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Undoing the injustices of the past: restitution of rights in land in post-apartheid South Africa, with special reference to the North-West Province

Summary

This article is concerned with the important question of the restitution of rights in land to individuals and communities, dispossessed of such rights under racially discriminatory laws. These laws were buttressed by policies such as "the clearance of blackspots" and "poorly situated areas", "betterment schemes" and "cancellation of title deeds". In the process some three and a half million people were forcibly removed from their ancestral lands leading to the notorious statistics where the white population, comprising less than 20% of the country's total population, owned 87% of the land, leaving 13% to the black peoples. In what is now the North-West Province, the land question was further complicated by the discredited policy of Bantustans. Under this policy, Botswana people were forcibly removed from their ancestral land to form the so-called homeland of Bophuthatswana. South Africa's history of conquest and dispossession, of forced removals and a racially-skewed distribution of land resources has left a painful legacy. This paper examines the achievements and challenges of the land restitution process since its inception in 1994. It is evident from the discussion below that while the Commission on Restitution of Land Rights has achieved some notable results in this complex and dynamic process, much remains to be done in addressing and overcoming an intricate web of challenges in the delivery process. It is hoped that this discussion will make a modest contribution to the on-going debate about reconciliation, reconstruction and development in post-apartheid South Africa.

Regstelling van die verlede se ongeregtighede: die herstel van grondregte in post-apartheid Suid-Afrika, met spesiale verwysing na die Noordwes Provinsie

Hierdie artikel handel oor die belangrike vraagstuk van die herstel van grondregte aan individue en gemeenskappe, wie se regte ontneem is as gevolg van diskriminerende wetgewing wat op ras gebaseer is. Hierdie wetgewing is ondersteun deur beleid wat daartoe aanleiding gegee het dat drie en 'n half miljoen mense met geweld van hul voorvaderlike grond verwyder is, wat tot gevolg gehad het dat die blanke bevolking, wat minder as twintig persent van die land se bevolking uitgemaak het, sewe-en-tagtig persent van die land besit het. In die gebied wat vandag as die Noordwes Provinsie bekend staan, is die grondkwessie verder vertroebel deur die gediskrediteerde Bantoestan-beleid waarvolgens die Batswana met geweld van hulle voorvaderlike land verwyder is om die sogenaamde tuisland, Bophuthatswana te vestig. Suid-Afrika se geskiedenis van verowering en ontneming, van gedwonge verwyderings en rasbevooroordele grondverdeling, het 'n pynlike erfenis nagelaat. Hierdie artikel ondersoek die uitdagings en

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welslae van die grondherstelproses wat in 1994 ingestel is. Daar word aangetoon dat die kommissie op die Herstel van Grondregte redelike sukses in hierdie komplekse en dinamiese proses behaal het, maar dat nog baie gedoen moet word om 'n verwikkelde web van uitdagings in die leweringsproses aan te spreek en te oorkom. Daar word gehoop dat hierdie bespreking 'n beskeie bydrae tot die voortdurende debat aangaande versoening, rekonstruksie en ontwikkeling in 'n post-apartheid Suid-Afrika kan maak.

1. Introduction

The land question is undoubtedly one of the central plunks in post-apartheid social re-construction and development. As in many countries emerging from the yoke of colonialism and imperialism, the question of land ownership, distribution and tenurial relationships arouses strong emotions and results in heated debates. In this country, the process of colonial conquest and subjugation of the indigenous people by European settlers was consummated by a ruthless policy of land dispossession on a very large scale.[1] Settler colonialism was in turn consolidated by a ruthless policy of dispossession and forced removals under the notorious policy of separate development or apartheid.

The architects and exponents of apartheid put into place an amorphous mixture of racially discriminatory laws and policies to dispossess mainly indigenous peoples of their ancestral lands. Examples of such laws include the *Black Land Act* of 1913, the *Black Administration Acts* of 1927, the *Development Trust and Land Act* of 1936, the *Group Areas Act* of 1950 and 1966, the *Rural Coloured Areas Act* of 1963 and the *Community Development Act* of 1966.

Rural communities suffered dispossession under a variety of policies, including clearance of "blackspots" and "poorly situated areas", betterment schemes, cancellation of provisions in title deeds and acquisition of land by the former South African Development Trust.[2] Many rural communities who were forcibly removed from their ancestral lands received no compensation or only nominal recompense, for example, the Mogopa people of the Ventersdorp District in the North-West province.[3]

Some indigenous people who were removed from freehold land and others removed from outlying pockets of tribal land became tenants of the South African Development Trust which bought up farmlands occupied by whites for the consolidation and enlargement of the homelands. The

1 Seremane 1996:5; Department of Land Affairs 1997.
2 Department of Land Affairs 1996:9.
3 Where compensation was paid, the affected people were not consulted about the adequacy or otherwise of the *quantum* of compensation offered by the government — Panel discussion with Bakwena-Ba-Mogopa, 14 March 1997. Their land was declared a "blackspot". They were originally sharecroppers and farm labourers, but were forcibly removed in the late 1960s.

homeland policy resulted in the forced re-location of millions of black South Africans into the former homelands, resulting in severe over-crowding.[4]

Traditionally, land under indigenous laws and customs was generally held in trust and administered by the chiefs on behalf of their tribes-people. Individual members of the tribe had security of tenure over pieces of land allocated to them for a home and crop farming, and had rights to graze livestock on communal grazing areas.[5]

In common with other indigenous systems of land ownership and tenure, the concepts of land ownership and tenure were "interwoven" with fundamental social structures and religious beliefs. Elias points out that the reverence and sacredness attached to land ownership and use was anchored on the belief that land was the foundation of the community's existence, a sanctuary of the souls of departed ancestors, and a sacred trust that must be handed intact to posterity. The learned author cites, with approval, the often quoted statement which a Nigerian chief is reported to have made to the West African Land Committee in 1912: "I conceive that land belongs to a vast family of which many are dead, few are living and countless members are unborn".[6]

Indigenous land ownership systems generally prohibited the alienation of rights in land, especially for cash consideration. This was generally the case in other African countries. The point is succinctly summarised in these trenchant words of a West African author, the late J B Danquah:

> An absolute sale of land ... was therefore not simply a question of alienating reality; notoriously it was a case of selling a spiritual heritage for a mess of portage, a veritable betrayal of an ancestral trust, an undoing of the hope of posterity.[7]

It is also useful to note that the powers of traditional leaders over land belonging to their communities were also circumscribed by indigenous laws and customs. The chiefs were principally concerned with exercising administrative oversight over the lands belonging to their communities.[8] However, the creation of Bantustans resulted in severe overcrowding, with existing communities forced to accommodate new arrivals. In the process, the Bantustan policy resulted in overlapping and competing rights on the same land, the emergence of warlords and squatter patrons, politicisation of traditional leadership and incidences where traditional leaders began to assert personal proprietary rights over land which was nominally held in trust by the Minister of Bantu Affairs on behalf of their people.[9]

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4 Department of Land Affairs 1996:9; *Citizen*: 6 November 1997.
5 Gluckman 1943; Schapera 1955.
6 Elias 1972:162.
7 Danquah 1928; *Amodu Tijani v Secretary, Southern Nigeria* 1921(2)AC 399; *Sobhuza v Miller* 1926 AC 518.
8 Schapera 1955. Elias (1972:164) makes the instructive point that the chief was everywhere regarded as the symbol of the residuary and reversionary of the ultimate ownership of the land held by a territorial community.
9 Department of Land Affairs 1996:20-1.

