

# RESTITUTION OF LAND RIGHTS ACT 22 OF 1994

(Afrikaans text signed by the President)

*[Assented To: 17 November 1994]  
[Commencement Date: 2 December 1994]*

## **as amended by:**

Restitution of Land Rights Amendment Act 84 of 1995  
Land Restitution and Reform Laws Amendment Act 78 of 1996  
Land Restitution and Reform Laws Amendment Act 63 of 1997  
Land Affairs General Amendment Act 61 of 1998  
Land Restitution and Reform Laws Amendment Act 18 of 1999  
Land Affairs General Amendment Act 11 of 2000  
Restitution of Land Rights Amendment Act 48 of 2003  
Public Service Amendment Act 30 of 2007  
[with effect from 1 April 2008]

## **ACT**

**To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.**

[Long title substituted by s. 31 of Act 63/97]

**WHEREAS the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides for restitution of property or equitable redress to a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices;**

**AND WHEREAS legislative measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken to promote the achievement of equality;**

[Preamble substituted by s. 1 of Act 63/97]

## **ARRANGEMENT OF SECTIONS**

### **CHAPTER I**

#### **INTRODUCTORY PROVISIONS**

1. Definitions
2. Entitlement to restitution
3. Claims against nominees

### **CHAPTER II**

## **COMMISSION ON RESTITUTION OF LAND RIGHTS**

- [4. Establishment of Commission on Restitution of Land Rights](#)
- [5. Meetings of Commission](#)
- [6. General functions of Commission](#)
- [7. Delegation of powers and performance of functions](#)
- [8. Performance of work of Commission](#)
- [9. Appointment of persons or organisations to assist Commission on ad hoc basis](#)
- [10. Lodgement of claims](#)
- [11. Procedure after lodgement of claim](#)
- [11A. Withdrawal or amendment of notice of claim](#)
- [12. Commission's power of investigation](#)
- [13. Mediation](#)
- [14. Referral of claims to Court](#)
- [15. ....](#)
- [16. Rules regarding procedure of Commission](#)
- [17. Offences and penalties](#)
- [18. Limitation of liability](#)
- [19. Expenditure of Commission](#)
- [20. Annual estimates of expenditure](#)
- [21. Annual report](#)

## **CHAPTER III THE LAND CLAIMS COURT**

- [22. Land Claims Court](#)
- [23. Qualifications of judges of Court](#)
- [24. ....](#)
- [25. Holding of office](#)
- [26. Remuneration and conditions of employment of judges](#)
- [26A. Secondment of judges and appointment of acting judges to Land Claims Court](#)
- [27. Appointment of assessors](#)
- [28. Seat and hearings of Court](#)
- [28A. Seals of Court](#)
- [28B. Proceedings to be conducted in open court](#)
- [28C. Reference of particular matters for investigation by referee](#)
- [28D. No process to be issued against judge of Court except with consent of court](#)
- [28E. Judgment by default](#)
- [28F. Manner of securing attendance of witnesses or production of any document or thing in proceedings before Court](#)
- [28G. Manner in which witnesses may be dealt with on refusal to give evidence or produce any document or thing](#)
- [28H. Examination by interrogatories of persons whose evidence is required in proceedings before Court](#)
- [28I. Appointment of officers of Court](#)

- [28J. Finances and accountability](#)
- [28K. Scope and execution of process of Court](#)
- [28L. Offences relating to execution](#)
- [28M. Witness fees](#)
- [28N. Powers of Court on hearing of appeals](#)
- [28O. Application of provisions of this Chapter in respect of performance by Court of its functions under other legislation](#)
- [29. Intervention to proceedings before Court, right to appear and legal representation](#)
- [30. Admissibility of evidence](#)
- [31. Pre-trial conference](#)
- [32. Rules governing procedure](#)
- [33. Factors to be taken into account by Court](#)
- [34. Ruling by Court on restoration before final determination of claim](#)
- [35. Court orders](#)
- [35A. Mediation](#)
- [36. Review of decisions of Commission](#)
- [37. Appeals from Court](#)
- [38. Decisions of Court a matter of public record](#)

### **CHAPTER IIIA**

#### **DIRECT ACCESS TO COURT**

- [38A. Definitions](#)
- [38B. Application to Court for restitution of right in land](#)
- [38C. Reports by regional land claims commissioner or Director-General](#)
- [38D. Time limit for applications for leave to intervene under certain circumstances](#)
- [38E. Additional powers of Court](#)

### **CHAPTER IV**

#### **MISCELLANEOUS PROVISIONS**

- [39. Register of public land](#)
- [40. Regulations](#)
- [41. Repeal of laws, and savings](#)
- [42. Transfer duty and fees](#)
- [42A. Registration of land in name of claimant](#)
- [42B. Certain laws not applicable in respect of land restored or awarded](#)
- [42C. Financial aid](#)
- [42D. Powers of Minister in case of certain agreements](#)
- [42E. Acquisition of land, portion of land or right in land for land reform purposes](#)
- [43. Short title and commencement](#)

### **CHAPTER I**

#### **INTRODUCTORY PROVISIONS**

## 1. Definitions

In this Act, unless the context indicates otherwise -

**“claim”** means -

- (a) any claim for restitution of a right in land lodged with the Commission in terms of this Act; or
- (b) any application lodged with the registrar of the Court in terms of [Chapter IIIA](#) for the purpose of claiming restitution of a right in land;  
[Definition of “claim” substituted by s. 2 of Act 63/97]

**“claimant”** means any person who has lodged a claim;  
[Definition of “claimant” substituted by s. 2 of Act 63/97]

**“Commission”** means the Commission on Restitution of Land Rights established by [section 4](#);

**“community”** means any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group, and includes part of any such group;

**“Court”** means the Land Claims Court established by [section 22](#);

**“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;  
[Definition of “day” inserted by s. 1 of Act 78/96]

**“direct descendant”** of a person includes the spouse or partner in a customary union of such person whether or not such customary union has been registered;

**“equitable redress”** means any equitable redress, other than the restoration of a right in land, arising from the dispossession of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices, including -

- (a) the granting of an appropriate right in alternative state-owned land;
- (b) the payment of compensation;  
[Definition of “equitable redress” inserted by s. 2 of Act 63/97]

**“High Court”** means any High Court referred to in [section 166\(c\)](#) of the Constitution, excluding a high court of appeal;  
[Definition of “High Court” inserted by s. 2 of Act 63/97]

**“Minister”** means the Minister of Land Affairs or an officer in his or her department designated by him or her;

**“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;

[Definition of “organisation” inserted by s. 1 of Act 78/96]

**“organ of state”** means an organ of state as defined in [section 239](#) of the Constitution;

[Definition of “organ of state” inserted by s. 2 of Act 63/97]

**“person”** includes a community or part thereof;

**“prescribed”** means prescribed by or under this Act;

**“presiding judge”**, in relation to a hearing before more than one judge, means the judge designated as such by the President of the Court;

[Definition of “presiding judge” inserted by s. 1 of Act 78/96]

**“public land”** means all land owned by any organ of state, and includes land owned by the Land Bank and any institution in which the State is the majority or controlling shareholder;

[Definition of “public land” substituted by s. 2 of Act 63/97]

**“racially discriminatory laws”** include laws made by any sphere of government and subordinate legislation;

[Definition of “racially discriminatory laws” inserted by s. 2 of Act 63/97]

**“racially discriminatory practices”** means racially discriminatory practices, acts or omissions, direct or indirect, by -

- (a) any department of state or administration in the national, provincial or local sphere of government;
- (b) any other functionary or institution which exercised a public power or performed a public function in terms of any legislation;

[Definition of “racially discriminatory practices” inserted by s. 2 of Act 63/97]

**“restitution of a right in land”** means -

- (a) the restoration of a right in land; or
- (b) equitable redress;

[Definition of “restitution of a right in land” inserted by s. 2 of Act 63/97]

**“restoration of a right in land”** means the return of a right in land or a portion of land dispossessed after 19 June 1913 as a result of past racially discriminatory laws or practices;

[Definition of “restoration of a right in land” inserted by s. 2 of Act 63/97 and substituted by s. 1 of Act 18/99]

**“right in land”** means any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question;

**“the Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

[Definition of “the Constitution” inserted by s. 2 of Act 63/97]

**“Supreme Court”** .....

[Definition of “Supreme Court” deleted by s. 2 of Act 63/97]

**“the rules”** means the rules made under [sections 16](#) and [32](#);

**“this Act”** includes the rules and the regulations made under [section 40](#).

## **2. Entitlement to restitution**

- (1) A person shall be entitled to restitution of a right in land if -
  - (a) he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices ; or
  - (b) it is a deceased estate dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
  - (c) he or she is the direct descendant of a person referred to in paragraph (a) who has died without lodging a claim and has no ascendant who -
    - (i) is a direct descendant of a person referred to in paragraph (a); and
    - (ii) has lodged a claim for the restitution of a right in land; or
  - (d) it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; and
  - (e) the claim for such restitution is lodged not later than 31 December 1998.

