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GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENT

No. 500.

23 April 1999

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

No. 18 of 1999: Land Restitution and Reform Laws Amendment Act, 1999.

KANTOOR VAN DIE PRESIDENT

No. 500.

23 April 1999

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

No. 18 van 1999: Wysigingswet op Grondherstel- en Grondhervormingswette, 1999.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(*English text signed by the President.*)
(Assented to 14 April 1999.)

ACT

To amend the Restitution of Land Rights Act, 1994, so as to effect certain textual improvements; to amend the provisions regulating entitlement to restitution; to authorise the Deputy Land Claims Commissioner to act in the stead of the Chief Land Claims Commissioner if the office of the Chief Land Claims Commissioner is vacant; to make provision for the appointment of acting regional land claims commissioners under certain circumstances; to amend the requirements for the publication of the notice of a claim; to authorise any interested party to apply for the rescission or variation of an order of the Land Claims Court or the setting aside or variation of certain agreements; to do away with the need for a claim to be referred to the Court where the interested parties have reached agreement as to how a claim should be finalised and to authorise the Minister to make an award of a right in land, pay compensation and grant financial aid in such a case; to authorise regional land claims commissioners to refer claims to the Court; to extend the powers of the Court; to grant the Court in any interlocutory or preliminary hearing or pre-trial proceedings the discretion to decide upon the appointment of one or more assessors; to provide that a claimant may be awarded land, a portion of land or a right in land dispossessed from another claimant or the latter's ascendant where the Court is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land; to make provision for financial aid to a claimant who has entered into an agreement regarding the finalisation of a claim; to abolish the statutory mechanism providing for the waiving of rights contained in section 42D; to amend the Land Reform (Labour Tenants) Act, 1996, so as to empower an arbitrator and the Court to determine, prescribe or amend the terms on which a labour tenant occupies or uses land; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 22 of 1994, as amended by section 1 of Act 78 of 1996 and section 2 of Act 63 of 1997

1. Section 1 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "restoration of a right in land" of the following definition:

"restoration of a right in land" means the return of a right in land or a portion of

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 14 April 1999.)*

WET

Tot wysiging van die Wet op Herstel van Grondregte, 1994, ten einde sekere teksverbeterings aan te bring; om die bepalings wat reg op herstel reël, te wysig; om die Adjunkgrondeisekommissaris te magtig om in die plek van die Hoofgrondeisekommissaris op te tree indien die amp van die Hoofgrondeisekommissaris vakant is; om vir die aanstelling onder sekere omstandighede van waarnemende streekgrondeisekommissarisse voorsiening te maak; om die vereistes vir die publikasie van die kennisgewing van 'n eis te wysig; om enige belanghebbende party te magtig om aansoek te doen om die nietigverklaring of wysiging van 'n bevel van die Hof vir Grondeise of die tersydestelling of wysiging van sekere ooreenkomste; om weg te doen met die vereiste dat 'n eis na die Hof verwys moet word waar die belanghebbende partye ooreengekom het oor die wyse waarop die eis afgehandel moet word en om die Minister te magtig om 'n toekenning van 'n reg in grond te maak, vergoeding te betaal en finansiële bystand te verleen in so 'n geval; om streekgrondeisekommissarisse te magtig om eise na die Hof te verwys; om die bevoegdhede van die Hof uit te brei; om die Hof in enige tussentydse of preliminêre verhoor of voorverhoor die diskresie te verleen om te besluit oor die aanstelling van een of meer assessore; om voorsiening te maak dat 'n eiser grond, 'n gedeelte van grond of 'n reg in grond toegeken kan word wat van 'n ander eiser of laasgenoemde se voorouer ontnem is waar die Hof oortuig is dat bevredigende reëlings getref is of getref sal word om so 'n ander eiser herstel van 'n reg in grond toe te ken; om voorsiening te maak vir finansiële bystand aan 'n eiser wat 'n ooreenkoms betreffende die afhandeling van 'n eis aangegaan het; om weg te doen met die statutêre meganisme in artikel 42D vervat wat vir die afstanddoening van regte voorsiening maak; tot wysiging van die Wet op Grondhervorming (Huurrabieders), 1996, ten einde 'n arbiter en die Hof te magtig om die voorwaardes waarop 'n huurrabieder grond okkuper of gebruik, te bepaal, voor te skryf of te wysig; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:

Wysiging van artikel 1 van Wet 22 van 1994, soos gewysig deur artikel 1 van Wet 78 van 1996 en artikel 2 van Wet 63 van 1997

- 5 1. Artikel 1 van die Wet op die Herstel van Grondregte, 1994 (Wet No. 22 van 1994) (hieronder die Hoofwet genoem), word hierby gewysig deur die omskrywing van "teruggawe van 'n reg in grond" deur die volgende omskrywing te vervang:

"teruggawe van 'n reg in grond' die teruggawe van 'n reg in grond of 'n gedeelte

Act No. 18, 1999**LAND RESTITUTION AND REFORM LAWS
AMENDMENT ACT, 1999**

land dispossessed after 19 June 1913 as a result of past racially discriminatory laws or practices;”.

