



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE PRESIDENT

No. 2011. 25 November 1994

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

No. 22 van 1994: Wet op Herstel van Grondregte, 1994.

OFFICE OF THE PRESIDENT

No. 2011. 25 November 1994

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

No. 22 of 1994: Restitution of Land Rights Act, 1994.

WET

Om voorsiening te maak vir die herstel van regte in grond ten opsigte waarvan persone of gemeenskappe kragtens of ter bevordering van die oogmerke van 'n rasgebaseerde diskriminerende wet ontnem is; om 'n Kommissie op Herstel van Grondregte en 'n Grondeishof in te stel; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

NADEMAAL die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), voorsiening maak vir die herstel van 'n reg in grond aan 'n persoon of gemeenskap wat kragtens of ter bevordering van die oogmerke van 'n rasgebaseerde diskriminerende wet daarvan ontnem is;

EN AANGESIEN wetgewing vir hierdie doel ontwerp staan te word om die beskerming en vooruitgang van persone, groepe of kategorieë van persone wat deur onbillike diskriminasie benadeel is, te bevorder ten einde hul volledige en gelyke benutting van grondregte te bevorder:

*(Afrikaanse teks deur die President geteken.)
(Goedgekeur op 17 November 1994.)*

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

HOOFSTUK I

Inleidende Bepalings

Woordomskrywing

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1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

- (i) “die reëls” die reëls gemaak kragtens artikels 16 en 32; (xiii)
- (ii) “direkte afstammeling” van 'n persoon ook die eggenoot of vennoot in 'n tradisionele verbintenis van sodanige persoon hetsy sodanige tradisionele verbintenis geregistreer is, al dan nie; (vi) 10
- (iii) “eis” enige aansoek wat by die Kommissie ingevolge hierdie Wet ingedien is; (i)
- (iv) “eiser” ook 'n gemeenskap; (ii)
- (v) “gemeenskap” enige groep persone wie se regte in grond verkry word uit gemeenskaplike reëls wat die toegang tot grond wat gesamentlik deur sodanige groep gehou word, bepaal, met inbegrip van 'n gedeelte van so 'n groep; (iv) 15
- (vi) “hierdie Wet” ook die reëls en die regulasies kragtens artikel 40 uitgereik; (xiv)
- (vii) “Hof” die Hof vir Grondeise ingestel by artikel 22; (v) 20
- (viii) “Hooggeregshof” die Hooggeregshof van Suid-Afrika bedoel in artikel 101 van die Grondwet; (xii)
- (ix) “Kommissie” die Kommissie op Herstel van Grondregte ingestel by artikel 4; (iii)
- (x) “Minister” die Minister van Grondsake of 'n beampte in sy of haar departement deur hom of haar aangewys; (vii) 25
- (xi) “openbare grond” alle grond wat deur 'n Staatsorgaan soos omskryf in artikel 233 van die Grondwet besit word, met inbegrip van grond wat besit word deur 'n plaaslike owerheid, die Landbank en enige instelling waarin die Staat die meerderheid- of beherende aandeelhouer is; (x) 30

ACT

To provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

WHEREAS the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides for the restitution of a right in land to a person or community dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law;

AND WHEREAS legislation for this purpose is to be designed to promote the protection and advancement of persons, groups or categories of persons disadvantaged by unfair discrimination, in order to promote their full and equal enjoyment of rights in land:

*(Afrikaans text signed by the President.)
(Assented to 17 November 1994.)*

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

CHAPTER I

Introductory Provisions

5 Definitions

1. In this Act, unless the context indicates otherwise—

- (i) "claim" means any application lodged with the Commission in terms of this Act; (iii)
- (ii) "claimant" includes a community; (iv)
- 10 (iii) "Commission" means the Commission on Restitution of Land Rights established by section 4; (ix)
- (iv) "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; (v)
- 15 (v) "Court" means the Land Claims Court established by section 22; (vii)
- (vi) "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; (ii)
- (vii) "Minister" means the Minister of Land Affairs or an officer in his or her department designated by him or her; (x)
- 20 (viii) "person" includes a community or part thereof; (xii)
- (ix) "prescribed" means prescribed by or under this Act; (xiv)
- (x) "public land" means all land owned by any organ of state as defined in section 233 of the Constitution, and includes land owned by a local authority, the Land Bank and any institution in which the State is the majority or controlling shareholder; (xi)
- 25 (xi) "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; (xiii)
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- (xii) "persoon" ook 'n gemeenskap of deel daarvan; (viii)
- (xiii) "reg in grond" enige reg in grond hetsy dit geregistreer is, al dan nie, en kan ook die belange van 'n huurarbeider, en 'n deelsaaier, 'n gewoonteregtelike belang, die belang van 'n begunstigde kragtens 'n trustooreenkoms en voordelige okkupasie vir 'n aaneenlopende tydperk van minstens 10 jaar voor die betrokke ontneming insluit; 5
- (xi)
- (xiv) "voorgeskryf" voorgeskryf by of kragtens hierdie Wet. (ix)

Afdwinging van eis vir herstel

- 2. (1) 'n Persoon is geregtig om herstel van 'n reg in grond af te dwing, indien— 10
 - (a) hy of sy 'n persoon of gemeenskap beoog in artikel 121(2) van die Grondwet of 'n direkte afstammeling van so 'n persoon is; en
 - (b) die eis vir sodanige herstel binne drie jaar vanaf 'n datum deur die Minister by kennisgewing in die *Staatskoerant* bepaal, ingedien is.
- (2) Die datum beoog in subartikel (1) is 'n datum wat nie vroeër is nie as die 15 vroegste van die datums beoog in artikel 43.
- (3) Die datum beoog in artikel 121(2)(a) van die Grondwet is 19 Junie 1913.

Eise teen verteenwoordigers

- 3. Behoudens die bepalings van hierdie Wet is 'n persoon geregtig om eiendomsreg ten opsigte van grond te eis indien sodanige eiser of sy of haar 20 voorganger—
 - (a) verhoed is om eiendomsreg ten opsigte van die geëiste grond te verkry of te behou as gevolg van 'n wet wat onbestaanbaar sou gewees het met die verbod op rassediskriminasie vervat in artikel 8(2) van die Grondwet indien daardie subartikel op die betrokke stadium in werking was; en 25
 - (b) bewys dat die geregistreerde eienaar van die grond eiendomsreg hou as gevolg van 'n transaksie tussen sodanige geregistreerde eienaar of sy of haar voorgangers en die eiser of sy of haar voorgangers ingevolge waarvan sodanige geregistreerde eienaar of sy of haar voorgangers die grond namens die eiser of sy of haar voorgangers gehou het. 30

HOOFSTUK II

Kommissie op Herstel van Grondregte

Instelling van Kommissie op Herstel van Grondregte

- 4. (1) Daar word hierby 'n kommissie ingestel wat bekend sal staan as die Kommissie op Herstel van Grondregte. 35
- (2) Die Kommissie het 'n hoofkantoor en die ander kantore, met die jurisdiksiegebiede, wat die Minister bepaal.
- (3) Die Kommissie bestaan uit 'n Hoofgrondeisekommissaris aangestel deur die Minister, na uitnodiging aan die algemene publiek om nominasies te maak, 'n Adjunkgrondeisekommissaris op soortgelyke wyse aangestel en die getal streekgrondeisekommissarisse wat deur die Minister aangestel word. 40
- (4) Die Hoofgrondeisekommissaris, die Adjunkgrondeisekommissaris en 'n streekgrondeisekommissaris moet—
 - (a) geskikte persone wees om sodanige ampte te beklee;
 - (b) Suid-Afrikaanse burgers wees; en 45
 - (c) beskik oor kundigheid en kennis wat betrekking het op die werksaamhede van die Kommissie of die regs kennis of kwalifikasies wat die Minister nodig ag.
- (5) Die Minister kan enige aanstelling kragtens subartikel (3) ophef—
 - (a) indien hy of sy oortuig is dat sodanige aangestelde persoon nie meer 50 voldoen aan die vereistes van subartikel (4) nie; of
 - (b) indien die aangestelde persoon die Minister skriftelik versoek om die aanstelling te beëindig.

- (xii) "Supreme Court" means the Supreme Court of South Africa referred to in section 101 of the Constitution; (viii)
(xiii) "the rules" means the rules made under sections 16 and 32; (i)
5 (xiv) "this Act" includes the rules and the regulations made under section 40. (vi)

Enforcement of claim for restitution

2. (1) A person shall be entitled to enforce restitution of a right in land if—
(a) he or she is a person or community contemplated in section 121(2) of the Constitution or a direct descendant of such a person; and
10 (b) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the *Gazette*.
(2) The date contemplated in subsection (1), shall be a date not earlier than the earliest of the dates contemplated in section 43.
(3) The date contemplated in section 121(2)(a) of the Constitution is 19 June
15 1913.