- (2) No person shall be entitled to restitution of a right in land if -
- (a) just and equitable compensation as contemplated in [section 25](#)(3) of the Constitution; or
  - (b) any other consideration which is just and equitable,
- calculated at the time of any dispossession of such right, was received in respect of such dispossession.
- (3) If a natural person dies after lodging a claim but before the claim is finalised and -
- (a) leaves a will by which the right or equitable redress claimed has been disposed of, the executor of the deceased estate, in his or her capacity as the representative of the estate, alone or, failing the executor, the heirs of the deceased alone; or
  - (b) does not leave a will contemplated in paragraph (a), the direct descendants alone,
- may be substituted as claimant or claimants.
- (4) If there is more than one direct descendant who have lodged claims for and are entitled to restitution, the right or equitable redress in question shall be divided not according to the number of individuals but by lines of succession.
- [S. 2 amended by s. 2 of Act 78/96 and substituted by s. 3 of Act 63/97 and s. 2 of Act 18/99]

### **3. Claims against nominees**

Subject to the provisions of this Act a person shall be entitled to claim title in land if such claimant or his, her or its antecedent -

- (a) was prevented from obtaining or retaining title to the claimed land because of a law which would have been inconsistent with the prohibition of racial discrimination contained in [section 9](#)(3) of the Constitution had that subsection been in operation at the relevant time; and  
[Para. (a) substituted by s. 4 of Act 63/97]
- (b) proves that the registered owner of the land holds title as a result of a transaction between such registered owner or his, her or its antecedents and the claimant or his, her or its antecedents, in terms of which such registered owner or his, her or its antecedents held the land on behalf of the claimant or his, her or its antecedents.

## **CHAPTER II**

## **COMMISSION ON RESTITUTION OF LAND RIGHTS**

### **4. Establishment of Commission on Restitution of Land Rights**

- (1) There is hereby established a commission to be known as the Commission on Restitution of Land Rights.
- (2) The Commission shall have a head office and such other offices, with such areas of jurisdiction, as the Minister may determine.
- (3) The Commission shall consist of a Chief Land Claims Commissioner appointed by the Minister, after inviting nominations from the general public, a Deputy Land Claims Commissioner similarly appointed and as many regional land claims commissioners as may be appointed by the Minister.
- (4) The Chief Land Claims Commissioner, the Deputy Land Claims Commissioner and a regional land claims commissioner, shall -
  - (a) be fit and proper persons to hold such offices;
  - (b) be South African citizens; and
  - (c) have skills and knowledge relevant to the work of the Commission or such legal knowledge or qualifications as the Minister may deem necessary.
- (5) The Minister may terminate any appointment made under subsection (3) -
  - (a) if he or she is satisfied that such appointed person no longer complies with the requirements of subsection (4); or
  - (b) if the appointed person requests the Minister in writing to terminate the appointment.

### **5. Meetings of Commission**

- (1) The Commission shall meet at least three times each year.
- (2) Meetings of the Commission shall be held at the time and place determined by the Chief Land Claims Commissioner.
- (3) The majority of the members of the Commission shall form a quorum for a meeting of the Commission.
- (4) The decision of the majority of the members of the Commission present at any meeting thereof shall be a decision of the Commission: Provided that, in



the event of an equality of votes, the Chief Land Claims Commissioner shall have a casting vote in addition to his or her deliberative vote.

**6. General functions of Commission**

- (1) The Commission shall, at a meeting or through the Chief Land Claims Commissioner, a regional land claims commissioner or a person designated by any such commissioner -
  - (a) subject to the provisions of [section 2](#), receive and acknowledge receipt of all claims for the restitution of rights in land lodged with or transferred to it in terms of this Act;
  - (b) take reasonable steps to ensure that claimants are assisted in the preparation and submission of claims;
  - (c) advise claimants of the progress of their claims at regular intervals and upon reasonable request;
  - (cA) investigate the merits of claims contemplated in paragraph (a);
  - (cB) mediate and settle disputes arising from such claims;
  - (d) subject to the provisions of [section 14](#), report to the Court on the terms of settlement in respect of successfully mediated claims;
  - (e) define any issues which may still be in dispute between the claimants and other interested parties with a view to expediting the hearing of claims by the Court;
  - (eA) draw up reports on unsettled claims for submission as evidence to the Court and present any other relevant evidence to the Court;
  - (f) at regular intervals, take appropriate steps to make public information regarding the persons entitled to claim restitution of rights in land, the limitations imposed by [section 2](#), and the manner in which claims may be lodged with the Commission.  
[Subs. (1) substituted by s. 5 of Act 63/97]
- (2) The Commission may, at a meeting or through the Chief Land Claims Commissioner, a regional land claims commissioner or a person designated by any such commissioner -
  - (a) monitor and make recommendations concerning the implementation of orders made by the Court under [section 35](#);

- (b) make recommendations or give advice to the Minister regarding the most appropriate form of alternative relief, if any, for those claimants who do not qualify for the restitution of rights in land in terms of this Act;
  - (c) 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);  
[Para. (c) substituted by s. 3 of Act 78/96]
  - (d) ensure that priority is given to claims which affect a substantial number of persons, or persons who have suffered substantial losses as a result of dispossession or persons with particularly pressing needs;
  - (e) generally, do anything necessarily connected with or reasonably incidental to the expeditious finalisation of claims.
- (3) Where the regional land claims commissioner having jurisdiction or and interested party has reason to believe that the sale, exchange, donation, lease, subdivision, rezoning or development 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 -
- (a) after a claim has been lodged in respect of such land; and
  - (b) after the owner of the land has been notified of such claim and referred to the provisions of this subsection;

on reasonable notice to interested parties, apply to the Court for an interdict prohibiting the sale, exchange, donation, lease, subdivision, rezoning or development 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.

[Subs. (3) added by s. 3 of Act 78/96 and substituted by s. 5 of Act 63/97]

## **7. Delegation of powers and performance of functions**

- (1) The Commission may delegate any power conferred upon it by or under this Act to a subcommittee of the Commission or to a member of the Commission or to a person contemplated in [section 8](#) or [9](#) subject to such directions or conditions as the Commission may give or determine from time to time: Provided that the powers referred to in [section 6](#)(2)(b), (c) and (d) may not be delegated.
- (2) The Chief Land Claims Commissioner may delegate any power conferred upon him or her by or under this Act except the power of delegation to the

Deputy Land Claims Commissioner or any regional land claims commissioner, either generally or with regard to a specific claim.

- (2A) The Director-General of Land Affairs may delegate any power conferred upon him or her by or under this Act except the power of delegation to any member of the Commission, any officer of the State or any person contemplated in [section 9](#).

[Subs. (2A) inserted by s. 3 of Act 18/99]

- (2B) A regional land claims commissioner may in consultation with the Chief Land Claims Commissioner and the Director General of Land Affairs delegate any power conferred upon him or her by or under this Act except the power of delegation to any other member of the Commission, any officer of the State or any person contemplated in [section 9](#).

[Subs. (2B) inserted by s. 3 of Act 18/99]

- (3) If the office of the Chief Land Claims Commissioner is vacant or if the Chief Land Claims Commissioner is absent or unable to perform any or all of his or her functions, the Deputy Land Claims Commissioner shall act in his or her stead and whilst the Deputy Land Claims Commissioner so acts, he or she shall perform all the functions of the Chief Land Claims Commissioner.

[Subs. (3) substituted by s. 3 of Act 18/99]

- (3A) If the office of a regional land claims commissioner is vacant or if a regional land claims commissioner is absent or unable to perform any or all of his or her functions, an acting regional land claims commissioner appointed by the Minister shall act in his or her stead and whilst the acting regional land claims commissioner so acts, he or she shall perform all the functions of the regional land claims commissioner.

[Subs. (3A) inserted by s. 3 of Act 18/99]

- (4) A regional land claims commissioner may, instead of performing any function in any particular case, refer the matter to the Commission for the Commission to perform such function at a meeting contemplated in [section 5](#).

## **8. Performance of work of Commission**

- (1) The work incidental to the performance of the functions of the Commission shall be performed by officers appointed and seconded to the Commission in terms of the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and designated in general or for a specific purpose by the Minister after consultation with the Commission.
- (2) In making a designation in terms of subsection (1), the Minister and the Commission shall seek to ensure that the staff of the Commission shall be broadly representative of the South African population.