Substitution of section 2 of Act 22 of 1994

- 2.** The following section is hereby substituted for section 2 of the principal Act:

Entitlement to restitution

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2. (1) A person shall be entitled to restitution of a right in land if—

- (a) he or she is a person [or community] dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices [or a direct descendant of such a person]; [and] 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) [the claim for such restitution is lodged not later than 31 December 1998] 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.

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[(1A)](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.

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(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.

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(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.”.

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Amendment of section 7 of Act 22 of 1994

- 3.** Section 7 of the principal Act is hereby amended—

- (a) by the insertion after subsection (2) of the following subsections:

“(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.

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(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.”;

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van grond wat na 19 Junie 1913 as gevolg van wette of praktyke van die verlede wat op grond van ras gediskrimineer het, ontnem is;”.

Vervanging van artikel 2 van Wet 22 van 1994

2. Artikel 2 van die Hoofwet word hierby deur die volgende artikel vervang:

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Reg op herstel

2. (1) 'n Persoon is geregtig op herstel van 'n reg in grond indien—

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(a) hy of sy 'n persoon [of gemeenskap] is wat na 19 Junie 1913 van 'n reg in grond ontnem is as gevolg van wette of praktyke van die verlede wat op grond van ras gediskrimineer het [of 'n direkte afstammeling van so 'n persoon is]; [en] of

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(b) dit 'n bestorwe boedel is wat na 19 Junie 1913 van 'n reg in grond ontnem is as gevolg van wette of praktyke van die verlede wat op grond van ras gediskrimineer het; of

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(c) [die eis vir sodanige herstel nie later nie as 31 Desember 1998 ingedien is] hy of sy die direkte afstammeling is van 'n persoon in paragraaf (a) bedoel wat gesterf het sonder om 'n eis in te dien en geen voorouer het nie wat—

(i) 'n direkte afstammeling is van 'n persoon in paragraaf (a) bedoel; en

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(ii) 'n eis om die herstel van 'n reg in grond ingedien het; of

(d) dit 'n gemeenskap of 'n deel van 'n gemeenskap is wat na 19 Junie 1913 van 'n reg in grond ontnem is as gevolg van wette of praktyke van die verlede wat op grond van ras gediskrimineer het; en

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(e) die eis om sodanige herstel nie later nie as 31 Desember 1998 ingedien word.

[(1A)] (2) Geen persoon is geregtig op herstel van 'n reg in grond nie indien—

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(a) billike en regverdigte vergoeding soos beoog in artikel 25 (3) van die Grondwet; of

(b) enige ander vergoeding wat billik en regverdig is, bereken ten tyde van 'n ontneming van sodanige reg, ten opsigte van sodanige ontneming ontvang is.

(3) Indien 'n natuurlike persoon sterf nadat 'n eis ingedien is maar voordat die eis afgehandel is, en—

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(a) 'n testament nalaat waarby oor die reg of billike vergoeding wat geëis word, beskik word, kan slegs die eksekuteur van die bestorwe boedel, in sy of haar hoedanigheid as verteenwoordiger van die boedel, of, by ontstentenis van die eksekuteur, slegs die erfgename van die oorledene; of

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(b) nie 'n testament in paragraaf (a) beoog, nalaat nie, kan slegs die direkte afstammelinge, as eiser of eisers vervang word.

(4) Indien daar meer as een direkte afstammeling is wat eise om herstel ingedien het en op herstel geregtig is, word die betrokke reg of billike vergoeding nie volgens die getal individue verdeel nie maar by stake.”.

Wysiging van artikel 7 van Wet 22 van 1994

3. Artikel 7 van die Hoofwet word hierby gewysig—

(a) deur na subartikel (2) die volgende subartikels in te voeg:

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“(2A) Die Direkteur-generaal van Grondsake kan enige bevoegdheid aan hom of haar by of kragtens hierdie Wet verleen, uitgesonderd die bevoegdheid om te deleger, aan enige lid van die Kommissie, enige beampete van die Staat of enige persoon in artikel 9 beoog, deleger.

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(2B) 'n Streekgrondeisekommissaris kan in oorleg met die Hoofgrondeisekommissaris en die Direkteur-generaal van Grondsake enige bevoegdheid aan hom of haar by of kragtens hierdie Wet verleen, uitgesonderd die bevoegdheid om te deleger, aan enige lid van die Kommissie, enige beampete van die Staat of enige persoon in artikel 9 beoog, deleger.”;

Act No. 18, 1999**LAND RESTITUTION AND REFORM LAWS
AMENDMENT ACT, 1999**

(b) by the substitution for subsection (3) of the following subsection:

“(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.”; and

(c) by the insertion after subsection (3) of the following subsection:

“(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.”.

