#### REPUBLIC OF SOUTH AFRICA

# RESTITUTION OF LAND RIGHTS AMENDMENT BILL

(As amended by the Portfolio Committee on Agriculture and Land Affairs (National Assembly)) (The English text is the official text of the Bill)

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)



[B 42B-2003]

ISBN 0 621 33931 8

No. of copies printed ...... 1 800

#### GENERAL EXPLANATORY NOTE:

[	]	Words in bold type in square brackets indicate omissions from existing enactments.								
	<del></del>		underlined g enactment		solid	line	indicate	insertions	in	
							4			

### 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 purpose 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.

**B**<sup>E</sup> 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) 5 (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 10 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 42C of Act 22 of 1994, as inserted by section 30 of Act 63 of 1997 and amended by section 4 of Act 61 of 1998 and by section 11 of Act 18 of 1999

- **3.** Section 42C of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
  - "(1) The Minister may from money appropriated by Parliament for this purpose and on such conditions as he or she may determine, grant an advance or a subsidy for the development or management of, or to facilitate the settlement of persons on, land which is the subject of an order of the Court in terms of this Act or an agreement in terms of section 14(3) or 42D or which is expropriated in terms of section 42E, to—

20

(a) any claimant to whom restoration or the award of a right in land has been ordered; (b) any claimant who has entered into an agreement contemplated in section 14(3) or 42D; (c) any person resettled [as a result of an order of the Court] on such land.". 5  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  4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of— (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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 neurons of such expropriation. In land under this Act, the amount of compensation and the time and manner of neurons of such expropriation.	ordered; (b) any claimant who has entered into an agreement contemplated in section 14(3) or 42D; (c) any person resettled [as a result of an order of the Court] on such land.". 5  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  4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of— (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose of such expropriation.  (3) Where the Minister expropriates land, a portion of land or a right in			
(b) any claimant who has entered into an agreement contemplated in section 14(3) or 42D; (c) any person resettled [as a result of an order of the Court] on such land.". 5  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  4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 expropriates land, a portion of land or a right in land under this Act, the amount of compensation and the time and manner	(b) any claimant who has entered into an agreement contemplated in section 14(3) or 42D; (c) any person resettled [as a result of an order of the Court] on such land.". 5  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  4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of— (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 63 of 1975), shall, with the necessary changes, apply to an exproportation 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 purpose 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	(a) a	any claimant to whom restoration or the award of a right in land has been	
or 42D; (c) any person resettled [as a result of an order of the Court] on such land.". 5  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  4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of— (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or (b) providing alternative relief as contemplated in section 6(2)(b). (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	or 42D; (c) any person resettled [as a result of an order of the Court] on such land.". 5  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  4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of— (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b). (2) The Expropriation Act, 1975 (Act No. 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 purpose 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			
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  4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of—  (a) restoring or awarding such land, portion of a right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	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  4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of— (a) restoring or awarding such land, portion of land or right in land in terms of section 2; or (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 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			
4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	4. Section 42D of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).  Insertion of section 42E in Act 22 of 1994  5. 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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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		•	5
Insertion of section 42E in Act 22 of 1994  5. 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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	Insertion of section 42E in Act 22 of 1994  5. 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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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			
5. 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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	5. 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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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			
"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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	<ul> <li>5. 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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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</li> </ul>			10
"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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	"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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	Insertion of	of section 42E in Act 22 of 1994	
"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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	"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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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		11. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.	
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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	5. The fe	bllowing section is hereby inserted in the principal Act after section 42D:	
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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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		· · · · · · · · · · · · · · · · · · ·	
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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	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 purpose of—  (a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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		purposes	15
<ul> <li>(a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or</li> <li>(b) providing alternative relief as contemplated in section 6(2)(b).</li> <li>(2) The Expropriation Act, 1975 (Act No. 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 purpose of such expropriation.</li> <li>(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</li> </ul>	<ul> <li>(a) restoring or awarding such land, portion of land or right in land to a claimant who is entitled to restitution of a right in land in terms of section 2; or</li> <li>(b) providing alternative relief as contemplated in section 6(2)(b).</li> <li>(2) The Expropriation Act, 1975 (Act No. 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 purpose of such expropriation.</li> <li>(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.</li> <li>(4) The rules of the Court made under section 32 shall govern the</li> </ul>			
claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	claimant who is entitled to restitution of a right in land in terms of section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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			
section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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	section 2; or  (b) providing alternative relief as contemplated in section 6(2)(b).  (2) The Expropriation Act, 1975 (Act No. 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 purpose 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			
(2) The Expropriation Act, 1975 (Act No. 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 purpose 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	(2) The Expropriation Act, 1975 (Act No. 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 purpose 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			20
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 purpose 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	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 purpose 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			
a reference to the Minister for the purpose 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	a reference to the Minister for the purpose 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			4
(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	(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			
land under this Act, the amount of compensation and the time and manner	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			25
	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			
of navment chall be determined either by agreement or by the Collic in C	accordance with section 25(3) of the Constitution.  (4) The rules of the Court made under section 32 shall govern the			
	(4) The rules of the Court made under section 32 shall govern the			
	Divocante vi nie count in die dewinniadon of compensation in wills of t			
	subsection (3).".			30

#### Short title

6. This Act is called the Restitution of Land Rights Amendment Act, 2003.

## MEMORANDUM ON THE OBJECTS OF THE RESTITUTION OF LAND RIGHTS AMENDMENT BILL, 2003

#### 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 be accelerated.

In 1999 the present procedure whereby land claims could be resolved by way of settlement agreements outside the Land Claims Court in terms of section 42D of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (hereinafter referred to as "the Restitution Act"), was introduced by the Land Restitution and Reform Laws Amendment Act, 1999 (Act No. 18 of 1999). The current provisions granting the Minister, with the agreement of all interested parties, powers to acquire or expropriate land for the purpose of restitution of rights in land without the necessity of an order of the Court are found in sections 35(5A) and 42D(1)(d) of the Restitution Act and are insufficient.

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 an order of the Court the power of the Minister to acquire or expropriate land for restitution purposes is limited to circumstances where an agreement has 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 an order of the Court 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 arises from the current 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 Act.

#### 2. OBJECTS OF BILL

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

In terms of the proposed section 42E of the Restitution Act, inserted by clause 4 of the Bill, the Minister of Land Affairs will be authorised to purchase, acquire in any other manner or expropriate land or a right in land for the purpose of a restitution award or for any land reform purpose.

The proposed section 42E(2) provides that the Expropriation Act, 1975 (Act No. 63 of 1975), will, with the necessary changes, apply to all expropriations under the Restitution Act.

The constitutional rights of the landowner 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 No. 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. DEPARTMENTS/BODIES/PERSONS CONSULTED

Consultations were held with and comments received from the following institutions or persons:

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

Law Society of South Africa
Black Lawyers Association

Phillip du Toit Incorporated

South African Law Commission

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 Unions

United Democratic Movement

Willie du Toit, Waterval, Steynsburg

Marietta van Vuuren

Landbouweekblad

Rapport

Beeld

Sowetan

Pretoria News

Mail and Guardian

**Business Day** 

The 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 procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.