- (3) Designated officers shall perform their functions under the control and supervision of the Chief Land Claims Commissioner or regional land claims commissioner, as the case may be.

[S. 8 substituted by s. 2 of Act 61/98]

## **9. Appointment of persons or organisations to assist Commission on ad hoc basis**

- (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;
  - (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;
  - (c) request any government department, provincial administration, local authority or person in the service of the State, a 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.
- (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 shall be made from moneys appropriated by Parliament for this purpose and shall be determined by the Minister in consultation with the Minister of Finance.

[S. 9 substituted by s. 4 of Act 78/96]

## **10. Lodgement of claims**

- (1) Any person who or the representative of any community which is entitled to claim restitution of a right in land, may lodge such claim, which shall include a description of the land in question, the nature of the right in land of which he, she or such community was dispossessed and the nature of the right or equitable redress being claimed, on the form prescribed for this purpose by the Chief Land Claims Commissioner under [section 16](#).
- (2) The Commission shall make claim forms available at all its offices.
- (3) If a claim is lodged on behalf of a community the basis on which it is contended that the person submitting the form represents such community,

shall be declared in full and any appropriate resolution or document supporting such contention shall accompany the form at the time of lodgement: Provided that the regional land claims commissioner having jurisdiction in respect of the land in question may permit such resolution or document to be lodged at a later stage.

- (4) If there is any dispute as to who legitimately represents a community for the purposes of any claim under this Act, the regional land claims commissioner having jurisdiction may in the manner prescribed in rules made by the Chief Land Claims Commissioner in terms of [section 16](#), in order to have a person or persons elected to represent the community -
  - (a) take steps for drawing up a list of the names of the members of the community;
  - (b) direct that a meeting of such community be convened and an election be held at that meeting;
  - (c) take such other steps as may be reasonably necessary for the election.
- (5) In any election in terms of subsection (4) all members of the community of 18 years or older shall be entitled to vote.
- (6) In making the rules contemplated in subsection (4), the Chief Land Claims Commissioner shall have regard to the cultural values of the community.  
[S. 10 substituted by s. 6 of Act 63/97]

## **11. Procedure after lodgement of claim**

- (1) If the regional land claims commissioner having jurisdiction is satisfied that -
  - (a) the claim has been lodged in the prescribed manner;
  - (b) the claim is not precluded by the provisions of [section 2](#); and
  - (c) the claim is not frivolous or vexatious,he or she shall cause notice of the claim to be published in the *Gazette* and shall take steps to make it known in the district in which the land in question is situated.  
[Subs. (1) amended by s. 5 of Act 78/96 and substituted by s. 4 of Act 18/99]
- (2) The regional land claims commissioner concerned may, on such conditions as he or she may determine, condone the fact that a claim has not been lodged in the prescribed manner.

- (3) A frivolous or vexatious claim may be dismissed by the regional land claims commissioner concerned.
- (4) If the regional land claims commissioner decides that the criteria set out in paragraphs (a), (b) and (c) of subsection (1) have not been met, he or she shall advise the claimant accordingly, and of the reasons for such decision.  
[Subs. (4) substituted by s. 4 of Act 18/99]
- (5) (a) If after an order has been made by the Court as contemplated in [section 35](#) or an agreement has been entered into as contemplated in [section 14](#)(3) or [42D](#), it is shown that another claim was lodged in terms of this Act in respect of the land to which the order or agreement relates, any interested party may apply to the Court for the rescission or variation of such order or the setting aside or variation of such agreement.
- (b) The Court may grant such an application, subject to such terms and conditions as it may determine, or make any other order it deems fit.  
[Subs. (5) substituted by s. 5 of Act 78/96, s. 7 of Act 63/97 and s. 4 of Act 18/99]
- (5A) Where an appeal is pending in respect of an order of the Court contemplated in [section 35](#), an application for the rescission or variation of such order under subsection (5) shall be made to the Constitutional Court or the Supreme Court of Appeal, as the case may be.  
[Subs. (5A) inserted by s. 4 of Act 18/99]
- (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).  
[Subs. (6) substituted by s. 5 of Act 78/96]
- (7) Once a notice has been published in respect of any land -
- (a) no person may in an improper manner obstruct the passage of the claim;
- (aA) no person may sell, exchange, donate, lease, subdivide, rezone or develop the land in question without having given the regional land claims commissioner one month's written notice of his or her intention to do so, and, where such notice was not given in respect of -
- (i) any sale, exchange, donation, lease, subdivision or rezoning of land and the Court is satisfied that such sale, exchange, donation,

lease, subdivision or rezoning was not done in good faith, the Court may set aside such sale, exchange, donation, lease, subdivision or rezoning or grant any other order it deems fit;

- (ii) any development of land and the Court is satisfied that such development was not done in good faith, the court may grant any order it deems fit;
- (b) no claimant who occupied the land in question at the date of commencement of this Act may be evicted from the said land without the written authority of the Chief Land Claims Commissioner;
- (c) no person shall in any manner whatsoever remove or cause to be removed, destroy or cause to be destroyed or damage or cause to be damaged, any improvements upon the land without the written authority of the Chief Land Claims Commissioner;
- (d) no claimant or other person may enter upon and occupy the land without the permission of the owner or lawful occupier.  
[Subs. (7) substituted by s. 5 of Act 78/96 and s. 7 of Act 63/97]
- (8) The regional land claims commissioner may, at any time after the publication of a notice contemplated in subsection (1), if he or she has reason to believe that any improvement on the land is likely to be removed, damaged or destroyed or that any person resident on such land may be adversely affected as a result of the publication of such notice, authorise any person contemplated in [section 8](#) or [9](#) to enter upon such land for the purpose of drawing up an inventory of any assets on the land, a list of persons employed or resident on the land, or a report on the agricultural condition of the land and of any excavations, mining or prospecting thereon.

#### **11A. Withdrawal or amendment of notice of claim**

- (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.
- (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) and (c) of [section 11](#)(1) have not been met, he or she shall publish in the *Gazette* and send by registered post to -
  - (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.

[Subs. (2) amended by s. 5 of Act 18/99]

- (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;
  - (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*.

[S. 11A inserted by s. 6 of Act 78/96]

## **12. Commission's power of investigation**

- (1) The Commission may, through a member of the Commission or any person authorised thereto in writing, in order to carry out its functions -
  - (a) conduct an investigation;
  - (b) demand from any person including any government department such particulars, documents and information as may be necessary in connection with any investigation;
  - (c) by notice in writing, addressed and delivered by a member of the staff of the Commission or a sheriff to any person, direct such person, in relation to an investigation, to appear before a member of the



Commission at a time and place mentioned in such notice and to produce to such member all documents or objects in the possession or custody or under the control of such person and which are relevant to that investigation.

- (2) Any person directed to produce documents or objects in terms of subsection (1)(c) shall not be compelled to produce any document or object which could be used in evidence against him or her in a criminal trial.
- (3) If a claimant is not able to provide all the information necessary for the adequate submission or investigation of a claim, the regional land claims commissioner concerned shall direct an officer contemplated in [section 8](#) to take all reasonable steps to have this information made available.
- (4) If at any stage during the course of an investigation by the Commission, the Chief Land Claims Commissioner is of the opinion that the resources of the Commission or the Court would be more effectively utilised if all claims for restitution in respect of the land, or area or township in question, were to be investigated at the same time, he or she shall cause to be published in the *Gazette* and in such other manner as he or she deems appropriate, a notice advising potential claimants of his or her decision and inviting them, subject to the provisions of [section 2](#), to lodge claims within a period specified in such notice.

[Subs. (4) substituted by s. 8 of Act 63/97]

- (5) No claim in respect of a matter contemplated in subsection (4) shall be lodged after the expiry of the period specified in the said notice: Provided that the Commission may allow a claimant on good cause shown, to lodge a claim after the expiry of such period, but not later than 31 December 1998.

[Subs. (5) substituted by s. 8 of Act 63/97]

### **13. Mediation**

- (1) If at any stage during the course of the Commission's investigation it becomes evident that -
  - (a) there are two or more competing claims in respect of the same land;  
[Para. (a) substituted by s. 9 of Act 63/97]
  - (b) in the case of a community claim, there are competing groups within the claimant community making resolution of the claim difficult;
  - (c) where the land which is subject to the claim is not stateowned land, the owner or holder of rights in such land is opposed to the claim; or
  - (d) there is any other issue which might usefully be resolved through mediation and negotiation,

the Chief Land Claims Commissioner may direct the parties concerned to attempt to settle their dispute through a process of mediation and negotiation.