Amendment of section 11 of Act 22 of 1994, as amended by section 5 of Act 78 of 15 1996 and section 7 of Act 63 of 1997

4. Section 11 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(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 [(1) or

(1A)]; and

(c) the claim is not frivolous or vexatious [and],

[(d) no order has been made by the Court in terms of section 35 in respect of rights relating to that land]

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.”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) If the regional land claims commissioner decides that the criteria set out in paragraphs (a), (b) and (c) [and (d)] of subsection (1) have not been met, he or she shall advise the claimant accordingly, and of the reasons for such decision.”;

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

“(5) (a) If after an order has been made by the Court as contemplated in section 35 [in respect of a right or rights in land, no person may lodge a] 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 [that] the land [without the leave of the Court] 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.”; and

(d) by the insertion after subsection (5) of the following subsection:

“(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.”.

Amendment of section 11A of Act 22 of 1994, as inserted by section 6 of Act 78 of 1996

5. Section 11A of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) Where during the investigation of a claim by the Commission the regional

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- (b) deur subartikel (3) deur die volgende subartikel te vervang:
 “(3) Indien die amp van die Hoofgrondeisekommissaris vakant is of indien die Hoofgrondeisekommissaris afwesig is of nie in staat is om enige of al sy of haar werksaamhede te verrig nie, tree die Adjunkgrondeisekommissaris in sy of haar plek op en terwyl die Adjunkgrondeisekommissaris sodanig optree, verrig hy of sy al die werksaamhede van die Hoofgrondeisekommissaris.”; en
- (c) deur na subartikel (3) die volgende subartikel in te voeg:
 “(3A) Indien die amp van 'n streekgrondeisekommissaris vakant is of indien 'n streekgrondeisekommissaris afwesig is of nie in staat is om enige of al sy of haar werksaamhede te verrig nie, tree 'n waarnemende streekgrondeisekommissaris deur die Minister aangestel, in sy of haar plek op en terwyl die waarnemende streekgrondeisekommissaris aldus optree, verrig hy of sy al die werksaamhede van die streekgrondeisekommissaris.”.

Wysiging van artikel 11 van Wet 22 van 1994, soos gewysig deur artikel 5 van Wet 78 van 1996 en artikel 7 van Wet 63 van 1997

4. Artikel 11 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:
 “(1) Indien die streekgrondeisekommissaris wat jurisdiksie het, tevrede is dat—
 (a) die eis op die voorgeskrewe wyse ingedien is;
 (b) die eis nie deur die bepalings van artikel 2 [(1) of (1A)] uitgesluit is nie; en
 (c) die eis nie beuselagtig of kwelsugtig is nie [en],
 [(d) **geen bevel deur die Hof ingevolge artikel 35 gemaak is nie ten opsigte van regte wat op daardie grond betrekking het**]
 moet hy of sy 'n kennisgewing van die eis in die Staatskoerant laat publiseer en stappe doen om dit bekend te maak in die distrik waarin die betrokke grond geleë is.”;
- (b) deur subartikel (4) deur die volgende subartikel te vervang:
 “(4) Indien die streekgrondeisekommissaris besluit dat die kriteria uiteengesit in paragrawe (a), (b) en (c) [en (d)] van subartikel (1) nie nagekom is nie, moet hy of sy die eiser dienooreenkomsdig inlig, asook oor die redes vir sodanige besluit.”;
- (c) deur subartikel (5) deur die volgende subartikel te vervang:
 “(5) (a) Indien dit, nadat 'n bevel deur die Hof soos in artikel 35 beoog [ten opsigte van 'n reg of regte in grond], gemaak is [mag geen persoon sonder verlof van die Hof] of ['n ooreenkoms soos beoog in artikel 14(3) of 42D aangegaan is, aangetoon word dat 'n ander eis ingevolge hierdie Wet ten opsigte van [daardie] die grond [indien nie] waarop die bevel of ooreenkoms betrekking het, ingedien is, kan enige belanghebbende party by die Hof aansoek doen om die nietigverklaring of wysiging van sodanige bevel of die tersydestelling of wysiging van sodanige ooreenkoms.
 (b) Die Hof kan, onderworpe aan die bedinge en voorwaardes wat hy bepaal, sodanige aansoek toestaan of enige ander bevel maak wat hy goedvind.”; en
- (d) deur na subartikel (5) die volgende subartikel in te voeg:
 “(5A) Waar 'n appèl hangende is ten opsigte van 'n bevel van die Hof in artikel 35 beoog, moet 'n aansoek om die nietigverklaring of wysiging van sodanige bevel kragtens subartikel (5) by die Konstitutionele Hof of die Hoogste Hof van Appèl, na gelang van die geval, gedoen word.”.

