

PROVISIONS WHICH WILL BE INCLUDED ELSEWHERE IN THE CONSTITUTION

CHAPTER 'Y' : RESTITUTION OF LAND RIGHTS

- (1) Any person who, or any community which, at any time after a date fixed by an Act of Parliament (which date shall not be earlier than 19 June 1913), was dispossessed of a right in land under, or for the purpose of furthering the object of, any law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2), had that section been in operation at the time of such dispossession, shall be entitled to claim restitution in a court of law in respect of such right from the state.
- (2) Any claim under subsection (1) shall be subject to such conditions, limitations and exclusions as may be prescribed by the said Act and shall not be justiciable by a court of law unless processed in accordance with such Act by a Commission established for the purpose by such Act.
- (3) The Commission referred to in subsection (2) shall at least be competent -
 - (a) to investigate the merits of any claims;
 - (b) to mediate and settle disputes arising from such claims; and
 - (c) to draw up reports on unsettled claims for submission as evidence to a court of law and to present any other relevant evidence to the court.
- (4) Where an unsettled claim is lodged with a court of law and the land in question is -
 - (a) in the possession of the state, the court may, subject to subsection (7), order the state to restore the relevant right to the claimant if the state certifies that such restoration is feasible; or
 - (b) in the possession of a private owner and the state certifies that the acquisition of such land by the state is feasible, the court may, subject to subsection (7), order the state to purchase or expropriate such land and to restore the relevant right to the claimant.
- (5) The court shall not issue an order under subsection (4)(b) unless it is just and equitable to do so, taking into account all relevant factors including the history of the

dispossession, the hardship caused, the use to which the property is being put, the history of the acquisition by the owner, the interest of the owner and others affected by any expropriation, and the interests of the dispossessed: Provided that any expropriation under the said subsection (4)(b) shall be subject to the payment of compensation calculated in the manner provided for in section 28(3).

- (6) If the State certifies that any restoration in terms of subsection (4)(a) or any acquisition in terms of subsection (4)(b) is not feasible, or if the claimant instead of the restoration of the right prefers alternative relief, the court may, subject to subsection (7), order the state in lieu of the restoration of the said right -
 - (a) to grant the claimant an appropriate right in available alternative state-owned land designated by the State to the satisfaction of the court, provided that the state certifies that it is feasible to designate alternative state-owned land;
 - (b) to pay the claimant compensation; or
 - (c) to grant the claimant any alternative relief.

- (7)
 - (a) The compensation referred to in subsection (6) shall be determined by the court as just and equitable, taking into account the circumstances which prevailed at the time of dispossession and all such other factors as may be prescribed by the said Act, including any compensation that was paid upon such dispossession.
 - (b) If the court grants any claimant relief contemplated in subsection (4) or (6) it shall take into account, and, where appropriate, make an order with regard to, any compensation that was paid to the claimant upon the dispossession of the right in question.

- (8)
 - (a) This section shall not apply to any rights in land expropriated under the Expropriation Act, 1975 (Act No. 63 of 1975), or any other law incorporating the Expropriation Act, 1975, or its provisions with regard to compensation, if just and equitable compensation as contemplated in subsection (6) was paid in respect of such expropriation.
 - (b) In this section "Expropriation Act, 1975" shall include any expropriation law repealed by that Act.

- (9) No claims under this section shall be lodged before the passing of the Act of Parliament contemplated herein.