Claims against nominees

3. 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
20 because of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2) of the Constitution had that subsection been in operation at the relevant time; and
(b) proves that the registered owner of the land holds title as a result of a
25 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

30 *Commission on Restitution of Land Rights*

Establishment of Commission on Restitution of Land Rights

4. (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
35 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.
40 (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
45 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
50 with the requirements of subsection (4); or
(b) if the appointed person requests the Minister in writing to terminate the appointment.

Vergaderings van Kommissie

5. (1) Die Kommissie vergader minstens drie keer per jaar.
 (2) Vergaderings van die Kommissie word gehou op die tyd en plek deur die Hoofgrondeisekommissaris bepaal.
 (3) Die meerderheid van die lede van die Kommissie maak 'n kworum uit vir 'n vergadering van die Kommissie. 5
 (4) Die besluit van die meerderheid van die lede van die Kommissie wat op 'n vergadering daarvan aanwesig is, is 'n besluit van die Kommissie: Met dien verstande dat in die geval van 'n staking van stemme die Hoofgrondeisekommissaris 'n beslissende stem benewens sy of haar beraadslagende stem het. 10

Algemene werksaamhede van Kommissie

6. (1) Die Kommissie moet, by 'n vergadering of deur die Hoofgrondeisekommissaris, 'n streekgrondeisekommissaris of 'n persoon deur enige sodanige kommissaris aangewys—
- (a) behoudens die bepalings van artikel 2, alle eise vir die herstel van regte in grond wat kragtens hierdie Wet by hom ingedien is, ontvang en ontvangs daarvan erken; 15
 - (b) redelike stappe doen om te verseker dat eisers in die voorbereiding en indiening van eise bygestaan word;
 - (c) met gereelde tussenpose en op redelike versoek, eisers inlig oor die vordering met hul eise; 20
 - (d) behoudens die bepalings van artikel 14 verslag doen aan die Hof oor die skikkingsvoorwaardes ten opsigte van suksesvol bemiddelde eise;
 - (e) aangeleenthede wat steeds tussen die eisers en ander belanghebbende partye in geskil is, omskryf met die oog op die bespoediging van die aanhoor van eise deur die Hof; 25
 - (f) met gereelde tussenpose gepaste stappe doen om inligting ten opsigte van die persone wat geregtig is om die herstel van regte in grond ingevolge artikel 121 van die Grondwet te eis, die beperkings opgelê by artikel 2 en die wyse waarop eise by die Kommissie ingedien kan word, bekend te maak. 30
- (2) Die Kommissie kan, by 'n vergadering of deur die Hoofgrondeisekommissaris, 'n streekgrondeisekommissaris of 'n persoon deur enige sodanige kommissaris aangewys—
- (a) die implementering van bevele wat deur die Hof kragtens artikel 35 gemaak is, moniteer en aanbevelings daarvoor doen; 35
 - (b) aan die Minister aanbevelings doen of hom of haar adviseer ten opsigte van die mees toepaslike vorm van alternatiewe regshulp, as daar is, vir die eisers wat nie vir die herstel van regte in grond ingevolge hierdie Wet kwalifiseer nie; 40
 - (c) regsvrae en uitlegvrae na die Hof verwys;
 - (d) verseker dat voorkeur gegee word aan eise wat 'n aansienlike getal persone raak of persone wat aansienlike verliese gely het as gevolg van ontneming of persone met besonder dringende behoeftes;
 - (e) in die algemeen, alles doen wat noodwendig saamhang met of redelikerwys verband hou met die spoedige finalisering van eise. 45

Delegering van bevoegdhede en verrigting van werksaamhede

7. (1) Behoudens die opdragte of voorwaardes wat die Kommissie van tyd tot tyd gee of bepaal, kan die Kommissie 'n bevoegdheid aan hom by of kragtens hierdie Wet verleen aan 'n subkomitee van die Kommissie of aan 'n lid van die Kommissie of aan 'n persoon beoog in artikel 8 of 9 deleger: Met dien verstande dat die bevoegdhede bedoel in artikel 6(2)(b), (c) en (d) nie gedelegeer mag word nie. 50
- (2) Die Hoofgrondeisekommissaris kan enige bevoegdheid aan hom of haar by of kragtens hierdie Wet verleen, uitgesonderd die bevoegdheid om te deleger, in die algemeen of ten opsigte van 'n spesifieke eis, aan die Adjunkgrondeisekommissaris of 'n streekgrondeisekommissaris deleger. 55
- (3) Indien die Hoofgrondeisekommissaris afwesig is of nie in staat is om enige of al sy of haar werksaamhede te verrig nie, tree die Adjunkgrondeise-

Meetings of Commission

5. (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.
15 (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
10 casting vote in addition to his or her deliberative vote.

General functions of Commission

6. (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—
15 (a) subject to the provisions of section 2, receive and acknowledge receipt of all claims for the restitution of rights in land lodged with it in terms of this Act;
(b) take reasonable steps to ensure that claimants are assisted in the preparation and submission of claims;
20 (c) advise claimants of the progress of their claims at regular intervals and upon reasonable request;
(d) subject to the provisions of section 14, report to the Court on the terms of settlement in respect of successfully mediated claims;
25 (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;
(f) at regular intervals, take appropriate steps to make public information regarding the persons entitled to claim restitution of rights in land in terms of section 121 of the Constitution, the limitations imposed by section 2, and the manner in which claims may be lodged with the
30 Commission.
(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—
35 (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;
40 (c) refer questions of law and interpretation to the Court;
(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;
45 (e) generally, do anything necessarily connected with or reasonably incidental to the expeditious finalisation of claims.

Delegation of powers and performance of functions

7. (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
50 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
55 Deputy Land Claims Commissioner or any regional land claims commissioner, either generally or with regard to a specific claim.
(3) 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

kommissaris in sy of haar plek op en terwyl die Adjunkgrondeisekommissaris sodanig optree, verrig hy of sy al die werksaamhede van die Hoofgrondeisekommissaris.

(4) 'n Streekgrondeisekommissaris kan, in plaas daarvan om 'n werksaamheid in 'n betrokke geval te verrig, die aangeleentheid na die Kommissie verwys sodat die Kommissie sodanige werksaamheid, tydens 'n vergadering beoog in artikel 5, kan verrig. 5

Verrigting van administratiewe werk van Kommissie

8. (1) Die administratiewe werk bykomstig by die verrigting van die werksaamhede van die Kommissie word verrig deur beamptes aangestel ingevolge die bepalings van artikel 15(3)(a) van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), en deur die Minister, na oorleg met die Kommissie, in die algemeen of vir 'n spesifieke doel aangewys. 10

(2) By die doen van 'n aanwysing ingevolge subartikel (1) moet die Minister en die Kommissie probeer verseker dat die personeel van die Kommissie in die breë verteenwoordigend is van die Suid-Afrikaanse bevolking. 15

(3) Aangewese beamptes verrig hulle pligte onder die beheer en toesig van die Hoofgrondeisekommissaris of streekgrondeisekommissaris, na gelang van die geval.

Aanstelling van persone om Kommissie op 'n *ad hoc*-grondslag by te staan

9. (1) Die Hoofgrondeisekommissaris kan van tyd tot tyd— 20

(a) een of meer persone met besondere kennis of spesifieke kundigheid met betrekking tot die bereiking van die Kommissie se doelstellings, aanstel om die Kommissie te adviseer ten opsigte van enige aangeleentheid wat verband hou met die verrigting van sy werksaamhede;

(b) een of meer persone met spesifieke kundigheid rakende die beslegting van geskille, aanstel om vergaderings van belanghebbende partye te fasiliteer, geskille te bemiddel en te besleg, en skriftelik verslag te doen aan die Kommissie oor die uitslag van sodanige onderhandelings; 25

(c) 'n staatsdepartement, provinsiale administrasie, plaaslike owerheid of persoon in diens van die Staat, 'n provinsiale administrasie of plaaslike owerheid, wat besondere kennis of spesifieke kundigheid het, versoek om die Kommissie te adviseer ten opsigte van enige aangeleentheid wat verband hou met die verrigting van sy werksaamhede. 30

(2) 'n Persoon aangestel ingevolge subartikel (1) wat nie in die heeltydse diens van die Staat is nie, kan uit geld vir dié doel deur die Parlement bewillig die besoldiging en toelaes ten opsigte van dienste deur hom of haar gelewer, betaal word wat die Minister in oorleg met die Minister van Finansies bepaal. 35

Indiening van eise

10. (1) 'n Persoon of die verteenwoordiger van 'n gemeenskap wat van mening is dat hy of sy of die gemeenskap wat hy of sy verteenwoordig geregtig is om die herstel van 'n reg in grond te eis soos beoog in artikel 121 van die Grondwet, kan sodanige eis, met inbegrip van 'n beskrywing van die betrokke grond en die aard van die reg wat geëis word, indien op die vorm wat vir hierdie doel deur die Hoofgrondeisekommissaris kragtens artikel 16 voorgeskryf is. 40

(2) Die Kommissie moet by al sy kantore eisvorms beskikbaar stel. 45

(3) Indien 'n eis namens 'n gemeenskap ingedien word, moet die grondslag waarop daar aanspraak gemaak word dat die persoon wat die vorm indien die gemeenskap verteenwoordig volledig verklaar word en 'n toepaslike besluit en dokument wat sodanige aanspraak steun, moet die vorm ten tye van indiening vergesel: Met dien verstande dat die streekgrondeisekommissaris wat jurisdiksie oor die betrokke grond het, kan toelaat dat sodanige besluit of dokument op 'n latere stadium ingedien word. 50

Prosedure na indiening van eis

11. (1) Indien die streekgrondeisekommissaris wat jurisdiksie het, tevrede is dat— 55

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.

