**2. Report of the Portfolio Committee on Rural Development and Land Reform on study tour on the restitution of indigenous people’s land rights in Canada, dated 13 March 2019**

The Portfolio Committee on Rural Development and Land Reform, having embarked on a study tour from 23 to 27 September 2018 to draw lessons from Canadian experiences regarding redress for land alienation from the indigenous people and processes for reconciliation, reports as follows:

# **Introduction**

Over the last 24 years, the government of South Africa has implemented a programme of land reform; restitution of land rights one of its critical components. Among the criticisms of restitution is its long-winded processes and the 1913 cut-off date which is seen as an impediment to the redress for colonial land dispossessions prior to 1913. The most affected groups are Indigenous communities, including descendants of the Khoi and Sans people. The Portfolio Committee on Rural Development and Land Reform, henceforth the Committee, had keen interest in other jurisdictions that grappled with related historical land injustices. One of those was the Canadian government processes of reconciliation with the First Nations and Indigenous communities whose land dispossessions dates as early as 1701. The Committee, therefore, undertook a study tour to draw lessons from the Canadian experience of redress of colonial land injustices and related development support to the Indigenous communities.

## **1.1 The rationale for the study tour**

The program of restitution, as discussed above, has been criticised for its failure to permit claims to restitution of land rights lost prior to 1913. The Committee, and its predecessors, received complaints and petitions from people who felt excluded. Most prominent complaints came from the Khoi and San descendants. In response to this critique, the Minister of Rural Development and Land Reform announced in 2013 that government would develop policy mechanisms that would entail exceptions to the 1913 cut-off date. The Committee, having noted limited progress in the development of the proposed policy, resolved to embark on a study to Canada as introduced above.

Both South Africa and Canada are part of the Commonwealth Nations. They share a history of settler occupation and deprivation of Indigenous people’s land rights by confining them to the Reserves. However, it is important to note that the two countries have dissimilar economic, social and legal contexts, yet the similarities present Canada as a relevant jurisdiction for this claiming historical land rights. Both Countries have been experiencing sustained campaigns and struggles of the marginal groups for restorative justice with regard to land rights. In South Africa, the descendants of the Khoi-San and other tribal groups argue that entrenchment of the 1913 cut-off date in the Constitution undermines their entitlement to restorative justice. In Canada, the First Nations, Inuit and Métis are also complaining about failure of government to implement treaty agreements. The highlights from the Report of the Royal Commission on Aboriginal Rights (1996) shows that "Canada is a test case for a grand notion - the notion that dissimilar peoples can share lands, resources, power and dreams while respecting and sustaining their differences. The story of Canada is the story of many such peoples, trying and failing and trying again, to live together in peace and harmony."

At the time of the visit, the Committee learnt that the Government of Canada was developing, together with First Nations and Indigenous communities, a Recognition and Implementation of Rights Framework (RIRF) in order to address their grievances and achieve national reconciliation. Similarly, South Africa has been grappling with related issues and considering policy options to address the concerns and questions that land reform has brought forward. For example, Constitutional amendment to allow expropriation of land without compensation, development of comprehensive policy on communal land tenure which directly impact on land rights for people in the former Reserves. One of the critical question relates to competing claims and interests in land by traditional communities on one hand and private investors such as mining companies on the other. This study tour, therefore, presented an opportunity for the Committee to draw lessons on a range of issues as outlined in Table 1 of this report.

