



**REPUBLIC OF SOUTH AFRICA**

# **GOVERNMENT GAZETTE**

---

---

## **STAATSKOERANT**

**VAN DIE REPUBLIEK VAN SUID-AFRIKA**

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

---

Vol. 377

CAPE TOWN, 20 NOVEMBER 1996

No. 17590

KAAPSTAD, 20 NOVEMBER 1996

---

**PRESIDENT'S OFFICE**

No. 1878. 20 November 1996

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

No. 78 of 1996: Land Restitution and Reform Laws Amendment Act, 1996.

---

**KANTOOR VAN DIE PRESIDENT**

No. 1878. 20 November 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 78 van 1996: Wysigingswet op Grondherstel- en Grondhervormingswette, 1996.

**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.

---

---

# ACT

To amend the Restitution of Land Rights Act, 1994, so as to insert certain definitions; to effect certain textual improvements; to provide that no person shall be entitled to enforce restitution of a right in land dispossessed if just and equitable compensation was paid; to provide for the appointment of certain organisations to advise the Commission on Restitution of Land Rights, to facilitate meetings of interested parties and to mediate and settle disputes; to require the leave of the Land Claims Court for the lodging of a claim in respect of land in certain circumstances; to alter the powers and duties of a regional land claims commissioner; to prohibit a person from selling, exchanging, donating, leasing, subdividing or rezoning land in respect of which a notice in terms of section 11(1) has been published without having given the regional land claims commissioner notice of his or her intention to do so; to provide that certain claims referred to the Court shall be accompanied by a document containing a list of the parties who have an interest in the claim; to prohibit the referral of claims to the Court in terms of section 14 until the Minister has issued certificates in terms of section 15 or has refused to do so; to extend the powers of the Court; to amend the provisions relating to assessors; to provide that gratuities and certain allowances of the President and judges of the Court shall not be taxable; to empower the Minister of Justice with the concurrence of the Minister of Finance to determine allowances for travelling and subsistence expenses incurred by the President and judges of the Court; to clarify the provisions relating to the manner of arriving at decisions of the Court; to provide for the seals of the Court; to provide that the proceedings of the Court shall be conducted in open court; to empower the Court to refer particular matters for investigation by a referee; to prohibit the issue of process against a judge of the Court without the consent of the Court; to provide for judgment by default; to provide for the manner of securing attendance of witnesses or the production of any document or thing in proceedings before the Court; to make special provision for the manner in which witnesses may be dealt with on refusal to give evidence or produce any document or thing; to provide for the examination by interrogatories of persons whose evidence is required in proceedings before the Court; to empower the Minister of Justice to appoint officers of the Court; to make special provision for finances and accountability in respect of the administration and functioning of the Court; to provide for the scope and execution of process of the Court; to provide for offences relating to execution; to provide for witness fees; to provide for the powers of the Court on the hearing of appeals; to provide for the application of Chapter III in respect of the performance by the Court of its functions in terms of other legislation; to express more clearly the provisions relating to the intervention of parties and legal representation; to provide that certified copies of records of the Court shall be admissible as evidence; to express more clearly the provisions relating to the power of the President of the Court to make rules in respect of the procedure of the Court; to empower the Court to make an order for costs against the State or the Commission; to empower the Court to rescind, vary or correct orders and judgments granted by the Court; to

clarify the Court's power to review any act or decision of the Minister; to provide for the procedure pertaining to appeals from the Court; to require registrars of deeds to remove certain notes from their records; and to provide that references to judges of the Supreme Court in laws shall be construed so as to include judges of the Court; to amend the Land Reform (Labour Tenants) Act, 1996, so as to include references to inserted sections and to effect certain textual improvements; and to provide for matters connected therewith.

*(Afrikaans text signed by the President.)*  
*(Assented to 6 November 1996.)*

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

#### Amendment of section 1 of Act 22 of 1994

1. Section 1 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the insertion after the definition of "Court" of the following definition:  
     "'day', in the computation of any period of time expressed in days, means any day which is not a Saturday, Sunday or public holiday and which does not fall within the period 24 December to 2 January;";
- (b) by the insertion after the definition of "Minister" of the following definition: 10  
     "'organisation' means any association of persons, incorporated or unincorporated, registered in terms of a law or unregistered and also any branch, section or committee of such association or any local, regional or subsidiary body which forms part of such association;"; and
- (c) by the insertion after the definition of "prescribed" of the following 15  
     definition:  
     "'presiding judge', in relation to a hearing before more than one judge, means the judge designated as such by the President of the Court;".

#### Amendment of section 2 of Act 22 of 1994

2. (1) Section 2 of the principal Act is hereby amended— 20
- (a) by the substitution for subsection (1) of the following subsection:  
     "(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] 25  
     (b) the claim is not precluded by section 121(4) of the Constitution; and  
     [(b)](c) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the Gazette;"; and
- (b) by the insertion after subsection (1) of the following subsection: 30  
     "(1A) No person shall be entitled to enforce restitution of a right in land if just and equitable compensation as contemplated in section 123(4) of the Constitution, calculated at the time of any dispossession of such right, was paid in respect of such dispossession.".
- (2) Subsection (1) shall be deemed to have come into operation on 2 December 1994.