(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.

Performance of administrative work of Commission

8. (1) The administrative work incidental to the performance of the functions of the Commission shall be performed by officers appointed in terms of the provisions of section 15(3)(a) 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.

Appointment of persons to assist Commission on *ad hoc* basis

9. (1) The Chief Land Claims Commissioner may from time to time—
(a) appoint one or more persons 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 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 province 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) A person appointed in terms of subsection (1) who is not in the full-time service of the State may, from moneys appropriated by Parliament for this purpose, 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.

Lodgement of claims

10. (1) Any person or the representative of any community who is of the opinion that he or she or the community which he or she represents is entitled to claim restitution of a right in land as contemplated in section 121 of the Constitution, may lodge such claim, which shall include a description of the land in question and the nature of the right 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.

Procedure after lodgement of claim

11. (1) If the regional land claims commissioner having jurisdiction is satisfied that—

- (a) die eis op die voorgeskrewe wyse ingedien is;
 - (b) die eis nie deur die bepalings van artikel 2(1) uitgesluit is nie;
 - (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, 5
- 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.
- (2) Die betrokke streekgrondeisekommissaris kan die feit dat 'n eis nie op die voorgeskrewe wyse ingedien is nie kondoneer op die voorwaardes wat hy of sy bepaal. 10
- (3) 'n Beuselagtige of kwelsugtige eis kan deur die betrokke streekgrondeisekommissaris verwerp word.
- (4) Indien die streekgrondeisekommissaris besluit dat die kriteria uiteengesit in paragrawe (a), (b), (c) en (d) van subartikel (1) nie nagekom is nie, moet hy of sy die eiser dienoooreenkomstig inlig, asook oor die redes vir sodanige besluit. 15
- (5) Indien 'n bevel deur die Hof soos in artikel 35 beoog, gemaak is, kan die eiser, behoudens die bepalings van artikel 2(1), by die Hof aansoek doen om toestemming om 'n eis ten opsigte van daardie grond in te dien.
- (6) Onmiddellik nadat die streekgrondeisekommissaris die kennisgewing bedoel in subartikel (1) gepubliseer het, moet hy— 20
- (a) enige ander party wat na sy of haar mening 'n belang by die eis mag hê, inlig; en
 - (b) die betrokke Registrateur, soos beoog in artikel 102 van die Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), vir die gebied waarin die betrokke grond geleë is, opdrag gee om in sy of haar rekords aan te teken dat 'n eis vir herstel van 'n reg in die grond ingevolge hierdie Wet ingestel is. 25
- (7) Sodra 'n kennisgewing ten opsigte van enige grond gepubliseer is en 'n tydelike inskrywing in die betrokke rekords soos beoog in subartikel (6)(b) aangebring is— 30
- (a) mag geen persoon die afhandeling van die eis op 'n onbehoorlike wyse belemmer nie;
 - (b) mag geen eiser wat op die datum van die inwerkingtreding van hierdie Wet op die betrokke grond woonagtig was sonder die skriftelike goedkeuring van die Hoofgrondeisekommissaris daarvan verwyder word nie; 35
 - (c) mag geen persoon op enige wyse hoegenaamd sonder die skriftelike goedkeuring van die Hoofgrondeisekommissaris enige verbeterings op die grond verwyder of laat verwyder, dit vernietig of laat vernietig of dit beskadig of laat beskadig nie; 40
 - (d) mag geen eiser of ander persoon die grond sonder die skriftelike toestemming van die eienaar of regmatige okkupeerder betree en bewoon nie.
- (8) Die streekgrondeisekommissaris kan te eniger tyd na die publisering van 'n kennisgewing beoog in subartikel (1), indien hy of sy rede het om te glo dat enige verbetering op die grond waarskynlik verwyder, beskadig of vernietig sal word of dat enige persoon woonagtig op sodanige grond nadelig geraak kan word as gevolg van die publisering van sodanige kennisgewing, enige persoon beoog in artikel 8 of 9 magtig om sodanige grond te betree ten einde 'n inventaris van alle bates op die grond, 'n lys van persone werksaam of woonagtig op die grond, of 'n verslag oor die landboukundige stand van die grond en van enige uitgrawings, mynbou of prospekteerwerk daarop, op te stel. 50

Kommissie se ondersoekbevoegdheid

12. (1) Die Kommissie kan, deur middel van 'n lid van die Kommissie of enige persoon skriftelik daartoe gemagtig, ten einde sy werksaamhede te verrig— 55
- (a) 'n ondersoek doen;
 - (b) van enige persoon, met inbegrip van 'n staatsdepartement, die besonderhede, dokumente en inligting eis wat nodig mag wees ten opsigte van 'n ondersoek;
 - (c) by skriftelike kennisgewing geadresseer en afgelewer deur 'n lid van die personeel van die Kommissie of 'n balju aan 'n persoon, sodanige 60

- (a) the claim has been lodged in the prescribed manner;
 - (b) the claim is not precluded by the provisions of section 2(1);
 - (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.
- (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), (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.
- (5) If an order has been made by the Court as contemplated in section 35 the claimant may, subject to the provisions of section 2(1), make application to the Court for permission to lodge a claim in respect of that land.
- (6) Immediately after publishing the notice referred to in subsection (1), the regional land claims commissioner shall—
- (a) advise any other party which, in his or her opinion, might have an interest in the claim; and
 - (b) direct the relevant Registrar, as contemplated in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), for the area in which the land in question is situated to note in his or her records the fact that a claim for restitution of a right in the land has been instituted in terms of this Act.
- (7) Once a notice has been published in respect of any land and a temporary note has been made in the records as contemplated in subsection (6)(b)—
- (a) no person may in an improper manner obstruct the passage of the claim;
 - (b) no claimant who was resident on 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.
- (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.

Commission's power of investigation

12. (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

persoon gelas om in verband met 'n ondersoek voor 'n lid van die Kommissie te verskyn op 'n tyd en plek vermeld in sodanige kennisgewing en om aan sodanige lid alle dokumente of voorwerpe in besit of bewaring of onder die beheer van sodanige persoon en wat betrekking het op daardie ondersoek, voor te lê.

(2) 'n Persoon wat gelas is om dokumente of voorwerpe ingevolge subartikel (1)(c) voor te lê, is nie verplig om enige sodanige dokument of voorwerp wat teen hom of haar in strafregtelike verrigtinge gebruik kan word, voor te lê nie.

(3) Indien 'n eiser nie in staat is om al die inligting wat nodig is vir die behoorlike indiening of ondersoek van 'n eis te verstrek nie, moet die streekgrondeisek-kommissaris 'n beampte beoog in artikel 8 gelas om alle redelike stappe te doen ten einde hierdie inligting beskikbaar te stel.

(4) Indien die Hoofgrondeisek-kommissaris te eniger tyd gedurende die loop van 'n ondersoek deur die Kommissie van mening is dat die bronne van die Kommissie of die Hof doeltreffender aangewend sal kan word indien alle eise ten opsigte van die betrokke grond of gebied of dorp gelyktydig ondersoek word, moet hy of sy, in die *Staatskoerant* en op sodanige ander wyse as wat hy of sy geskik ag, 'n kennisgewing laat publiseer wat potensiele eisers van sy of haar besluit meedeel en hulle uitnooi om, behoudens die bepalings van artikel 2(1), eise binne die tydperk vermeld in die kennisgewing in te dien.

(5) Geen eis ten opsigte van 'n aangeleentheid beoog in subartikel (4) mag ingedien word na verstryking van die tydperk vermeld in bedoelde kennisgewing nie: Met dien verstande dat die Kommissie 'n eiser, indien hy of sy goeie gronde aanvoer, kan toelaat om 'n eis na die verstryking van sodanige tydperk in te dien, maar nie later nie as drie jaar na die datum bepaal ingevolge artikel 2(1)(b).

Bemiddeling

13. (1) Indien dit te eniger tyd gedurende die verloop van die Kommissie se ondersoek blyk dat—

(a) daar twee of meer mededingende eise ten opsigte van 'n spesifieke reg in grond bestaan;

(b) in die geval van 'n gemeenskap se eis, daar mededingende groepe binne die eisergemeenskap bestaan wat die beslegting van die eis bemoeilik;

(c) waar die grond waarop die eis betrekking het nie staatsgrond is nie, die eienaar of houer van regte in daardie grond teen die eis gekant is; of

(d) daar enige ander aangeleentheid is wat moontlik suksesvol by wyse van bemiddeling en onderhandeling opgelos kan word,

kan die Hoofgrondeisek-kommissaris die betrokke partye gelas om hulle geskilpunte by wyse van 'n proses van bemiddeling en onderhandeling te probeer oplos.

