



## **RESTITUTION OF LAND RIGHTS AMENDMENT BILL**

### **PRIVATE MEMBER'S BILL**

Agri SA wishes to comment on the Restitution of Land Rights Amendment Bill, which was introduced by Mnguni, PJ, a member of Parliament as a Private Member's Bill. Agri SA, is a federation of agricultural organisations, was established in 1904 as the South African Agricultural Union and consists of 9 provincial unions, 24 commodity organisations and 30 corporate members. Agri SA, through its affiliated membership represents a diverse grouping of individual farmers regardless of gender, colour or creed. Agri SA is committed to the development of agriculture in South Africa. Commercial agriculture ensures that our country is food secure. We are a non-profit organisation that is helping to develop a stable, profitable agricultural environment within South Africa.

1. The Bill seeks to achieve the following objectives:
  - i. To develop and keep a National Land Restitution Register
  - ii. amend the cut-off date for lodging restitution claims;
  - iii. to regulate the prioritization of claims;
  - iv. to regulate the appointment, tenure of office, remuneration and terms and conditions of service of Judges of the Land Claims Court;
  - v. to make provisions for the advertisement of claims;
  - vi. to create certain offences; and
  - vii. extend the Minister's powers of delegation.

In 2017, Mnguni PJ tabled a Private Member's Bill with similar objectives including a section amending certain definitions in section 1 of the Restitution Act.

2. The principal Restitution Act – The Restitution Act of 1994 was enacted to give effect to section 25(7) of the Constitution. This section, and consequently the Restitution Act, seek to provide equitable redress to those who were dispossessed of their land because of previously discriminatory laws. This objective is central to the achievement of the values of

human dignity, the achievement of equality and advancement of human rights and freedoms espoused in the South African Constitution.

3. Restitution is also aimed at progressively realizing socio-economic rights, and Agri SA remains supportive of the land restitution programme within the confines of the Restitution Act and regards it as a prerequisite for stable and safe rural areas. Agri SA believes that equitable redress should and can be achieved in a manner that does not prejudice land owners, the state and claimants alike.

We now turn to provide comments to the specific proposed amendments in the Bill.

#### ***Amendment to the cut-off date for lodging restitution claims***

4. Provision 1(b) of the Bill seeks to amend section 2(e) of the 1994 Act by re-opening claims until 30 June 2019. This is an amendment from the initial Private Members Bill which sought to extend the claims period to 30 June 2021. Agri SA is opposed to the re-opening of the restitution claims process. In our submission to the Restitution of Land Rights Amendment Bill, 2013, when the principal Act was amended to re-open the claim process for another 5 years; we expressed the same view. A copy of this submission is attached hereto as Annexure A. Whilst it is common knowledge that not all prospective claimants were able to lodge their claims by the 1998 deadline, and that some were not aware of the process and the closing date; we submit that the process of re-opening the claims, under the current challenges within the land reform programme, is not in the best interests for landowners whose land has been subject to a claim since the 1998 process; for claimants and even for those claimants who missed the 1998 deadline.
5. The effectiveness of re-opening the claims process must be weighed against the number of claims from the 1998 process the Land Claims Commission has been able to settle and finalize to date. The land restitution process has been plagued with implementation challenges, resulting in many unsettled claims from the 1998 process. The High-Level Panel on Key Legislation<sup>1</sup> tabled in November 2017, reported that there are more than 7000 claims unsettled, over 19 000 remain unfinalized and the current rate of finalizing 560 claims per annum will take at least 35 years to finalise all claims lodged under the 1998 cutoff date. It will take a further 143 years to settle new claims lodged under the 2014 amendment Restitution Act; and if claims are reopened, it is expected that 397 000 will be lodged, taking 709 years to finalise Land Restitution claims. These projections are based on research conducted by experts on restitution.

Re-opening the claiming process will place a burden on an already under capacitated Land Claims Commission which was structurally not set up to deal with the high volume of claims it deals with.

---

<sup>1</sup> Report of the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change. Chapter 3: Land Reform – Restitution, Redistribution and Security of Tenure at page 233.

6. In its June 2016 annual report, the Land Claims Commission alluded to the fact that they were unable to receive proper data relating to the research conducted into the number of claims settled from the 1998 process. The annual report cited difficulties with the management and monitoring of outsourced research claims, in that outsourced research reports were not received timeously; and poor quality of research reports submitted by service providers, which resulted in repeated amendments as service providers underestimated the complexity and extent of work needed for the research; as the reason, why this exercise was not a success.<sup>2</sup>
8. The re-opening process will lead to uncertainty, which is detrimental to investment and economic growth, will have budgetary implications and will cause uncertainty around ownership rights and tenure whilst claims are being investigated and settled.
9. Another concern about re-opening restitution process is the possibility of competing claims on same land. As with the 2014 Amendment Act, the Private Member's Bill contains no provision for ring-fencing, which would preclude claims lodged against the same piece of land. The Land Claims Court has been insistent that before proceeding with a claim, all competing claimants for any land subject to a dispute before it is joined in the proceedings. With the re-opening of the process, the only way in which the Court can know that there are no competing claims is to wait for the claims to be processed and finalized and that will only be after June 2019.