- (2) (a) A direction contemplated in subsection (1) shall be made in a written notice specifying the time when and the place where such process is to start.
- (b) The Chief Land Claims Commissioner shall appoint a mediator to chair the first meeting between the parties: Provided that the parties may at any time during the course of mediation or negotiation by agreement appoint another person to mediate the dispute.
- (3) A person appointed by the Chief Land Claims Commissioner in terms of subsection (2)(b) shall either be an officer contemplated in [section 8](#) who is a fit and proper person to conduct such a process of mediation and negotiation or an independent mediator contemplated in [section 9](#)(1)(b).
- (4) All discussions taking place and all disclosures and submissions made during the mediation process shall be privileged, unless the parties agree to the contrary.

#### **14. Referral of claims to Court**

- (1) If upon completion of an investigation by the Commission in respect of specific claim -
  - (a) the parties to any dispute arising from the claim agree in writing that it is not possible to settle the claim by mediation and negotiation;
  - (b) the regional land claims commissioner certifies that it is not feasible to resolve any dispute arising from such claim by mediation and negotiation; or
  - (c) .....
  - (d) the regional land claims commissioner is of the opinion that the claim is ready for hearing by the Court,

the regional land claims commissioner having jurisdiction shall certify accordingly and refer the matter to the Court.

[Subs. (1) substituted by s. 6 of Act 18/99]

- (2) Any claim referred to the Court as a result of a situation contemplated in subsection (1)(a), (b) or (d) shall be accompanied by a document -

- (a) setting out the results of the Commission's investigation into the merits of the claim;
  - (b) reporting on the failure of any party to accede to mediation;
  - (c) containing a list of the parties who have an interest in the claim;  
[Para. (c) substituted by s. 7 of Act 78/96]
  - (d) setting out the Commission's recommendation as to the most appropriate manner in which the claim can be resolved.
- (3) If in the course of an investigation by the Commission the interested parties enter into a written agreement as to how the claim should be finalised and the regional land claims commissioner having jurisdiction certifies in writing that he or she is satisfied with the agreement and that the agreement ought not to be referred to the Court, the agreement shall be effective only from the date of such certification or such later date as may be provided for in the agreement.  
[Subs. (3) substituted by s. 6 of Act 18/99]
- (3A) If the regional land claims commissioner having jurisdiction is of the opinion that -
- (i) a question of law arising out of the agreement needs to be resolved;
  - (ii) there is doubt as to whether or not all parties who have an interest in the claim are parties to the agreement;
  - (iii) there is doubt as to the validity of the agreement or any part of it;
  - (iv) there is doubt as to the feasibility of the implementation of the agreement;
  - (v) the agreement does not comply with [section 42D\(2\)](#);
  - (vi) the agreement is not just and equitable in respect of any party;
  - (vii) the agreement is contrary to any provision of the Act;
  - (viii) the authority of any signatory is in doubt;
  - (ix) the agreement is vague or contradictory;
  - (x) the parties to the agreement agree that it is desirable that the agreement be made an order of Court;

- (xi) the agreement ought to be referred to the Court for any other good reason,

he or she may refer the matter to the Court.

[Subs. (3A) inserted by s. 6 of Act 18/99]

- (4) A referral under subsection (3A) shall be accompanied by a copy of the relevant deed of settlement and a report containing -
  - (a) concise information about the background to the claim and the settlement;
  - (b) information necessary for the Court to establish whether or not it has jurisdiction;
  - (c) the reasons for the referral of the matter to the Court; and
  - (d) the regional land claims commissioner's recommendations, if any, as to how the matter should be dealt with.

[Subs. (4) substituted by s. 6 of Act 18/99]

- (5) Any interested party shall be entitled, upon payment of the prescribed fee, to copies of the documents contemplated in this section, including the submissions of other interested parties in relation to any matter contemplated in this section.

(5A).....

[Subs. (5A) inserted by s. 7 of Act 78/96 and deleted by s. 10 of Act 63/97]

- (6) Subject to the provisions of [Chapter IIIA](#), the Court shall not make any order in terms of [section 35](#) unless the Commission has, in respect of the claim in question, acted in accordance with the provisions of this section: Provided that the Court may, on good cause shown, condone any noncompliance with the provisions of this section.

[Subs. (6) substituted by s. 10 of Act 63/97 and amended by s. 6 of Act 18/99]

(7) .....

[Subs. (7) deleted by s. 7 of Act 78/96]

**15.** .....

[S. 15 amended by s. 8 of Act 78/96 and repealed by s. 11 of Act 63/97]

## **16. Rules regarding procedure of Commission**

- (1) After consultation with the Minister, the Chief Land Claims Commissioner may make rules regarding -

- (a) any matter which, in terms of this Chapter, is required or permitted to be prescribed;
  - (b) the filing of claims;
  - (c) any steps which may be taken to give public notice of claims and notice to persons who have an interest in any matter under investigation by the Commission;
  - (d) the giving of notice to parties to attend a meeting for the purpose of mediating or negotiating the settlement of disputes;
  - (e) the giving of notice to parties and public notices giving notice that the Commission will consider any related claims in respect of specific land, a neighbourhood or township within a stipulated period;
  - (f) the order of preference to be given to claims or categories of claims in order to achieve the result contemplated in [section 6\(2\)\(d\)](#); and
  - (g) generally, with regard to any other matter which he or she considers it necessary or expedient to prescribe in order to achieve or promote the objects of this Act.
- (2) The generality of subsection (1) shall not be limited by the preceding sections of this Chapter.
- (3) Rules made under the provisions of subsection (1) shall be published in the *Gazette*.

## 17. Offences and penalties

Any person who -

- (a) contravenes the provisions of [section 11\(7\)\(a\)](#), (aA), (b), (c), or (d);  
[Para. (a) substituted by s. 12 of Act 63/97]
- (b) having been directed to appear before a member of the Commission and to produce documents or objects in terms of [section 12\(1\)\(c\)](#), fails to appear at the specified time and place or to produce such documents or objects;
- (c) hinders or obstructs the Commission in the performance of its functions;
- (d) prevents or attempts to prevent a duly authorised officer contemplated in [section 8](#), or a person or organisation appointed in terms of [section 9](#), from performing a function in terms of this Act,  
[Para. (d) substituted by s. 12 of Act 63/97]

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

**18. Limitation of liability**

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.

[S. 18 substituted by s. 9 of Act 78/96]

**19. Expenditure of Commission**

- (1) All expenditure in connection with the performance of the Commission's functions shall be defrayed from moneys appropriated by Parliament for such purpose.
- (2) A person appointed in terms of [section 4](#)(3) who is not in the full-time service of the State may, from moneys appropriated by Parliament for such purpose, be paid such remuneration and allowances in respect of services performed in connection with the functions of the Commission, as may be determined by the Minister in consultation with the Minister of Finance.

**20. Annual estimates of expenditure**

The estimates of expenditure in respect of each financial year shall, after being prepared by the Chief Land Claims Commissioner or an official contemplated in [section 8](#)(1) and designated by the Chief Land Claims Commissioner, be submitted, not later than the first day of August of the preceding financial year to the Director-General of Land Affairs, who shall be the accounting officer.

**21. Annual report**

The Commission shall annually not later than the first day of June submit to Parliament a report on all its activities during the previous year, up to 31 March.

**CHAPTER III**

**THE LAND CLAIMS COURT**

**22. Land Claims Court**

- (1) There shall be a court of law to be known as the Land Claims Court which shall have the power, to the exclusion of any court contemplated in [section 166](#) (c), (d) or (e) of the Constitution -

- (a) to determine a right to restitution of any right in land in accordance with this Act;
  - (b) to determine or approve compensation payable in respect of land owned by or in the possession of a private person upon expropriation or acquisition of such land in terms of this Act;
  - (c) to determine the person entitled to title to land contemplated in [section 3](#);
  - (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 25](#)(7) 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;
  - (cB) to determine whether compensation or any other consideration received by any person at the time of any dispossession of a right in land was just and equitable;
  - (cC) to determine any matter involving the interpretation or application of this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), with the exception of matters relating to the definition of “occupier” in [section 1](#) (1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997);  
[Para. (cC) substituted by s. 4 of Act 11/2000]
  - (cD) to decide any constitutional matter in relation to this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).
  - (cE) to determine any matter involving the validity, enforceability, interpretation or implementation of an agreement contemplated in [section 14](#)(3), unless the agreement provides otherwise;  
[Para. (cE) inserted by s. 7 of Act 18/99]
  - (d) to determine all other matters which require to be determined in terms of this Act.  
[Subs. (1) amended by s. 10 of Act 78/96 and substituted by s. 13 of Act 63/97]
- (2) Subject to [Chapter 8](#) of the Constitution, the Court shall have jurisdiction throughout the Republic and shall have -
- (a) all such powers in relation to matters falling within its jurisdiction as are possessed by a High Court having jurisdiction in civil proceedings at the place where the land in question is situated, including the powers of a High Court in relation to any contempt of the Court;

- (b) all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and interdicts;
- (c) the power to decide any issue either in terms of this Act or in terms of any other law, which is not ordinarily within its jurisdiction but is incidental to an issue within its jurisdiction, if the Court considers it to be in the interests of justice to do so.