All in all, millions of indigenous people were dispossessed through the colonial and apartheid governments' racially discriminatory laws and policies. The Commission on Restitution of Land Rights has received claims from approximately 3.6 million potential claimants.[10]

In urban areas, thousands of families were dispossessed under the *Group Areas Act*, 1950, the *Community Development Act*, 1966 and the *Resettlement of Blacks Act*, 1954. Some of the victims received compensation from the state, others, following the proclamation of racially segregated residential areas, were forced to sell on the open market under very unfavourable circumstances, for instance, District Six in Cape Town and Sophiatown in Johannesburg. The Commission on Restitution of Land Rights has received claims from 300,000 potential urban beneficiaries.[11]

2. The key issues

It is generally accepted that the land question is a highly controversial one. It is fraught with political obstacles and raises profound questions, which do not allow for quick-fix solutions. South Africa's history of conquest and dispossession, of forced removals and a racially-skewed distribution of land resources has left a complex and difficult legacy, namely insecurity, landlessness and poverty among black people and a cause of inefficient land administration and land use system.[12]

The post-apartheid government has acknowledged that resentment over land dispossession runs deep in society. "It threatens to boil over, causing social and economic dislocation through the illegal occupation of land, invasion of public and private land in both rural and urban areas".[13] Cases of land invasions have been on the increase. In the infamous *Bredell* case, more than 2000 squatters invaded and occupied a barren patch of land in Bredell farm, Kempton Park, North of Johannesburg. Worried about Zimbabwe-style land grabs and the negative images associated with such lawlessness to potential foreign investors, the government obtained a court order to evict the squatters. Millions of television viewers worldwide watched a private security firm, the Red Ants, backed by hundreds of armed police, fanning through the squatter camp and tearing down corrugated iron and plastic sheeting shacks erected by the squatters.

The eviction of helpless squatters has thrown into sharper relief the efficacy of the government's land reform policy and programmes, namely:

- the Land Redistribution Programme which aims to provide the poor with land for residential and productive purposes in order to improve their livelihoods.

10 Department of Land Affairs, 1999-2000:4.
11 Department of Land Affairs, 1999-2000:4.
12 Department of Land Affairs, 1996:i-iv.
Department of Land Affairs, 1997:1-4.
13 Department of Land Affairs 1997. See *Diepsloot Residents and Landowners Association v Administrator, Transvaal*, 1994 3 SA 336 AD.

- the Land Restitution Programme which aims to restore land and provide other remedies to people dispossessed by racially discriminatory legislation and practice.
- the Land Tenure Reform which aims to bring all people occupying land under a unitary, legally validated system of landholding; devise secure forms of land tenure, help resolve tenure disputes and provide alternatives for people who are displaced in the process.[14]

Without significant change in the racial and equal distribution of land and ownership and an aggressive land reform programme that would address the grievances of those who were dispossessed in the past, there can be no long-term political stability and therefore no economic prosperity.

This dilemma has been put into sharper relief by recent events in the neighbouring Republic of Zimbabwe. Since independence in April 1980, the government of President Robert Mugabe has made a myriad of broken promises about land resettlement and reform. As a rebel leader, Mugabe promised to reward each of his followers with "a *musha* and *mombi*" (a field and cow). Today, more than two decades later, thousands of those followers are still waiting. The militants want land. Meanwhile, more than a third of the country's best farmland remains in the hands of roughly 5,000 white farmers. The white farmers want fair compensation for the land wanted for the re-settlement of landless blacks. Frustrated by the slow transformation of their nation and failed land reform policies, hordes of allegedly liberation war veterans simply invaded and took possession of land they claim was "stolen from their ancestors a century ago by British colonists". Since February 2000, more than 1,500 farms have been invaded and illegally occupied. In the Chinhoyi, Doma, Mhangura and Karoi areas north of Harare, more than fifty farming families fled after the war veterans raided their farms, looted the farmhouses, stole tractors and other implements before setting barns on fire. A High Court order giving the invaders 24 hours to vacate the illegally occupied farms has simply been ignored, with serious implications for the rule of law in that country.[15] President Mugabe criticised the court order as "nonsensical". His government's position is that land distribution is a political matter which can not be resolved by the application of the "little law of trespass". The courts must keep out of the arena.[16]

The Zimbabwean National War of Liberation Veterans claim that the main war of liberation, "*Chimurenga*", has been betrayed by the slow progress in the implementation of the land reform programme. They claim that the main ideological basis for Zimbabwe's war of liberation was re-possession of land taken from the indigenous population by white colonists.[17] That is what the

14 Department of Land Affairs 1997:1-6.

15 *Sunday Times*: 17 March 2000, 30 April 2000, 21 May 2000, 16 July 2000; *Newsweek Magazine*: 20 March, 10 September 2000. See also Moyana 1984; Moyo 1995; *Sunday Times*:12 August 2001.

16 *Sunday Times*: 8 July 2001.

17 *Sunday Times*: 16 July 2000; *Newsweek Magazine*: 20 March 2000.

former combatants now occupying the farms went into the bush to accomplish. In the words of one war veteran:

> The white oppressors took the land away from our forefathers, and we fought in the bush to get that land back. But what has happened now? They are still holding unto the land. We are poor and landless. We are not going to move now. The only solution is for them to move away and give the land back to us.[18]

While the tragedy in Zimbabwe is perhaps an extreme example of land-grabbing by a lawless mob and political thugs, manipulated by political hacks and opportunists, it is a poignant example and a lesson of the consequences of failure to address the land question with requisite commitment and political will. In this country, given the fact that some three and half million people and their descendants were forcibly removed from their ancestral lands or had their homes expropriated at the height of apartheid, the intimate link between the land question and the struggle against apartheid cannot be over-emphasized. And yet as the respectable *Newsweek Magazine* poignantly points out, any massive and instantaneous land redistribution would almost certainly result in white flight and wreak irreparable havoc on the economy.[19]

In a study of this nature it is neither prudent nor desirable to attempt to deal with all the complex and diverse issues associated or raised by the land question. In principle, this study examines the process of land restitution in post-apartheid South Africa, with particular reference to the North-West Province.[20] The main thrust of the study is on the constitutional and legal framework relating to the land restitution process. The associated administrative framework will also be referred to insofar as it impacts on that process.

