

REPUBLIC OF SOUTH AFRICA

BLACK AUTHORITIES ACT REPEAL BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 33102 of 16 April 2010)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B 9—2010]

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BILL

To repeal the Black Authorities Act, 1951; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Repeal of Act 68 of 1951

1. The Black Authorities Act, 1951, is hereby repealed on—
 - (a) 31 December 2010; or
 - (b) the date on which the last of the provinces of KwaZulu-Natal and Limpopo has repealed those provisions that were assigned to them, whichever occurs first.

Short title

2. This Act is called the Black Authorities Act Repeal Act, 2010.

MEMORANDUM ON THE OBJECTS OF THE BLACK AUTHORITIES ACT REPEAL BILL, 2010

1. BACKGROUND

- 1.1 The Bill seeks to repeal the Black Authorities Act, 1951 (Act No. 68 of 1951) (the Act), which—
 - (a) established statutory “tribal”, regional and territorial authorities to (amongst other things) generally administer the affairs of Blacks;
 - (b) abolished the Black Representative Council established by section 20 of the Representation of Blacks Act, 1936 (Act No. 12 of 1936); and
 - (c) amended the Black Affairs Act, 1920 (Act No. 23 of 1920), and the Representation of Blacks Act, 1936 (Act No. 12 of 1936).
- 1.2 The Act was a legislative cornerstone of apartheid by means of which Black people were controlled and dehumanised, and is reminiscent of past division and discrimination. The provisions of the Bill are both obsolete and repugnant to the values and human rights enshrined in the Constitution of the Republic of South Africa, 1996 (the Constitution).
- 1.3 The proposed repeal is also in line with the investigation and report of the South African Law Reform Commission on obsolete and redundant legislative provisions, which report was adopted by the Department of Justice and Constitutional Development.
- 1.4 In terms of President’s Minute No. 13 of 10 June 1994, the then Minister of Land Affairs was initially designated to administer the (whole) Act. In terms of Proclamation No. 44 of 2009 that administration is now designated to the Minister of Rural Development and Land Reform.
- 1.5 The administration of the Act, excluding those provisions that fell outside the functional areas specified in Schedule 6 to the (Interim) Constitution of 1993, was assigned by Proclamations Nos. 109, 110, 111, 112 and 166 of 1994 to the provinces of Limpopo, North West, Eastern Cape, Mpumalanga and KwaZulu-Natal respectively.
- 1.6 North West, Eastern Cape and Mpumalanga have repealed the Act insofar as the administration thereof was assigned to them, while Limpopo and KwaZulu-Natal have not yet done so. KwaZulu-Natal supports the proposed repeal of the Act on the basis that the cut-off date in clause 1 (31 December 2010) will afford sufficient time for the passage of its Bill on the Code of Local Government Law. Limpopo has not recorded any objection or identified any consequential legal vacuum.
- 1.7 No assignments to the Free State, Gauteng, Northern Cape and Western Cape were made. Gauteng and Western Cape support the proposed repeal and Free State and Northern Cape have not recorded any objection or identified any consequential legal vacuum.
- 1.8 Insofar as it relates to the functional area of *rural development and land reform*, the Act can be repealed immediately without unintended consequences or the enactment of replacement legislation.
- 1.9 The Act also affects the concurrent functional areas of “indigenous law and customary law” and “traditional leadership” listed in Schedule 4 to the Constitution. In view of the enactment of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), legislative alternatives for the provisions of the Act affecting those areas are no longer required. The cut-off periods for the continued existence of the old community, regional and other authorities mentioned in section 28(5) and (6)(a) of the Traditional Leadership and Governance Framework Act, 2003, have expired.

- 1.10 The Department of Cooperative Governance and Traditional Affairs has confirmed the content of 1.9 above and supports the proposed repeal of the Act.

2. OBJECTS OF THE BILL

- 2.1 The Bill seeks to repeal the Act and consists of two clauses.
- 2.2 **Clause 1** provides for the repeal in terms of a sunset provision which will afford the provinces of KwaZulu-Natal and Limpopo an opportunity to themselves repeal those provisions that were assigned to them. It is therefore proposed that the Act be repealed on 31 December 2010 or on the date on which the last of those two provinces repeals the provisions assigned to them, whichever occurs first.
- 2.3 **Clause 2** contains the short title of the Bill.

3. CONSULTATION

- 3.1 All nine provinces and the Department of Provincial and Local Government were consulted on the Bill with the outcomes indicated in paragraphs 1.6, 1.7 and 1.10 above.
- 3.2 In addition the Bill was published for general comment in *Gazette* No. 32554 under Government Notice No. 1223 dated 11 September 2009.
- 3.3 All respondents to the above consultations supported the draft Bill as published (with the cutoff date in clause 1 being 31 December 2009) except for the province of KwaZulu-Natal, which supports the Bill with the cut-off date adjusted to 31 December 2010, to afford sufficient time for the passage of that province's Bill on the Code of Local Government Law which will address certain consequences for that province of the repeal of the Act.
- 3.4 The Bill was referred to the Directors-General Clusters for the Economic Sectors and Employment, and for Social Protection and Community Development.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Rural Development and Land Reform are of the opinion that—

- (a) the Bill must be dealt with in accordance with the procedure established by subsection (1) or (2) of section 76 of the Constitution, since it falls within functional areas listed in Schedule 4 to the Constitution, namely “Indigenous law and customary law, subject to Chapter 12 of the Constitution” and “Traditional leadership, subject to Chapter 12 of the Constitution”; and
- (b) it is necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does contain provisions pertaining to customary law or customs of traditional communities.