

COMMITTEE REPORTS

National Assembly

1. Report of the Portfolio Committee on Rural Development and Land Reform on the *Communal Property Associations Amendment Bill* [B12–2017], dated 19 April 2018.

The Portfolio Committee on Rural Development and Land Reform, having considered the subject of the *Communal Property Associations Amendment Bill* [B12 – 2017] (National Assembly – Section 76), referred to it on 28 April 2017 and classified by the Joint Tagging Mechanism (JTM) as a Section 76 Bill, reports the Bill with amendments [B12A – 2017].

The Bill was amended as follows:

LONG TITLE

1. On page 2, from line 3, to omit “**to extend the application of the Act to certain labour tenants who acquired land;**”

CLAUSE 1

1. On page 2, from line 12 up to line 13, to omit the definition of “committee”.
2. On page 2, from line 16 up to line 20, to omit the definition of “community”.
3. On page 3, in line 7, to omit paragraph (*e*).
4. On page 3, from line 11, to omit the definition of “labour tenant”.

CLAUSE 2

1. On page 3, in line 47, after “to”, to insert “₂”.

2. On page 3, in line 47, after “property” to insert “1”.
3. On page 4, in line 9, after “interest” to insert “and the interests of the community”.
4. On page 4, from line 35, to omit subsection (6).
5. On page 4, from line 44, to omit, subsection (1).
6. On page 4, after line 43, to insert:

“2A. (1) Notwithstanding section 2 and section 42A of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), property contemplated in this Act shall be registered in the name of the association within a reasonable time.

(2) For the purposes of the registration of property in terms of the Deeds Registries Act, 1997 (Act No. 37 of 1937) as contemplated in section 2, the Department shall, in consultation with the community concerned, have a general plan for such property prepared for approval in terms of the Land Survey Act, 1997 (Act No. 8 of 1997), in instances where a general plan is required for such purposes.”
7. On page 4, in line 51, to omit “entire community” and to substitute “community concerned”.
8. On page 4, in line 53, to omit “entire community” and to substitute “community concerned”.
9. On page 4, from line 54, to omit “entire community” and to substitute “community concerned”.
10. On page 5, from line 4, to omit subsection (5).
11. On page 5, from line 14, to omit subsection (2).
12. On page 5, after line 28, to insert:

“(a) with the consent of the Director-General, establish a provincial office in each province and may, subject to the laws governing the public service, appoint a Deputy Registrar for each provincial office, to perform the functions of the Registrar in such office, subject to the control of the Registrar;”

13. On page 5 from line 29, to omit paragraph (a) and to substitute:

“(b) provide assistance to the communities and associations concerned for the purposes of this Act;”

14. On page 5, after line 30, to insert:

“(c) ensure the verification of members of the association;”

CLAUSE 7

1. On page 6, from line 41, to omit subsection (1) and to substitute:

“(1) When a community [**or provisional association**] wishes to adopt a constitution it shall notify the [**Director-General**] Registrar accordingly, within a reasonable period of time and shall convene a meeting or meetings in such a manner as may be prescribed for the adoption of constitutions :Provided that a constitution shall be adopted by a resolution of no less than 60% of the total number of the verified members of the association having the right to make decisions.”

CLAUSE 8

1. On page 7, from line 26, to omit paragraph (b) and to substitute:

“(b) the association has, as its main object the holding of property in common;”

2. On page 8, from line 17, to omit subsection (6) and to substitute:

“(6) Upon registration of an association—

- (a) the association shall be established as a juristic person, with the capacity to sue and be sued;
- (b) the association may acquire rights and incur obligations on behalf of the community concerned, in its own name, in accordance with its constitution;
- (c) the association may, on behalf of the community concerned, subject to the provisions of its constitution and section 12—
 - (i) acquire and dispose of immovable property and real rights therein; and
 - (ii) encumber such immovable property or real rights by mortgage, servitude, or lease or in any other manner;
- (d) the association shall have perpetual succession regardless of changes in its membership;
- (e) the constitution shall be a legally binding agreement between the association and its members, the association and members of the committee and shall be deemed to be a matter of public knowledge;" and....

CLAUSE 9

1. On page 8, from line 58, to omit subparagraph (ii) and to substitute:
- “(ii) any decision to amend the constitution or dissolve the association, or to dispose of or to encumber **[the] immovable property [of the association], requires [an inclusive decision-making process] a resolution of no less than 60% of the verified members of the association who have the right to make decisions; and”.**

2. On page 9 from line 6, to omit paragraph (*d*) and to substitute:

"(*d*) fair access to the property of the association, in that—

(i) the association shall manage property owned, controlled or held by it or the benefit of the members in a participatory and non-discriminatory manner;

(ii) a member may not be excluded from access to or use of any part of the associations' property which has been allocated for such member's exclusive or the communal use except in accordance with the procedures set out in the constitution; and

(iii) the association may **[not] only** sell, donate or encumber the property of the association, or any substantial part of it, **[without the consent of a majority of the members present at a general meeting of the association]** in accordance with the provisions of section 12(1);";

3. On page 9, in line 27, to omit "community or".

4. On page 9, in line 28, to omit "community or".

5. On page 9, from line 56, to omit paragraph (*e*) and to substitute:

"(vi) the committee members shall have fiduciary responsibilities in relation to the association and its members, and shall exercise their powers in the best interests of all the members of the association **[,without any advantage to themselves in comparison with other members who are similarly placed].**"

CLAUSE 10

1. On page 10, in line 12, to omit “community and”.
2. On page 10, in line 13, to omit “[**or provisional association and its members**]” and to substitute “and its members”.