The study is confined to the North-West Province for two reasons, namely constraints of time and resources, and the fact that the province offers a unique opportunity in the study of post-apartheid social reconstruction. The vast majority of the province's black inhabitants suffered a double jeopardy under colonial and apartheid policies. Not only were they dispossessed of their ancestral land under settler colonialism but they were also victims of the bantustan system under grand apartheid. They were driven off their ancestral lands and herded into barren patches of land to form the erstwhile homeland of Bophuthatswana. In the course of fieldwork for this paper, the author gained valuable insights into the problem of land dispossession and forced removals through panel discussions with some of the affected communities, especially the Bakwena Ba-Mogopa in the Ventersdorp District.[21] In addition, the author studied various claims from

18 *Newsweek Magazine*: 20 March 2000.
19 *Newsweek Magazine*: 16 July 2001.
20 For the purpose of the land restitution process, the North-West Province is part of the Gauteng and North-West region, but the study is concerned with the North-West Province, consisting of principally the former homeland of Bophuthatswana.
21 Panel discussions, 14 March 1997. Discussions had also been held with communities at Weldevoeden; Tsetse, Doornkop and Goedgevonden.

different parts of the North-West Province, namely the Ratsegae (Ratsegaai) location in the Rustenburg district, (Bakwena-Ba-Modisakwane-a-Maake Tribe), Takwen (Takwaning) Native Reserve in the Vryburg district (Ba-Tlhaping-Ba-Phuduhutswana-Ba-Ga Mahura Tribe) and the Meyer Empire, district of Marico.[22]

In order to have as comprehensive a picture as possible, the author also interviewed officials from the local office of the Commission on the Restitution of Land Rights. Although many of the insights from this component of the research may not find their way directly into this paper, they nevertheless added significantly to the understanding of the discussion hereunder. Oral sources also proved important for comparative purposes and for filling in the gaps left by written documents. The overall approach has been based on a comprehensive scheme involving not only constitutional and legal materials but also the historical, political and socio-economic conditions, which provide the backdrop against which the laws operate.

3. The policy framework on land restitution

The post-apartheid government has developed and adopted a comprehensive policy of social reconstruction and development. Land restitution is seen as an integral part of a comprehensive and far-reaching land reform programme.[23] In order to successfully implement the reconstruction and development programme, the government's land policy aims to deal with the following factors in both urban and rural areas:

- The injustices of racially based land dispossession.
- The inequitable distribution of land ownership.
- The need for security of tenure for all.
- The need for sustainable use of land.
- The need for rapid release of land for development.
- The need to record and register all rights in property.
- The need to administer public land in an effective manner.[24]

As part of this comprehensive scheme, land restitution aims to restore land and provide other remedies to people dispossessed by racially discriminatory laws and practices. The restitution process is to be implemented in such a way as to provide support to the process of reconciliation, reconstruction and

22 I am very grateful to Ms V Moshoeshoe, formerly project co-ordinator in the Mmabatho Office, Gauteng and North-West Regional Commission on Restitution of Land Rights who has been very kind in allowing me access to vital documents, annual reports and claims lodged with the Commission. Mr Mogapi of Land Affairs has equally been of great assistance at the earliest stage of this research.

23 Department of Land Affairs 1997:1-7.

24 Department of Land Affairs 1997:1-7.

development, and with regard to the over-arching consideration of fairness and justice for individuals, communities and the country as a whole.[25]

It is submitted that these objectives, laudable as they may seem, are not easy to achieve. For instance, given the horrendous injustices of the past, what does the phrase "just and equitable" mean? Should compensation be paid to the beneficiaries of the colonial and apartheid land laws and policies who, through government subsidies, obtained their land at a pittance? Should the state expropriate land held back from the restitution process because of disagreements over the *quantum* of compensation demanded by current landowners?[26] Given the scale of the problem (some 3.5 million victims of dispossession and forced removals), where will the government source the requisite financial resources to finance restoration and re-distribution programmes?

There is also the question of multiple claims — especially in peri-urban areas such as the surrounding areas of the city of Mafikeng where land has since been re-developed and changed hands several times. For the peri-urban claimants, their quality of life, where they live and work, their possibilities for recreation and the environment which surrounds them depend, to a considerable degree, on the system and methods used to acquire, allocate and service land. For low-income families in particular, access to a piece of land with security of tenure, close to employment opportunities and provided with municipal services is critical if they have to maintain a toe-hold in the urban economy.[27]

Land is also a non-tangible commodity. Its location is specific. Each piece of land is unique and cannot be reproduced, except very marginally. Because of reverence by indigenous people to their ancestral land, many people feel very strongly about the particular land from which they were forcibly removed. To such people, nothing short of being restored to their ancestral land will suffice. Consequently being offered an alternative piece of land may not be sufficient.[28]

Over and above claims for actual restoration of land rights, there is also the question of the indignities and suffering associated with forced removals that may entail monetary compensation as some form of acknowledgement

25 Department of Land Affairs 1997:6; see also *Land Restitution and Reform Laws Amendment Act*, 18/1999:section 2.

26 One of the instructive cases in this respect is that of Bakwena-Ba-Mogopa in Ventersdorp whose land was forcibly taken away from them. The new owner, one Hannes de Villiers, bought 372 hectares of prime farmland in the then Western Transvaal for R70,000 at 1981 prices.

27 Mangin 1967:65-98; Ward 1976:336.

28 Department of Land Affairs 1997:1. See also *The Citizen* 22 March 2000 in respect of claimants whose families were removed from Sophiatown, Albertville and Popeview. Rita de Lange, uprooted from Sophiatown to the Western Native Township in 1958, had this to say about her emotional attachment to her place of birth: "I was born there and grew up there, but I won't be also to go back there. Our family lost its sense of identity when we were moved".

or atonement for the evils of apartheid.[29] This will impose a further burden on the fiscus.

4. Constitutional and legal framework of restitution

The *Interim Constitution*, Act 200 of 1993, provided the constitutional basis for restoration of rights in land to those individuals and communities who were dispossessed of such rights as a result of racially discriminatory legislation. That landmark document was intended to provide "a historic bridge between the past of a deeply divided society characterised by strife, conflicts, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex".[30]

Under section 8(3)(b) of that *Constitution*, individuals or communities dispossessed of land under racially discriminatory laws are entitled to claim restitution of such rights, subject to an elaborate procedure, enacted in the *Restitution of Land Rights Act*, 22 of 1994, as amended. That Act in turn provided for the establishment of two vital institutions, namely the Commission on Restitution of Land Rights and the Land Claims Court. As will be shown hereunder, the Commission and the Court are entrusted with investigative/facilitative and adjudicatory roles respectively (see sections 6,(1); 12; 13; 14; 22).

