

NOTICE 1223 OF 2009

Black Authorities Act Repeal Bill CDPLD 030309 a.a. 240809

REPUBLIC OF SOUTH AFRICA

**BLACK AUTHORITIES ACT
REPEAL BILL**

(As introduced in the National Assembly as a section 76 Bill;

Bill published in Government Gazette No.)

(The English text is the official text of the Bill)

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B

- 2009]

Black Authorities Act Repeal Notice of Publication for Comment 240809

GENERAL NOTICE

NOTICE NO.

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

PUBLICATION OF THE BLACK AUTHORITIES ACT REPEAL BILL, 2009 FOR GENERAL COMMENT

The Black Authorities Act Repeal Bill, 2009 is hereby published, with the Memorandum on its Objects, for general comment.

Comment must be submitted in writing within 30 days of the date of publication of this notice, to :

The Director-General : Rural Development and Land Reform

(for attention Mr C M Brocker)

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C M BROCKER

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BILL

To repeal the Black Authorities Act, 1951; and to provide for matters connected therewith.

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

Repeal of Act 68 of 1951

1. The Black Authorities Act, 1951 (Act No. 68 of 1951) is hereby repealed on –
 - (a) 31 December 2009; or
 - (b) the date on which the last of the provinces of KwaZulu-Natal and Limpopo has repealed those provisions that were assigned to them, whichever occurs first.

Short title

2. This Act is called the Black Authorities Act Repeal Act, 2009.

Black Authorities Act Repeal Objects Memo CDP&LD 040609 a.a. 240809

MEMORANDUM ON THE OBJECTS OF THE BLACK AUTHORITIES ACT REPEAL BILL, 2009

1. BACKGROUND

- 1.1 The Black Authorities Act Repeal Bill, 2009 ("the Bill") is intended to repeal the Black Authorities Act, No. 68 of 1951 ("the Act"), which -
 - 1.1.1 established statutory "tribal", regional and territorial authorities to (amongst other things) generally administer the affairs of Blacks;
 - 1.1.2 abolished the Black Representative Council established by section 20 of the Representation of Blacks Act, No. 12 of 1936; and
 - 1.1.3 amended the Black Affairs Act, No. 23 of 1920, and the Representation of Blacks Act, No. 12 of 1936.
- 1.2 The Act was a legislative cornerstone of apartheid by means of which Black people were controlled and dehumanized, and is reminiscent of past divisions and discrimination. It is both obsolete and repugnant to the values and human rights enshrined in our Constitution.
- 1.3 The proposed repeal is in line with the investigation and report of the South African Law Reform Commission on obsolete and redundant legislative provisions, which report was adopted by the Department of Justice and Constitutional Development.
- 1.4 In terms of President's Minute No. 13 of 10 June 1994 the Minister of Land Affairs was initially designated to administer the (whole) Act. In terms of Proclamation No. 44 of 2009 that administration was transferred to the Minister of Rural Development and Land Reform.

- 1.5 The administration of the Act, excluding those provisions which fell outside the functional areas specified in Schedule 6 to the (Interim) Constitution of 1993, was assigned by Proclamations Nos. 109, 110, 111, 112 and 166 of 1994 to the provinces of Limpopo, North West, Eastern Cape, Mpumalanga and KwaZulu-Natal respectively.
- 1.6 North West, Eastern Cape and Mpumalanga have repealed the Act insofar as the administration thereof was assigned to them, while Limpopo and KwaZulu-Natal have not yet done so. KwaZulu-Natal supports the proposed repeal of the Act; Limpopo has not recorded any objection or identified any consequential legal vacuum.
- 1.7 No assignments to the Free State, Gauteng, Northern Cape and Western Cape were made. Gauteng and Western Cape support the proposed repeal; Free State and Northern Cape have not recorded any objection or identified any consequential legal vacuum.
- 1.8 Insofar as it relates to the functional area of *rural development and land reform*, the Act can be repealed immediately without unintended consequences or the enactment of replacement legislation.
- 1.9 The Act also affects the concurrent functional areas of *indigenous law and customary law* and *traditional leadership*. In view of the enactment of the Traditional Leadership and Governance Framework Act, No. 41 of 2003 legislative alternatives for the provisions of the Act affecting these areas are no longer required. The cut-off periods for the continued existence of the old community, regional and other authorities mentioned in section 28(5) and (6)(a) of that Act have expired.
- 1.10 The Department of Provincial and Local Government has confirmed the content of 1.9 above and supports the proposed repeal of the Act.

2. OBJECTS OF THE BILL

- 2.1 The Bill seeks to repeal the whole Act and consists of two clauses.
- 2.2 *Clause 1* provides for the repeal in terms of a sunset provision which will afford the provinces of KwaZulu-Natal and Limpopo an opportunity to themselves repeal those provisions that were assigned to them. It is therefore proposed that the Act be repealed on 31 December 2009 or on the date on which the last of those provinces repeals the provisions assigned to them, whichever occurs first.
- 2.3 *Clause 2* contains the short title of the Bill.

3. CONSULTATION

- 3.1 The following were consulted on the Bill –
- 3.1.1 all nine provinces; and
- 3.1.2 the Department of Provincial and Local Government,
with the results indicated in 1.6, 1.7 and 1.10 above.
- 3.2 The Department of Justice and Constitutional Development, the National House of Traditional Leaders, and the Economic Sectors and Employment, and the Social Protection and Community Development Clusters will be consulted prior to the Bill being submitted to Cabinet.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None

5. CONSTITUTIONAL IMPLICATIONS

The only constitutional implication is that the Act, which is repugnant to the Constitution, will be repealed and removed from the statute book.

6. COMMUNICATION IMPLICATIONS

The Department of Rural Development and Land Reform will communicate the repeal to all affected stakeholders.

7. PARLIAMENTARY PROCEDURE

The Department of Rural Development and Land Reform and the State Law Advisers are of the opinion that –

- 7.1 the Bill must be dealt with in accordance with the procedure established by subsection (1) or (2) of section 76 of the Constitution, since it falls within the functional areas of *indigenous law and customary law* and *traditional leadership* listed in Schedule 4 to the Constitution; and
- 7.2 it is necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 as it does contain provisions pertaining to customary law or customs of traditional communities.