CLAUSE 11

1. On page 11, from line 5, to omit paragraph (a) and to substitute:
“(a) inspect and remove, for the purposes of copying only, any records, reports and other documents relating to the affairs of an association [**or provisional association**] and ensure the prompt return of all such documents;”

CLAUSE 12

1. On page 12, from line 12, to omit “written consent of the Minister and without a resolution supported by at least 60% of the total number of individuals, families or households” and to substitute, “prior consultation with the Minister and without a resolution supported by no less than 60% of the members of the association having a right to make decisions”.
2. On page 12, from line 37, to omit “The consent referred to in subsection (1)(a), (b) and (c)” and to substitute “The requirement of consultation with the Minister referred to in subsection (1)(a) and the requirement of consent referred to in subsection 1(b) and (c)”.
3. On page 12, in line 44, to omit “assist him or her in” and to substitute “intervene in [assist him or her in]”.

CLAUSE 13

1. On page 13, from line 35, to omit paragraph *(d)* and to substitute:
“(d) The Registrar shall, in good faith, cover the costs of any expenses related to the administration and management of the affairs of an association placed under his or her administration by defraying from any funds held by the association and should such funds be insufficient, from funds of the Department as may be made available by the Director-General.”
2. On page 13, from line 47, to omit paragraph *(a)* and to insert “*(a)* a resolution in favour of deregistration was adopted [**at a meeting attended by a substantial number of the members of the association or provisional association**] by no less than 60% of the members of the association who were present or represented at the meeting;”
3. On page 13, from line 50, to omit paragraph *(b)*.

CLAUSE 14

1. On page 14, in line 10, to omit “any thing” and to substitute “anything”.
2. On page 14, in line 11, to omit “any thing” and to substitute “anything”.
3. On page 14, from line 16, to omit “communal land administered and managed”.
4. On page 14, from line 26, to omit subsection (2) and to substitute:
“(3) In a prosecution [**under section 1 of the Trespass Act, 1959 (Act No. 6 of 1959), and in**] or any proceedings for the eviction of any person from property owned, controlled or managed

by an association, a certificate issued by the **[Director-General] Registrar** in terms of subsection (2) shall be *prima facie* proof of the correctness of the contents thereof."

CLAUSE 17

1. On page 15, in line 35, to omit "therefor" and to substitute "for deregistrations".
2. On page 15, in line 41, to omit "therefor" and to substitute "therefore".
3. On page 15, in line 50, to omit "and".
4. On page 15, in line 51, to omit "." and to insert "; and".
5. On page 15, after line 51 to insert:
"(k) any matter deemed necessary by the Registrar in relation to the performance of associations generally."

CLAUSE 19

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

"Regulations

18. (1) The Minister may make regulations intended to give effect to the implementation of this Act [.], including regulations relating to—

(a) the management of associations; and

(b) the management of business affairs conducted by or on behalf associations; and

(c) the minimum threshold in relation to the sale, donation, encumbrance or purchase of certain categories of movable property.

(2) Any regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty of a fine or imprisonment [**for a period not exceeding five years,**] or both such fine and imprisonment.”

CLAUSE 20

1. On page 16, in line 38, omit “any manner he or she deems appropriate” and substitute “a just and equitable manner”.
2. On page 17, from line 5, to omit “Communal land registered in the name of an association must, within 24 months from the date of commencement of this Act, be registered in the name of the community or name preferred by the community”.

CLAUSE 21

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

“21. Amendment of Schedule to Act 28 of 1996

21. The Schedule to the principal Act is hereby amended by the substitution for items 13 of the following item:

13. How the committee is to be elected, its terms of office, which shall not exceed five years, its powers, the powers of members in relation to decisions made by the committee, the power of members to remove the committee or members of the committee, and payment (if any) of the committee members.”

CLAUSE 22

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

“Amendment of long title of Act 28 of 1996

22. The following long title is hereby substituted for the long title of the principal Act:

To enable communities to form juristic persons, to be known as communal property associations in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution; to provide for the establishment of the Communal Property Associations Office, to provide for the appointment and functions of the Registrar; and to provide for matters connected therewith.”

CLAUSE 23

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause.

“Amendment of Preamble of Act 28 of 1996

23. The following Preamble is hereby substituted for the Preamble of the principal Act:

“WHEREAS it is desirable that disadvantaged communities should be able to establish appropriate legal institutions through which they may acquire, hold and manage property in common;

AND WHEREAS it is necessary to ensure that such institutions are established and managed in a manner which is non-discriminatory, equitable and democratic and that such institutions be accountable to their members;

AND WHEREAS it is necessary to ensure that members of such institutions are protected against abuse of power by other members.’’.

Report to be considered.