[Para. (c) added by s. 7 of Act 18/99]

[Subs. (2) substituted by s. 10 of Act 78/96 and s. 13 of Act 63/97]

- (3) There shall be a President of the Court, who shall be appointed by the President of the Republic, acting on the advice of the Judicial Service Commission.
- (4) The President of the Republic may, after consultation with the President of the Court and the Judicial Service Commission, appoint additional judges of the Court.
- (5) The President of the Court and the additional judges of the Court may be appointed for a fixed term.
- (6) A judge of a High Court may be seconded to serve as a judge of the Court.  
[Subs. (6) amended by s. 13 of Act 63/97]
- (7) The President of the Republic shall designate a judge of the Court to act as President of the Court during the absence of the President of the Court.  
[Subs. (7) added by s. 1 of Act 84/95]
- (8) If there is sufficient reason the President of the Republic may, after consultation with the President of the Court, appoint an 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.  
[Subs. (8) added by s. 1 of Act 84/95 and substituted by s. 10 of Act 78/96]
- (9) (a) Proceedings in which a judge of the Court has participated and which have not  
been disposed of at the termination of his or her term of service or, having been disposed of before or after such termination, are reopened, shall be disposed of by that judge.
- (b) For the purposes of paragraph (a) any appointment made under this section shall be deemed also to have been made for the time in which the proceedings referred to in paragraph (a) are being disposed of.



[Subs. (9) added by s. 1 of Act 84/95]

## **23. Qualifications of judges of Court**

No person shall be qualified to be appointed President of the Court or a judge of the Court unless he or she -

- (a) is a South African citizen;
- (b) is a fit and proper person to be a judge of the Court; and
- (c) (i) is a judge of a High Court or is qualified to be admitted as an advocate or attorney  
and has, for a cumulative period of at least ten years, practised as an advocate or an attorney or lectured in law at a university; or  
[Sub-para. (i) amended by s. 14 of Act 63/97]  
(ii) by reason of his or her training and experience, has expertise in the fields of law and land matters relevant to the application of this Act and the law of the Republic.

## **24.....**

[S. 24 repealed by s. 15 of Act 63/97]

## **25. Holding of office**

- (1) The provisions of [sections 174\(8\)](#) and [177](#) 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 of the Court.  
[Subs. (1) substituted by s. 16 of Act 63/97]
- (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.

[S. 25 substituted by s. 11 of Act 78/96]

## **26. Remuneration and conditions of employment of judges**

- (1) The President and a judge of the Court not being a judge of a High Court, shall receive such remuneration and shall, subject to [section 22\(5\)](#), be appointed subject to such conditions of employment as determined by the President of the Republic in consultation with the Judicial Service

Commission, and his or her remuneration shall not be reduced during his or her term of service.

[Subs. (1) amended by s. 17 of Act 63/97]

- (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.

[Subs. (2) inserted by s. 12 of Act 78/96]

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

[Subs. (3) inserted by s. 12 of Act 78/96]

- (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.

[Subs. (4), previously Subs. (2), substituted by s. 12 of Act 78/96]

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

[Subs. (5), previously Subs. (3), substituted by s. 12 of Act 78/96]

[S. 26 substituted by s. 2 of Act 84/95]

## **26A. Secondment of judges and appointment of acting judges to Land Claims Court**

- (1) Notwithstanding [sections 22](#)(3), (4), (5), (6), (7), (8) and (9), [23](#), [25](#) and [26](#), the Minister of Justice must, after consultation with the Minister, at the expiry of the fixed term contemplated in [section 22](#)(5) cause such number of judges of the High Court as may be necessary to be seconded to serve as judges of the Court.
- (2) The Minister may request the Minister of Justice to appoint an acting judge of the Court in accordance with [section 175](#)(2) of the Constitution for such period as may be necessary.
- (3) The President of the Republic shall, after consultation with the Minister of Justice, designate one of the seconded judges or an acting judge appointed under subsection (2), to act as President of the Court.
- (4) Proceedings in which -
- (a) a seconded judge or acting judge has participated and which have not been disposed of during the secondment or the term of service or, having been disposed of before or after such secondment or term, are reopened; or

- (b) a judge of the Court appointed under [section 22](#) has participated and which have not been disposed of at the expiry of the fixed term contemplated in subsection (1) or, having been disposed of before or after such expiry, are reopened,

must be disposed of by that judge.

[S. 26A inserted by s. 5 of Act 11/2000]

## **27. Appointment of assessors**

- (1) The assessors contemplated in [section 28](#)(4) shall be appointed by the presiding judge from a list compiled from time to time by the Minister after -
  - (a) inviting nominations from the general public; and
  - (b) consultation with the President of the Court.
- (2) An assessor of the Court 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 that an assessor shall have any legal qualifications.
- (3) An assessor shall receive such remuneration and be entitled to such benefits as may be determined by the Minister of Justice in consultation with the Minister of Finance and the President of the Court.

[S. 27 substituted by s. 13 of Act 78/96]

## **28. Seat and hearings of Court**

- (1) The seat or seats of the Court shall be determined by the Minister of Justice in consultation with the President of the Court.
- (2) The Court may notwithstanding the provisions of subsection (1) conduct hearings at any other place in the Republic with a view to making the Court accessible to claimants.
- (3) Hearings of the Court shall be presided over by a single judge unless the President of the Court or in his or her absence the most senior available judge decides to the contrary.
- (4) At least one assessor shall assist the Court at a contested hearing of -
  - (a) any claim which has been referred to the Court in terms of [section 14](#);
  - (b) any application in terms of [section 34](#); and
  - (c) any application in terms of [Chapter IIIA](#):

Provided that this requirement shall not apply in respect of -

- (i) any hearing where the only matters in dispute are questions of law;
- (ii) any interlocutory or preliminary hearing or pre-trial proceedings, unless the Court decides otherwise;  
[Sub-para. (ii) substituted by s. 8 of Act 18/99]
- (iii) any proceedings dealing with contempt of the Court.  
[Subs. (4) substituted by s. 14 of Act 78/96 and s. 18 of Act 63/97]

- (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.

[Subs. (5) substituted by s. 14 of Act 78/96]

- (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.

[Subs. (6) added by s. 14 of Act 78/96]

- (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.

[Subs. (7) added by s. 14 of Act 78/96]

- (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.

[Subs. (8) added by s. 14 of Act 78/96]

- (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.  
[Subs. (9) added by s. 14 of Act 78/96]
- (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).  
[Subs. (10) added by s. 14 of Act 78/96]

#### **28A. Seals of Court**

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.

[S. 28A inserted by s. 15 of Act 78/96]

#### **28B. Proceedings to be conducted in open court**

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

[S. 28B inserted by s. 15 of Act 78/96]

#### **28C. Reference of particular matters for investigation by referee**

- (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.

[S. 28C inserted by s. 15 of Act 78/96]

**28D. No process to be issued against judge of Court except with consent of court**

- (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 a High Court which has jurisdiction to hear and determine an appeal in a civil action from such lower court, has consented thereto.

[Subs. (1) amended by s. 19 of Act 63/97]

- (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, the Supreme Court of Appeal or a High 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).

[Subs. (3) substituted by s. 19 of Act 63/97]

[S. 28D inserted by s. 15 of Act 78/96]

**28E. Judgment by default**

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.

[S. 28E inserted by s. 15 of Act 78/96]

**28F. Manner of securing attendance of witnesses or production of any document or thing in proceedings before Court**

- (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.

[S. 28F inserted by s. 15 of Act 78/96]

**28G. Manner in which witnesses may be dealt with on refusal to give evidence or produce any document or thing**

- (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.

[S. 28G inserted by s. 15 of Act 78/96]

## **28H. Examination by interrogatories of persons whose evidence is required in proceedings before Court**

- (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.
- (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.
- (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.

[S. 28H inserted by s. 15 of Act 78/96]

## **28I. Appointment of officers of Court**

- (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.
- (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.  
[Subs. (2) amended by s. 20 of Act 63/97 and s. 43 of Act 30/2007]
- (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.