The Commission is made up of a Chief Land Claims Commissioner, his or her deputy and a number of Regional Land Claims Commissioners for Kwazulu-Natal, Gauteng and North-West; Western and Northern Cape; Eastern Cape and Free State; Mpumalanga and Northern Province respectively. Section 6(1) sets out the general functions of the Commission in more detail than the provisions of section 122 of the *Interim Constitution*. These functions may be summarised as follows:

- To receive and acknowledge receipt of all claims for the restitution of rights in land, lodged with or transferred to it.
- To take reasonable steps to ensure that claimants are assisted in the preparation and submission of claims.
- To advise claimants of the progress of their claims at regular intervals and upon reasonable request.
- To investigate the merits of claims lodged with it.
- To mediate and settle disputes arising from such claims.

29 Some of the families removed from Sophiatown by the Native Settlement Board between 1955 and 1961 and re-settled in parts of Soweto have termed their R40 000 compensation as peanuts. Jerry Rabetebele has had this to say: "What am I going to do with R40 000? I cannot even build a two-roomed house with that". *Citizen*: 22 March 2000.

30 See the Preamble and Postamble to the *Interim Constitution* 200/1993.

- To report to the Land Claims Court on the terms of settlements in respect of successfully mediated claims.
- To define any issues which may still be in dispute between the claimants and other interested parties with a view to expediting the hearing of such claims by the Court.
- To draw up reports on unsettled claims for submission as evidence to the Land Claims Court and present any other relevant evidence to the Court.
- To publicise the restitution process, etc.

The actual processing of claims is handled by the Regional Land Claims Commissioners. Claims are lodged on a prescribed form with the Regional Land Claims Commissioner having jurisdiction in respect of the land in question. Those who are entitled to claim restitution of land rights are individuals or communities who were dispossessed of a right in land after 19 June 1913 under or for the object of furthering the object of a racially discriminatory law, or were not paid just and equitable compensation, if expropriated under the *Expropriation Act* 63 of 1975 (see also section 2 of the *Land Restitution and Reform Laws Amendment Act*, 18 of 1999).

The claimant should have had a registered or unregistered right or interest. Such a right may have been established by occupation of the land for a substantial period. The right to claim restitution is not limited to a legal right *strict sensu* such as ownership rights but may include long-term tenancy rights and other occupational rights.[31]

Persons who were dispossessed as a result of threats of state action under racial land laws and land-use zoning schemes may also qualify.

5. Procedural steps

There are essentially five procedural steps which must be followed. It may be instructive to summarise these steps hereunder:

- Lodgement of claims

All claims must be made on a prescribed form and lodged with the Regional Land Claims Commissioner for the area. Claims lodged with the previous Commission on Land Allocation (ACLA) are regarded as already lodged with the new Commission.

The claim must disclose a description of the land in question, the nature of the right in land for which the individual claimant or the community or their descendants, as the case may be, was dispossessed and the nature of the right or equitable redress being claimed (section (10)(1)).

If the claim is brought on behalf of a community, the basis on which it is contended that the person submitting the claim represents such a community

31 See section 121(4) of the *Interim Constitution* 200/1993 — and Department of Land Affairs 1996:36.

must be disclosed in full together with any supporting document or resolution (section 10(3)).

- Prioritization of claims

Once a claim has been duly lodged, it must be prioritized. In deciding on what status to accord to the claim, several factors must be taken into consideration, including:

  - Whether the land in question was urgently needed;
  - The number of claimants involved; and
  - Whether the Commission has sufficient resources to handle the claim.

- Validation/Investigation

Once the claim has been prioritized, it is referred to a research unit for validation/investigation. The acceptance criteria which govern the validation stage are as follows:

  - Whether the claim which has been lodged substantially complies with the requirements contained in the prescribed claim form;
  - Whether the claimant was dispossessed of a right in land as defined in the Act;
  - Whether the dispossession was racially motivated as contemplated in Section 121 (2)(b) of the *Interim Constitution*, 1993.
  - Whether the claim fell within the stipulated period, that is, on or after 19 June 1913.
  - In the event that rights in land were expropriated under the *Expropriation Act*, 1975, whether just and equitable compensation was paid as contemplated in sections 121(4)(a) and 123(4) of the *Interim Constitution*, 1993. In the *Meyer Empire* claim, one Louis Meyer lodged a claim in respect of some farms, which were expropriated from his family, for the consolidation of the erstwhile homeland of Bophuthatswana. The Commission held that the compensation that was paid was just and equitable, after considering the fact that there were three valuations of the property prior to the expropriation and that the valuations were approved by the Land Affairs Board. After the property was expropriated, a further amount was paid. In those circumstances, the claim was accordingly dismissed.[33]
  - Whether the claim is frivolous and vexatious. In the landmark case of *Farjas (Pty) Ltd and Another v Regional Land Claims Commissioner, Kwazulu-Natal*,[34] the Land Claims Court held that section 11(3) of the Act only authorised the Commissioner to dismiss a claim

32 See section 121 (4) of the *Interim Constitution*, Act 200 1993 and Department of Land Affairs 1996:36.

33 Department of Land Affairs 1998.

34 1998(2) SA 900 LCC.

as "frivolous and vexatious", if the Commissioner was not satisfied that an arguable case had been made out. Even then, the Commissioner was not entitled to dismiss the claim there and then, but first had to take the matter further with the claimant, who had to be provided with reasons for the Commissioner's view and given the opportunity to respond and amplify his/her claim.[35]

- Consider whether any order had been made by the Land Claims Court in respect of rights relating to the land in question (section 11; see also section 2 of the *Land Restitution and Reform Laws Amendment Act*, 18 of 1999);
- Whether the claim was lodged within the prescribed period.

If the Regional Land Claims Commissioner is satisfied that the criteria set in section 11(1) have been met, he or she must advise the claimant that the claim has been accepted for investigation. The notification is by way of a publication in the Government Gazette. The Commissioner is also required to take steps to publicise the claim in the district in which the land in question is situated.

The accepted claim must also be registered and entered into a database. The research unit is then required to carry out the necessary archival research including the examination of the deeds registry for documentary proof of the root of title. Oral evidence may also be admitted to support the claim. Interested parties must be called upon to make their representations, if any. Existing landowners must be called upon to object to the claim or agree to an amicable settlement. If the existing landowner agrees to a settlement, an amicable price must be agreed upon by way of compensation. If no amicable settlement is reached with the existing landowner, the claim is referred to the Land Claims Court to deal with the points in dispute.