55 Wysiging van artikel 11A van Wet 22 van 1994, soos ingevoeg deur artikel 6 van Wet 78 van 1996

5. Artikel 11A van die Hoofwet word hierby gewysig deur in subartikel (2) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“(2) Waar die streekgrondeisekommissaris wat jurisdiksie het gedurende die

Act No. 18, 1999**LAND RESTITUTION AND REFORM LAWS
AMENDMENT ACT, 1999**

land claims commissioner having jurisdiction has reason to believe that any of the criteria set out in paragraphs (a), (b) and (c) [**and** (d)] of section 11(1) have not been met, he or she shall publish in the *Gazette* and send by registered post to—”.

Amendment of section 14 of Act 22 of 1994, as amended by section 7 of Act 78 of 1996 and section 10 of Act 63 of 1997

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

(a) by the substitution for subsection (1) of the following subsection:

“(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; 10

(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) the parties to any dispute arising from such claim reach agreement as to how the claim should be finalised and the regional land claims commissioner is satisfied that such agreement is appropriate; or] 15

(d) the regional land claims commissioner is of the opinion that the claim is ready for hearing by the Court,

the [Chief Land Claims Commissioner] regional land claims commissioner having jurisdiction shall certify accordingly and refer the matter to the Court.”;

(b) by the substitution for subsection (3) of the following subsection:

“(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.”;

(c) by the insertion after subsection (3) of the following subsection:

“(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; 35

(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; 40

(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.”;

(d) by the substitution for subsection (4) of the following subsection:

“(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;

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ondersoek van 'n eis deur die Kommissie rede het om te glo dat enige van die maatstawwe uiteengesit in paragrawe (a), (b) en (c) [en (d)] van artikel 11 (1) nie nagekom is nie, moet hy of sy 'n kennisgewing in die *Staatskoerant* publiseer en per aangetekende pos aan—”.

5 Wysiging van artikel 14 van Wet 22 van 1994, soos gewysig deur artikel 7 van Wet 78 van 1996 en artikel 10 van Wet 63 van 1997

6. Artikel 14 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Na afhandeling van 'n ondersoek deur die Kommissie, en indien—

(a) die partye tot 'n geskil voortspruitend uit die eis skriftelik ooreenkom dat dit nie moontlik is om die eis by wyse van bemiddeling en onderhandeling te skik nie;

(b) die streekgrondeisekommisaris sertificeer dat dit nie uitvoerbaar is om 'n geskil wat voortspruit uit sodanige eis by wyse van bemiddeling en onderhandeling op te los nie; of

(c) die partye tot 'n geskil wat voortspruit uit sodanige eis ooreenkom oor die wyse waarop die eis afgehandel moet word en die streekgrondeisekommisaris tevrede is dat sodanige ooreenkoms toepaslik is; of

(d) die streekgrondeisekommisaris van mening is dat die eis gereed is vir aanhoor deur die Hof, moet die **[Hoofgrondeisekommisaris]** streekgrondeisekommisaris wat jurisdiksie het dienooreenkomstig sertificeer en die aangeleentheid na die Hof verwys.”;

(b) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Indien in die loop van 'n ondersoek deur die Kommissie die belanghebbende partye 'n skriftelike ooreenkoms aangegaan het oor die wyse waarop die eis afgehandel moet word en die streekgrondeisekommisaris wat jurisdiksie het skriftelik sertificeer dat hy of sy tevrede is met die ooreenkoms en dat die ooreenkoms nie na die Hof verwys behoort te word nie, is die ooreenkoms slegs van krag vanaf die datum van sodanige sertifisering of die latere datum waarvoor in die ooreenkoms voorsiening gemaak word.”;

(c) deur na subartikel (3) die volgende subartikel in te voeg:

“(3A) Indien die streekgrondeisekommisaris wat jurisdiksie het van mening is dat—

(i) dit nodig is om enige regsvraag wat uit die ooreenkoms ontstaan, te beslis;

(ii) daar twyfel is of alle belanghebbende partye, partye tot die ooreenkoms is;

(iii) daar twyfel is oor die geldigheid van die ooreenkoms of enige gedeelte daarvan;

(iv) daar twyfel is oor die uitvoerbaarheid van die implementering van die ooreenkoms;

(v) die ooreenkoms nie aan artikel 42D(2) voldoen nie;

(vi) die ooreenkoms nie regverdig en billik is nie ten opsigte van enige party;

(vii) die ooreenkoms strydig is met enige bepaling van die Wet;

(viii) daar twyfel is oor die magtiging van enige ondertekenaar;

(ix) die ooreenkoms vaag of weerspreekend is;

(x) die partye tot die ooreenkoms ooreenkom dat dit wenslik is dat die ooreenkoms 'n bevel van die Hof gemaak word;

(xi) die ooreenkoms na die Hof verwys behoort te word om enige ander goeie rede,

kan hy of sy die aangeleentheid na die Hof verwys.”;

(d) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) 'n Verwysing kragtens subartikel (3A) gaan vergesel van 'n afskrif van die betrokke skikkingsakte, tesame met 'n verslag wat die volgende bevat:

(a) Saaklike inligting oor die agtergrond tot die eis en die skikking;

Act No. 18, 1999**LAND RESTITUTION AND REFORM LAWS
AMENDMENT ACT, 1999**

- (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.”; and
- (e) by the addition to subsection (6) of the following proviso:
- “Provided that the Court may, on good cause shown, condone any noncompliance with the provisions of this section.”.

