

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
NATIONAL FORESTS
AMENDMENT BILL**

[B 11—2016]

*(As agreed to by the Portfolio Committee on Agriculture, Forestry and Fisheries
(National Assembly))*

[B 11A—2016]

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AMENDMENTS AGREED TO

NATIONAL FORESTS AMENDMENT BILL
[B 11—2016]

CLAUSE 1

1. On page 2, after line 13, to insert the following paragraph:
 - “(b) by the insertion after the definition of “biological diversity” of the following definition:
“‘**Appeal Committee**’ means the committee constituted in terms of section 57A(2);””.

CLAUSE 3

1. On page 3, in line 21, to omit paragraph (a) and to substitute the following paragraph:
 - “(a) by the substitution for the heading of the following heading:
“Prohibition [on] against destruction [of trees] in natural forests”;
2. On page 3, from line 22, to omit paragraphs (b) and (c) and to substitute the following paragraph:
 - “(b) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:
 “(a) cut, disturb, damage, or destroy any indigenous tree or any other indigenous vegetation in a natural forest;
 (b) possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, **[or any]** forest product derived from a tree contemplated in paragraph (a), other indigenous vegetation or any forest product derived from a vegetation contemplated in paragraph (a),”; and
3. On page 3, from line 33, to omit paragraph (d).

CLAUSE 6

1. On page 4, from line 22, to omit paragraph (a).

CLAUSE 15

1. Clause rejected.

New clause

1. That the following be a new clause:

“CHAPTER 6A**APPEAL****Right to appeal**

57A. (1) A person who is aggrieved by any decision or action taken by a delegated official in terms of this Act may appeal in the prescribed manner to the Minister against such decision or action.

(2) The Minister may constitute a committee known as the Appeal Committee to investigate and consider any appeal referred to it in terms of section 57D.

Composition and membership of Appeal Committee

57B. (1) The Appeal Committee must consist of at least three members appointed by the Minister, on an *ad hoc* basis and when necessary, of whom—

- (a) one person must be appointed on account of his or her knowledge in the relevant fields of the law; and
- (b) two or more persons must have expert knowledge on the subject of the appeal.

(2) The person referred to in subsection (1)(a) must be designated as the chairperson of the Appeal Committee.

(3) The Minister must appoint the members for a determined period through an open and transparent process.

(4) The chairperson and the other members of the Appeal Committee must, for each day or part of a day in any month on which the duties attached to the office concerned were performed, be remunerated and paid a travelling and subsistence allowance, at such daily rate as the Minister in consultation with the Minister of Finance may determine from time to time.

(5) In order to be eligible for appointment or designation as a member of the Appeal Committee, and to continue to hold that office, a person must—

- (a) not be subject to any disqualification set out in subsection (6); and
- (b) have submitted to the Minister a written declaration stating that the person—
 - (i) is not disqualified in terms of subsection (6); and
 - (ii) does not have any personal interests, or interest through a spouse, partner or associate.

(6) A person may not be a member of the Appeal Committee if that person—

- (a) is an unrehabilitated insolvent or he or she becomes insolvent and the insolvency results in the sequestration of that person’s estate;
- (b) has ever been, or is, removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money;
- (c) is subject to an order of a competent court holding that person to be mentally unfit;
- (d) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004

- (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or
- (e) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.
- (7) A member of the Appeal Committee must not—
- (a) engage in any activity that may undermine the integrity of the Appeal Committee;
- (b) attend, participate in or influence the proceedings of the Appeal Committee, if, in relation to the matter before the Appeal Committee, that member has an interest that precludes that member from performing the functions of a member of the Appeal Committee in a fair, unbiased and proper manner;
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Appeal Committee; or
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions as a member of the Appeal Committee.
- (8) If, at any time, it appears to a member of the Appeal Committee that a matter being considered by the Appeal Committee during proceedings concerns an interest of that member referred to in subsection (7)(b), that member must—
- (a) immediately and fully disclose the nature of that interest to the members present; and
- (b) withdraw from the proceedings to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.
- (9) The disclosure by a member of the Appeal Committee in terms of subsection (8)(a), and the decision by the Appeal Committee in terms of subsection (8)(b), must be expressly recorded in the records of the proceedings in question.

Vacancies in Appeal Committee

- 57C.** (1) A member of the Appeal Committee vacates office—
- (a) if the member becomes subject to any disqualification referred to in section 57B(6); and
- (b) in the case where the member has resigned by giving one month's notice in writing to the Minister, when the member's resignation takes effect.
- (2) The Minister may, subject to due process of law, remove any member of the Appeal Committee from office—
- (a) for misconduct;
- (b) for failing to perform the duties of a member or to perform such duties diligently and efficiently; or
- (c) if the member, because of any physical or mental illness or disability, has become incapable of performing a member's duties or performing the duties diligently and efficiently.
- (3) (a) Any vacancy in the office of the Appeal Committee must be filled by the Minister through the appointment of another member in accordance with section 57B(3).
- (b) A member so appointed holds office for the unexpired portion of the predecessor's term of office.

Investigation and consideration of appeal by Appeal Committee

57D. (1) The Minister may refer an appeal to the Appeal Committee.

(2) An appeal must be heard on the date, time and place determined by the chairperson.

(3) The chairperson must inform the appellant and any other party that has an interest in the appeal in writing of the date, time and place of the hearing.

(4) The chairperson may, for the purpose of the hearing of an appeal—

- (a) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control, any document which has any bearing upon the subject of the hearing, to appear before the Appeal Committee at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain for examination any document so produced; and
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing.

(5) A person who appeals in terms of section 57A may be represented by any person.

(6) If a member of the Appeal Committee—

- (a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;
- (b) is unable to act and another person cannot be appointed in time; or
- (c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members of the Appeal Committee.

(7) Where the member of the Appeal Committee who has died or has become incapacitated as envisaged in subsection (5) was the chairperson of the Appeal Committee, the Minister must designate one of the remaining members of the Appeal Committee to act as chairperson, until the Minister appoints a chairperson.

(8) Any person appointed in terms of section 57B and 57C(3) must recuse himself or herself as a member of the Appeal Committee if he or she has any direct or indirect personal interest in the outcome of the appeal.

(9) The Appeal Committee must make recommendation to the Minister on its decision regarding an appeal.

Consideration of appeal by Minister

57E. (1) When the Minister receives a recommendation in terms of section 57D(9), he or she may—

- (a) substitute, confirm or set aside the recommendations of the Appeal Committee; and
- (b) order the delegated official to execute the decision in connection therewith.

(2) Where the Minister considers an appeal, he or she may—

- (a) confirm, set aside or vary the decision of the delegated official; and
- (b) order the delegated official to execute the decision in connection therewith.

(3) The Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), applies.

(4) The decision of the Minister must be in writing and a copy thereof must be furnished to the delegated official, appellant and any other party that has an interest in the appeal.

(5) If the Minister—

- (a) sets aside any decision or action by the delegated official, the prescribed fee paid by the appellant in respect of the appeal must be refunded to him or her; or
- (b) varies any decision or action by the delegated official, the Minister may direct that the whole or any part of such fee, be refunded to the appellant.

Clause 17

1. On page 6, in line 30, after “7(5),” to insert “8(3),”.

CLAUSE 18

1. On page 6, in line 38, after “trees” to insert “, indigenous vegetation or any other forest product”.

ENACTMENT CLAUSE

1. On page 2, after the long title, to insert:
“**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—”.

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