(2)(a) 'n Lasgewing beoog in subartikel (1) geskied by skriftelike kennisgewing wat die tyd wanneer en plek waar sodanige proses 'n aanvang moet neem, vermeld.

(b) Die Hoofgrondeisek-kommissaris stel 'n bemiddelaar aan om by die eerste vergadering tussen die partye voor te sit: Met dien verstande dat die partye te enige tydstip gedurende die verloop van die bemiddeling of onderhandeling by ooreenkoms 'n ander persoon kan aanstel om die geskil te bemiddel.

(3) 'n Persoon aangestel deur die Hoofgrondeisek-kommissaris ingevolge subartikel (2)(b) moet óf 'n beampte beoog in artikel 8 wees wat 'n geskikte persoon is om 'n sodanige proses van bemiddeling en onderhandeling te beheer, óf 'n onafhanklike bemiddelaar beoog in artikel 9(1)(b).

(4) Alle besprekings wat plaasvind en alle onthullings en voorleggings wat gedoen word gedurende die bemiddelingsproses is geprivilegieerd, tensy die partye anders ooreenkom.

Verwysing van eise na Hof

14. (1) Na afhandeling van 'n ondersoek deur die Kommissie ten opsigte van 'n spesifieke eis 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 streekgrondeisek-kommissaris sertifiseer dat dit nie uitvoerbaar is om

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(1), to lodge claims within a period specified in such notice.

(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 three years after the date fixed in terms of section 2(1)(b).

Mediation

13. (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 to a particular right in land;
- (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 state-owned 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.

Referral of claims to Court

14. (1) If upon completion of an investigation by the Commission—

- (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

'n geskil wat voortspruit uit sodanige eis by wyse van bemiddeling en onderhandeling op te los nie;

- (c) die partye tot 'n geskil wat voortspruit uit sodanige eis ooreenkom oor die wyse waarop die eis afgehandel moet word en die streekgrondeisekommissaris tevrede is dat sodanige ooreenkoms toepaslik is; of 5
- (d) die streekgrondeisekommissaris van mening is dat die eis gereed is vir aanhoor deur die Hof,

moet die Hoofgrondeisekommissaris dienooreenkomstig sertifiseer en die aangeleentheid na die Hof verwys.

(2) 'n Eis wat na die Hof verwys is as gevolg van omstandighede beoog in subartikel (1)(a), (b) of (d) moet vergesel gaan van 'n dokument wat— 10

- (a) die uitslae van die Kommissie se ondersoek met betrekking tot die meriete van die eis uiteensit;
- (b) oor die versuim van 'n party om tot bemiddeling in te stem, verslag doen;
- (c) 'n lys bevat van al die partye wat die reg behoort te hê om vertoë tot die Hof te rig met betrekking tot die eis; en 15
- (d) die Kommissie se aanbeveling ten opsigte van die mees toepaslike wyse waarop die eis afgehandel kan word, uiteensit.

(3) 'n Verwysing gedoen as gevolg van 'n ooreenkoms beoog in subartikel (1)(c) gaan vergesel van 'n dokument wat die uitslae van die Kommissie se ondersoek na die meriete van die eis uiteensit en 'n afskrif van die betrokke skikkingsakte, tesame met 'n versoek onderteken deur die betrokke partye en geëndoseer deur die Hoofgrondeisekommissaris waarin versoek word dat sodanige skikking 'n bevel van die Hof gemaak word. 20

(4) Indien die Hoofgrondeisekommissaris nie tevrede is dat 'n skikking bedoel in subartikel (1)(c) toepaslik is nie, moet hy of sy die aangeleentheid na die Hof verwys vir 'n verhoor ooreenkomstig subartikel (1)(d). 25

(5) Enige belanghebbende party is, by betaling van die voorgeskrewe fooi, geregtig op afskrifte van die dokumente in hierdie artikel beoog, met inbegrip van die voorleggings van ander belanghebbende partye ten opsigte van enige aangeleentheid in hierdie artikel beoog. 30

(6) Die Hof gee geen bevel ingevolge artikel 35 nie, tensy die Kommissie ten opsigte van die betrokke eis ooreenkomstig die bepalings van hierdie artikel gehandel het.

(7) Indien 'n eis nie binne nege maande vanaf die datum van indiening daarvan na die Hof verwys is nie, moet die betrokke streekgrondeisekommissaris skriftelik aan die Kommissie verslag doen en die redes vir die vertraging verstrek. 35

Sertifikaat van uitvoerbaarheid

15. (1) Wanneer 'n eis beoog in artikel 121(2) van die Grondwet ingevolge artikel 14 na die Hof verwys is, moet die Hoofgrondeisekommissaris die Minister versoek om te sertifiseer of— 40

- (a) in die geval van grond beoog in artikel 123(1)(a) van die Grondwet, die herstel van die betrokke reg uitvoerbaar is;
- (b) in die geval van grond beoog in artikel 123(1)(b) van die Grondwet, die verkryging van die betrokke reg uitvoerbaar is. 45

(2) Wanneer 'n eis vir 'n bevel beoog in artikel 123(3)(a) van die Grondwet ingevolge artikel 14 na die Hof verwys is, moet die Hoofgrondeisekommissaris die Minister versoek om te sertifiseer of die aanwysing van alternatiewe Staatsgrond uitvoerbaar is.

(3) Indien die Minister kragtens subartikel (1) sertifiseer dat herstel of verkryging nie uitvoerbaar is nie, moet die Hoofgrondeisekommissaris dadelik die Minister versoek om te sertifiseer of dit uitvoerbaar is om alternatiewe Staatsgrond aan te wys. 50

(4) Wanneer hy of sy 'n versoek beoog in subartikels (1), (2) of (3) voorlê, moet die Hoofgrondeisekommissaris die Minister adviseer of herstel, verkryging of aanwysing ten opsigte van die betrokke geval uitvoerbaar is of nie. 55

(5) Alle belanghebbende partye moet die geleentheid gebied word om voorleggings ten opsigte van uitvoerbaarheid aan die Minister te doen

(6) By oorweging of herstel of verkryging deur die Staat uitvoerbaar is ingevolge subartikel (1), moet die Minister, tesame met enige ander faktor, in ag neem— 60

- to resolve any dispute arising from such claim by mediation and negotiation;
- (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
- (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 shall certify accordingly and refer the matter to the Court.
- (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 ought to have the right to make representations to the Court in respect of the claim; and
- (d) setting out the Commission's recommendation as to the most appropriate manner in which the claim can be resolved.
- (3) A referral made as a result of an agreement contemplated in subsection (1)(c) shall be accompanied by a document setting out the results of the Commission's investigation into the merits of the claim and a copy of the relevant deed of settlement together with a request signed by the parties concerned and endorsed by the Chief Land Claims Commissioner requesting that such agreement be made an order of Court.
- (4) If the Chief Land Claims Commissioner is not satisfied that a settlement referred to in subsection (1)(c) is appropriate, he or she shall refer the matter to the Court for a hearing in accordance with subsection (1)(d).
- (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.
- (6) 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.
- (7) If a claim has not been referred to the Court within nine months from the date of its lodgement, the regional land claims commissioner concerned shall report in writing to the Commission, giving the reasons for the delay.

Certificate of feasibility

15. (1) Upon referral of a claim contemplated in section 121(2) of the Constitution to the Court in terms of section 14, the Chief Land Claims Commissioner shall request the Minister to certify whether—
- (a) in the case of land contemplated in section 123(1)(a) of the Constitution, restoration of the right in question is feasible;
- (b) in the case of land contemplated in section 123(1)(b) of the Constitution, acquisition of the right in question is feasible.
- (2) Upon referral of a claim for an order contemplated in section 123(3)(a) of the Constitution to the Court in terms of section 14, the Chief Land Claims Commissioner shall request the Minister to certify whether it is feasible to designate alternative state-owned land.
- (3) If the Minister certifies under subsection (1) that restoration or acquisition is not feasible, the Chief Land Claims Commissioner shall forthwith request the Minister to certify whether it is feasible to designate alternative state-owned land.
- (4) When submitting a request contemplated in subsections (1), (2) or (3), the Chief Land Claims Commissioner shall advise the Minister as to whether or not restoration, acquisition or designation is feasible in the case in question.
- (5) All interested parties shall be given the opportunity to make submissions to the Minister on the question of feasibility.
- (6) In considering whether restoration or acquisition by the State is feasible in terms of subsection (1), the Minister shall, in addition to any other factor, take into account—

