

180306 PC RURAL

180314 PC RURAL

HLP Presentation

Restitution of Land Rights
and CPAs

Section 25(7) of Constitution

- ‘A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.’

Backlogged claims and massive expectations

- More than 7 000 unsettled, and more than 19 000 unfinalised, 'old order' claims.
- At the present rate of finalising 560 claims a year, it will take at least 35 years to finalise old order claims;
- New order claims (lodged after 2014) that have already been lodged will take 143 years to settle;
- If land claims are reopened and the expected 397 000 claims are lodged, it will take 709 years to complete Land Restitution.

Alarming DPME reports and Land Claims Court judgments

- Land Claims Commission not set up with capacity to deal with number of claims
- Lack of historical and legal training
- Lack of records, claims forms lost
- Genesis 2014 report: some provinces less than 3% of files in order
- Invalid claims approved, especially after 1999 amendment to enable administrative approval

Inconsistent prioritisation

- Mala Mala settlement R1.1 billion – yet Commission's research indicated claim not valid
- Other transfers held back for over 10 years despite signed approvals
- Evidence of increasing corruption. SIU investigations and reports
- Bunching together of conflicting claims – locking claimants into dysfunctional groups – no adequate research as to which claims are actually historically valid

Unresolved overlapping and conflicting claims

- Ethnic and tribal tensions
- Focus shifted away from WHO was dispossessed WHEN and HOW to idea of tribal claims to address pre-1913 wars of conquest
- This meant to be addressed by redistribution – not suited to court based evidence and adjudication.
- Poor records leads to claimants being awarded land that is subject to existing rights or counterclaims eg Mawubuye

Model of big groups getting large farms

- No attention paid to specific historical identities
- No sub-division of land to award to specific families or descendants of land buying syndicates
- Instead counter-claimants lumped into big groups and awarded large commercial farms managed by strategic partners.
- Generated disputes and litigation – meanwhile no agricultural production
- Very poor outcomes documented in official reports and DPME reports

Problems exacerbated by 2014 Amendment Act

- Simply no budget to deliver at scale on promise of re-opening restitution
- ‘Tribes’ encouraged to put in pre-1913 claims, yet date not changed in Amendment Act
- Contradicts purpose of restitution which was to provide redress to the families of specific people who lost land after 1913
- Exacerbating conflicts and tensions
- Evidence that valid settlements held back to enable counterclaims by specific elites to be lodged (cf Land Claims Court judgments)

Voices from the public hearings

- *'It seems like our government has turned Black people against Black people. You don't engage in in-depth research and ethnographic studies, you just take my land and give it to another person or take their land and give it to us, this is disturbing.'* (speaker at Limpopo hearing)
- *'Our experience... has made us poorer than before we engaged in this land restitution because we are running to courts instead of developing the land.'* (March Motene at the North West hearing)
- *'Back then there was ubuntu. Today ubuntu has been eroded. There is lack of tolerance in our communities. There is tribalism.'* (Speaker at Limpopo hearing)

Voices from public hearings

'We never said we want farms. The fact that those occupying the land have turned it into farms is not our problem and has nothing to do with the fact that we want our land back. Why is it that when a person asks to be given back what belongs to them, they are asked what they are going to do with it? If it was your car that was stolen, assuming that the land is a car, and later on the stolen car is recovered, and you go to the police station to claim it back, you find out that your sedan car was converted into a van, and the police tell you that they cannot help you with anything and that you must negotiate with the thief, and the thief tells you that because I converted the sedan car to a van you must pay for costs of converting it.

Recommendations

- Backlogged claims must be resolved before other claims allowed
- 1913 cut off date retained
- LC Commission must be made independent of government
- Land Claims court must be stabilised- more judges
- Panel to review merits of existing claims- many do not qualify
- Break up consolidated mega 'communities' and sub-divide the land
- Bring back judicial oversight before claims can be approved
- Ensure that claimants are treated equally and budget fairly allocated

Annexures to report L2 and 3

- Panel had provided an indicative draft Judicial Amendment Bill and a draft Restitution Amendment Bill given the urgency of the Con Court deadline which is mid 2018
- Key issue that sufficient budget be available to ensure that restitution is available to all valid claimants and not used selectively to advance the interests of some at the expense of others.

Recommendations irt CPAs

- Proper budget and costed plan need to be dedicated to CPAs
- All Trusts converted to CPAs – Master's office no capacity
- Need strong family and individual recorded land rights within CPAs that are enforceable against committees- need detailed regulations asap to enable communities to determine land use, and user right allocation (Land Records Bill in longer term)
- Staff capacity and training increased

CPAs

- Many CPAs are made up of groups with competing claims who were 'lumped together' by officials – locked in internal disputes
- Many CPAs are dysfunctional because too many people for one farm
- State response has been to impose strategic partners – evidence at hearings that this is experienced as disastrous
- Urgent need to break up and sub-divide dysfunctional CPAs
- Need for Land Rights Protector to investigate and rule on disputes – litigation too expensive