

REPUBLIC OF SOUTH AFRICA

RESTITUTION OF LAND RIGHTS AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. of) (The English text is the official text of the Bill)

(MINISTER OF LAND AFFAIRS)

[B -2003]

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 purposes 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).

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:

"(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.".

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 420 of the principal Act is hereby amended by the deletion of paragraph (d) of subsection (1).

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 purposes of the restoration or award of such land, portion of land or right in land to a claimant in terms of this Act and for any other land reform purpose.

(2) Subject to this Act the Expropriation Act 1975 (Act 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 purposes of such expropriation.

(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

(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).

(5) The provisions of section 42D (3) to (6) shall with the necessary changes apply in respect of the acquisition of land."

Short title

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

**MEMORANDUM ON THE OBJECTS OF THE RESTITUTION OF LAND
RIGHTS AMENDMENT BILL**

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 must be accelerated.

In 1999 the present procedure whereby land claims could be resolved by way of settlement agreements outside the Court in terms of section 42D of the Restitution of Land Rights Act, 1994 (Act 22 of 1994) (the Restitution Act") was introduced by the Land Restitution and Reform Laws Amendment Act, 1999 (Act 18 of 1999). The present insufficient provisions granting the Minister with the agreement of all interested parties, powers to acquire or expropriate land for the purposes of restitution of rights in land without the necessity of a Court Order, were created in sections 35(5A) and 42(1)(d) of the Restitution Act.

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 a Court Order the power of the Minister to acquire or expropriate land for restitution purposes is limited to circumstances where an agreement had 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 a Court Order 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 arise from the present 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 of Land Rights Act.

2. OBJECTS OF THE BILL

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

In terms of the new section 42E of the Restitution Act, inserted by clause 4 of the Bill, the Minister of Land Affairs may purchase, acquire in any other manner or expropriate land or a right in land for the purposes of a restitution award or for any land reform purpose (see subsection (1)).

The proposed section 42E(2) provides that the Expropriation Act, 1975 (Act 63 of 1975), will, with the necessary changes, apply to all expropriations under the Restitution Act.

The constitutional rights of the land owner 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 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. OTHER DEPARTMENTS/BODIES/PERSONS CONSULTED

4.1 The following instances/persons were consulted.

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

General Council of the Bar of South Africa

Law Society of South Africa

Black Lawyers Association

Philip du Toit Incorporated

South African Law Commission

General Council of the Bar of South Africa

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 Union
United Democratic Movement
Willie du Toit, Waterval, Steynsburg
Marietta van Vuuren
Landbouweekblad
Rapport
Beeld
Sowetan
Pretoria News
Mail and Guardian
Business Day
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 procedures established by Section 75 of the Constitution, since it contain no provisions to which the procedures as set out in Section 74 or Section 76 of the Constitution apply.