**Amendment of section 6 of Act 22 of 1994****3. Section 6 of the principal Act is hereby amended—**

- (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) [refer questions of law and interpretation] on notice to interested parties, apply to the Court for a declaratory order on a question of law as contemplated in section 22(1)(cA);” and 5

- (b) by the addition of the following subsection:

“(3) Where the regional land claims commissioner having jurisdiction has reason to believe that the sale, exchange, donation, lease, subdivision or rezoning of land which may be the subject of any order of the Court, or in respect of which a person or community is entitled to claim restitution of a right in land, will defeat the achievement of the objects of this Act, he or she may— 10

(a) after a claim has been lodged in respect of such land; 15

(b) after the owner of the land has been notified of such claim and referred to the provisions of this subsection; and

(c) with the approval of the Chief Land Claims Commissioner, which approval may be granted either in general or in particular, 20

on reasonable notice to interested parties, apply to the Court for an interdict prohibiting the sale, exchange, donation, lease, subdivision or rezoning of the land, and the Court may, subject to such terms and conditions and for such period as it may determine, grant such an interdict or make any other order it deems fit.”. 25

**Substitution of section 9 of Act 22 of 1994****4. The following section is hereby substituted for section 9 of the principal Act:**

**“Appointment of persons or organisations 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 or organisations 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; 30

(b) appoint one or more persons or organisations 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; 35

(c) request any government department, provincial administration, local authority or person in the service of the State, a [province] provincial administration or local authority who has particular knowledge or specific expertise to advise the Commission regarding any matter connected with the performance of its functions. 40

(2) Payment for the services rendered by a person appointed in terms of subsection (1) who is not in the full-time service of the State or an organisation appointed in terms of subsection (1) in which the State has no material financial interest [may,] shall be made 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] and shall be determined by the Minister in consultation with the Minister of Finance.”. 50

**Amendment of section 11 of Act 22 of 1994****5. Section 11 of the principal Act is hereby amended—**

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- “(b) the claim is not precluded by the provisions of section 2(1) or (1A);”.
- (b) by the substitution for subsection (5) of the following subsection:  
“(5) If an order has been made by the Court as contemplated in section [35] 123 of the Constitution in respect of a right or rights in land, [the claimant] no person may [, subject to the provisions of section 2(1), make application to the Court for permission to] lodge a claim in respect of that land without the leave of the Court.”;
- (c) by the substitution for subsection (6) of the following subsection:  
“(6) Immediately after publishing the notice referred to in subsection (1), the regional land claims commissioner shall by notice in writing—  
(a) advise the owner of the land in question and any other party which, in his or her opinion, might have an interest in the claim of the publication of the notice; and  
(b) refer the owner and such other party to the provisions of subsection (7).”; and
- (d) by the substitution for subsection (7) of the following subsection:  
“(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;  
(aA) no person may sell, exchange, donate, lease, subdivide or rezone 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 any sale, exchange, donation, lease, subdivision or rezoning of land in respect of which such notice was not given, may be set aside by 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 grant any other order it deems fit;  
(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.”.

#### Insertion of section 11A in Act 22 of 1994

6. The following section is hereby inserted in the principal Act after section 11:

#### “Withdrawal or amendment of notice of claim

- 11A.(1)** Any person affected by the publication of the notice of a claim in terms of section 11(1) may make representations to the regional land claims commissioner having jurisdiction for the withdrawal or amendment of that notice. 45
- (2) Where during the investigation of a claim by the Commission the regional land claims commissioner having jurisdiction has reason to believe that any of the criteria set out in paragraphs (a), (b), (c) and (d) of section 11(1) have not been met, he or she shall publish in the *Gazette* and send by registered post to— 50
- (a) the claimant;
- (b) the owner; and

- (c) where applicable, a person who has made representations in terms of subsection (1) and any other party, who to his or her knowledge, may have an interest in the claim, a notice stating that at the expiry of the period mentioned in the notice, the notice of the claim published in terms of that section will be withdrawn unless cause to the contrary has been shown to his or her satisfaction. 5
- (3) At the expiry of the period contemplated in subsection (2), the regional land claims commissioner shall, unless cause to the contrary has been shown to his or her satisfaction, withdraw the notice of claim and—
- (a) advise the persons mentioned in that subsection by notice sent by registered post; 10
- (b) cause notice of his or her decision to be published in the *Gazette*; and
- (c) take other steps to make his or her decision known in the district in which the land in question is situated.
- (4) The regional land claims commissioner having jurisdiction may, during the investigation of a claim by the Commission and after following the procedure set out in subsection (2), unless cause to the contrary has been shown to his or her satisfaction, amend the notice published in terms of section 11(1), whereafter the provisions of paragraphs (a), (b) and (c) of subsection (3) shall apply *mutatis mutandis*: Provided that the regional land claims commissioner may, without following the procedure set out in subsection (2), amend the notice to correct any obvious error in it, and cause notice of his or her decision to be published in the *Gazette*.” 15 20