- (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).
- (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.

[S. 28I inserted by s. 15 of Act 78/96]

#### **28J. Finances and accountability**

- (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 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 193](#) of the Constitution.

[Para. (b) substituted by s. 21 of Act 63/97]

[S. 28J inserted by s. 15 of Act 78/96]

#### **28K. Scope and execution of process of Court**

- (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.

[S. 28K inserted by s. 15 of Act 78/96]

#### **28L. Offences relating to execution**

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.

[S. 28L inserted by s. 15 of Act 78/96]

#### **28M. Witness fees**

- (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.

[S. 28M inserted by s. 15 of Act 78/96]

## **28N. Powers of Court on hearing of appeals**

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.

[S. 28N inserted by s. 15 of Act 78/96]

## **28O. Application of provisions of this Chapter in respect of performance by Court of its functions under other legislation**

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.

[S. 28O inserted by s. 15 of Act 78/96]

## **29. Intervention to proceedings before Court, right to appear and legal representation**

- (1) 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.
- (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.

[S. 29 substituted by s. 16 of Act 78/96]

### **30. Admissibility of evidence**

- (1) The Court may admit any evidence, including oral evidence, which it considers relevant and cogent to the matter being heard by it, whether or not such evidence would be admissible in any other court of law.
- (2) Without derogating from the generality of the foregoing subsection, it shall be competent for any party before the Court to adduce -
  - (a) hearsay evidence regarding the circumstances surrounding the dispossession of the land right or rights in question and the rules governing the allocation and occupation of land within the claimant community concerned at the time of such dispossession; and
  - (b) expert evidence regarding the historical and anthropological facts relevant to any particular claim.
- (3) The Court shall give such weight to any evidence adduced in terms of subsections (1) and (2) as it deems appropriate.
- (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.

[Subs. (4) added by s. 17 of Act 78/96]

### **31. Pre-trial conference**

- (1) The Court may, at its own instance or at the request of any party before it, at any stage prior to the hearing of a matter convene a pre-trial conference of the parties with a view to clarifying the issues in dispute, identifying those issues on which evidence will be necessary and, in general, expediting a decision on the claim in question.
- (2) The Court may, after the holding of such a pre-trial conference, issue such orders and directions as to the procedure to be followed before and during the trial as it deems appropriate.

### **32. Rules governing procedure**

- (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;
  - (cA) the practice and procedure of the Court in applications in terms of [Chapter IIIA](#); and  
 [Para. (cA) inserted by s. 22 of Act 63/97]
  - (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.  
 [Subs. (1) substituted by s. 18 of Act 78/96]
- (2) The rules contemplated in subsection (1) shall be published in the *Gazette*.
- (3) Notwithstanding anything to the contrary in this Act or in the rules contemplated in subsection (1) -
- (a) the Court may, at any stage after a claim has been referred to it, refer the claim back to the Commission with directives as to matters which are to be investigated and reported on by the Commission; and
  - (b) the Court may conduct any part of any proceedings on an informal or inquisitorial basis.
- (4) The rules contemplated in subsection (1) shall make provision for the expeditious hearing of an application in terms of [section 34](#).

### **33. Factors to be taken into account by Court**

In considering its decision in any particular matter the Court shall have regard to the following factors:

- (a) The desirability of providing for restitution of rights in land to any person or community dispossessed as a result of past racially discriminatory laws or practices;
- (b) the desirability of remedying past violations of human rights;
- (c) the requirements of equity and justice;

- (cA) if restoration of a right in land is claimed, the feasibility of such restoration;
- (d) the desirability of avoiding major social disruption;
- (e) any provision which already exists, in respect of the land in question in any matter, for that land to be dealt with in a manner which is designed to protect and advance persons, or categories of persons, disadvantaged by unfair discrimination in order to promote the achievement of equality and redress the results of past racial discrimination;
- (eA) the amount of compensation or any other consideration received in respect of the dispossession, and the circumstances prevailing at the time of the dispossession;
- (eB) the history of the dispossession, the hardship caused, the current use of the land and the history of the acquisition and use of the land;
- (eC) in the case of an order for equitable redress in the form of financial compensation, changes over time in the value of money;
- (f) any other factor which the Court may consider relevant and consistent with the spirit and objects of the Constitution and in particular the provisions of [section 9](#) of the Constitution.

[S. 33 substituted by s. 23 of Act 63/97]

#### **34. Ruling by Court on restoration before final determination of claim**

- (1) Any national, provincial or local government body may, in respect of land which is owned by it or falls within its area of jurisdiction, make application to the Court for an order that the land in question or any rights in it shall not be restored to any claimant or prospective claimant.
- (2) Notice of any such application shall be given to the Commission, which shall investigate and submit a report to the Court on the desirability of making an order referred to in subsection (1): Provided that the provisions of [sections 12](#) and [13](#) shall not be so construed that it prohibits the Commission from exercising the powers conferred by those sections for the purposes of such investigation.

[Subs. (2) substituted by s. 24 of Act 63/97]

- (3) Any party making an application to the Court in terms of subsection (1) shall, at its own expense, take such steps as the relevant regional land claims commissioner (or in the case of proceedings in terms of [Chapter IIIA](#), the Court) may direct in order to bring the application to the attention of other persons who may have an interest therein, in order that they may make submissions to and appear before the Court on the hearing of the application.

[Subs. (3) substituted by s. 24 of Act 63/97]



- (4) The regional land claims commissioner concerned shall take such further steps as he or she deems appropriate to bring the application to the attention of persons who may have an interest.
- (5) After hearing an application contemplated in subsection (1), the Court may -
  - (a) dismiss the application;
  - (b) order that when any claim in respect of the land in question is finally determined, the rights in the land in question, or in part of the land, or certain rights in the land, shall not be restored to any claimant;
  - (c) make any other order it deems fit.

[Subs. (5) substituted by s. 24 of Act 63/97]
- (6) The Court shall not make an order in terms of subsection (5)(b) unless it is satisfied that -
  - (a) it is in the public interest that the rights in question should not be restored to any claimant; and
  - (b) the public or any substantial part thereof will suffer substantial prejudice unless an order is made in terms of subsection (5)(b) before the final determination of any claim.
- (7) .....
 

[Subs. (7) deleted by s. 19 of Act 78/96]
- (8) Any order made in terms of subsection (5)(b) shall be binding on all claimants to the rights in question, whether such claim is lodged before or after the making of the order.
- (9) Unless the Court orders otherwise, the applicant shall not be entitled to any order for costs against any other party.
 

[Subs. (9) added by s. 24 of Act 63/97]

### **35. Court orders**

- (1) The Court may order -
  - (a) the restoration of land, a portion of land or any right in land in respect of which the claim or any other claim is made to the claimant or award any land, a portion of or a right in land to the claimant in full or in partial settlement of the claim and, where necessary, the prior acquisition or expropriation of the land, portion of land or right in land: Provided that the claimant shall not be awarded land, a portion of land

or a right in land dispossessed from another claimant or the latter's ascendant, unless -

- (i) such other claimant is or has been granted restitution of a right in land or has waived his or her right to restoration of the right in land concerned; or
- (ii) the Court is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land;

[Para. (a) amended by s. 9 of Act 18/99]

- (b) the State to grant the claimant an appropriate right in alternative state-owned land and, where necessary, order the State to designate it;
- (c) the State to pay the claimant compensation;
- (d) the State to include the claimant as a beneficiary of a State support programme for housing or the allocation and development of rural land;
- (e) the grant to the claimant of any alternative relief.

[Subs. (1) substituted by s. 25 of Act 63/97]

(2) The Court may in addition to the orders contemplated in subsection (1) -

- (a) determine conditions which must be fulfilled before a right in land can be restored or granted to a claimant;
- (b) if a claimant is required to make any payment before the right in question is restored or granted, determine the amount to be paid and the manner of payment, including the time for payment;
- (c) if the claimant is a community, determine the manner in which the rights are to be held or the compensation is to be paid or held;
- (d) .....
- (e) give any other directive as to how its orders are to be carried out, including the setting of time limits for the implementation of its orders;
- (f) make an order in respect of compensatory land granted at the time of the dispossession of the land in question;
- (fA) make appropriate orders to give effect to any agreement between the parties regarding the finalisation of the claim;

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

[Subs. (2) amended by s. 20 of Act 78/96 and substituted by s. 25 of Act 63/97]

- (3) An order contemplated in subsection (2)(c) shall be subject to such conditions as the Court considers necessary to ensure that all the members of the dispossessed community shall have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including a tenant, and which ensures the accountability of the person who holds the land or compensation on behalf of the community to the members of such community.

