

REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
TO  
LAND RESTITUTION AND  
REFORM LAWS AMENDMENT  
BILL**

[B 64—97]

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

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[B 64A—97]

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REPUBLIEK VAN SUID-AFRIKA

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**PORTEFEULJEKOMITEE-AMENDEMENTE  
OP  
WYSIGINGSWETSONTWERP  
OP GRONDHERSTEL- EN  
GRONDHERVORMINGSWETTE**

[W 64—97]

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*(Soos goedgekeur deur die Portefeuljekomitee oor Grondsake (Nasionale Vergadering))*

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[W 64A—97]

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## AMENDMENTS AGREED TO

### LAND RESTITUTION AND REFORM LAWS AMENDMENT BILL [B 64—97]

#### CLAUSE 3

1. On page 6, from line 25, to omit paragraph (c) and to substitute the following paragraph:
  - (c) the claim for such restitution is lodged [**within three years after a date fixed by the Minister by notice in the *Gazette***] not later than 31 December 1998.

#### CLAUSE 6

1. On page 10, in line 9, to omit “prescribed manner” and to substitute:
 

manner prescribed in rules made by the Chief Land Claims Commissioner in terms of section 16
2. On page 10, after line 17, to add the following subsection:
 

(6) In making the rules contemplated in subsection (4), the Chief Land Claims Commissioner shall have regard to the cultural values of the community.

#### CLAUSE 7

1. On page 10, from line 26, to omit paragraph (b) and to substitute the following paragraph:
  - (b) by the substitution for subsection (7) of the following subsection:
 

“(7) Once a notice has been published in respect of any land—

    - (a) no person may in an improper manner obstruct the passage of the claim;
    - (aA) no person may sell, exchange, donate, lease, subdivide, [**or**] rezone or develop the land in question without having given the regional land claims commissioner one month’s written notice of his or her intention to do so, and, where such notice was not given in respect of—
      - (i) any sale, exchange, donation, lease, subdivision or rezoning of land [**in respect of which such notice was not given, may be set aside by**] and the Court [**if it**] is satisfied that such sale, exchange, donation, lease, subdivision or rezoning was not done in good faith, [**or**] the Court may set aside such sale, exchange, donation, lease, subdivision or rezoning or grant any other order it deems fit;

- (ii) any development of land and the Court is satisfied that such development was not done in good faith, the court may grant any order it deems fit;
- (b) no claimant who [**was resident on**] occupied 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.”.

#### CLAUSE 8

1. On page 10, from line 56, to omit subsection (5) and to substitute 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 [**three years after the date fixed in terms of section 2(1)(b)**] 31 December 1998.

#### CLAUSE 10

1. On page 12, after line 17, to add the following subsection:

(2) Subsection (1)(a) shall be deemed to have come into operation on 2 December 1994.

#### CLAUSE 11

1. On page 12, after line 19, to add the following subsection:

(2) Subsection (1) shall be deemed to have come into operation on 2 December 1994.

#### CLAUSE 13

1. On page 12, from line 43, to omit paragraph (c) and to substitute the following paragraph:

(c) [**in respect of a claim in terms of section 3,**] to determine the person entitled to [**ownership**] title to land contemplated in section 3;

#### CLAUSE 23

1. On page 18, after line 4, to insert the following paragraph:

(cA) if restoration of a right in land is claimed, the feasibility of such restoration;

CLAUSE 25

1. On page 20, from line 17, to omit “has been granted equitable redress” and to substitute:

is or has been granted restitution of a right in land

CLAUSE 29

1. On page 26, after line 14, to add the following paragraph:

(c) no application to the Court in terms of section 38B shall be lodged with the registrar in respect of the land in question:

2. On page 26, in line 17, to omit “three years after 1 May 1995” and to substitute “31 December 1998”.

CLAUSE 32

1. On page 30, after line 17, to add the following subsection:

(6) For the purpose of establishing whether a person is a labour tenant, a court shall have regard to the combined effect and substance of all agreements entered into between the person who avers that he or she is a labour tenant and his or her parent or grandparent, and the owner or lessee of the land concerned.

CLAUSE 33

1. On page 30, from line 24, to omit subsections (1A), (2), (3) and (4) and to substitute:

(1A) If an issue arises in a case in a magistrate’s court or a High Court which requires that court to interpret or apply this Act and—

(a) no oral evidence has been led, such court shall transfer the case to the Court and no further steps may be taken in the case in such court;

(b) any oral evidence has been led, such court shall decide the matter in accordance with the provisions of this Act.

(2) Any decision or order made by a magistrate’s court in proceedings referred to in subsection (1) or (1A), shall in its entirety be subject to appeal to the Court [in the manner provided in the rules] if any of the grounds of appeal relates to the application or interpretation of this Act in such decision or order.

(3) The Court shall have exclusive jurisdiction to hear any appeal [against any such decision or order] contemplated in subsection (2), notwithstanding the provisions of any other law to the contrary.

[(4) The Court may, on the hearing of an appeal in terms of this section, confirm the decision or order or allow the appeal in whole or in part.]

## NEW CLAUSE

1. That the following be a new Clause to follow Clause 33:

**Amendment of section 17 of Act 3 of 1996, as amended by section 27 of Act 78 of 1996**

34. Section 17 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If the owner fails to inform the Director-General within the period referred to in subsection (4) that he or she denies that the applicant is a labour tenant, **[such failure shall constitute rebuttable evidence that]** the applicant **[is]** shall be presumed to be a labour tenant, unless the contrary is proved.”.