The previous Private Member's Bill sought to introduce an amendment to the effect that before claims can be processed in terms of the 2014 Amendment Act, the 1998 claims must first be finalized. This section has been omitted in the current version of the Bill. However, clause 5 seeks to achieve a similar objective. The clause inserts a new section 16(A)<sup>3</sup> in the Act and provides that no new claims<sup>4</sup> may be processed unless the Chief Land Claims Commissioner has certified that all 1998 claims have been finalized or referred to Court. This only address prioritization of old order claims and still leaves the dilemmas raised in the judgment quoted in paragraphs 11 and 12 below, in respect of claims where land has already been allocated to claimants.

10. In the Land Claims Court judgement in the matter of Emakhasaneni community and another v the Minister of Rural Development and others (LCC 03/2009) in which judgement was handed down on 17 November 2016, the court, through Judge Bertelsman, said in paragraph 8 of the judgement: "The implications of re-opening the period to introduce new claims for restitution for another five years were significant. Claims already finalized by either the Commission or the Court were not protected from new claims filed since July 2014. Claimants, many of them communities who had waited for decades to obtain redress, could suddenly be faced with the potential loss of the land they had eventually received, through a new claim being lodged over the same land. The Commission, having at no stage of its existence been able "get on top" of the claims it had accepted by the end of 1998, was swamped by between 75 000 and 80 000 new claims. Given these facts, one shudders to

---

<sup>2</sup> CRLR Annual Report 2015/16 at page 24.

<sup>3</sup> This provision found expression in the previous Private Member's Bill but excluded reference to claims lodged between 1 July 2014 to 28 July 2016.

<sup>4</sup> New claims in this instance refers to those lodged from 1 July 2014 until 28 July 2016 and those lodged in terms of the Restitution Amendment Act, 2017.

think how long the disposal of the newly introduced claims might take. A vague instruction to the Commission to “give priority” to the existing non-finalized claims in the amended section 6(1) (g) did in no manner whatsoever address the administrative nightmare facing the Commission in having to deal with new claims competing with pending claims or claims already finalized, to say nothing of the effect new competing claims could and did have upon matters pending before the Court.”

11. In paragraph 9 of the abovementioned judgement the Court added the following: “The position of landowners, whose immovable property was and remained the object of a restitution claim, already unenviable at the best of times, was prejudiced further. As matters stood, once an old claim, duly lodged was published, by the Regional Land Claims Commissioner, the landowner’s freedom to enter into transactions, was curtailed significantly. No sale, development, exchange, donation, lease, subdivision or rezoning of land affected by any claim could be embarked upon without one month’s prior notice to the Regional Land Claims Commissioner before the claim was finally settled or adjudicated upon. The Amendment Act will prolong the restrictions imposed upon landowners’ freedom to contract and to deal with their assets and the consequent limitation of their farming operations, for many more years to come.” In paragraph 10 of the judgement, Judge Bertelsman remarked that:” The financial implications of the re-opening of the claims to both the landowners and the public purse must be enormous.”

12. ***Amendment pertaining to S22 of the Principal Act – Appointment, tenure of office and remuneration of Judges of the Land Claims Court***

Agri SA welcomes the provisions dealing with the appointment of a Judge President and Judges of the Land Claims Court. Section 4 of the Restitution Act merely states that the President of the Republic *may* after consultation appoint additional judges of the court. The Bill abandons the word ‘may’ and assumes a positive stance for the President to make such appointments.

This is a significant insertion and will ensure stability by having permanent judges in the Land Claims Court, ensuring that matters relating to claims are dealt with more expeditiously.

***Financial Implications for the State***

13. It is unacceptable for the Private Member’s Bill to indicate that it is not possible to determine the financial implications of extending the period of lodging restitution claims. Costing and budgeting is central to the greater programme of land restitution. Resources should be invested in conducting research to determine such costing and budgeting. Further, the High-Level report has provided data, based on expert evidence, of the number of claims to be expected should the claims process be re-opened, including the duration it will take to settle such claims.<sup>5</sup>

***Conclusion***

14. In summary, we submit that the re-opening of the land claims process will–

14.1. be detrimental to claimants that had already been successful in getting the restoration of their land and landowners alike;

---

<sup>5</sup> Ibid at 1.

14.2 seriously disrupt the land claims process as it has been conceptualised and implemented to date and will lead to extensive further delays;

14.3 result in a very substantial commitment of scarce state funds, including the risk of double compensation where land is taken from a claimant under the earlier process and restored to a claimant under the new claims process;

14.4 result in disadvantages which will outweigh any possible advantages.

Agri SA requests an opportunity to also make oral submissions to the Portfolio Committee on Rural Development and Land Reform on this Bill.