[Subs. (3) substituted by s. 9 of Act 18/99]

- (4) The Court's power to order the restitution of a right in land or to grant a right in alternative state-owned land shall include the power to adjust the nature of the right previously held by the claimant, and to determine the form of title under which the right may be held in future.

- (5) .....

[Subs. (5) substituted by s. 25 of Act 63/97 and s. 9 of Act 18/99 and deleted by s. 1 of Act 48/2003]

- (5A).....

[Subs. (5A) inserted by s. 9 of Act 18/99 and deleted by s. 1 of Act 48/2003]

- (6) In making any award of land, the Court may direct that the rights of individuals to that land shall be determined in accordance with the procedures set out in the Distribution and Transfer of Certain State Land Act, 1993 (Act No. 119 of 1993).

- (7) An order of the Court shall have the same force as an order of the Supreme Court for the purposes of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

- (8) .....

[Subs. (8) deleted by s. 20 of Act 78/96]

- (9) Any state-owned land which is held under a lease or similar arrangement shall be deemed to be in the possession of the State for the purposes of subsection (1)(a): Provided that, if the Court orders the restoration of a right in such land, the lawful occupier thereof shall be entitled to just and equitable compensation determined either by agreement or by the Court.

[Subs. (9) substituted by s. 25 of Act 63/97]

- (10) An interested party which is of the opinion that an order of the Court has not been fully or timeously complied with may make application to the Court for further directives or orders in that regard.

- (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.

[Subs. (11) added by s. 20 of Act 78/96]

- (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.

[Subs. (12) added by s. 20 of Act 78/96]

### **35A. Mediation**

- (1) If at any stage during proceedings under this Act or any other Act conferring jurisdiction upon the Court it becomes evident that there is any issue which might be resolved through mediation and negotiation, the Court may make an order -
- (a) directing the parties concerned to attempt to settle the issue through a process of mediation and negotiation;
  - (b) that such proceedings be stayed pending such process.
- [Subs. (1) amended by s. 3 of Act 61/98]
- (2) (a) An order contemplated in subsection (1) shall specify the time when and the place where such process is to start.

- (b) The Court shall appoint a fit and proper person as mediator to chair the first meeting between the parties: Provided that the parties may at any time during the course of mediation or negotiation by agreement appoint another person to mediate the dispute.
- (3) A mediator appointed in terms of subsection (2)(b) who is not in the full-time service of the State may be paid such remuneration and allowances in respect of the services performed by him or her as may be determined by the Minister in consultation with the Minister of Finance and the President of the Court.
- (4) All discussion taking place and all disclosures and submissions made during the mediation process shall be privileged, unless the parties agree to the contrary.

[S. 35A inserted by s. 26 of Act 63/97]

### **36. Review of decisions of Commission**

- (1) Any party aggrieved by any act 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.

[Subs. (1) substituted by s. 21 of Act 78/96]

- (2) The Court shall exercise all of the Supreme Court's powers of review with regard to such matters, to the exclusion of the provincial and local divisions thereof.

### **37. Appeals from Court**

- (1) No appeal shall lie against a judgment or order of the Court except with leave of the Court or, where such leave has been refused, with the leave of the Supreme Court of Appeal.

[Subs. (1) substituted by s. 27 of Act 63/97]

- (2) An appeal from a judgment or order of the Court shall be heard by the Supreme Court of Appeal.

[Subs. (2) amended by s. 27 of Act 63/97]

- (3) The Supreme Court of Appeal may, in granting leave to appeal, vary any order for costs made by the Court in refusing leave to appeal.

[Subs. (3) amended by s. 27 of Act 63/97]

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

- (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.

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

[Subs. (5) amended by s. 27 of Act 63/97]

- (6) The Supreme Court of Appeal 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.

[Subs. (6) amended by s. 27 of Act 63/97]

- (7) (a) An application to the Supreme Court of Appeal in terms of subsection (6) -

(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 Supreme Court of Appeal, to the registrar of the Court and to all other parties in the proceedings before the Court.

- (b) The application shall be considered by two judges of the Supreme Court of Appeal 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 -

(i) grant or refuse the application; or

(ii) refer the application to the Supreme Court of Appeal for consideration, whether upon argument or otherwise,

and where an application has been so referred, the Supreme Court of Appeal may thereupon grant or refuse the application.

- (d) The decision of the majority of the judges considering the application, or the decision of the Supreme Court of Appeal, 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 Supreme Court of Appeal.

[Subs. (7) amended by s. 27 of Act 63/97]

- (8) The Supreme Court of Appeal shall, on the hearing of any appeal from the Court have the power -

- (a) to receive further evidence;
- (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 Supreme Court of Appeal 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.

[Subs. (8) amended by s. 27 of Act 63/97]

- (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.

- (10) For the purposes of this section “Supreme Court of Appeal” means the Supreme Court of Appeal referred to in [section 168](#) of the Constitution.

[Subs. (10) added by s. 27 of Act 63/97]

[S. 37 substituted by s. 22 of Act 78/96]

### **38. Decisions of Court a matter of public record**

The decisions of the Court shall be a matter of public record on the same basis as decisions of a High Court.

[S. 38 amended by s. 28 of Act 63/97]

## **CHAPTER IIIA**

### **DIRECT ACCESS TO COURT**

#### **38A. Definitions**

In this Chapter, unless the context indicates otherwise -

“**Director-General**” means the Director-General of Land Affairs;

“**registrar**” means the registrar of the Court;

**“the regional land claims commissioner”** means the regional land claims commissioner having jurisdiction in respect of the land to which an application in terms of this Chapter relates.

[S. 38A inserted by s. 29 of Act 63/97]

### **38B. Application to Court for restitution of right in land**

- (1) Notwithstanding anything to the contrary contained in this Act, any person who or the representative of any community which is entitled to claim restitution of a right in land and has lodged a claim not later than 31 December 1998 may apply to the Court for restitution of such right: Provided that leave of the Court to lodge such application shall first be obtained if -
  - (a) an order has been made by the Court in terms of [section 35](#) in respect of a right relating to that land; or
  - (b) a notice has been published in the *Gazette* in terms of [section 12](#)(4) or [38D](#)(1) in respect of that land and the period specified in the said notice has expired.

[Subs. (1) amended by s. 10 of Act 18/99]

- (2) An application contemplated in subsection (1) shall be in the form prescribed by the rules.
- (3) The regional land claims commissioner may at any stage after the lodgement of an application contemplated in subsection (1) suspend the investigation of any claim lodged in terms of [section 10](#) in respect of the land in question until -
  - (a) the Court has ordered that the suspension be lifted; or
  - (b) the application has, in accordance with the rules, been withdrawn,and the applicant has informed the regional land claims commissioner accordingly.
- (4) The Court may at any stage of the proceedings order that all claims lodged in terms of [section 10](#) in respect of the land in question be transferred to the Court, whereupon the regional land claims commissioner shall forward without delay all documents in his or her possession pertaining to such claims to the registrar.
- (5) Where all interested parties have reached agreement as to how the claim should be finalised, the Court may make the agreement an order of the Court.
- (6) After hearing the application, the Court may -



- (a) make any order in terms of [section 35](#);
- (b) dismiss the application;
- (c) transfer all the claims before the Court in respect of the land in question to the regional land claims commissioner: Provided that the regional land claims commissioner shall not by virtue of such transfer be obliged to give priority to any claim so transferred;
- (d) make no order thereon but grant leave for the applicant to renew the application on the same papers supplemented by such further affidavits and documents as the case may require.

[S. 38B inserted by s. 29 of Act 63/97]

### **38C. Reports by regional land claims commissioner or Director-General**

The regional land claims commissioner or the Director-General may, of his or her own accord, file a report in any application in terms of this Chapter and shall do so if so directed by the Court.

[S. 38C inserted by s. 29 of Act 63/97]

### **38D. Time limit for applications for leave to intervene under certain circumstances**

- (1) If at any stage during proceedings under this Chapter the Court is satisfied that it is necessary or appropriate that all claims for restitution in respect of the land in question be considered at the same time, it may direct the applicant to publish in the *Gazette* and in such other manner as it deems appropriate, a notice advising potential claimants of its decision and inviting them to apply for leave to intervene in the application or action within the period specified in such notice.
- (2) After the expiry of the period contemplated in subsection (1) -
  - (a) no claim in respect of the land in question shall be lodged with the regional land claims commissioner;
  - (b) no application for leave to intervene in order to enforce restitution of a right in such land shall be lodged with the registrar;
  - (c) no application to the Court in terms of [section 38B](#) shall be lodged with the registrar in respect of the land in question:

Provided that the Court may allow a claimant or applicant on good cause shown, to lodge such a claim or application after the expiry of such period, but not later than 31 December 1998.