#### Amendment of section 14 of Act 22 of 1994

7. Section 14 of the principal Act is hereby amended— 25
- (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- “(c) containing a list of the parties who [ought to have the right to make representations to the Court in respect of] have an interest in the claim;” 30
- (b) by the insertion after subsection (5) of the following subsection:
- “(5A) No claim shall be referred to the Court in terms of this section until—
- (a) in the case of land contemplated in section 123(1)(a) or (b) of the Constitution, the Minister has issued or refused to issue a certificate in terms of subsections (1) and (3) of section 15; 35
- (b) in the case of an order contemplated in section 123(3)(a) of the Constitution, the Minister has issued or refused to issue a certificate in terms of section 15(2).”; and
- (c) by the deletion of subsection (7). 40

#### Amendment of section 15 of Act 22 of 1994

8. Section 15 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) [Upon] Prior to 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— 45
- (a) in the case of land contemplated in section 123(1)(a) of the Constitution, [restoration] restitution 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.” 50
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) [Upon] Prior to 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.” 55
- and
- (c) by the substitution for subsection (10) of the following subsection:

“(10) [The] Any decision of the Minister in terms of this section 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.”

**Substitution of section 18 of Act 22 of 1994**

5

9. The following section is hereby substituted for section 18 of the principal Act:

**“Limitation of liability**

18. The Commission, members of the Commission, any person or organisation 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.”

10

**Amendment of section 22 of Act 22 of 1994, as amended by section 1 of Act 84 of 1995**

10. Section 22 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (c) of the following paragraph:

15

“(cA) at the instance of any interested person and in its discretion, to grant a declaratory order on a question of law relating to section 121, 122 or 123 of the Constitution or to this Act or to any other law or matter in respect of which the Court has jurisdiction, notwithstanding that such person might not be able to claim any relief consequential upon the granting of such order;”

20

(b) by the substitution for subsection (2) of the following subsection:

“(2) [The] Subject to Chapter 7 of the Constitution, the Court shall have jurisdiction throughout the Republic and shall have—

25

(a) all such powers in relation to matters falling within its jurisdiction as are possessed by a provincial division of the Supreme Court having jurisdiction in civil proceedings at the place where the land in question is situated, including the powers of such a division in relation to any contempt of the Court;

30

(b) all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and interdicts.”; and

(c) by the substitution for subsection (8) of the following subsection:

“(8) If there is sufficient reason the President of the Republic may, after consultation with the President of the Court, appoint an [additional or] acting judge of the Court for such term as the President of the Republic shall determine: Provided that the Minister of Justice, after consultation with the President of the Court, may make such an appointment in respect of a term not exceeding one month.”

35

40

**Substitution of section 25 of Act 22 of 1994**

11. The following section is hereby substituted for section 25 of the principal Act:

**“Holding of office**

25. (1) The provisions of section 104 of the Constitution with regard to making of an oath or a solemn affirmation and the removal or suspension of judges shall apply mutatis mutandis to judges [and assessors] of the Court.

45

(2) An assessor shall take an oath or make a solemn affirmation that he or she will, on the evidence placed before him or her, give a true verdict or considered opinion upon the issues to be tried.

(3) An assessor's oath or affirmation shall be administered by the presiding judge at the commencement of the hearing of every matter, before any evidence is led."

#### Amendment of section 26 of Act 22 of 1994, as amended by section 2 of Act 84 of 1995

12. Section 26 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsections: 10

"(2) Notwithstanding anything to the contrary contained in any other law, a gratuity included in the remuneration determined in terms of subsection (1) and payable after vacation of office, shall not be taxable.

(3) An allowance included in the remuneration determined in terms of subsection (1) shall not be taxable, unless Parliament expressly provides otherwise."

(b) by the substitution for subsection (2) of the following subsection: 15

"[2] (4) The President and a judge of the Court may be paid such allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act as the Minister of Justice may determine with the concurrence of the Minister of Finance."; and 20

(c) by the substitution for subsection (3) of the following subsection: 25

"[3] (5) The provisions of subsections (1) [and (2)], (3) and (4) shall apply also to a person appointed under section 22(7) and (8)."

#### Substitution of section 27 of Act 22 of 1994

13. The following section is hereby substituted for section 27 of the principal Act:

##### "Appointment of assessors

27. (1) The [Court] assessors contemplated in section 28(4) shall be [assisted by assessors] appointed by the presiding judge from a list compiled from time to time by the Minister after— 30

(a) inviting nominations from the general public; and

(b) consultation with the President of the Court.

