Thank you for invitation to stakeholder engagement.

I am deeply committed to restitution. Was one of the group who drafted the initial act so that it was ready by 1994. Process was driven by people who were re-occupying land they had been forcibly removed from. They took great risks during 1985-1990 state of emergency. Eg Goedgevonden and Mogopa communities in heart of AWB country.

Have pondered long and hard about what has gone wrong with restitution, and how we could have avoided this if we had drafted the Act differently. In hindsight these are my reflections

1. We did not anticipate that restitution would outstrip redistribution. We assumed that redistribution would be the flagship progamme of land reform and that restitution would be a very small component by comparison – providing specific redress to the 3 and half million black South Africans who were forcibly removed between 1960 and 1986 when the Driefontein and KwaNgema communities won their historic victory against forced removals

* Restitution flooded by people with invalid claims. Can’t prove history, just need land
* Commission overwhelmed and under pressure, validated some of these claims - to detriment of people with specific historical claims

1. CPAs and individual rights

* Serious problem of amalgamated claims – applies to both restitution and redistribution – Officials under pressure to reach targets –easier to simply amalgamate claims then time consuming job of sub-division and individual rights
* Key shortcoming of CPA Act (which I co-drafted). Does not provide for enforceable family and individual rights within CPAs. Allows for lumping together of large groups of people. Contributes to abuse of power
* Need to sub-divide existing CPAs that are locked in intractable disputes. Yet Sub-Division Act never brought into operation despite being passed by National Assembly
* Has generated severe conflicts between counterclaimants

1. Capacity and resources

* Totally underestimated the resources needed to do the job. Whole new function - yet govt was under pressure to restrict staff complement after 1994. Need for expert historical and legal skills within commission underestimated
* Commission meant to have been independent of Dept with own ring-fenced budget – but over time absorbed into Dept. Section 6 of Act should have been more detailed to provide commission with more independence and include qualifications
* Land Claims Court under resourced. Needs permanent judges and more review authority to help sort out bungled claims

1. Tribal claims and corruption

* Tribal claims rhetoric at odds with qualification requirements of Restitution Act. Those dispossessed and their descendants. Tribal dispossession before 1913. Key focus of redistribution, not restitution. Yet former president repeatedly encouraged tribal claims.
* Has been used to hold back valid claims so that tribal counterclaims can be prioritized through re-opening. Cf Cata affidavit cf judgments by Judge Ncube in KZN (Nongoma Commonage case). Melmoth – death threats to induna to withdraw his claim so that tribal claim can be lodged
* Former Minister Nkwinti. Restitution a honey pot for corruption. SIU investigation. Officials substituting names and ID numbers
* Made easier by large group approach vs identifying individuals and families who qualify
* Massive problem that original claims forms have been lost or destroyed in order to pave way for tribal counter claims.
* Has generated severe conflict, including ethnic tensions.
* Amendment to the Act that allowed administrative settlement of claims has contributed to corruption. Need court oversight

Outcome of these mistakes. People locked in hellish situations. Many people are still waiting. Not only those stuck in the queue, also those who have received restitution awards.

Some examples

* Mawubuye in Mpumalanga
* Amandebele land buyers in Hammanskraal – amalgamated 3 groups, including land buyers who have counter-claim. One lawyer appointed to rep all 3. Yet claim of Kekana royal family directly contradicts that of the land buyers
* Magogwane CPA –infighting by different groups who were amalgamated into CPA despite having owned the original land separately as families. (Bogatsu involved)
* Putfontein/Batloung – 19 plot owners all lodged separate claims. Originally treated as separate claims – family trusts. But then all land awarded to Batloung CPA. Batloung CPA originally agreed to cede to plot owners, but this ignored by Commission. Current CPA is defunct but is negotiating with mining company behind back of community. (Bogatsu implicated)

Former President Motlanthe wrote letters after people appealed for help. No replies received. My assumption is that this is because there are no easy fixes. These examples illustrate the intractability of the problems facing restitution.

Cannot be business as usual.

Need a process that acknowledges and addresses these mistakes so that re-opening restitution does not mean that more people end up in this situation

* Panel to review outstanding claim- refer some to redistribution instead
* Focus on individual and family based rights – only those who qualify – not amalgamated groups. More than that, a review of existing settlements – subdivisions and individual rights.
* Dedicated capacity and resources to Land Claims Court and Commission. Training of staff
* Need to identify and dismiss the officials involved in corruption. Not give them more opportunities to cheat people of their rights.

These are some of the issues that the HLP recommendations tried to address. I understand that the land sections of the report have been referred to this committee for processing. Unofficial as Panel no longer exists. I understand that this puts committee in a difficult position because it has two separate processes to consider while Parliament is under pressure because of the Con Court deadlines set out in the LAMOSA judgment. I also heard from my colleagues who sought to engage with the committee yesterday that the majority of committee members take a negative view of the HLP recommendations. I am sad to hear that as I know that this committee has heard about, and is concerned about, many of the same complaints and problems that the Panel heard about during its public hearings. My plea is that you consider incorporating at least two issues into the draft legislation:

* Review panel to assess backlogged claims and refer to redistribution where appropriate – also to review disputed settlements
* Focus on individual rights as opposed to amalgamated group claims – include mechanism in bill that will enable existing settlements to be sub-divided so that rights can be awarded to specific beneficiaries