[S. 38D inserted by s. 29 of Act 63/97]

### **38E. Additional powers of Court**

The Court may, during proceedings under this Chapter and subject to such terms and conditions as it may determine -

- (a) make an order -
  - (i) prohibiting or setting aside the sale, exchange, donation, lease, subdivision, rezoning or development of land to which an application relates, if it is satisfied that such sale, exchange, donation, lease, subdivision, rezoning or development -
    - (aa) defeats or will defeat the achievement of the objects of this Act;
    - (bb) was not or will not be done in good faith;
  - (ii) prohibiting the eviction of any claimant who was resident on the land in question at the date of commencement of this Act;
  - (iii) prohibiting the removal, destruction or damaging of improvements upon the land in question;
  - (iv) prohibiting the entering upon and occupation of the land in question without the permission of the owner or lawful occupier;
- (b) direct the Commission or the Director-General to perform any function necessary or expedient for the exercise of its powers in terms of this Chapter;
- (c) on good cause shown condone any deviation from or noncompliance with the provisions of this Chapter or the rules;
- (d) make recommendations to the Minister regarding the most appropriate form of alternative relief, if any, for those claimants who do not qualify for the restitution of rights in land in terms of the Act; and
- (e) make such other order as in the circumstances appears to be just.

[S. 38E inserted by s. 29 of Act 63/97]

[Chapter IIIA inserted by s. 29 of Act 63/97]

## **CHAPTER IV**

### **MISCELLANEOUS PROVISIONS**

### **39. Register of public land**

In order to facilitate the work of the Commission and the Court, the Minister may take all necessary steps to compile a register of public land, which register shall be open to inspection by claimants and prospective claimants.

#### **40. Regulations**

The Minister may make regulations regarding -

- (a) any matter required or permitted to be prescribed in terms of this Act; and
- (b) generally, all matters which in his or her opinion are necessary or expedient to be prescribed in order to achieve the objects of this Act.

#### **41. Repeal of laws, and savings**

- (1) Sections 88A up to and including 96A of the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991), and the Abolition of Racially Based Land Measures Amendment Act, 1993 (Act No. 110 of 1993), are hereby repealed.
- (2) If an application was, before the commencement of this Act, lodged with the Commission on Land Allocation established in terms of section 89 of the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991) and that Commission has, before the commencement of this Act -
  - (a) made a recommendation in respect of such application, such application shall on request of any interested party; or
  - (b) not made any order or recommendation in respect of such application such application shall,subject to the provisions of subsection (3), be deemed to have been lodged with the Commission in accordance with the provisions of [section 10](#)(1).
- (3) The regional land claims commissioner having jurisdiction may -
  - (a) direct any applicant in respect of an application referred to in subsection (2) to provide the Commission with any further information relevant to the application; and
  - (b) in respect of an application referred to in subsection (2), waive compliance with any or all of the procedures prescribed by or under this Act.

#### **42. Transfer duty and fees**

- (1) The Minister may direct that any transfer duty or other fees payable by a claimant in respect of any transfer of land or of a right in land in terms of this Act shall be defrayed in full or in part from money appropriated by Parliament for that purpose.
- (2) The Minister may, in consultation with the Minister of Finance, direct that no transfer duty, stamp duty or other fees contemplated in subsection (1) shall be paid in respect of a particular transfer under this Act.

#### **42A. Registration of land in name of claimant**

- (1) Where, in terms of this Act, land is acquired or expropriated in order to restore or award the land to a claimant, such land vests in the State, which must transfer it to the claimant.  
[Subs. (1) substituted by s. 2 of Act 48/2003]
- (2) No duty, fee or other charge is payable in respect of any registration in terms of subsection (1).  
[S. 42A inserted by s. 30 of Act 63/97]

#### **42B. Certain laws not applicable in respect of land restored or awarded**

- (1) The laws governing the subdivision of agricultural land shall not apply in respect of any subdivision undertaken in order to restore or award land to any claimant in terms of this Act.
- (2) The laws governing the establishment of townships shall not apply to land restored or awarded to any claimant in terms of this Act, as long as that land is predominantly occupied by that claimant.  
[S. 42B inserted by s. 30 of Act 63/97]

#### **42C. Financial aid**

- (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 -
  - (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 on such land.

[Subs. (1) substituted by s. 4 of Act 61/98 and s. 11 of Act 18/99 and amended by s. 3 of Act 48/2003]

- (2) For the purposes of subsection (1) “development of land” includes the facilitation of the planning of any development of land.
- (3) The Minister may, either in general or in a particular case or in cases of a particular nature and on such conditions as he or she may determine, delegate any power conferred by subsection (1) -
  - (a) to any officer in the Department of Land Affairs;
  - (b) to a Premier of a province;
  - (c) with the concurrence of the Premier of a province, to another member of the Executive Council of that province;
  - (d) with the concurrence of a Municipal Council, to any member of that Municipal Council; or
  - (e) with the concurrence of the relevant Minister, to any officer in any other organ of state.
- (4) Any delegation of a power under subsection (3) -
  - (a) shall be done in writing;
  - (b) shall not prevent the Minister from exercising that power himself or herself; and
  - (c) may at any time be withdrawn in writing by the Minister.
- (5) The Minister may in writing for the purposes of the development of land contemplated in subsection (1) transfer funds contemplated in that subsection to any organ of state.

[S. 42C inserted by s. 30 of Act 63/97]

#### **42D. Powers of Minister in case of certain agreements**

- (1) If the Minister is satisfied that a claimant is entitled to restitution of a right in land in terms of [section 2](#), and that the claim for such restitution was lodged not later than 31 December 1998, he or she may enter into an agreement with the parties who are interested in the claim providing for one or more of the following:
  - (a) The award to the claimant of land, a portion of land or any other right in land : Provided that the claimant shall not be awarded land, a portion of

land or a right in land dispossessed from another claimant or the latter's ascendant, unless -

- (i) such other claimant is or has been granted restitution of a right in land or has waived his or her right to restoration of the right in land in question; or
    - (ii) the Minister is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land;
  - (b) the payment of compensation to such claimant;
  - (c) both an award and payment of compensation to such claimant;
  - (d) .....  
[Para. (d) deleted by s. 4 of Act 48/2003]
  - (e) the manner in which the rights awarded are to be held or the compensation is to be paid or held; or
  - (f) such other terms and conditions as the Minister considers appropriate.
- (2) If the claimant contemplated in subsection (1) is a community, the agreement must provide for all the members of the dispossessed community to have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including a tenant, and which ensures the accountability of the person who holds the land or compensation on behalf of such community to the members of the community.
- (3) The Minister may delegate any power conferred upon him or her by subsection (1) or [section 42C](#) to the Director General of Land Affairs or any other officer of the State or to a regional land claims commissioner.
- (4) The Director General of Land Affairs may with the consent of the Minister delegate to any officer of the State or a regional land claims commissioner any power delegated to the Director General under subsection (3).
- (5) Any delegation under subsection (3) or (4) may be made either in general or in a particular case or in cases of a particular nature and on such conditions as may be determined by the Minister or the Director General of Land Affairs, as the case may be, and the Minister or the Director General is not thereby divested of any power so delegated.
- (6) Expenditure in connection with the exercise of the powers conferred by subsection (1) shall be defrayed from moneys appropriated by Parliament for that purpose.

- (7) The provisions of subsections (1) to (6) and [section 42C](#) shall apply *mutatis mutandis* in respect of an agreement entered into before the commencement of the Land Restitution and Reform Laws Amendment Act, 1999, in terms of which a claimant has waived any or all of his or her rights to relief under this Act.

[S. 42D inserted by s. 30 of Act 63/97 and substituted by s. 12 of Act 18/99]

#### **42E. Acquisition of land, portion of land or right in land for land reform purposes**

- (1) The Minister may purchase, acquire in any other manner or, consistent with the provisions of [section 3](#) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), expropriate land, a portion of land or a right in land-
- (a) in respect of which a claim in terms of this Act has been lodged, for the purpose of-
    - (i) 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
    - (ii) providing alternative relief as contemplated in [section 6\(2\)\(b\)](#); and
  - (b) in respect of which no such claim has been lodged but the acquisition of which is directly related to or affected by such claim, and which will promote the achievement of the purpose contemplated in paragraph (a).
- (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 procedure of the Court in the determination of compensation in terms of subsection (3).

[S. 42E inserted by s. 5 of Act 48/2003]

#### **43. Short title and commencement**

- (1) This Act shall be called the Restitution of Land Rights Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) Different dates may be fixed in respect of different Chapters of this Act.