(2) [No person shall be appointed as an] An assessor of the Court [unless he or she] shall be a person who, 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. 35

(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." 40

#### Amendment of section 28 of Act 22 of 1994

14. Section 28 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection: 45

"(4) At least one assessor shall [participate at the hearing of any disputed case] assist the Court at a contested hearing of—

(a) any claim contemplated in section 121 of the Constitution which has been referred to the Court; and

(b) any application in terms of section 34: 50

Provided that this requirement shall not apply in respect of—

(i) any hearing where the only matters in dispute are questions of law; or

(ii) any interlocutory or preliminary hearing or pre-trial proceedings.";



(b) by the substitution for subsection (5) of the following subsection:

“(5) An assessor, other than an assessor contemplated in subsection (6), shall be a member of the Court and the decision or finding of the majority of the members of the Court shall be the decision or finding of the Court: Provided that an assessor shall not decide upon a question of law or upon a question whether or not any matter constitutes a question of law: Provided further that a decision in respect of a matter referred to in section 33 or 34(6) shall be deemed not to be a question of law.”; and

(c) by the addition of the following subsections:

“(6) In any proceedings, other than those contemplated in paragraphs (a) and (b) of subsection (4), the Court may summon to its assistance no more than two assessors to act in an advisory capacity.

(7) Subject to the provisos to subsection (5), in the event of an equality of votes—

(a) at a hearing where one or more members of the Court are assessors, the vote of the judge, or, if there is more than one judge, the vote of the majority of the judges, shall prevail;

(b) at any other hearing, the hearing shall be adjourned and commenced before a new court constituted in such manner as the President of the Court or, in his or her absence, the most senior available judge may determine.

(8) If at any stage during the hearing of any matter where two or more judges are members of the Court, any judge of such Court dies or retires or is otherwise incapable of acting or is absent, the hearing shall proceed before the remaining members of such Court: Provided that such members shall include at least one judge.

(9) If at any stage during the hearing of any matter an assessor who is a member of the Court dies or, in the opinion of the presiding judge, becomes unable to act as assessor or is absent, the presiding judge may direct—

(a) that the hearing proceed before the remaining member or members of the Court; or

(b) that the hearing shall commence *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the remaining member or members as the decision of the Court.

(10) Subsections (5) and (7) shall apply *mutatis mutandis* when a hearing proceeds before the remaining member or members of the Court in the circumstances set out in subsection (8) or (9).”.

**Insertion of sections 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, 28J, 28K, 28L, 28M, 28N and 28O in Act 22 of 1994**

15. The following sections are hereby inserted in the principal Act after section 28:

**“Seals of Court**

28A. The Court shall have for use as occasion may require, a seal of such design as may be prescribed by the President of the Republic by proclamation in the *Gazette* and such seal shall be kept in the custody of the registrar of the Court.

**Proceedings to be conducted in open court**

28B. All hearings in the Court shall, except in so far as the Court may in special cases direct otherwise, be conducted in open court.

**Reference of particular matters for investigation by referee**

**28C. (1)** In any proceedings the Court may, with the consent of the parties, refer—

- (a) any matter which requires extensive examination of documents or scientific, technical or local investigation which cannot be conveniently conducted by the Court;
- (b) any matter which relates wholly or in part to accounts; or
- (c) any other matter arising in such proceedings,

for enquiry and report to a referee, and the Court may, after hearing such evidence or arguments as may be adduced or presented by the parties—

- (i) adopt the report of any such referee, either wholly or in part, and either with or without modifications;
- (ii) remit such report for further enquiry or report or consideration by such referee; or
- (iii) make any other order in regard thereto.

(2) Any finding in such report or any part thereof which is adopted by the Court, whether with or without modifications, shall have effect as if it were a finding by the Court in the proceedings in question.

(3) Any such referee shall for the purpose of such enquiry have such powers and shall conduct the enquiry in such manner as may be prescribed by a special order of court or by the rules.

(4) For the purpose of procuring the attendance of any witness, including any witness detained in custody under any law, and the production of any document or thing before a referee, an enquiry under this section shall be deemed to be proceedings before the Court: Provided that the referee shall not have jurisdiction in respect of the criminal offences created by this section.

(5) Any person summoned to appear and give evidence or produce any document or thing before a referee, and who, without sufficient cause—

- (a) fails to attend at the time and place specified or to remain in attendance until the conclusion of the enquiry or until he or she is excused by the referee from further attendance;
- (b) refuses to be sworn or to make affirmation as a witness;
- (c) having been sworn or having made affirmation as a witness, fails, without just excuse, to answer fully and satisfactorily any question put to him or her;
- (d) fails to produce any document or thing in his or her possession or custody or under his or her control which he or she was summoned to produce,

shall be guilty of an offence and liable on conviction either by the Court by way of the procedures set out in section 28F or by a criminal court having jurisdiction, to a fine or to imprisonment for a period not exceeding three months.

