

Office 1106 Braamfischer towers,

20 Albert Street, Marshalltown

010 021 0572

Email: ruraldemocracytrust@gmail.com

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Submission to the Portfolio Committee on Rural Development and Land Reform**

**14 August 2018**

1. **Who is ARD**

The Alliance for Rural Democracy (ARD) is a cross-section of civil society organisations sharing a common concern about the on-going struggle to defend rural land rights and democracy against the onslaught of new laws and policies that favour the interests of traditional leaders and politically connected business investors at the expense of the land and political rights of poor South Africans living in the former Bantustans.

The ARD welcomes an opportunity to be invited to submit to the Portfolio committee and believe that Restitution is one of the land reform programme that is of crucial importance to the directly affected black communities of South Africa who have:

* 1. Waited for over 20 years for new promised land and not been afforded real restoration of land;
  2. Whose existing land claims files are missing and therefore not captured as an existing claim, whose claims are captured and have not been dealt with or have not been finalised; and those who received land through restitution but have not enjoyed the benefits due to lack of post settlement support, either financially, technically and through clauses such as encumbrance clauses or SAHA clause.
  3. Who cannot protect their land rights from unscrupulous business because they are told that they occupy state land?

To address the above-mentioned points, Restitution of land rights act alone cannot address the land crisis that the country is experiencing today, we need to look at the whole Empowering Mandate contained in Section 25 the Constitution of South Africa of the Act 108 of 1996

Restitution mandate as contained in the constitution itself is limited. It states “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.”

Parliament need to implement all the Section 25 (1-9) to address the land problems as people cannot wait for information in archives, we need land now!!!!

Parliament have enacted the Restitution of Land Rights Act no. 22 of 1996, through which they established the RLCC and received a total number of claims. They met so many challenges that they didn’t envisage and planned for, including the below

* Budget has declined over time, with a lot of unfruitful expenditure and funds going to consultants and not going to purchasing of land
* Slow pace of processing claims due to several factors amounting from Capacity, and corruption. In the 2017 Motlanthe High level Panel report stated that there are still over 7000 unsettled and over 19000 unfinalized “old order” claims. The slow pace of resolving claims have resulted in more challenges as the number of claimants are multiplying, complicating the process even more.
* Capacity Deficit within the institutions set up to drive the process. Both the CLCC and the Land Claim Court. There is an overwhelming historical knowledge deficit within the staff of the Commission and the Department, the filing systems and digital database of the Land Claims Commission are in disarray.
* The land claims court nave no permanent judge to deal with loads of files referred from the Commission, therefore delaying justice for restitution even more. The Land Claims Court is overwhelmed with cases regarding the validity of claims, the nature of just and equitable compensation and feasibility. Despite the enormity of the task, there are no permanent judges of the Land Claims Court.

Irrespective of the challenges, Parliament introduced a new Restitution bill in 2015 to allow for new claims with missed the 1998 cut of date to be lodged. There was an out cry which resulted in a letter by LAMOSA, MACUA ns BUA Mining communities to the President pleading for the President not to sign the 2015 bill into law. The President signed the letter into law and left us no choice but to take the matter to court.

**The Restitution Bill 19 of 2017**

This Bill was introduced by a private member of the Portfolio committee obo The ANC. It was later converted into the Committee’s bill to assist the Private member with advertisements and cost of Public hearings.

The bill is problematic in itself because it ignores the LAMOSA Concourt judgement with regard to ring fencing the old order claims, instead.

* It will allow the new order claims to be dealt with old order claims, which will further complicate matters for both the RLCC and the claimants.
* It envisages that the outstanding claims could be dealt within 2 years, not convincing enough because it does not address the current challenges which are hindering factors, and does not align the institutions such as Land Claims Court, The role of Parliament as a monitoring body etc.,
* There was no Socio-Economic Impact Assessment presented before the bill was published, so that one can be convinced of all the factors as to what are we correcting in the old Act, who will be the players and at what cost. The High-Level Panel report motivates this very well foreach proposed amendment. As the ARD we can’t see the reason why the Portfolio committee didn’t incorporate the recommendations in the High-Level Panel report into the private members bill
* The 2017 Bill does not bring the Commission to report or bring them under a supervision of Land Claim Court, and does not say anything about stabilisation the Land Claims Court.

**Recommendations and Way forward**

We strongly recommend that Portfolio committee should consider recommendations of the Motlanthe led High Level Panel, that reads as follows.

1. Land claims lodged on or before 31 December 1998 must be resolved as according to the order of the Constitutional Court in the LAMOSA judgment.
2. The statutory independence of the Commission from the Department of Rural Development and Land Reform must be restored and regional land claims commissioners appointed in terms of section 4(3).
3. The capacity of the Commission needs to be jerked up
4. The Land Claims Court needs to be stabilised by the appointment of permanent Land Claims Court judges.
5. Create an independent panel of researchers within the Commission to research claims.
6. If there is any Amendments to the Restitution Act that are urgently required include amendments to the definition of “community” to

* Incorporate the principles established in the Kranspoort judgment; and
* Ensure that the interests of those truly dispossessed are not diluted by piggy-backing on claims by persons not dispossessed of rights in land, including traditional communities or traditional leaders not dispossessed in the manner contemplated in the Constitution and the Restitution Act;
* Ensure that the definition of community keeps with the initial intention of the Restitution Act, which was not intended for pre-1913 tribal claims
* Ensure that Just and equitable compensation are paid to current owners; and
* Ensure consistency of treatment of claimants and claims and avoid the malamala case study, 40,000 for black claimants versus 1 billion rand for one white family.

The Act must be amended to provide for formal reporting by the Commission and the Minister to Parliament and to the Judge President of the Land Claims Court at specified intervals on progress in the implementation of the Restitution Act as amended.

Post Settlement Support and advice must be appropriate, developmental and protective of beneficiaries from unscrupulous business deal, Department must promote the best interest of communities who are still learning the ropes and don’t leave them to the vultures who makes them sign dodgy business deals.

Lastly, the Restitution Act is just but one leg of Section 25 and must be complimented by other sections to address the injustices of the past to address the skewed patterns of ownership.

**References**

. [www.ruraldemocracy.org](http://www.ruraldemocracy.org)

1. https://www.parliament.gov.za/.../HLP\_**Report**/HLP\_**report**.pdf · PDF file
2. 3 **report** of the **high level panel** on the assessment of key legislation and the acceleration of fundamental change
3. [www.customcontested.co.za/kgalema-motlanthes-high-level-panel](http://www.customcontested.co.za/kgalema-motlanthes-high-level-panel).
4. Section 25 (7) Constitution of South Africa, 108 of 1996
5. Land Access Movement of South Africa vs National Council of Provinces
6. ewn.co.za/2016/07/29/Over-100000-land-claims-put-on-ice-follow-Con.