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Amendment of section 22 of Act 22 of 1994, as amended by section 1 of Act 84 of 1995, section 10 of Act 78 of 1996 and section 13 of Act 63 of 1997

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

- (a) by the insertion in subsection (1) after paragraph (cD) of the following paragraph:
- “(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;”; and
- (b) by the addition to subsection (2) of the following paragraph:
- “(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.”.

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Amendment of section 28 of Act 22 of 1994, as amended by section 14 of Act 78 of 1996 and section 18 of Act 63 of 1997**8. Section 28 of the principal Act is hereby amended by the substitution in subsection (4) for subparagraph (ii) of the proviso of the following subparagraph:**

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- “(ii) any interlocutory or preliminary hearing or pre-trial proceedings, unless the Court decides otherwise;”.

Amendment of section 35 of Act 22 of 1994, as amended by section 20 of Act 78 of 1996 and section 25 of Act 63 of 1997**9. Section 35 of the principal Act is hereby amended—**

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- (a) by the substitution in subsection (1) for the proviso to paragraph (a) of the following proviso:
- “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 [restitution] 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”;

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- (b) by the substitution for subsection (3) of the following subsection:
- “(3) An order contemplated in subsection (2)(c) shall be subject to such conditions as the Court considers necessary to ensure that all the [dispossessed] members of the dispossessed community [concerned] 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 woman and] 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.”;
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) If—
- (a) the Court orders the State to; or

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WYSIGINGSWET OP GRONDHERSTEL- EN
GRONDHERVORMINGSWETTE, 1999

Wet No. 18, 1999

- (b) inligting wat noodsaklik is vir die Hof om vas te stel of hy jurisdiksie het al dan nie;
- (c) die redes vir die verwysing van die aangeleentheid na die Hof; en
- (d) die streekgrondeisekommissaris se aanbevelings, indien enige, oor die wyse waarop met die aangeleentheid gehandel behoort te word.”; en
- (e) deur die volgende voorbehoudsbepaling by subartikel (6) te voeg:
“Met dien verstande dat die Hof, indien goeie gronde aangevoer word, enige nie-nakoming van die bepalings van hierdie artikel kan kondoneer.”.

Wysiging van artikel 22 van Wet 22 van 1994, soos gewysig deur artikel 1 van Wet 84 van 1995, artikel 10 van Wet 78 van 1996 en artikel 13 van Wet 63 van 1997**7. Artikel 22 van die Hoofwet word hierby gewysig—**

- (a) deur in subartikel (1) na paragraaf (cD) die volgende paragraaf in te voeg:
“(cE) om enige aangeleentheid betreffende die geldigheid, afdwingbaarheid, uitleg of implementering van ‘n ooreenkoms in artikel 14(3) beoog, te bepaal, tensy die ooreenkoms anders bepaal;”; en
- (b) deur die volgende paragraaf by subartikel (2) by te voeg:
“(c) die bevoegdheid om enige aangeleentheid, hetsy ingevolge hierdie Wet of ingevolge enige ander wet, wat nie gewoonlik binne sy jurisdiksie is nie maar verband hou met ‘n aangeleentheid binne sy jurisdiksie, te beslis indien die Hof dit in die belang van geregtigheid ag om dit te doen.”.

Wysiging van artikel 28 van Wet 22 van 1994, soos gewysig deur artikel 14 van Wet 78 van 1996 en artikel 18 van Wet 63 van 1997**8. Artikel 28 van die Hoofwet word hierby gewysig deur in subartikel (4) subparagraaf (ii) van die voorbehoudsbepaling deur die volgende subparagraaf te vervang:**

- “(ii) enige tussentydse of preliminêre verhoor of voorverhoor, tensy die Hof anders beslis;”.

Wysiging van artikel 35 van Wet 22 van 1994, soos gewysig deur artikel 20 van Wet 78 van 1996 en artikel 25 van Wet 63 van 1997**9. Artikel 35 van die Hoofwet word hierby gewysig—**