(6) Any person who, after having been sworn or having made affirmation, gives false evidence before a referee at any enquiry, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

(7) Any referee shall be entitled to such fees as may be prescribed by the rules or, if no such fees have been so prescribed, to such fees as the Court may determine, and to any reasonable expenditure incurred by him or her for the purposes of the enquiry, and any such fees and expenditure shall be taxed by the taxing master of the Court and shall be costs in the cause: Provided that the Court may order the State to pay the said fees and expenditure.

**No process to be issued against judge of Court except with consent of court**

28D. (1) Notwithstanding anything to the contrary contained in any law, no summons or subpoena against the President or any other judge of the Court shall in any civil action be issued out of any court without the consent of such court: Provided that no such summons or subpoena shall be issued out of a lower court unless the provincial division of the Supreme Court which has jurisdiction to hear and determine an appeal in a civil action from such lower court, has consented thereto.

(2) Where the issuing of a summons or subpoena against a judge of the Court to appear in a civil action has been consented to, the date upon which such judge must attend court shall be determined in consultation with the President of the Court or, in his or her absence, the most senior available judge of the Court.

(3) For the purposes of subsection (1) "lower court" means any court, other than the Constitutional Court or a court of a division of the Supreme Court, which is required to keep a record of its proceedings, and includes a court of a regional division and a magistrate's court established in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

**Judgment by default**

28E. A judgment by default may be granted by the Court in the manner and in the circumstances prescribed in the rules: Provided that the Court shall be satisfied that there was proper service of the process by which the case was initiated.

**Manner of securing attendance of witnesses or production of any document or thing in proceedings before Court**

28F. (1) A party to proceedings before the Court may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules.

(2) Whenever any person subpoenaed to attend any proceedings before the Court as a witness or to produce any document or thing fails without reasonable excuse to obey the subpoena and it appears from the return of the proper officer or from evidence given under oath that the subpoena was served upon the person to whom it is directed and that his or her reasonable expenses calculated in accordance with the tariff referred to in section 28M have been paid or offered to him or her, or that he or she is evading service of the subpoena, or if any person who has attended in obedience to a subpoena fails to remain in attendance until excused, the Court may issue a warrant directing that he or she be arrested and brought before the Court at a time and place stated in the warrant or as soon thereafter as possible.

(3) A person arrested under any such warrant may be detained thereunder before the Court or in any prison or lock-up or other place of detention or in the custody of the person who is in charge of him or her with a view to securing his or her presence as a witness or to produce any document or thing at the said proceedings: Provided that the Court may release him or her on a recognizance with or without sureties for his or her appearance to give evidence or to produce any document or thing as required and for his or her appearance at the enquiry referred to in subsection (4).

(4) The Court may in a summary manner, enquire into such person's evasion of the service of the subpoena or failure to obey the subpoena or to remain in attendance, and may, if it finds such person guilty, sentence him or her to a fine or to imprisonment for a period not exceeding three months.

(5) Any sentence imposed by the Court under subsection (4) shall be

enforced and shall be subject to appeal as if it were a sentence imposed in a criminal case.

(6) If a person who has entered into any recognizance for his or her appearance to give evidence at such proceedings, or to produce any document or thing or for his or her appearance at any enquiry referred to in subsection (4) fails so to appear, he or she may, apart from the forfeiture of his or her recognizance, be dealt with as if he or she had failed to obey a subpoena to attend such proceedings or appear at such enquiry.

**Manner in which witnesses may be dealt with on refusal to give evidence or produce any document or thing**

**28G. (1)** Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section 28F or is present and is verbally required by the Court to give evidence in any proceedings refuses to be sworn or to make an affirmation, or, having been sworn or having made an affirmation, without any just excuse refuses or fails to answer such questions as are put to him or her, or to produce any document or thing which he or she is required to produce the Court may adjourn the proceedings for any period not exceeding eight days and may, in the meantime, by warrant commit the person so refusing or failing to prison unless he or she consents to do what is required of him or her.

(2) If at the resumed hearing of the proceedings, any person referred to in subsection (1) again refuses without just excuse to do what is so required of him or her, the Court may again adjourn the proceedings and commit him or her to prison for a like period and so again from time to time until such person consents to do what is required of him or her.

(3) Nothing contained in this section shall prevent the Court from giving judgment in any case or otherwise disposing of the proceedings according to any other sufficient evidence taken.

(4) No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he or she actually has it in court.

(5) When a subpoena is issued to procure the attendance of any person to give evidence or to produce any book, paper, document or thing in any proceedings before the Court, and it appears—

- (a) that he or she is unable to give any evidence or to produce any book, paper, document or thing which would be relevant to any issue in such proceedings;
- (b) that to compel him or her to attend would be an abuse of the judicial process,

the Court may, notwithstanding anything contained in this section, after reasonable notice by the registrar of the Court to the party who sued out of the subpoena and after hearing that party in chambers if he or she appears, make an order cancelling such subpoena.

**Examination by interrogatories of persons whose evidence is required in proceedings before Court**

**28H. (1)** The Court may in connection with any proceedings pending before it, order that the evidence of a person who resides or is for the time being outside the area of jurisdiction of the Court be taken by means of interrogatories.