- (a) of die sonering van die betrokke grond sedert die ontneming gewysig is en of die grond in so 'n mate verander het dat dit nie prakties moontlik is om die betrokke reg te herstel nie;
 - (b) enige tersaaklike stadsontwikkelingsplan;
 - (c) enige ander aangeleentheid wat die herstel of verkryging van die betrokke reg onuitvoerbaar maak; en
 - (d) enige fisiese of inherente gebrek aan die grond wat dit gevaarlik vir menslike bewoning kan maak.
- (7) By oorweging of die aanwysing van alternatiewe staatsgrond uitvoerbaar is ingevolge subartikels (2) en (3), moet die Minister, tesame met enige ander faktor, in ag neem—
- (a) welke grond aan die Staat behoort, en in besonder grond wat in die gebied waar die ontneming plaasgevind het, geleë is; en
 - (b) die geskiktheid van sodanige grond om die eiser se behoeftes te bevredig.
- (8) Niks in hierdie artikel word op so 'n wyse uitgelê dat daar van die Minister verwag word of dat hy of sy bevoeg is om te oorweeg of herstel, verkryging of aanwysing regverdig of wenslik is nie.
- (9) Die Minister moet die betrokke sertifikaat van uitvoerbaarheid uitreik, of weier om dit te doen, binne 30 dae vanaf ontvangs van 'n versoek en die Hoofgrondeisekommissaris of die betrokke streekgrondeisekommissaris moet die Minister se beslissing aan elke persoon wat daardeur geraak word, bekend maak.
- (10) Die besluit van die Minister is onderhewig aan hersiening deur die Hof, en die verhoor van die hersiening kan, na die goeddunke van die Hof, gelyktydig met die aanhoor van die betrokke eis geskied.
- (11) Die besluit van die Minister ten opsigte van die uitreiking van 'n sertifikaat van uitvoerbaarheid, en die redes vir sodanige besluit, is openbare dokumente.
- (12) Indien die Minister ingevolge subartikel (2) of (3) sertifiseer dat dit uitvoerbaar is om alternatiewe Staatsgrond aan te wys, kan hy of sy sodanige aanwysing gelyktydig of enige tyd daarna, doen.

Reëls ten opsigte van prosedures van Kommissie

16. (1) Na oorlegpleging met die Minister kan die Hoofgrondeisekommissaris reëls maak ten opsigte van—
- (a) enige aangeleentheid wat ingevolge hierdie Hoofstuk voorgeskryf moet of kan word;
 - (b) die indien van eise;
 - (c) enige stappe wat gedoen kan word ten einde openbare kennis te gee van eise en kennis aan persone wat 'n belang het by enige aangeleentheid wat deur die Kommissie ondersoek word;
 - (d) kennisgewing aan partye om 'n vergadering by te woon met die doel om geskille by wyse van bemiddeling of onderhandeling te skik;
 - (e) kennisgewing aan partye en openbare kennisgewings waarin kennis gegee word dat die Kommissie verbandhoudende eise ten opsigte van spesifieke grond, 'n woonbuurt of dorp sal oorweeg binne 'n vasgestelde tydperk;
 - (f) die prioriteitsorde wat aan eise of kategorieë eise verleen word ten einde die uitslag beoog in artikel 6(2)(d) te bereik; en
 - (g) in die algemeen, ten opsigte van enige ander aangeleentheid wat hy of sy nodig of wenslik ag om voor te skryf ten einde die oogmerke van hierdie Wet te bereik of te bevorder.
- (2) Die algemeenheid van subartikel (1) word nie deur die voorafgaande artikels van hierdie Hoofstuk beperk nie.
- (3) Reëls wat kragtens die bepalinge van subartikel (1) gemaak is, moet in die Staatskoerant gepubliseer word.

Misdrywe en strawwe

17. 'n Persoon wat—
- (a) die bepalinge van artikel 11(7)(a), (b), (c) of (d) oortree;
 - (b) gelas is om voor 'n lid van die Kommissie te verskyn en dokumente of

- (a) whether the zoning of the land in question has since the dispossession been altered and whether the land has been transformed to such an extent that it is not practicable to restore the right in question;
- (b) any relevant urban development plan;
- 5 (c) any other matter which makes the restoration or acquisition of the right in question unfeasible; and
- (d) any physical or inherent defect in the land which may cause it to be hazardous for human habitation.
- (7) In considering whether designation of alternative state-owned land is
10 feasible in terms of subsections (2) and (3), the Minister shall, in addition to any other factor, take into account—
- (a) what land is owned by the State, in particular land which is situated in the area in which the dispossession took place; and
- (b) the suitability of such land to meet the needs of the claimant.
- 15 (8) Nothing in this section shall be construed to mean that the Minister shall be required or entitled to consider whether restoration, acquisition or designation is just or desirable.
- (9) The Minister shall issue the relevant certificate of feasibility, or refuse to do so, within 30 days of receipt of a request, and the Chief Land Claims
20 Commissioner or the regional land claims commissioner concerned shall communicate the Minister's decision to every person affected by it.
- (10) The decision of the Minister shall be subject to review by the Court, the hearing of which review may, at the discretion of the Court, be conducted at the same time as the hearing of the claim in question.
- 25 (11) The decision of the Minister in respect of the issue of a certificate of feasibility, and the reasons for such decision, shall be public documents.
- (12) If the Minister certifies in terms of subsection (2) or (3) that it is feasible to designate alternative state-owned land he or she may make such designation at the same time or at any time thereafter.

30 Rules regarding procedure of Commission

16. (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;
- 35 (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;
- 40 (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;
- 45 (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
50 sections of this Chapter.
- (3) Rules made under the provisions of subsection (1) shall be published in the *Gazette*.

Offences and penalties

17. Any person who—
- 55 (a) contravenes the provisions of section 11(7)(a), (b), (c), or (d);
- (b) having been directed to appear before a member of the Commission

- voorwerpe ingevolge artikel 12(1)(c) voor te lê, en versuim om op die bepaalde tyd en plek te verskyn of sodanige dokumente en voorwerpe voor te lê;
- (c) die Kommissie in die verrigting van sy werksaamhede hinder of belemmer; 5
- (d) 'n behoorlik gemagtigde beampte beoog in artikel 8, of 'n persoon aangestel ingevolge artikel 9, verhoed of probeer verhoed om 'n werksaamheid ingevolge hierdie Wet te verrig, 10
- is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens drie maande.

Beperking van aanspreeklikheid

18. Die Kommissie, lede van die Kommissie, 'n persoon kragtens artikel 9 aangestel of 'n beampte beoog in artikel 8 is nie aanspreeklik nie vir enige handeling of versuim te goeder trou terwyl hy of sy 'n werksaamheid ingevolge 'n bepaling van hierdie Wet verrig. 15

Uitgawes van Kommissie

19. (1) Alle uitgawes in verband met die verrigting van die Kommissie se werksaamhede word betaal uit geld vir dié doel deur die Parlement bewillig.

(2) 'n Persoon aangestel ingevolge artikel 4(3) wat nie in die heeltidse diens van die Staat is nie kan uit geld vir dié doel deur die Parlement bewillig, ten opsigte van dienste verrig met betrekking tot die werksaamhede van die Kommissie, die besoldiging en toelaes betaal word wat deur die Minister in oorleg met die Minister van Finansies bepaal word. 20

Jaarlikse begroting van uitgawes

20. Die begroting van uitgawes ten opsigte van elke boekjaar moet, nadat dit opgestel is deur die Hoofgrondeisekommissaris of 'n beampte beoog in artikel 8(1) en deur die Hoofgrondeisekommissaris aangewys, nie later nie as die eerste dag van Augustus van die voorafgaande boekjaar, voorgelê word aan die Direkteur-generaal van Grondsake, wat die rekenpligtige beampte is. 25

Jaarlikse verslag

21. Die Kommissie lê jaarliks, nie later nie as die eerste dag van Junie, 'n verslag van al sy bedrywighede gedurende die voorafgaande jaar tot op 31 Maart, aan die Parlement voor. 30

HOOFSTUK III

Die Grondeishof

Grondeishof

22. (1) Daar is 'n geregshof wat bekend sal staan as die Grondeishof met die bevoegdheid, benewens die bevoegdhede beoog in artikel 123 van die Grondwet—
- (a) om herstel van 'n reg in grond ooreenkomstig hierdie Wet te bepaal; 40
- (b) om vergoeding ingevolge hierdie Wet te bepaal;
- (c) om ten opsigte van 'n eis ingevolge artikel 3, die persoon wat op eiendomsreg geregtig is, te bepaal;
- (d) om al die ander aangeleenthede wat ingevolge artikels 121, 122 en 123 van die Grondwet bepaal moet word, te bepaal. 45
- (2) Die Hof het jurisdiksie regdeur die Republiek en het al die bykomende bevoegdhede wat noodsaaklikerwys of redelikerwys verbandhoudend is met die verrigting van sy werksaamhede, met inbegrip van die bevoegdheid om tussentydse bevele en interdikte toe te staan.
- (3) Daar is 'n President van die Hof deur die President van die Republiek aangestel handelende op advies van die Regterlike Dienskommissie. 50
- (4) Die President van die Republiek kan, na oorleg met die President van die Hof en die Regterlike Dienskommissie, bykomende regters van die Hof aanstel.