6. Negotiations

The investigation stage is followed by the negotiation stage. Under the "old" legislation, all claims had to be referred to the Land Claims Court for adjudication and ratification of agreements regardless of whether there has been an amicable settlement between the parties. That legalistic and bureaucratic red tape has now been removed by the *Land Restitution and Reform Laws Amendment Act*. That Act seeks, *inter alia*, to do away with the need for a claim to be referred to the Court where the interested parties have reached agreement as to how a claim should be finalised (see sections 6(3) and 42(d) of the principal Act).

Under the new procedure, if all parties agree on a settlement, the claim is referred to the Minister for settlement and finalisation. Consequently, only a limited number of claims will be referred to the Court, namely disputed

35 At 923 E/F; 924 C/D-E/F and 927 H/G - 928 A/B.
36 18/1999.

cases, those in which complex points are raised, direct access cases, reviews and appeals. Clearly, the administrative resolution introduces a shift in emphasis, from a judicial to an administrative process centred on ministerial approval of claims. The Commission hopes that this strategic shift will lead to an exponential increase in the pace of delivery.[37]

7. Referral of claims to court

As pointed out above, the aim of the amendment is to limit the involvement of the Court to those cases involving complex legal disputes or where there is a need for interpretation of the law (see section 14 as amended by Act 18 of 1999).[38]

Such a referral must be accompanied by a copy of the deed of settlement and a report containing:

- Concise information about the background to the claim and the settlement;
- Information necessary for the Court to establish whether or not it has jurisdiction;
- The reasons for the referral of the matter to the Court; and
- The Regional Land Claims Commissioner's recommendations, if any, as to how the matter should be dealt with (section 14 (4) as amended).

8. Court orders

In deciding a matter before it, the Court is empowered to grant a number of orders, as the case may be:

- The restoration of land, a portion of land or any right in land in respect of which the claim or any other claim is made to the claimant; or award any land, a portion or a right in land to the claimant in full or in partial settlement of the claim and where necessary, the prior acquisition or expropriation of the land, portion of land or right in land: Provided that the claimant is not to be awarded land, a portion of land as a right in land dispossessed from another claimant or the latter's ascendant, unless such other claimant is or has been granted restitution of a right in land or has waived his or her right to restoration of the right in land concerned, or the court is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land;[39]
- The state to grant the claimant an appropriate right in alternative state-owned land and, where necessary, order the state to designate it;

37 Annual Report, 2000:5.
38 Department of Land Affairs 2000:4-6.
39 Act 18/1999.

- The state to pay the claimant just and equitable compensation;
- The state to include the claimant as a beneficiary of a state support programme for housing and any other land reforms programme and/or the allocation and development of rural land;
- The grant to the claimant of any alternative relief (section 35 (1) of the principal Act, as amended).

The court is empowered to make further orders as follows:

- Determine conditions which must be fulfilled before a right in land can be restored or granted to a claimant;
- 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 (section 35 (2) of the principal Act, as amended);
- 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. It is important to note here that in respect of communal claims, policy objectives seek to ensure that all members of the dispossessed community concerned must have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including women and people whose rights were not formally recognised due to racially recognised measures of the past[40] 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. In this respect, it is instructive to note that the *Communal Property Association Act*, 1994 provides for the election of a democratic legal entity called the Communal Property Association to hold and administer land that has been restored to successful claimants. This option has been followed in the claims from the North-West Province, namely, the Dithakwaneng and Ratsegae (Ratsegaai) communities. Other possible options include section 21 Companies; Associations of Persons; Companies, Trusts and Closed Corporations;
- Give ancillary orders and directives including the setting of time limits for the implementation of its orders, orders in respect of compensatory land granted at the time of the dispossession of the land in question; appropriate orders to give effect to any agreement between the parties regarding the finalisation of the claim and such orders for costs as it deems just.

9. Section 42(d) settlements

The parent Act has been amended with a view to fast-tracking the system of resolving claims. In terms of section 42(d) of the Amended Act, the Minister may, in consultation with the Commission, make an out of court settlement with any claimant who is prepared to waive his/her rights in terms

40 Department of Land Affairs, 1998-1999; 1999-2000.

of the Act, in any case where all the parties are agreed and there is a clear claim.

The Commissioner has proposed further amendments to the amended legislation so as to do away with the need for claimants to waive their rights in order to facilitate the administrative processing of claims. One of the benefits of the administrative approach is that it will allow for similar claims to be batched together for mass processing, thus increasing the delivery pace of restitution. However, it is important to note in this regard that the administrative approach will not affect the rights of claimants. Restitution will therefore remain rights-based, with the claimants' rights still being protected by the Constitution.[41]

10. Payment of compensation

In those cases where restoration or other remedies are not appropriate, successful claimants are entitled to the payment of just and equitable compensation. The claimants here would be those individuals who held rights in land which were taken away from them with inadequate or no compensation at all, for example, labour tenants, farm workers and beneficiary occupants.[42]

In deciding what would be just and equitable compensation, the circumstances prevailing at the time of the dispossession and all other relevant factors, including any compensation that was paid at that time, and the method of calculating the compensation (especially if the valuation was fair) must be taken into account.

The guiding principle is to compare the compensation that was received at the time of dispossession with the compensation for the land to which the claimant would have been entitled in terms of the constitutional stipulations and the *Expropriation Act* 63 of 1975.[43]

11. Urban claims

In the case of claims in respect of land in the peri-urban and urban areas, the Commission has acknowledged the fact that resolutions of such claims are complicated by a number of factors including:

- The large number of investigations that are required to deal with the overwhelming number of individual claims, with a potential for bankrupting the process before any remedial compensations could be granted;
- Multiple overlapping claims in respect of individual properties involving original owners, long-term tenants and even sub-tenants;

41 See Act 18/1999, Department of Land Affairs, 1999-2000.
42 Section 121 (4) of the *Interim Constitution*, Act 200/1993.
43 See also section 25 (3) of the *Final Constitution*, Act 108/1996.

- The changing land use patterns and pressing needs for housing and re-development which have to be weighed up against the need for restoration.

In dealing with these claims, the Commission has developed and formulated some policy guidelines, namely:

- Claimants are encouraged to form groups for each affected town, suburb or former group area to submit and/or negotiate the settlement of their claim jointly;
- There should be participation in the planning of the process by the former residents themselves, thus affording the people affected an opportunity to participate in shaping the future of the areas which are still available for development;
- Successful claimants should be afforded the opportunity to acquire property within the framework of development projects;
- Individual portions of land for residential and related uses should be made available where it is fair and feasible to effect such restoration. In such cases, claimants are expected to contribute to the acquisition costs on a market related bases, taking into account any compensation received at the time of dispossession; and
- Any compensation paid at the time of dispossession will be taken into account when calculating reparatory compensation (if any).