(2) Whenever an order is made under subsection (1), the registrar of the Court shall certify that fact and transmit a copy of his or her certificate to a commissioner of the Court, together with any interrogatories duly and lawfully framed which it is desired to put to the said person and the fees and

the amount of the expenses payable to the said person for his or her appearance as hereinafter provided.

(3) Upon receipt of the aforesaid certificate and of the interrogatories and amounts aforesaid, the commissioner shall summon the said person to appear before him or her, and upon his or her appearance shall take his or her evidence as if he or she were a witness in proceedings before the Court, and shall put to him or her the interrogatories aforesaid with any other questions calculated to obtain full and true answers to the said interrogatories and shall take down or cause to be taken down the evidence so obtained, and shall transmit the same, certified as correct, to the registrar of the Court. 5 10

(4) The commissioner shall further transmit to the said registrar a certificate showing the amount paid to the person concerned in respect of the expenses of his or her appearance, and the cost of the issue and service of the process for summoning such person before him or her. 15

(5) Any person summoned to appear as provided in this section who without reasonable excuse fails to appear at the time and place mentioned in the summons, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(6) Any interrogatories taken and certified under this section, shall, subject to all lawful exceptions, be received as evidence in the aforesaid proceedings. 20

#### Appointment of officers of Court

28I. (1) The Minister of Justice may, subject to the laws governing the public service, appoint registrars, assistant registrars and other officers for the Court whenever they may be required for the administration of justice or the execution of the functions of the Court. 25

(2) Whenever by reason of absence or incapacity a registrar or assistant registrar is unable to carry out the functions of his or her office, or his or her office becomes vacant, the Minister of Justice may authorise any other competent officer in the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled: Provided that when any such vacancy has remained unfilled for a continuous period exceeding six months that fact shall be reported to the Public Service Commission established by section 209 of the Constitution. 30 35

(3) Any officer in the public service appointed under subsection (1) may simultaneously hold more than one of the offices mentioned in that subsection.

(4) (a) The President of the Court may, in consultation with the Minister of Justice, from time to time, appoint one or more persons to undertake such research or perform such duties for the Court as the President of the Court may determine. 40

(b) The remuneration and other terms and conditions of service of a person appointed in terms of paragraph (a) shall be as determined, either generally or in any specific case, by the President of the Court in consultation with the accounting officer referred to in section 28J(3). 45

(5) The Minister of Justice may delegate to an officer in the Department of Justice any of the powers vested in him or her by this section.

#### Finances and accountability 50

28J. (1) Expenditure in connection with the administration and functioning of the Court shall be defrayed from monies appropriated by Parliament for such purpose.

(2) Requests for the funds needed for the administration and functioning of the Court, as determined by the President of the Court after consultation with the Minister of Justice, shall be addressed to Parliament by the 55

Minister of Justice in the manner prescribed for the budgetary process of Departments of State.

(3) The Director-General of Justice or an officer of the Department of Justice designated by him or her for such purpose shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)—

(a) be charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Court; and

(b) cause the necessary accounting and other related records to be kept, which records shall be audited by the Auditor-General appointed in terms of section 191 of the Constitution.

#### Scope and execution of process of Court

28K. (1) The process of the Court shall run throughout the Republic and its sentences, rulings, judgments, writs, summonses, orders, warrants, commands and other processes shall be executed in any area in like manner as if they were processes of the provincial division of the Supreme Court having jurisdiction in such area.

(2) A sheriff or a deputy sheriff of the Supreme Court appointed for the area in which any process is to be served, shall execute all sentences, rulings, judgments, writs, summonses, orders, warrants, commands and other processes of the Court directed to him or her and any reference in this Act to a sheriff or a deputy sheriff shall be deemed to be a reference to a sheriff or deputy sheriff of the Supreme Court acting in terms of this section.

(3) A sheriff or deputy sheriff performing his or her duties in terms of this Act shall have all the powers and rights and be subject to all the obligations and duties applicable to the execution by such sheriff or deputy sheriff of the process of the provincial division of the Supreme Court for which he or she is appointed.

(4) The return of a sheriff or a deputy sheriff of what has been done in connection with any process of the Court, shall be *prima facie* evidence of the matters therein stated.

(5) A refusal by the sheriff or any deputy sheriff to do any act which he or she is, in terms of this Act, empowered or obliged to do, shall be subject to review by the Court on application *ex parte* or on notice as the circumstances may require.

(6) Any warrant or other process for the execution of a judgment given or order issued against any association of persons, corporate or unincorporated, partnership or firm may be executed by attachment of the property or assets of such association, partnership or firm.

#### Offences relating to execution

28L. Any person who is guilty of the conduct referred to in section 40 of the Supreme Court Act, 1959 (Act No. 59 of 1959), in relation to the execution by a sheriff or deputy sheriff of his or her duties 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 six months.

#### Witness fees

28M. (1) A witness in any proceedings of the Court and any person who accompanies any such witness on account of the youth or infirmity of such witness, shall be paid such allowances as may be prescribed in terms of section 42 of the Supreme Court Act, 1959.