- (a) deur in subartikel (1) die voorbehoudsbepaling by paragraaf (a) deur die volgende voorbehoudsbepaling te vervang:
“Met dien verstande dat daar nie aan die eiser grond, ‘n gedeelte van grond of ‘n reg in grond wat van ‘n ander eiser of laasgenoemde se voorouer ontneem is, toegeken word nie, tensy—
- (i) aan sodanige ander eiser herstel van ‘n reg in grond toegestaan word of is of [die] sodanige ander eiser afstand gedoen het van sy of haar reg op [herstel op] terugawe van die betrokke reg [op] in die grond; of
- (ii) die Hof oortuig is dat bevredigende reëlings getref is of getref sal word om aan sodanige ander eiser herstel van ‘n reg in grond toe te staan;”;
- (b) deur subartikel (3) deur die volgende subartikel te vervang:
“(3) ‘n Bevel beoog in subartikel (2)(c) is onderworpe aan die voorwaardes wat die Hof noodsaklik ag om te verseker dat alle [ontneemde] lede van die [betrokke] ontneemde gemeenskap toegang sal hê tot die betrokke grond of vergoeding, op ‘n basis wat billik en nie diskriminerend teenoor enige persoon is nie, met inbegrip van [‘n vrou en] ‘n huurder, en wat die aanspreeklikheid van die persoon wat die grond of vergoeding namens die gemeenskap hou teenoor die lede van sodanige gemeenskap, verseker.”;
- (c) deur subartikel (5) deur die volgende subartikel te vervang:
“(5) Indien—
- (a) die Hof die Staat beveel om; of

Act No. 18, 1999**LAND RESTITUTION AND REFORM LAWS
AMENDMENT ACT, 1999**

- (b) in terms of an agreement contemplated in section 42D, the State must, expropriate land, a portion of land or a right in land in order to restore or award it to a claimant, the Minister shall expropriate such land, portion of land or right in land in accordance [*mutatis mutandis*] with [the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975): Provided that the owner of such land or right shall be entitled to the payment of just and equitable compensation, determined either by agreement or by the Court according to the principles laid down in section 25(2) and (3) of the Constitution: Provided further that the procedure to be followed by the Court in the determination of such compensation shall be as provided in sections 24 and 32 of this Act] subsection (5A)."; and
- (d) by the insertion after subsection (5) of the following subsection:
- "(5A) The Minister has the power pursuant to an order of the Court under section 35(1) or an agreement in terms of section 42D, to expropriate land, a portion of land or a right in land in order to restore or award it to a claimant, *mutatis mutandis* in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), and may perform the functions of the Minister of Public Works in terms of that Act: Provided that the owner of such land, portion of land or right in land shall be entitled to just and equitable compensation, determined either by agreement or by the Court as prescribed by the Constitution, with due regard to the provisions of section 12(3), (4) and (5) of the Expropriation Act, 1975: Provided further that the rules of the Court made under section 32 shall govern the procedure of the Court in the determination of such compensation.".

Amendment of section 38B of Act 22 of 1994, as inserted by section 29 of Act 63 of 1997

10. Section 38B of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- "(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—".

Amendment of section 42C of Act 22 of 1994, as inserted by section 30 of Act 63 of 1997 and amended by section 4 of Act 61 of 1998

11. Section 42C of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- "(1) The Minister may from money appropriated by Parliament for this purpose and on such conditions as he or she may determine, grant an advance or a subsidy for the development or management of, or to facilitate the settlement of persons on, land which is the subject of an order of the Court in terms of this Act or an [**award**] agreement in terms of section 14(3) or 42D, to—
- (a) any claimant to whom restoration or the award of a right in land has been ordered;
- (b) any [person] claimant who has [**wave** any or all of his or her rights to relief in terms of] entered into an agreement contemplated in section 14(3) or 42D;
- (c) any person resettled as a result of an order of the Court.".

Substitution of section 42D of Act 22 of 1994, as inserted by section 30 of Act 63 of 1997

12. The following section is hereby substituted for section 42D of the principal Act:

- (b) ingevolge 'n ooreenkoms in artikel 42D beoog, die Staat verplig is om,
grond, 'n gedeelte van grond of 'n reg in grond te onteien ten einde dit aan die eiser terug te gee of toe te ken, moet die Minister sodanige grond, gedeelte van grond of reg in grond onteien [mutatis mutandis] ooreenkombig [die bepalings van die Oenteeningswet, 1975 (Wet No. 63 van 1975): Met dien verstande dat die eienaar van sodanige grond of reg geregtig is op die betaling van regverdige en billike vergoeding, wat óf by ooreenkoms óf deur die Hof ooreenkombig die beginsels neergelê in artikel 25(2) en (3) van die Grondwet bepaal word: Met dien verstande voorts dat die prosedure wat deur die Hof by die bepaling van sodanige vergoeding gevvolg moet word, die prosedure is wat in artikels 24 en 32 van hierdie Wet bepaal word] subartikel (5A).”;; en
- (d) deur na subartikel (5) die volgende subartikel in te voeg:
- “(5A) Die Minister het die bevoegdheid voortspruitend uit 'n bevel van die Hof kragtens artikel 35(1) of 'n ooreenkoms ingevolge artikel 42D om grond, 'n gedeelte van grond of 'n reg in grond te onteien ten einde dit aan 'n eiser terug te gee of toe te ken, mutatis mutandis ooreenkombig die Oenteeningswet, 1975 (Wet No. 63 van 1975), en kan die bevoegdheide uitoefen en kan die werksaamhede verrig van die Minister van Openbare Werke ingevolge daardie Wet: Met dien verstande dat die eienaar van sodanige grond, gedeelte van grond of reg in grond geregtig is op redelike en billike vergoeding, wat óf by ooreenkoms óf deur die Hof soos deur die Grondwet voorgeskryf, met behoorlike inagneming van die bepalings van artikel 12(3), (4) en (5) van die Oenteeningswet, 1975, bepaal word: Met dien verstande voorts dat die reëls van die Hof gemaak kragtens artikel 32 die prosedure van die Hof by die bepaling van sodanige vergoeding reël.”.