12. Implementation

The Commissioner believes that at the end of a successful claim, there must be a managed after-care process involving some form of networking with other stakeholders in the land reform process and service providers such as the line departments of Water Affairs, Agriculture, Health and Roads. The major aim is to ensure that resettled communities gain access to vital services such as extension services, basic education, health, recreation facilities etc.[44]

13. Synthesis and evaluation

The land restitution process has been going on for a little over five years now. Nationally, a total of 63,455 claims have been lodged with the Commission on Restitution of Land Rights. However, the validation process that is currently under way has indicated that, while some of the claim forms do not represent valid restitution claims, in other cases more than one claim is in fact represented per claim form. The total number of 63,455 claims is therefore subject to change, hence the current number of 67,531 claims as indicated in table 1 below.

44 Department of Land Affairs, 1998-99; 1999-2000.

Once the validation process has been completed, with the target date of 31 December 2001, it will be possible to determine the exact number of valid restitution claims received by the Commission.

Table 1[45]

Region	Number of claims received
Kwazulu-Natal	14,809
Western Cape	13,108
Eastern Cape	7,486
Free State & Northern Cape	4,159
Gauteng & North West	15,843
Mpumalanga & Northern Province	12,126
Total number of claims received	67,531

13. Settled restitution claims

13.1 National statistics

The total number of claims settled as at 30 October 2000 can be seen in Table 2. These claims represent 3,551 claim forms lodged with the Commission on Restitution of Land Rights.

Table 2[46]

LAND RESTORATION	
Households awarded land	12,957
Land cost	R136,367,193.00
Hectares of land restored (Land Claims Court)	173,805
Hectares of land restored (Ministerial Approval)	94,501
Total beneficiaries receiving land	77,742
Projected households to receive land by 31 March 2001	100,000
Projected hectares to be restored by 31 March 2001	500,000

45 Source: http://dla.pwv.gov.za/restitution/new stats/rest(graph).htm, 24/11/2000.
46 Source: http://dla.pwv.gov.za/restitution/new stats/rest(graph).htm, 24/11/2000.

Table 3[47]

Projected beneficiaries to receive land by 31 March 2001	250,000
FINANCIAL COMPENSATION	
Households awarded compensation	5,762
Financial compensation awarded (Land Claims Court)	R280,330.00
Financial compensation awarded (Ministerial Approval)	R150,327,963.26
RESTITUTION TOTAL	
Claims settled as at 30 October 2000	6,534
Total households	18,719
Total restitution beneficiaries	112,839
Total restitution award cost	R286,975,486.26

In the North-West Province as at 30 October 2000, three major claims have been finalised, namely, the Dithakwaneng, Ratsegae (Ratsegaai) and Putfontein communities. Table 4 illustrates the position graphically.

Table 4[48]

LAND RESTORATION	
Households awarded land	2,851
Land cost	R19,896,268.00
Hectares of land restored (Land Claims Court)	28,299
Hectares of land restored (Ministerial Approval)	0
Total beneficiaries receiving land	17,106
FINANCIAL COMPENSATION	
Households awarded compensation	0
Financial compensation awarded (Land Claims Court)	R0.00
Financial compensation awarded (Ministerial Approval)	R0.00
RESTITUTION TOTAL	
Claims settled as at 30 October 2000	361
Total households	2,851
Total restitution beneficiaries	12,663
Total restitution award cost	R19,896,268.00

47 Source: http//dla.pwa.gov.za/restitution/new stats rest(graph).htm, 24/11/2000.
48 Source: http://dla.pwv.gov.za/restitution/new stats rest(graph).htm, 24/11/2000.

The full details of each claim are as follows:

(1) In the Ratsegae (Ratsegaai) claim, the Land Claims Court granted an order for restoration on the 16th of November 1997. Between 3000 and 4000 individuals are beneficiaries in this claim, involving the restoration of about 4000 hectares of land. The black-owned land which formed the Ratsegae location in the Rustenburg district, was portion 1 (South West portion) of the farm Haartebeesfontein 431 JP and the farm Koedoesfontein in 432 JP. The land was registered in the name of one Petrus Jacobus Joubert J.F. Seun in his capacity as superintendent of "natives" of the Republic, in trust for the "Native Ratesegaai" and his descendants. The Ratsegae people became known as the Bakwena-Ba-Modisakwane-a-Maake tribe.

    The land was regarded as a so-called "black spot" and the community was removed from it in 1962. All the landowners, bar one, agreed to sell their land to the state. The claim was referred to the Land Claims Court in July 1997, which made an order on the 16th November 1997. The order was conditional upon the community registering a Communal Property Association within sixty days.

    That period lapsed before the Communal Property Association could be registered and a new order had to be obtained. This was granted in January 1998 and the Communal Property Association was registered in time. However, one landowner and his portion was left out of the settlement for further negotiations.

(2) In the case of the Dithakwaneng claim, after 40 years of dispossession, an order for restoration was granted by the Land Claims Court on the 15th of June 1998 with the court sitting taking place on the land to be restored in Vryburg. Approximately 6000 beneficiaries were involved in this claim, for the return of ±10,000 hectares of land.

(3) Putfontein claim

    The Batloung community under Chief Laban Shole and Willem L de Wet Jooste of the Hanoverian Evangelical Lutheran Free Church Society were the initial joint owners of a certain portion of Putfontein 62 IP in extent 2817, 6470 hectares. On the 14th of May 1907 a share in the above-mentioned portion in extent 1596, 6770 hectares was registered in the name of Laban Shole and the Batloung Community. The community was the holder of all mineral rights. All mineral rights were subsequently expropriated.

During the same time some portions of the farm Putfontein 62 IP were held by groups of blacks in undivided shares and also by individuals. The said properties were expropriated in terms of section 13 (2) of Act 18 of 1936 during 1978. The various portions of the farm were expropriated during 1978 and were subsequently consolidated to form portion 37 of Putfontein 62 IP, in extent 3251, 9036 hectares in January 1983. Portion 37 of the farm Putfontein 62 IP was subdivided into five subdivisions leaving a remaining extent of 157, 9036 hectares.

The farm Omega 156 IP and Portion 3 Delta (a portion of Portion 1) of the farm Wildfontein 201 IP were also bought by the Batloung community. The above farms were consolidated on the 12th of November 1982 to form the farm Omega 478 IP in extent 1980, 7735 hectares. The farms were also expropriated from the community. During 1984 this property was subdivided into two portions and sold. Chief Shole claimed all these various farms for the Batloung community for the restoration of their land rights. An application for restoration of land rights was lodged with the Commission on Land Allocation on 18 November 1992.

Batloung community has already been awarded restoration of their rights in land. In terms of the Restitution Core Business for resettlement of the restitution beneficiaries, a Business Plan is to be drawn. The Business Plan would outline the development options of the Batloung community area.