(2) Notwithstanding anything to the contrary contained in any other law, the Court may order that no allowances or only a portion of the prescribed allowances shall be paid to any witness.

**Powers of Court on hearing of appeals**

**28N.** The Court shall, at the hearing of any appeal in terms of any law conferring upon it any appellate jurisdiction, have the power—

- (a) to receive further evidence;
- (b) to remit the case to the court or other tribunal of first instance or to the arbitrator concerned, for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Court considers necessary; or
- (c) to confirm, amend or set aside the judgment, order or decision which is the subject matter of the appeal and to give any judgment, order or decision which the circumstances may require, unless such law provides otherwise.

**Application of provisions of this Chapter in respect of performance by Court of its functions under other legislation**

**28O.** The provisions of this Chapter regulating the procedures, powers and obligations of the Court shall apply *mutatis mutandis*, to the performance by the Court of its functions in terms of any other law in respect of which it has jurisdiction, unless such application is excluded expressly or by necessary implication.”

**Substitution of section 29 of Act 22 of 1994**

16. The following section is hereby substituted for section 29 of the principal Act:

**“Intervention to proceedings before Court, right to appear 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.] Any interested person, including an organisation, may apply to the Court for leave to intervene as a party to any proceedings before the Court.

**(2)** The State shall have the right to intervene as a party to all proceedings before the Court.

**(3)** Any party appearing before the Court may do so in person or may be represented by an advocate or attorney.

[2](4) 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.”

**Amendment of section 30 of Act 22 of 1994**

17. Section 30 of the principal Act is hereby amended by the addition of the following subsection:

**“(4)** Whenever an order, judgement or other record of the Court is required to be proved or inspected or referred to in any manner, a copy of such order, judgment or other record duly certified as such by the registrar of the Court under its seal shall be *prima facie* evidence thereof without proof of the authenticity of such registrar’s signature.”

**Amendment of section 32 of Act 22 of 1994**

18. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The President of the Court may make rules to govern the procedure of the Court, including rules providing for—

(a) any of the matters listed in paragraphs (a) to (s) of subsection (1) of section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), insofar as they are appropriate to the functions of the Court;

(b) the circumstances under which opinion and oral evidence may be submitted to the Court;

(c) the suspension or execution of judgments, orders or sentences of the Court pending—

(i) applications or petitions for leave to appeal; and

(ii) the prosecution of appeals; and

(d) generally, any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Court.”

**Amendment of section 34 of Act 22 of 1994**

19. Section 34 of the principal Act is hereby amended by the deletion of subsection (7).

**Amendment of section 35 of Act 22 of 1994**

20. Section 35 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (g) of the following paragraph:

“(g) make such orders for costs as it deems just, including an order for costs against the State or the Commission;”;

(b) by the deletion of subsection (8); and

(c) by the addition of the following subsections:

“(11) The Court may, upon application by any person affected thereby and subject to the rules made under section 32, rescind or vary any order or judgment granted by it—

(a) in the absence of the person against whom that order or judgment was granted;

(b) which was void from its inception or was obtained by fraud or mistake common to the parties;

(c) in respect of which no appeal lies; or

(d) in the circumstances contemplated in section 11(5):

Provided that where an appeal is pending in respect of such order, or where such order was made on appeal, the application shall be made to the Constitutional Court or the Appellate Division of the Supreme Court, as the case may be.

(12) The Court may, upon application by any person affected thereby, or of its own accord—

(a) if a person is, in the circumstances contemplated in subsection (1), registered as a preferential claimant, rescind or vary the order contemplated in that subsection:

(b) correct patent errors in any order or judgment.”

**Amendment of section 36 of Act 22 of 1994**

21. Section 36 of the principal Act is hereby amended by the substitution for subsection(1) of the following subsection:

“(1) Any party aggrieved by any act [of] or decision of the Minister, 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.”



**Substitution of section 37 of Act 22 of 1994**

22. The following section is hereby substituted for section 37 of the principal Act:

**“Appeals from Court**

37. (1) [Appeals] No appeal shall lie against [decisions by] a judgment or order of the Court [shall lie either to the Constitutional Court] except with leave of the Court or [to], where such leave has been refused, with the leave of the Appellate Division of the Supreme Court (hereinafter referred to as the Appellate Division). 5

(2) [The] An appeal from a judgment or order of the Court shall [in each case determine the court to which an appeal shall lie] be heard by the Appellate Division. 10

(3) The Appellate Division may, in granting leave to appeal, vary any order for costs made by the Court in refusing leave to appeal.