Wysiging van artikel 38B van Wet 22 van 1994, soos ingevoeg deur artikel 29 van Wet 63 van 1997

10. Artikel 38B van die Hoofwet word hierby gewysig deur die woorde wat paragraaf (a) van subartikel (1) voorafgaan deur die volgende woorde te vervang:

“(1) Ondanks enige andersluidende bepalings in hierdie Wet vervat, kan 'n persoon of die verteenwoordiger van 'n gemeenskap wat geregtig is om herstel van 'n reg in grond te eis en wat 'n eis nie later nie as 31 Desember 1998 ingedien het, by die Hof aansoek doen om herstel van sodanige reg: Met dien verstande dat verlof van die Hof om sodanige aansoek in te dien eers verkry moet word indien—”.

Wysiging van artikel 42C van Wet 22 van 1994, soos ingevoeg deur artikel 30 van Wet 63 van 1997 en gewysig deur artikel 4 van Wet 61 van 1998

11. Artikel 42C van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Minister kan uit geld wat deur die Parlement vir dié doel bewillig is en onderworpe aan die voorwaardes wat hy of sy bepaal, 'n voorskot of 'n subsidie vir die ontwikkeling of bestuur van, of om die vestiging van persone aan te help op, grond wat die onderwerp is van 'n bevel van die Hof ingevolge hierdie Wet of 'n [toekenning] ooreenkoms ingevolge artikel 14(3) of 42D, toestaan aan—

- (a) enige eiser aan wie teruggawe of die toekenning van 'n reg in grond gelas is;
- (b) enige [persoon] eiser wat [van enige van of al sy of haar regte tot regshulp ingevolge] 'n ooreenkoms in artikel 14(3) of 42D [afstand gedoen het] beoog, aangegaan het;
- (c) enige persoon wat as gevolg van 'n bevel van die Hof hervestig is.”.

Vervanging van artikel 42D van Wet 22 van 1994, soos ingevoeg deur artikel 30 van Wet 63 van 1997

12. Artikel 42D van die Hoofwet word hierby deur die volgende artikel vervang:

"Powers of Minister in case of certain agreements"

42D. (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 [person has entered] the claim for such restitution was lodged not later than 31 December 1998, he or she may enter into an agreement [in terms of which he or she has waived any or all of his or her rights to relief under this Act, the Minister may, after consultation with the Commission and on such conditions as he or she may determine—] 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 [and, where necessary, acquire such land, portion of land or 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 descendant, 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; [or]
 - (b) [pay] the payment of compensation to such [person] claimant; [or]
 - (c) [make] both an award and [pay] payment of compensation to such [person] claimant;
 - (d) the acquisition or expropriation by the State of such land, portion of land or other right in land;
 - (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) [Expenditure in connection with the exercise of the powers conferred by subsection (1) shall be defrayed from moneys appropriated by Parliament for that purpose.] 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.”.

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"Bevoegdhede van Minister in geval van sekere ooreenkomste

42D. (1) Indien die Minister oortuig is dat 'n eiser ingevolge artikel 2 geregty is op herstel van 'n reg in grond, en [daardie persoon] die eis vir sodanige herstel nie later nie as 31 Desember 1998 ingedien is, kan hy of sy 'n ooreenkoms [aangegaan het ingevolge waarvan hy of sy van enige van of al sy of haar regte tot regshulp kragtens hierdie Wet afstand gedoen het, kan die Minister na oorleg met die Kommissie en onderworpe aan die voorwaardes wat hy of sy bepaal—] met die belanghebbende partye aangaan wat vir een of meer van die volgende voorsiening maak:

- (a) Die toekenning aan die eiser van grond, 'n gedeelte van grond of enige ander reg in grond [toeken en, waar nodig, sodanige grond, gedeelte van grond of ander reg in grond bekom]: Met dien verstande dat daar nie aan die eiser grond, 'n gedeelte van grond of 'n reg in grond wat van 'n ander eiser of laasgenoemde se voorouer ontneem is, toegeken word nie, tensy—
 - (i) aan sodanige ander eiser herstel van 'n reg in grond toegestaan word of is of sodanige eiser afstand gedoen het van sy of haar reg op terugawe van die betrokke reg op die grond; of
 - (ii) die Minister tevrede is dat bevredigende reëlings getref is of getref sal word om aan sodanige ander eiser herstel van 'n reg in grond toe te staan; [of]
- (b) die betaling van vergoeding aan sodanige [persoon] eiser [betaal]; [of]
- (c) beide 'n toekenning [maak] en betaling van vergoeding aan sodanige [persoon] eiser [betaal];
- (d) die verkryging of onteiening deur die Staat van sodanige grond, gedeelte van grond of ander reg in grond;
- (e) die wyse waarop die regte toegeken, gehou moet word of die vergoeding betaal of gehou moet word; of
- (f) die ander bedinge en voorwaardes wat die Minister gepas ag.

