

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA NOTICE 288 OF 2017

SCHEDULE

REPUBLIC OF SOUTH AFRICA

THE RESTITUTION OF LAND RIGHT AMENDMENT BILL

(P J Mnguni MP)

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE OF INTENT TO INTRODUCE PRIVATE MEMBER'S BILL AND INVITATION FOR PUBLIC COMMENT ON DRAFT RESTITUTION OF LAND RIGHT RIGHTS AMENDMENT BILL

Mr P.J. Mnguni, MP acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), intends to introduce the Restitution of Land Rights Amendment Bill, 2017 in Parliament during the second quarter of 2017. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

Section 2(1) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) ("the Act") *inter alia* provides that a claim for the restitution of rights in land must be lodged by no later than 31 December 1998. Due to a number of challenges experienced in the application of the restitution programme, and in order to align it to the broad goals of the National Development Plan: Vision 2030 (2012), this programme was evaluated. The evaluation indicated that certain deserving persons and communities dispossessed of rights in land as a result of past racially discriminatory laws and practices did not participate in the process. The following categories were identified as being excluded by the restitution laws and programme, i.e. those who could not lodge claims by the cut-off date of 31 December 1998, and those dispossessed through betterment planning schemes and not allowed to lodge their claims by the Commission on Restitution of Land Rights (CRLR).

The evaluation further indicated that the research methodology that informed the restitution process was to large extend inadequate; that the window period that was provided to lodge claims was too short and that the communication campaign to inform citizens about the requirement to lodge claims did not reach every corner of the country.

It is estimated that at least 3.5 million individuals were forcibly removed from their land as a result of racially discriminatory laws and practices implemented after 19 June 1913, especially between

1960 and 1982. It has been argued that this figure excludes disposessions that were caused by betterment planning and homeland consolidation. When disposessions that took place as a result of betterment and homeland consolidations (which also included disposessions of rights in land held by white people) during the same period are taken into account the figure could be closer to 7.5 million, whilst less than 80 000 claims for restitution were lodged with the CRLR before the cut-off date of 31 December 1998. These figures do not take into account the fact that some of the disposessions of rights in land, particularly in urban areas, did not involve the physical removal of people.

The Restitution of Land Rights Amendment Act, 2014 (Act No. 15 of 2014) (“the Amendment Act”) had sought to reopen the lodgement of land claims for the period of five years ending on 30 June 2019. However, on 28 July 2016 the Constitutional Court (*Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others [2016] ZACC 22*) declared that the National Council of Provinces’ public participation process was unreasonable and therefore constitutionally invalid. The Constitutional Court held that a failure by one of the Houses of Parliament to comply with a constitutional obligation amounts to failure by Parliament as a whole. The Constitutional Court, therefore, held that Parliament failed to satisfy its obligation to facilitate public involvement in accordance with section 72(1)(a) of the Constitution when it passed the Amendment Act and therefore declared the Amendment Act invalid in its entirety.

The Restitution of Land Rights Amendment Bill, 2017 (“the Bill”), again proposes certain amendments to the Act so as to extend the date for lodging a claim for restitution to 30 June 2021; to criminalise the lodgement of a fraudulent claim; to further regulate the appointment, tenure of office, remuneration and the terms and conditions of service of judges of the Land Claims Court; and to further amend certain provisions which are aimed at promoting the effective implementation of the Act.

What follows is a list of some of the other matters that the Bill seeks to deal with:

- the amendment of certain definitions so as to allow new claims to be lodged. These new claims will however not be processed until the claims lodged before 31 December 1998 have been finalised.

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- the publication of details of a claim in media that is circulating nationally and in media that is circulated in the province in which the affected land is situated.
 - the Land Claims Commission (“the Commission”) must ensure that claims lodged by 31 December 1998 are finalised first before new claims are processed. The Commission will further be required to establish a register where particulars of claims must be inserted, which register will be open to the public.
 - a consequential amendment to section 12(5) of the Act as a result of extending the period for lodging a claim.
 - a requirement that the Commissioner certifies in writing that all claims lodged no later than 31 December 1998 have been finalised and publishes in the *Government Gazette* a date from when new claims will be processed.
 - an amendment to create two additional offences in respect of a person who:
 - (a) obstructs, unduly influences, misleads or engages in any conduct which is designed to prevent, compromise or obstruct any claimant from pursuing his or her rights provided for in the Act; and
 - (b) lodges a claim with the sole intention of defrauding the state.
 - an amendment to section 22 of the Act to provide for the appointment of an acting judge of the Land Claims Court (“the Court”) when a vacancy arises or for any other sufficient reason, by the Minister of Justice and Constitutional Development (“the Minister”) after consultation with the President of the Court, for such term as the Minister may determine.
 - currently the remuneration of judges of the Court is regulated by section 26 of the Act. This section is being deleted, as all judges of the Court must be a judge of the High Court of South Africa whose conditions of service are regulated by the Judges’ Remuneration and Conditions of Employment Act, 2001.

- a proposal that sections 23, 26 and 26A of the Act be repealed, as the matters dealt with in these sections are now being dealt with by the proposed amendments to section 22 of the Act.
- a further proposal that sections 38B, 38D, and 42D of the Act be amended by substitution for the date “31 December 1998” of the date “30 June 2021”. These substitutions are a direct consequence of the amendment of the cut-off date for lodging a claim for restitution in section 2(1)(e) of the Act.
- a proposal that section 42D of the Act be amended to extend the Minister’s powers of delegation.

The Bill will be available on the website of the African National Congress (<http://www.anc.org.za/>) once it has been certified by the Chief Parliamentary Legal Adviser or a parliamentary legal advisor designated by him or her as required by Rule 279(4) of the Rules of the National Assembly (9th Edition). It may also, after introduction, be obtained from:

The African National Congress

ANC Parliamentary Caucus

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Interested parties and institutions are invited to submit written representations on the draft bill to the Speaker of the National Assembly by **31 April 2017**. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town or mailed to the Speaker, P O Box 15, Cape Town 8000 or e-mailed to bmbete@parliament.gov.za and copied to pjmnguni@parliament.gov.za.