(4) The power to grant leave to appeal as contemplated in subsection (1)— 15

(a) shall not be limited by reason only of the value of the matter in dispute or the amount claimed or awarded in the suit or by reason only of the fact that the matter in dispute is incapable of being valued in money; and

(b) shall be subject to the provisions of any other law which specifically limits it or specifically grants, limits or excludes any right of appeal. 20

(5) Leave to appeal may be granted subject to such conditions as the Court or the Appellate Division, as the case may be, considers appropriate, including a condition that the applicant shall find security for the costs of the appeal. 25

(6) The Appellate Division may grant leave to appeal on application made to it within 15 days, or such longer period as may on good cause be allowed, after the Court has refused leave to appeal.

(7) (a) An application to the Appellate Division in terms of subsection (6)— 30

(i) shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief;

(ii) shall be addressed to the registrar of the Appellate Division, to the registrar of the Court and to all other parties in the proceedings before the Court. 35

(b) The application shall be considered by two judges of the Appellate Division designated by the Chief Justice, and in the case of a difference of opinion, also by the Chief Justice or any other such judge so designated.

(c) The judges considering the application may order that the application be argued before them at a time and place appointed, and may, whether or not they have so ordered— 40

(i) grant or refuse the application; or

(ii) refer the application to the Appellate Division for consideration, whether upon argument or otherwise,

and where an application has been so referred, the Appellate Division may thereupon grant or refuse the application. 45

(d) The decision of the majority of the judges considering the application, or the decision of the Appellate Division, as the case may be, to grant or refuse the application shall be final.

(e) Notice of the date and place fixed for the hearing of the application shall be given to the applicant and the respondent by the registrar of the Appellate Division. 50

(8) The Appellate Division shall, on the hearing of any appeal from the Court have the power—

(a) to receive further evidence; 55

(b) to remit the case to the Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Appellate Division considers necessary; or

(c) to confirm, amend or set aside the judgment or order which is the subject of the appeal and to give any judgment or make any order which the circumstances may require. 60

(9) Nothing in this section contained shall be construed as preventing an appeal from a judgment or order of the Court being made directly to the Constitutional Court, if such an appeal is allowed by national legislation and by the rules of the Constitutional Court.”

#### Registrar to remove certain notes

5

23. Every registrar of deeds shall, upon the commencement of this Act, remove any note entered in his or her records in terms of section 11(6)(b) of the principal Act.

#### Interpretation of reference to judges of Supreme Court in laws

24. Unless it would in any particular case be inconsistent with the context or otherwise obviously be inappropriate, having regard to the objects of the principal Act, any reference in a law to a judge of the Supreme Court shall be construed as including a reference to a judge of the Land Claims Court established by section 22 of the principal Act.

10

#### Amendment of section 3 of Act 3 of 1996

25. Section 3 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), is hereby amended by the substitution for subsection (1) of the following subsection:

15

“(1) Notwithstanding the provisions of any other law, but subject to the provisions of subsection (2), a person who was a labour tenant on 2 June 1995 shall have the right with his or her family members [to occupy and use that part of the farm in question]—

20

- (a) to occupy and use that part of the farm in question which he or she or his or her associate was using and occupying on that date; [and]
- (b) to occupy and use that part of the farm in question the right to [the] occupation and use of which is restored to him or her in terms of this Act or any other law.”

25

#### Substitution of section 5 of Act 3 of 1996

26. The following section is hereby substituted for section 5 of the Land Reform (Labour Tenants) Act, 1996:

##### “Prohibition on eviction

5. Subject to the provisions of section 13, [A] a labour tenant or his or her associate may only be evicted in terms of an order of the Court issued under this Act.”

30

#### Amendment of section 17 of Act 3 of 1996

27. Section 17 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

35

“The owner of affected land shall within one calendar month of receipt of the notice referred to in subsection [2](2)(a), inform the Director-General in writing—”

#### Amendment of section 18 of Act 3 of 1996

40

28. Section 18 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution for subsection (9) of the following subsection:

“(9) Any nomination referred to in subsection [7](8) shall be in writing, signed by all the parties, and submitted to the President of the Court.”

**Amendment of section 19 of Act 3 of 1996**

29. Section 19 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) a person nominated by the parties in terms of section [18(7)]18(8); or”.

**Amendment of section 30 of Act 3 of 1996**

5

30. Section 30 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The provisions of sections 22, 24, 25, 28, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28J, 28K, 28L, 28M, 28N, 29, 30, 31, 32, 37 and 38 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), shall apply *mutatis mutandis* to the performance by the Court of its functions in terms of this Act: Provided that the reference to the Commission on Restitution of Land Rights in section 32(3) of the said Act shall for the purposes of this Act be deemed to be a reference to the Director-General.”.

10

**Substitution of section 35 of Act 3 of 1996**

15

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

**“Effect of order of Court**

35. For the purposes of the Deeds Registries Act, 1937 (Act No. 47 of 1937), an order of the Court shall have the same force as an order of the Supreme Court.”.

20

**Amendment of section 39 of Act 3 of 1996**

32. Section 39 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The right of a labour tenant to apply [to buy] for an award of land or a right in land in terms of this Act—”.

25

**Short title**

33. This Act shall be called the Land Restitution and Reform Laws Amendment Act, 1996.