- 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;
- 5 (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 appointed in terms of section 9, from performing a function in terms of this Act,
- 10 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

Limitation of liability

18. The Commission, members of the Commission, any person 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
- 15 of any provision of this Act.

Expenditure of Commission

19. (1) All expenditure in connection with the performance of the Commission's functions shall be defrayed from moneys appropriated by Parliament for such purpose.
- 20 (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.

25 Annual estimates of expenditure

20. 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
- 30 the Director-General of Land Affairs, who shall be the accounting officer.

Annual report

21. 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

35 *The Land Claims Court*

Land Claims Court

22. (1) There shall be a court of law to be known as the Land Claims Court which, in addition to the powers contemplated in section 123 of the Constitution, shall have the power—
- 40 (a) to determine restitution of any right in land in accordance with this Act;
- (b) to determine compensation in terms of this Act;
- (c) in respect of a claim in terms of section 3, to determine the person entitled to ownership;
- 45 (d) to determine all other matters which require to be determined in terms of sections 121, 122 and 123 of the Constitution.
- (2) The Court shall have jurisdiction throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and interdicts.
- (3) There shall be a President of the Court, who shall be appointed by the
- 50 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) Die President van die Hof en die bykomende regters van die Hof kan vir 'n vaste termyn aangestel word.

(6) 'n Regter van 'n provinsiale of plaaslike afdeling van die Hooggeregshof kan afgestaan word om as 'n regter van die Hof te dien.

Kwalifikasies van regters van Hof

5

23. Niemand kwalifiseer om as President of 'n regter van die Hof aangestel te word nie, tensy hy of sy—

- (a) 'n Suid-Afrikaanse burger is;
- (b) 'n geskikte persoon is om 'n regter van die Hof te wees; en
- (c) (i) 'n regter van die Hooggeregshof is of kwalifiseer om as advokaat of prokureur toegelaat te word en, vir 'n gesamentlike tydperk van minstens 10 jaar as advokaat of prokureur gepraktiseer het of in die regte aan 'n universiteit gedoseer het; of
- (ii) op grond van sy of haar opleiding en ervaring, kundigheid op die gebied van die regte en grondaangeleenthede het wat toepaslik is by die toepassing van hierdie Wet en die reg van die Republiek.

15

Prosesreg en reëls

24. Totdat reëls van die Hof ingevolge artikel 32 gemaak is, geld die prosedurereëls wat toegepas word in siviele gedinge en aansoeke in 'n provinsiale afdeling van die Hooggeregshof *mutatis mutandis* ten opsigte van enige verrigtinge in die Hof.

20

Ampsbekleding

25. Die bepalings van artikel 104 van die Grondwet ten opsigte van die aflê van 'n eed of plegtige verklaring en die afdanking of skorsing van regters, is van toepassing op regters en assessore van die Hof.

25

Besoldiging en diensvoorwaardes van regters

26. 'n Regter van die Hof ontvang die besoldiging en word, behoudens artikel 22(5), aangestel onderworpe aan die diensvoorwaardes wat by of kragtens die Wet op die Besoldiging en Diensvoorwaardes van Regters, 1989 (Wet No. 88 van 1989), voorgeskryf is, en sy of haar besoldiging word nie, behoudens die bepalings van artikel 7(4) van bedoelde Wet, tydens sy of haar dienstydperk verminder nie.

30

Aanstelling van assessore

27. (1) Die Hof word bygestaan deur assessore deur die Minister aangestel na uitnodiging aan die algemene publiek om benoemings te doen.

35

(2) Niemand word as assessor van die Hof aangestel nie, tensy hy of sy, na die oordeel van die Minister, oor vaardighede en kennis beskik wat toepaslik is ten opsigte van die werk van die Hof: Met dien verstande dat dit nie 'n aanstellingsvereiste is dat 'n assessor oor 'n regskwalifikasie beskik nie.

(3) 'n Assessor ontvang die vergoeding en is geregtig op die vakansie- en ander voordele wat die Minister van Justisie in oorleg met die Minister van Finansies en die President van die Hof bepaal.

40

Setel en sittings van Hof

28. (1) Die setel of setels van die Hof word deur die Minister van Justisie in oorleg met die President van die Hof bepaal.

45

(2) Die Hof kan, ondanks die bepalings van subartikel (1), verhoor hou op enige ander plek in die Republiek met die oog daarop om die Hof toeganklik vir eisers te maak.

(3) 'n Enkele regter sit by verhoor van die Hof voor tensy die President van die Hof of in sy of haar afwesigheid die mees senior beskikbare regter anders besluit.

50

(4) Ten minste een assessor moet by elke betwiste saak sitting neem.

(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 provincial or local division of the Supreme Court may be seconded to serve as a judge of the Court.

5 Qualifications of judges of Court

23. 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
- 10 (c) (i) is a judge of the Supreme 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
- 15 (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.

Law of procedure and rules

24. Until such time as rules of Court are made in terms of section 32, the rules of procedure applicable in civil actions and applications in a provincial division
20 of the Supreme Court shall apply *mutatis mutandis* in respect of any proceedings in the Court.

Holding of office

25. The provisions of section 104 of the Constitution with regard to the making of an oath or solemn affirmation and the removal or suspension of judges shall
25 apply to judges and assessors of the Court.

Remuneration and conditions of employment of judges

26. A judge of the Court shall receive such remuneration and shall, subject to section 22(5), be appointed subject to such conditions of employment as may be prescribed by or under the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), and his or her remuneration shall, subject
30 to the provisions of section 7(4) of the said Act, not be reduced during his or her continuance in office.

Appointment of assessors

27. (1) The Court shall be assisted by assessors appointed by the Minister after
35 inviting nominations from the general public.

(2) No person shall be appointed as an assessor of the Court unless he or she, 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 of appointment that an assessor shall have any legal qualifications.

40 (3) An assessor shall receive such remuneration and be entitled to such vacation and other benefits as may be determined by the Minister of Justice in consultation with the Minister of Finance and the President of the Court.

Seat and hearings of Court

28. (1) The seat or seats of the Court shall be determined by the Minister of
45 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
50 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 participate at the hearing of any disputed case.

(5) By elke verhoor het 'n deelnemende assessor 'n stem gelyk aan dié van 'n regter wat die aangeleentheid aanhoor, behalwe ten opsigte van regspraak: Met dien verstande dat beslissings ten opsigte van die aangeleentheid bedoel in artikels 33 en 34(6) nie as regspraak geag word nie: Met dien verstande voorts dat by 'n staking van stemme die voorsittende regter 'n beslissende stem benewens sy of haar beraadslagende stem het. 5

Locus standi en regsverteenvoording

29. (1) Enige party wat gelys is in die dokument bedoel in artikel 14(2), of enige belanghebbende party ten opsigte van 'n aansoek ingevolge artikel 34, kan voor die Hof verskyn, hetsy persoonlik of verteenwoordig deur 'n advokaat of prokureur: Met dien verstande dat die Staat die reg het om in alle sake aangehoor te word en dat 'n persoon of gemeenskap wat nie gelys is in die dokument bedoel in artikel 14(2) nie by die Hof aansoek kan doen vir toestemming om voor die Hof te verskyn. 10

(2) Indien 'n party nie self regsverteenvoording kan bekostig nie, kan die Hoofgrondeisekommissaris stappe doen om regsverteenvoording vir sodanige persoon te reël, hetsy deur die Staat se regshulpstelsel of, indien nodig, op koste van die Kommissie. 15

Toelaatbaarheid van getuienis

30. (1) Die Hof kan enige getuienis, met inbegrip van mondelinge getuienis, toelaat wat die Hof as tersaaklik en oortuigend ag ten opsigte van die aangeleentheid wat aangehoor word, ongeag of sodanige getuienis in enige ander hof toelaatbaar sou wees of nie. 20

(2) Sonder om afbreuk te doen aan die algemeenheid van die voorafgaande subartikel, is dit geoorloof vir enige party voor die hof om— 25

(a) hoorsêgetuienis rakende die omringende omstandighede in verband met die ontneming van die betrokke reg of regte in grond en die reëls wat die toedeling en okkupasie van grond binne die betrokke eisergemeenskap op die tydstip van sodanige ontneming gereël het, aan te voer; en

(b) deskundige getuienis betreffende die historiese en antropologiese feite van toepassing ten opsigte van 'n bepaalde eis, aan te voer. 30

(3) Die Hof heg die waarde aan enige getuienis aangevoer ingevolge subartikels (1) en (2) wat hy goedvind.