(2) [Uitgawes in verband met die uitoefening van die bevoegdhede by subartikel (1) verleen, word betaal uit geld vir dié doel deur die Parlement bewillig] Indien die eiser in subartikel (1) beoog 'n gemeenskap is, moet die ooreenkoms voorsiening maak dat al die lede van die ontneemde gemeenskap toegang sal hê tot die betrokke grond of vergoeding op 'n basis wat billik en nie-diskriminerend teenoor enige persoon is nie, met inbegrip van 'n huurder, en wat die aanspreeklikheid van die persoon wat die grond of vergoeding namens sodanige gemeenskap hou teenoor die lede van die gemeenskap, verseker.

(3) Die Minister kan enige bevoegdheid by subartikel (1) of artikel 42C aan hom of haar verleen, aan die Direkteur-generaal van Grondsake of enige ander beampete van die Staat of aan 'n streekgrondeisekommissaris deleger.

(4) Die Direkteur-generaal van Grondsake kan met die toestemming van die Minister enige bevoegdheid aan die Direkteur-generaal kragtens subartikel (3) gedelegeer aan 'n beampete van die Staat of 'n streekgrondeisekommissaris deleger.

(5) Enige delegering kragtens subartikel (3) of (4) kan gedoen word óf in die algemeen óf in 'n bepaalde geval óf in gevalle van 'n bepaalde aard en op die voorwaardes wat deur die Minister of die Direkteur-generaal van Grondsake, na gelang van die geval, bepaal word, en die Minister of die Direkteur-generaal word nie daardeur ontdoen van enige bevoegdheid aldus gedelegeer nie.

(6) Uitgawes in verband met die uitoefening van die bevoegdhede by subartikel (1) verleen, word betaal uit geld vir dié doel deur die Parlement bewillig.

(7) Die bepalings van subartikels (1) tot (6) en artikel 42C is *mutatis mutandis* van toepassing ten opsigte van 'n ooreenkoms wat voor die inwerkingtreding van die Wysigingswet op Grondherstel- en Grondhervormingswette, 1999, aangegaan is, ingevolge waarvan 'n eiser van enige van of al sy of haar regte op regshulp kragtens hierdie Wet afstand gedoen het.”.

Act No. 18, 1999**LAND RESTITUTION AND REFORM LAWS
AMENDMENT ACT, 1999****Amendment of section 33 of Act 3 of 1996, as amended by section 42 of Act 63 of 1997 and section 5 of Act 61 of 1998**

13. Section 33 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), is hereby amended by the insertion in subsection (1) after paragraph (e) of the following paragraph:

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"(eA) determine, prescribe or amend the terms on which a labour tenant occupies or uses land;".

Transitional provision

14. All proceedings which were pending before a court upon the date of promulgation of this Act, must be disposed of in accordance with section 2 of the principal Act as 10 substituted by section 2 of this Act, unless the interests of justice require otherwise.

Short title and commencement

15. (1) This Act shall be called the Land Restitution and Reform Laws Amendment Act, 1999.

(2) The provisions of sections 2, 3 and 4 shall be deemed to have come into operation 15 on 2 December 1994.

Wysiging van artikel 33 van Wet 3 van 1996, soos gewysig deur artikel 42 van Wet 63 van 1997 en artikel 5 van Wet 61 van 1998

13. Artikel 33 van die Wet op Grondhervorming (Huurarbeiders), 1996 (Wet No. 3 van 1996), word hierby gewysig deur in subartikel (1) na paragraaf (e) die volgende 5 paragraaf in te voeg:

"(eA) die voorwaardes waarop 'n huurarbeider grond bewoon of gebruik, bepaal, voorskryf of wysig;".

Oorgangsbeplaling

14. Alle verrigtinge wat voor 'n hof hangende is op die datum van die promulgasie 10 van hierdie Wet, moet afgehandel word ooreenkomsdig artikel 2 van die Hoofwet soos vervang deur artikel 2 van hierdie Wet, tensy die belang van geregtigheid anders vereis.

Kort titel en inwerkingtreding

15. (1) Hierdie Wet heet die Wysigingswet op Grondherstel- en Grondhervormingswette, 1999.

15 (2) Die bepalings van artikels 2, 3 en 4 word geag op 2 Desember 1994 in werking te getree het.