## CLAUSE 35

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause to follow Clause 34:

**Substitution of section 19 of Act 3 of 1996, as amended by section 29 of Act 78 of 1996**

35. The following section is hereby substituted for section 19 of the Land Reform (Labour Tenants) Act, 1996:

**“Hearing of application by Court or referral to arbitration**

19. (1) On referral of an application by the Director-General, the President of the Court or a judge of the Court nominated by him or her **[shall]** may direct either that the application be heard by the Court or that it be referred to arbitration.

(2) If the matter is referred to arbitration, the President of the Court or a judge of the Court nominated by him or her, shall appoint an arbitrator to hear the application and may give such directions as he or she considers appropriate as to the procedure to be followed.

**[(a) appoint an arbitrator to hear the application;**

**(b) set a date and venue for the hearing of the application;**

**(c) give such directions as he or she considers appropriate as to the procedure to be followed or steps to be taken before the hearing takes place; and**

**(d) take steps to ensure that the parties are notified accordingly,**

**and may order any party—**

**(i) to make discovery under oath of documents in his or her possession; or**

**(ii) to furnish such particulars to his or her application or reply as any other party may reasonably require; or**

**(iii) to furnish summaries of any expert testimony which he or she wishes to present at the hearing,**

**in such manner as may be provided in the rules.**

- (2)] (3) The President of the Court or the judge nominated by him or her may appoint as arbitrator—
- (a) a person nominated by the parties in terms of section 18(8);  
or
- (b) a person on the panel of arbitrators referred to in section 31, but shall not be obliged to appoint a person nominated by the parties.”.

#### NEW CLAUSES

1. That the following be new Clauses to follow Clause 35:

##### **Substitution of section 25 of Act 3 of 1996**

36. The following section is hereby substituted for section 25 of the Land Reform (Labour Tenants) Act, 1996:

##### **“Land subject to mortgage bonds or deeds of sale**

25. (1) If any land [**acquired**] awarded under this [**Act was, immediately prior to the date of such acquisition,**] Chapter is encumbered by a registered mortgage bond or subject to a deed of sale, the applicant shall not pay to the owner of the affected land any part of the compensation money except on terms agreed to by the owner and the mortgagee or buyer, or in accordance with an order of the Court in terms of subsection (2).

(2) If the owner of the affected land and the mortgagee or buyer fail to conclude an agreement in terms of subsection (1), [**any of the said persons may apply to**] the Court [**for**] may make an order [whereby the applicant is directed to pay out] giving directions as to the payment of the compensation money [as the Court may determine].

(3) [**The Court may, on hearing an application in terms of subsection (2), make such order, including an order for costs, as it deems fit**] An order in terms of subsection (2) may be made by the Court of its own accord after affording the interested parties a hearing or on application by any interested person.”.

##### **Amendment of section 28 of Act 3 of 1996**

37. Section 28 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any land awarded to the applicant and real rights in respect of any servitudes awarded to the applicant shall vest in the applicant released from all mortgage bonds when the order of the Court is noted against the registers of the land concerned as referred to in subsection (1).”.

## NEW CLAUSE

1. That the following be a new Clause to follow Clause 36:

**Amendment of section 33 of Act 3 of 1996**

**37.** Section 33 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The President of the Court or a judge of the Court nominated by him or her may determine that proceedings for the eviction of any person which have been instituted in or transferred to the Court [**for the eviction of a labour tenant or his or her associate**] shall take place before an arbitrator appointed by him or her.”.

## CLAUSE 37

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause to follow Clause 36:

**Substitution of section 38 of Act 3 of 1996**

**37.** The following section is hereby substituted for section 38 of the Land Reform (Labour Tenants) Act, 1996:

**“Deeds registration**

**38.** (1) As soon as possible after an order of the Court has been noted by the Registrar in his or her registers in respect of the land units concerned, the Director-General shall—

- (a) cause any diagrams necessary for the registration of a deed of transfer of the awarded land and the registration of a notarial deed of the awarded servitudes to be prepared and approved by the relevant Surveyor-General;
- (b) cause a deed of transfer of any land awarded [**land**] to the applicant to be [**transferred to the applicant**] registered in terms of section 31 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), which section shall *mutatis mutandis* apply: Provided that—
  - (i) all references to “transferee” shall be deemed to be references to the applicant;
  - (ii) all references to “notice of expropriation” shall be deemed to be references to the relevant order of the Court containing the award;
  - (iii) the Director-General may perform all functions and sign all documents required in terms of section 31 of the Deeds Registries Act to achieve the registration of a deed of transfer of the land on behalf of the applicant;
- (c) cause a deed of cession of any awarded servitude to be registered in favour of the applicant in terms of section 32 of the Deeds Registries Act, 1937, which section shall *mutatis mutandis* apply, provided that—

- (i) all references to “cessionary” shall be deemed to be references to the applicant;
- (ii) all references to “notice of expropriation” shall be deemed to be references to the relevant order of the Court containing the award;
- (iii) the Director-General may perform all functions and sign all documents required in terms of section 32 of the Deeds Registries Act to achieve registration of the servitude on behalf of the applicant.

(2) The Minister may direct that any [**transfer duty,**] stamp duty or fees in respect of—

- (a) the preparation and approval of survey diagrams; or
- (b) the transfer of land; or
- (c) the registration of servitudes,

in terms of this Act, shall be defrayed in full or in part from money appropriated by Parliament for that purpose.

(3) The Minister may, in consultation with the Minister of Finance, direct that no [**transfer duty or**] stamp duty contemplated in subsection (2) shall be paid in respect of a particular transaction under this Act.”.