Voorverhoorvergadering

31. (1) Die Hof kan, uit eie beweging of op versoek van 'n party voor die Hof, te eniger tyd voor die aanhoor van 'n aangeleentheid 'n voorverhoorvergadering van die partye belê met die doel om geskilpunte op te klaar, die aangeleentheid waar getuienis noodsaaklik is, te identifiseer en, in die algemeen, om 'n beslissing oor die betrokke eis te bespoedig. 35

(2) Die Hof kan, na die hou van sodanige voorverhoorvergadering, die bevel en lasgewings uitreik ten opsigte van die prosedure wat gevolg moet word voor en gedurende die verhoor wat die Hof nodig ag. 40

Reëls ten opsigte van prosedure

32. (1) Die President van die Hof kan reëls maak om die prosedure van die Hof te reël, met inbegrip van reëls wat voorsiening maak vir die omstandighede waaronder mondelinge getuienis voor die Hof gebring kan word. 45

(2) Die reëls beoog in subartikel (1) word in die *Staatskoerant* gepubliseer.

(3) Ondanks andersluidende bepalings in hierdie Wet of in die reëls beoog in subartikel (1)—

(a) kan die Hof, te eniger tyd nadat 'n eis na hom verwys is, die eis terugverwys na die Kommissie met riglyne oor die aangeleentheid wat ondersoek en waaroor verslag gedoen moet word deur die Kommissie; en 50

(b) kan die Hof 'n deel van enige verrigtinge op 'n informele of ondersoekende wyse hou.

(4) Die reëls beoog in subartikel (1) moet voorsiening maak vir die spoedige verhoor van 'n aansoek ingevolge artikel 34. 55

(5) At every hearing, a participating assessor shall have a vote equal to that of a judge hearing the matter, except in relation to questions of law: Provided that decisions in respect of the matters referred to in sections 33 and 34(6) shall be deemed not to be questions of law: Provided further that in the event of an equality of votes the presiding judge shall have a casting vote in addition to his or her deliberative vote.

Locus standi and legal representation

29. (1) Any party listed in the document referred to in section 14(2), or any interested party in relation to an application in terms of section 34, may appear before the Court, either in person or represented by an advocate or attorney: Provided that the State shall have the right to be heard in all cases and that a person or community not listed in the document referred to in section 14(2) may apply to the Court for permission to appear before it.

(2) 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.

Admissibility of evidence

30. (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.

Pre-trial conference

31. (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.

Rules governing procedure

32. (1) The President of the Court may make rules to govern the procedure of the Court, including rules providing for the circumstances under which oral evidence may be submitted to the Court.

(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.

Faktore wat deur Hof in ag geneem moet word

33. By oorweging van sy beslissing in 'n bepaalde geval, met uitsluiting van die hersiening van 'n beslissing ingevolge artikel 15, moet die Hof, bo en behalwe die aangeleenthede bedoel in artikels 121, 122 en 123 van die Grondwet, die volgende faktore in ag neem: 5

- (a) Die wenslikheid daarvan om voorsiening te maak vir die herstel van regte in grond of vir vergoeding aan persone wat van hul regte in grond ontnem is as gevolg van of voortspruitend uit rasgebaseerde diskriminerende wette;
- (b) die wenslikheid daarvan om oortredings van menseregte in die verlede reg te stel; 10
- (c) die vereistes van billikheid en geregtigheid;
- (d) die wenslikheid daarvan om grootskaalse maatskaplike ontwigting te vermy;
- (e) enige bestaande bepaling ten opsigte van die grond in 'n betrokke geval, waarkragtens daar met daardie grond gehandel kan word op 'n wyse wat bedoel is om die doelstellings beoog in artikel 8(3)(a) van die Grondwet te bereik; 15
- (f) enige ander faktor wat na die Hof se mening toepaslik is en saamgaan met die gees en doelstellings van die Grondwet, en in die besonder die bepalings van artikel 8 van die Grondwet. 20

Beslissing van Hof oor herstel voor finale beslegting van eis

34. (1) 'n Nasionale, provinsiale of plaaslike owerheidsliggaam kan ten opsigte van grond wat deur hom besit word of binne sy regsgebied val, aansoek doen by die Hof vir 'n bevel dat die betrokke grond of regte daarin nie aan 'n eiser of voorgenome eiser herstel sal word nie. 25

(2) Kennis van sodanige aansoek moet aan die Kommissie gegee word, wat ondersoek moet instel en 'n verslag aan die Hof moet voorlê oor die wenslikheid daarvan om 'n bevel bedoel in subartikel (1) te maak.

(3) Enige party wat 'n aansoek ingevolge subartikel (1) tot die Hof rig, moet op eie koste die stappe doen wat die betrokke streekgrondeisekommissaris bepaal ten einde die aansoek onder die aandag van ander persone wat 'n belang daarin mag hê, te bring sodat hulle vertoë tot die Hof kan rig en by die verhoor van die aansoek voor die Hof kan verskyn. 30

(4) Die betrokke streekgrondeisekommissaris moet die verdere stappe doen wat hy of sy toepaslik ag om die aansoek onder die aandag van persone wat 'n belang daarby mag hê, te bring. 35

(5) Na aanhoor van die aansoek beoog in subartikel (1) kan die Hof—

- (a) die aansoek van die hand wys; of
- (b) beveel dat wanneer enige eis ten opsigte van die betrokke grond finaal besleg word, die regte in die betrokke grond of die regte in 'n deel daarvan of sekere regte daarin nie aan die eiser herstel sal word nie. 40

(6) Die Hof gee nie 'n bevel ingevolge subartikel (5)(b) nie, tensy hy tevrede is dat—

- (a) dit in openbare belang is dat die betrokke regte nie aan 'n eiser herstel moet word nie; en 45
- (b) die publiek of enige wesenlike deel daarvan wesenlik benadeel sal word, tensy 'n bevel ingevolge subartikel (5)(b) voor die finale beregting van 'n eis gegee word.

(7) Indien die Hof 'n bevel ingevolge subartikel (5)(b) gee, moet die streekgrondeisekommissaris die betrokke Registrateur gelas om die aantekening in sy of haar rekords gemaak ingevolge artikel 11(6)(b), te verwyder. 50

(8) Enige bevel gegee ingevolge subartikel (5)(b) is bindend op alle eisers van die betrokke regte ongeag of sodanige eis voor of na die gee van die bevel ingedien is. 55

Hofbevele

35. (1) 'n Persoon in wie se guns 'n bevel beoog in artikel 123(3)(c) van die Grondwet uitgereik is, kan, in plaas daarvan om sodanige alternatiewe regshulp

Factors to be taken into account by Court

33. In considering its decision in any particular matter, excluding the review of a decision in terms of section 15, the Court shall, in addition to the matters referred to in sections 121, 122 and 123 of the Constitution, have regard to the following factors:

- (a) The desirability of providing for restitution of rights in land or compensation to people who were dispossessed of their rights in land as a result of or in pursuance of racially based discriminatory laws;
- (b) the desirability of remedying past violations of human rights;
- (c) the requirements of equity and justice;
- (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 achieve the goals contemplated in section 8(3)(a) of the Constitution;
- (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 8 of the Constitution.

Ruling by Court on restoration before final determination of claim

34. (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).

(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 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.

(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; or
- (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.

(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) If the Court makes an order in terms of subsection (5)(b), the regional land claims commissioner shall direct the relevant Registrar to remove any note made in his or her records in terms of section 11(6)(b).

(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.

55 Court orders

35. (1) A person in whose favour an order contemplated in section 123(3)(c) of the Constitution has been made may, instead of accepting such alternative

te aanvaar, binne 30 dae na die datum waarop die bevel gemaak is, skriftelik by die Minister aansoek doen om geregistreer te word as 'n voorkeureiser ten einde voordeel te trek uit enige Staatsbystandprogram vir behuising en die toekenning en ontwikkeling van landelike grond.

(2) Die Hof kan bykomend tot die bevel beoog in artikel 123 van die Grondwet—

- (a) voorwaardes bepaal wat nagekom moet word voordat 'n reg in grond aan 'n eiser herstel of verleen kan word;
- (b) indien daar van 'n eiser verlang word om enige betaling te maak voordat die betrokke reg herstel of verleen word, die bedrag wat betaal moet word en die wyse waarop die betaling moet geskied, met inbegrip van die tyd vir betaling, bepaal;
- (c) indien die eiser 'n gemeenskap is, die wyse bepaal waarop die regte gehou moet word, of die vergoeding betaal of gehou moet word;
- (d) by die Minister aanbeveel dat 'n eiser voorkeurtogang tot Staatsbronne gegee moet word by die toekenning en ontwikkeling van behuising en grond in die toepaslike ontwikkelingsprogram;
- (e) enige ander voorskrif gee oor die wyse waarop die Hof se bevel uitgevoer moet word, met inbegrip van die bepaling van spertye vir die implementering van sy bevel;
- (f) 'n bevel uitreik met betrekking tot grond ter vergoeding toegeken ten tye van die ontneming van die betrokke grond;
- (g) die bevel met betrekking tot koste uitreik wat hy regverdig ag.

