of the land in terms of section 11(6)(b).



(9) Any state-owned land which is held under a lease or similar arrangement shall be deemed to be in the possession of the State for the purposes of section 123(1)(a) of the Constitution: Provided that, if the Court orders the restitution of a right in such land, the lawful occupier thereof shall be entitled to just and equitable compensation determined either by agreement or by the Court according to the principles laid down in section 28(3) of the Constitution.

(10) An interested party which is of the opinion that an order of the Court has not been fully or timeously complied with may make application to the Court for further directives or orders in that regard.

#### Review of decisions of Commission

36. (1) Any party aggrieved by any act of or decision of the Commission or any functionary acting or purportedly acting in terms of this Act may apply to have such act or decision reviewed by the Court.

(2) The Court shall exercise all of the Supreme Court's powers of review with regard to such matters, to the exclusion of the provincial and local divisions thereof.

#### Appeals from Court

37. (1) Appeals against decisions by the Court shall lie either to the Constitutional Court or to the Appellate Division of the Supreme Court.

(2) The Court shall in each case determine the court to which an appeal shall lie.

#### Decisions of Court a matter of public record

38. The decisions of the Court shall be a matter of public record on the same basis as decisions of the Supreme Court.

## **CHAPTER IV**

### **Miscellaneous Provisions**

#### Register of public land

39. In order to facilitate the work of the Commission and the Court, the Minister may take all necessary steps to compile a register of public land, which register shall be open to inspection by claimants and prospective claimants.

#### Regulations

40. The Minister may make regulations regarding-

(a) any matter required or permitted to be prescribed in terms of this Act; and

(b) generally, all matters which in his or her opinion are necessary or expedient to be prescribed in order to achieve the objects of this Act.

#### Repeal of laws, and savings

41. (1) Sections 88A up to and including 96A of the Abolition of Racially Based Land Measures Act,

1991 (Act No. 108 of 1991), and the Abolition of Racially Based Land Measures Amendment Act, 1993 (Act No. 110 of 1993), are hereby repealed.

(2) If an application was, before the commencement of this Act, lodged with the Commission on Land Allocation established in terms of section 89 of the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991), and that Commission has, before the commencement of this Act-

(a) made a recommendation in respect of such application, such application shall on request of any interested party; or

(b) not made any order or recommendation in respect of such application such application shall, subject to the provisions of subsection (3), be deemed to have been lodged with the Commission in accordance with the provisions of section 10(1).

(3) The regional land claims commissioner having jurisdiction may-

(a) direct any applicant in respect of an application referred to in subsection (2) to provide the Commission with any further information relevant to the application; and

(b) in respect of an application referred to in subsection (2), waive compliance with any or all of the procedures prescribed by or under this Act.

Transfer duty and fees

42. (1) The Minister may direct that any transfer duty or other fees payable by a claimant in respect of any transfer of land or of a right in land in terms of this Act shall be defrayed in full or in part from money appropriated by Parliament for that purpose.

(2) The Minister may, in consultation with the Minister of Finance, direct that no transfer duty, stamp duty or other fees contemplated in subsection (1) shall be paid in respect of a particular transfer under this Act.

### **Short title and commencement**

43. (1) This Act shall be called the *Restitution of Land Rights Act, 1994*, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

(2) Different dates may be fixed in respect of different Chapters of this Act.