An agricultural land use plan is also to be drawn to inform the subdivision plan, if only to show clearly the location of the land with agricultural potential and to ensure that it is reserved for the purpose and not converted to residential uses. The agricultural production plan is actually to be drafted in consultation with the Department of Agriculture officials for providing advice and assistance to the community. This will show the anticipated flow costs and benefits as a basis for any loans to be raised for agricultural development. It is important to note that these farms fall within the heart of the maize triangle of South Africa.

13.2 Achievements in the North-West Province

- The approval and finalisation of the Putfontein Land Claim.
- Research and negotiations are in progress for the special project — Vogelfontein and Tweerivier.
- Settlement of the remainder of Ratsegae (Portion 13).
- Transfer of development funds for Ratsegae — on site development taking place.
- Business Plan for Dithakwaneng completed.
- Bakubung claimants completely resettled.
- A working relationship and a commitment with the Department of Agriculture on the implementation of Court orders and the Ministerial Awards.
- A working relationship with District Councils as service delivery points.

13.3 Highlights of outstanding claims or those nearing completion

13.3.1 Ellison and Steynberg

Ellison and Steynberg is a claim which involves people who were removed from the farms Ellison and Steynberg in the district of Bronkhorstspruit, Gauteng Province in the 1970s. Most of the community members resettled in Hammanskraal, North West Province.

Approximately 120 claims were lodged with the Regional Land Claims Commissioner for the restitution of land rights. The claim was investigated and gazetted before commencement of negotiations with the stakeholders. Through consultation with the claimants, the Commission realised that they had opted for restoration of the land as an option of redress.

The Regional Land Claims Commissioner submitted the proposals to the Minister of Agriculture and Land Affairs in 1999 and the proposal was consequently approved. A service provider was appointed to assist the claimants in drafting a development plan. Transfer of land to the claimants will take place after the completion of the development plan.[49]

13.3.2 Lady Selborne

Lady Selborne was situated in the north-west of Pretoria and the land is currently part of Suiderberg suburb. Lady Selborne was declared a black spot in terms of the *Group Areas (Amendment) Act*.[50] Between 1955 and 1965, people were forcibly removed to Atteridgeville, Mamelodi and Ga-Rankuwa.

In 1996, approximately 960 claims were lodged by individual claimants for the restitution of land rights in Lady Selborne. The claims were investigated and gazetted in terms of the *Restitution of Land Rights Act*, as amended. During the investigation, it became clear that part of the land was vacant and is owned by the City Council of Pretoria.

Consultations with the claimants indicated that some of them opted for monetary compensation while others opted for restoration to the vacant land. An agreement has been reached between the claimants, the Regional Land Claims Commissioner, the Department of Land Affairs and the City Council of Pretoria that the council will formulate a development plan for the purposes of restoration. A settlement offer has been made to the claimants and at the time of writing the Regional Land Claims Commissioner was awaiting their response.[51]

49 Annual Report, 2000.
50 29/1956.
51 Annual Report, 2000.

13.3.3 Kinde Estate

Kinde Estate is a rural claim lodged by one Mr J.K. Msindwana on behalf of the descendants of the late one James Cindi for the farms Doornbult 268-IN and Vergenoeg 258-IN in the district of Mafikeng. This is a rural claim and the land measures 5530, 5173 hectares. In 1969 the farms were consolidated into what is known as Kinde Estate.

Approximately 500 people will benefit from the claim. Dispossession took place in 1963 in terms of the *Development and Trust Act* of 1936. The community resettled in Frenchdale, Defence and Sweet Valleys commonly known as the Railway block.

After several consultation meetings between parties to the claim, it was agreed that the claim be referred to the Land Claims Court while negotiations continue. A valuation was conducted on the land but no agreement was reached between the parties on the purchase price. At the time of writing, the claim was in court and the judgment was awaited.[52]

13.3.4 Zephanjeskraal

Zephanjeskraal is a rural claim lodged by Bataung-Ba-Ga-Selale community for the restitution of land rights in Zephanjeskraal (Sefanyetsokraal) in the district of Rustenburg. The claim is in respect of land that measures approximately 70 hectares and this settlement will benefit 2000 people.[53]

13.3.5 Madikwe

This claim was lodged by the Baphalane-Ba-Sesobe and Barokologadi-Ba-Maotwe tribes for the restitution of rights to the land, which includes the Madikwe Game Reserve in North-West Province.

Dispossession took place in the 1950s and private farmers now own part of this land. At the time of writing, investigations and negotiations were still in progress to establish the correct boundaries of the land.[54]

13.3.6 Rama (Bakgatla-Ba-Mmakau)

The claim involves the land that is adjacent to MEDUNSA, which belonged to the Bakgatla-Ba-Mmakau community and is currently owned by Eckraal Quarries (Pty) Ltd that uses part of the land for mining iron-ore.

Dispossession took place in the 1950s and the community resettled at Madidi, North West. Some of the members of the community resettled in Ga-Rankuwa and Mabopane.

52 Annual Report, 2000.
53 Annual Report, 2000.
54 Annual Report, 2000.

In 1995, one Mr A.B.C. Motsepe lodged a claim on behalf of the Bakgatla-Ba-Mmakau. Consultation meetings with the claimants indicated that they have opted for restoration to the land as part of it is vacant.

The Regional Land Claims Commissioner and the Department of Land Affairs have held several meetings with the current landowners to discuss various approaches to the claim. An offer for the purchase of the land has been made to Eckraal Quarries.[55]

13.3.7Tshivulana

The Gauteng and North-West Regional Land Claims Commission inherited the claim when the four provinces of Gauteng, North-West, Mpumalanga and Northern Province were separated into two regional commissions in 1996.

The claim was lodged by Chief Tshivulana on behalf of the Tshivulana community which was removed from an area called Block 5 in the Northern Province in 1972. Part of the land is currently inhabited by Chief Xiviti and his community. As a result of the dispute between the two communities regarding the borders to the claimed land, the case was referred to the Land Claims Court. The first pre-trial conference was held in September 1997. At the time of writing, the claim was still in court and consultations with the stakeholders were continuing in order to clarify outstanding issues.[56]

Table 5 : Settled Restitution Claims, Gauteng[57]

LAND RESTORATION	
Households awarded land	108
Land cost	R1,836,000.00
Hectares of land restored (Land Claims Court)	0
Hectares of land restored (Ministerial Approval)	0
Total beneficiaries receiving land	648
FINANCIAL COMPENSATION	
Households awarded compensation	1,688
Financial compensation awarded (Land Claims Court)	R280,330.00
Financial compensation awarded (Ministerial Approval)	R70,000,000.00

55 Annual Report, 2000.
56 Annual Report, 2000.
57 Source: http://dla.pwv.gov.za/restitution/new stats rest(graph).htm 24/11/2000.