(3) 'n Bevel beoog in subartikel (2)(c) is onderworpe aan die voorwaardes wat die Hof noodsaaklik ag om te verseker dat alle ontnemende lede van die betrokke 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.

(4) Die Hof se bevoegdheid om die herstel van 'n reg in grond te gelas of 'n reg in alternatiewe staatsgrond te verleen, sluit in die bevoegdheid om die aard van die reg voorheen gehou deur die eiser aan te pas, en om die titelvorm wat in die toekoms gehou kan word, te bepaal.

(5) Indien die Hof die Staat beveel om grond of 'n reg in grond te onteien ten einde dit aan 'n eiser te herstel, moet die Minister sodanige grond of reg onteien *mutatis mutandis* ooreenkomstig die bepalings van die Onteieningswet, 1975 (Wet No. 63 van 1975): Met dien verstande dat die eienaar geregtig is op die betaling van regverdige en billike vergoeding, wat óf by ooreenkoms óf deur die Hof ooreenkomstig die beginsels neergelê in artikel 28(3) van die Grondwet bepaal word: Met dien verstande voorts dat die prosedure wat deur die Hof by die bepaling van sodanige vergoeding gevolg moet word, die prosedure is wat in artikels 24 en 32 van hierdie Wet bepaal word.

(6) By die toekenning van enige grond, kan die Hof gelas dat die regte van individue ten opsigte van daardie grond bepaal moet word ooreenkomstig die prosedures uiteengesit in die Wet op die Verdeling en Oordrag van Sekere Staatsgrond, 1993 (Wet No. 119 van 1993).

(7) 'n Bevel van die Hof het dieselfde krag as 'n bevel van die Hooggeregshof vir doeleindes van die Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937).

(8) By die verlening van 'n bevel moet die Hof die betrokke Registrateur van Aktes gelas om enige tydelike aantekening aan te bring op sy of haar rekords ten opsigte van die grond ingevolge artikel 11(6)(b), te verwyder.

(9) Enige staatsgrond wat gehou word kragtens 'n huurkontrak of soortgelyke reëling, word geag in Staatsbesit te wees vir doeleindes van artikel 123(1)(a) van die Grondwet: Met dien verstande dat indien die Hof die herstel van 'n reg in sodanige grond beveel die regmatige okkupeerder daarvan geregtig is op billike en regverdige vergoeding soos bepaal deur ooreenkoms of deur die Hof ooreenkomstig die beginsels neergelê in artikel 28(3) van die Grondwet.

(10) 'n Belanghebbende party wat van mening is dat daar nie aan 'n bevel van die Hof behoorlik of vroegtydig voldoen is nie, kan aansoek doen by die Hof vir verdere aanwysings of bevel in daardie verband.

relief, within 30 days after the date on which the order was made, apply in writing to the Minister to be registered as a preferential claimant to benefit from any State support programme for housing and the allocation and development of rural land.

5 (2) The Court may in addition to the orders contemplated in section 123 of the Constitution—

- (a) determine conditions which must be fulfilled before a right in land can be restored or granted to a claimant;
- 10 (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;
- 15 (d) recommend to the Minister that a claimant be given priority access to State resources in the allocation and development of housing and land in the appropriate development programme;
- (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;
- 20 (f) make an order in respect of compensatory land granted at the time of the dispossession of the land in question;
- (g) make such orders for costs as it deems just.

(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 community concerned shall have access to the land or the
25 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.

(4) The Court's power to order the restitution of a right in land or to grant a
30 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) If the Court orders the State to expropriate land or a right in land in order to restore it to a claimant, the Minister shall expropriate such land or right in
35 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 28(3) of the Constitution: Provided further that the procedure to be followed by
40 the Court in the determination of such compensation shall be as provided in sections 24 and 32 of this Act.

(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
45 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) Upon making an order, the Court shall direct the Registrar concerned to remove any temporary note entered in his or her records in respect of the land
50 in terms of section 11(6)(b).

(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 section 123(1)(a) of the Constitution: Provided that, if the Court orders the restitution of a right in such land, the lawful occupier thereof shall be entitled to just and
55 equitable compensation determined either by agreement or by the Court according to the principles laid down in section 28(3) of the Constitution.

(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.

Hersiening van beslissings van Kommissie

36. (1) Enige party wat gegrief voel oor enige handeling deur of beslissing van die Kommissie of deur enige funksionaris wat optree of skynbaar optree ingevolge hierdie Wet, kan aansoek doen om die hersiening van sodanige handeling of beslissing deur die Hof. 5

(2) Die Hof beskik ten opsigte van daardie aangeleenthede oor al die hersieningsbevoeghede van die Hooggeregshof, tot die uitsluiting van die provinsiale en plaaslike afdelings daarvan.

Appel vanaf Hof

37. (1) Appelle teen beslissings van die Hof is óf na die Konstitusionele Hof óf na die Appèlafdeling van die Hooggeregshof. 10

(2) Die Hof bepaal in elke geval na welke hof 'n appel is.

Beslissings van Hof openbare kennis

38. Die beslissings van die Hof is 'n saak van openbare kennis op dieselfde wyse as beslissings van die Hooggeregshof. 15

HOOFTUK IV***Diverse Bepalings*****Register van openbare grond**

39. Ten einde die werk van die Kommissie en die Hof te vergemaklik, kan die Minister al die nodige stappe doen om 'n register van openbare grond op te stel, welke register oop is vir inspeksie deur eisers en voornemende eisers. 20

Regulasies

40. Die Minister kan regulasies maak oor—

- (a) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet of kan word; en
- (b) in die algemeen, alle aangeleenthede wat na sy of haar mening nodig of wenslik is om voor te skryf ten einde die doelstellings van hierdie Wet te bereik. 25

Herroeping van wette, en voorbehoude

41. (1) Artikels 88A tot en met 96A van die Wet op die Afskaffing van Rasgebaseerde Grondreëlings, 1991 (Wet No. 108 van 1991), en die Wysigingswet op die Afskaffing van Rasgebaseerde Grondreëlings, 1993 (Wet No. 110 van 1993), word hierby herroep. 30

(2) Indien 'n aansoek voor die inwerkingtreding van hierdie Wet ingedien is by die Kommissie op Grondtoewysing, ingestel ingevolge artikel 89 van die Wet op die Afskaffing van Rasgebaseerde Grondreëlings, 1991 (Wet No. 108 van 1991), en daardie Kommissie voor die inwerkingtreding van hierdie Wet— 35

- (a) 'n aanbeveling ten opsigte van sodanige aansoek gedoen het, word sodanige aansoek op versoek van enige belanghebbende party; of
- (b) nie 'n bevel of aanbeveling ten opsigte van sodanige aansoek gemaak of gedoen het nie, word sodanige aansoek, 40

behoudens die bepalinge van subartikel (3) geag by die Kommissie ingedien te wees ooreenkomstig die bepalinge van artikel 10(1).

(3) Die streekgrondeisekommissaris wat jurisdiksie het, kan—

- (a) enige aansoeker gelas om ten opsigte van 'n aansoek bedoel in subartikel (2) enige verdere inligting ten opsigte van die betrokke aansoek aan die Kommissie te verskaf; en 45
- (b) ten opsigte van 'n aansoek bedoel in subartikel (2) afstand doen van enige of alle prosedures deur of kragtens hierdie Wet voorgeskryf. 45

Review of decisions of Commission

36. (1) Any party aggrieved by any act of or decision of the 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.
- 5 (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.

Appeals from Court

37. (1) Appeals against decisions by the Court shall lie either to the Constitutional Court or to the Appellate Division of the Supreme Court.
- 10 (2) The Court shall in each case determine the court to which an appeal shall lie.

Decisions of Court a matter of public record

38. The decisions of the Court shall be a matter of public record on the same basis as decisions of the Supreme Court.
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CHAPTER IV***Miscellaneous Provisions*****Register of public land**

39. 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.
- 20

Regulations

40. The Minister may make regulations regarding—
- 25 (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.

Repeal of laws, and savings

41. (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.
- 30

- (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—
- 35

- (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,
- 40

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—
- 45 (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.

Hereregte en gelde

42. (1) Die Minister kan gelas dat enige hereregte of ander gelde wat deur 'n eiser betaalbaar is ten opsigte van 'n oordrag van grond of van 'n reg in grond ingevolge hierdie Wet ten volle of gedeeltelik betaal word uit geld deur die Parlement vir daardie doel bewillig.

5

(2) Die Minister kan, in oorleg met die Minister van Finansies, gelas dat geen hereregte, seëlregte of ander gelde beoog in subartikel (1) met betrekking tot 'n bepaalde oordrag kragtens hierdie Wet betaal word nie.

Kort titel en inwerkingtreding

43. (1) Hierdie Wet heet die Wet op Herstel van Grondregte, 1994, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

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(2) Verskillende datums kan ten opsigte van verskillende Hoofstukke van hierdie Wet bepaal word.

Transfer duty and fees

42. (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
5 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.

Short title and commencement

10 43. (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.