RESTITUTION TOTAL	
Claims settled as at 30 October 2000	1,816
Total households	1,796
Total restitution beneficiaries	10,776
Total restitution award cost	R72,116,330.00

14. Broad summary and conclusions

It is evident from the foregoing that the land restitution programme is an enabling and dynamic process. It does not mean that each and every successful claimant must receive a piece of land or an amount of money in compensation. On the contrary, the processes enable successful claimants to access various options to arrive at appropriate solutions, which may entail:

- Restoration of land from which the claimants were dispossessed;
- Provision of alternative land;
- Payment of compensation;
- Alternative relief comprising a combination of the above; or
- Priority access to government housing and land development programmes.

Since the inception of the programme, the Commission on Restitution of Land Rights has faced enormous challenges involving an intricate web of legal and administrative problems in the delivery process. These challenges may be summarised as follows:

- Each claim presents its own unique obstacles which must be dealt with from the lodgement stage through to the stages of validation, research, negotiations and finally settlement. There are enormous problems relating to the following:
- Problems relating to informal land rights;
- Lack of documentation relating to the dispossession itself;
- Lack of documents connecting the claimants with the land being claimed;
- Competing claims over the same piece of land coupled with infighting amongst claimants;
- Exorbitant land prices;
- The costs of establishing historical valuations are exceptionally high;
- The process of acquiring state-owned land is very cumbersome and time-consuming;
- Lack of full disclosure of other interested parties by claimants; disputes among the claimants themselves;

- Resistance from traditional rulers especially in relation to the Communal Property Association that are perceived as threats to their hegemony;
- Determination of whether just and equitable compensation was paid to claimants at the time of dispossession;
- Lack of synergy between the restitution process and socio-economic development needs of successful claimants, including problems resulting from poor co-ordination between the various governmental agencies involved with issues of reconstruction and development at national and provincial levels;
- Organizational constraints within the Commission, including lack of delivery capacity due to insufficient human resources to handle the current case load, and inappropriate skills and experience of the personnel involved coupled with the relative weakness of service agencies which are often poorly funded and under-staffed;
- Organizational constraints within associated government departments, including lack of co-ordination across sectors and at different levels, and the fragmented ownership and control of public land;
- Weak organization of rural communities with little existing capacity at rural local government level;
- The ability of the Department of Land Affairs to pay exorbitant amounts being demanded by current landowners;
- Slow delivery due to bureaucratic red-tape;
- Failure to make optimal use of the expropriation option.[58]

In the light of these formidable challenges, the Minister for Agriculture and Land Affairs called for a review of the restitution process. The review was conducted in mid 1998. This review recommended a Restitution Transformation Programme involving the following measures of implementation:

- More systematic registration, validation and processing of claims;
- Rationalisation of the restitution structures and budgets of the Commission and the Department of Land Affairs;
- The batching together of similar claims in a given geographical area and pursuing of group settlements wherever possible, thereby providing the foundation for innovative development-orientated settlements;
- Creative negotiations towards out-of-court settlements wherever possible in terms of section 42 (1) of the *Restitution of Land Rights Act*, 22 of 1994 as amended by Act 18 of 1999;
- Referring only a limited number of cases to court, namely disputed cases, those in which complex points of law are raised and direct access cases, reviews and appeals. This approach would entail a deliberate

58 Department of Land Affairs 1999-2000.

move away from some of the excessively legalistic elements of the procedures to a predominantly administrative approach;

- The use of alternative dispute resolution mechanisms to fast-track the process;
- Working on integrated service delivery at local level; reintegrating segregated cities, towns and hamlets; and balancing the interests and rights of claimants on the one hand with the priorities of government, on the other hand;
- The drafting of a standard settlement offer policy for urban claims which will be implemented after a process of consultation. It is anticipated that this measure will enhance delivery and allow even greater acceleration of claims delivery;
- The involvement of all sectors of society, such as local authorities, in the formulation of development-oriented settlement packages;
- Short project cycles and acceleration of the delivery process.[59]

15. Conclusion

This paper has been chiefly concerned with the legal framework governing the restitution of land rights in post-apartheid South Africa, with particular reference to the North West Province. We have discussed the policies and laws under which indigenous people were dispossessed of their rights in land, resulting in a racially skewed and inequitable pattern of land distribution and use. We have also examined the post-apartheid situation with its unequivocal commitment to land reform, including restoration of land rights to individuals and communities. The relevant legislative and administrative structures have been discussed, emphasizing the achievements and challenges in the path of delivery.

59 *The Citizen*: 13 July 2001, quoting Mr Gilingwe Mayende, Director-General for Land Affairs.

Bibliography

BENNET TWA
1991. *Source book of African customary law for Southern Africa*. Cape Town: Juta & Co.

BUSINESS REPORT
11 September 2001. Graham Searjeant. Market forces, not racism offer financial groundwork for land reform.

DANQUAH JB
1928. *Akan laws and custom*. London: Routledge.

ELIAS TO
1972. *The nature of African customary law*. Manchester: University Press.

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
1996. Green paper on land policy. Pretoria: Department of Land Affairs.

1997. White paper on land policy. Pretoria: Department of Land Affairs.

1999-2000. Annual reports. Pretoria: Department of Land Affairs.

GLUCKMAN M
1943. *Essays on Lozi land and royal property*. Livingstone: Rhodes-Livingstone Paper. No 10.

MANGIN W
1967. Latin America, squatter settlements: a problem and a solution. *Latin American Research Review* 2(2):65-98.

MOYANA HV
1984. *The political economy of land in Zimbabwe*. Gweru: Mambo Press.

MOYO S
1995. *The land question in Zimbabwe*. Harare: SAPSE Books.

NORTH WEST MIRROR
14 March 1996. Sereman J.O.W. What is the Commission on Restitutions of Land Rights.

SEREMANE JWO
1996. *What is the Commission on Restitution of Land Rights?* Mafikeng: North West Mirror.

SCHAPERA JA
1955. *A handbook of Tswana law and custom*. 2nd ed. Cape Town: Juta & Co.

SUNDAY TIMES
8 July 2001. Antony Gubbay, formerly Chief Justice Zimbabwe. Rulers, too, must obey the rule of law.

11 November 2001. Antony Gubbay. Decline and fall of the sanctity of the law.

11 November 2001. Sechaba Ka' Nkosi. Botswana leader blasts Mugabe over land grabs.

3 March 2002. David Blair. Butchered in the name of Mugabe.

19 March 2000. Mondli Makanya. Story of an African farm.

16 July 2000. World Digest. "Hitler", we won't budge.

THE CITIZEN
11 February 1997. Derek Hanekom. Government will tackle land issue in '97.

13 July 2001. Liesl Venter. World watches as shacks removed.

14 July 2001. Hugo Hagen. Judgment 'Leaves door open for land grabbing'.