|  |  |  |
| --- | --- | --- |
| Key question | Sub-set of questions | Possible area of interest for SA Parliament |
| Constitutional/legislative and policy framework for addressing the land rights of Indigenous people in their diversity.  | * What are key constitutional provisions that the aboriginal people rely on to make claim to their land?
* What are the key pieces of legislation that are relevant to the issues of access to land by indigenous people, together with planning and land use management? What are the successes and impediments that could be shared with the committee?
* What are constitutional parameters with regard to foreign ownership of land in Canada, including ownership of land by non-community/band members in the reserves?
 | * Constitutional parameters for land reform, including historical claims to land.
* Spatial planning and land use management
* Communal Land Tenure Policy and foreign ownership of land debates
 |
| Indigenous peoples’ comprehensive land claims negotiations and agreements (modern treaties) | * How are claims for indigenous land filed? With whom? How are they processed?
* Explain notions ‘existing” rights in the context of land alienation that saw most land being ceded to the Crown under treaties?
* What are the institutional support mechanism (government and non-government), including roles and responsibilities? How does Canada deal with coordination of various actors from federal to provincial government departments?
 | * Pre-1913 land claims outside the restitution of land rights act, especially for Khoisan and other tribal groups in the former homelands and reserves.
* Exceptions policy
 |
| Experiences of Indigenous groups, First Nations  | * What are the necessary historical and contextual considerations to claim making by the Indigenous groups in Canada? What are the empowering legislative and policy tools? What are the socio-economic impact of implementation of policy instruments available? What is their greatest achievement and short-comings to-date in their struggle for secure independent ownership of land? How have land claims been settled over the years?
 | * Land restitution and upgrading of tenure on communal land.
* Tenure security and land sales or leases (administration of state and public land, and state disposal policy)
 |
| Settlement support and economic development (including cooperative development and support Young Farmers Fora)  | * What kinds of support, including capacity building intervention, is provided by the State? At what level?
* Are there joint interventions across the different levels of government? How is it coordinated? What are there models of cooperatives implemented in the reserves?
* Are there any benefits of private sector partnerships? How is the level of youth engagement in agriculture?
* What are the incentives or disincentives for both government, private sector and Indigenous groups, families or individuals?
 | * Comprehensive Rural Development Strategy
* Agri-Parks.
* Rural Enterprise and Industrial Development.
* Rural Infrastructure Development.
 |
| Parliamentary oversight and accountability | * How does Parliamentary oversight over the executive, especially at the level of the Committee, functions?
* What are the observations made during Parliamentary Committee sitting?
 | * Parliamentary oversight and accountability approach of the Committee.
 |

**Table 1:** Summary of key questions for the study tour

**1.2 Study tour objectives**

The overarching objective of the study tour was for the Committee to engage Canadian counterparts and government with regard to legislative mechanisms to redress colonial land alienation, regulation of access and governance. The study tour, therefore, hinged on the legal framework and institutional arrangements enabling processing of comprehensive land claims as well as development support in the reserves broadly, including coordination of state and private sector participation.

Specifically, the Committee set out to -

* explore and draw lessons on the Canadian process of claim making and settlement of claims; further draw insights into the development support;
* draw insights on the types and functions of institutions set up for facilitation of claims, land ownership, governance and state support;
* draw comparison of South African and Canadian legislative frameworks for facilitation of Aboriginal people’s land access and development, specifically on landholding mechanisms and spatial planning and land use;
* interact with Indigenous people in order to learn about the socio-economic impact of Comprehensive Land Claims (CLC), implementation of modern treaties and related economic development benefits;
* learn from the existing community capacity building strategies to enhance land management; and
* to draw comparisons with relevant parliamentary committees that conduct oversight on comprehensive land claims and rural development.

**1.3 Key questions for the study tour**

Having regard to the overarching concern of this study tour, the following key questions constituted the framework for engagement with the relevant Canadian authorities:

* What legislative and policy framework exist to address the Indigenous rights in Canada? What process does Canada follow in the development of policies and legislation? What is progress in the implementation of the relevant policies, treaties and agreements.

What is the role of civil society in shaping policy (stakeholders) as well as supporting the First Nations claims to the land?

* How does the Canadian government deal with the indigenous people’s claims to the land? What is the legislative framework for facilitating land development with specific reference to legal entities and various landholding mechanisms including land use management strategies?
* How do First Nation communities view legislative processes and implementation, especially tenure arrangements, land use management and planning, government support services.
* What lessons does Canadian Parliament bring forward in relation to effective parliamentary oversight by committees?

## **1.4 Delegation**

The delegation of Members of Parliament (MPs), accompanied by two parliamentary officials and an official from the South African High Commission in Canada, conducted its work over 5 days as will be discussed in this report.

 **Table 2**: List of members of the delegation

|  |  |
| --- | --- |
| Category  | NAMES |
| Members of Parliament  | MP Ngwenya-Mabila, Ms PC: Leader of the delegation (ANC) MP Mnguni, Mr PJ (ANC)MP Magadla, Ms NW (ANC)MP Nchabeleng, Mr EM (ANC) MP Robertson, Mr K (DA)MP Filtane, Mr ML (UDM) |
| Parliamentary Officials  | Ms P Nyamza, Committee SecretaryDr T Manenzhe, Content Advisor |
| South African High Commission | Ms N Maponya, Third Secretary Political  |

## **1.5 Structure of the report**

This report accounts for the activities and engagements of the delegation of the Committee, henceforth, the delegation, to Ottawa, Canada. Following this introductory part which outlined the background to the study tour and the Committee delegation, the report proceeds in three parts as follows:

* It highlights the delegation’s approach during engagements with stakeholders and further outlines key activities that the delegation carried out during its visit to Canada.
* It summarises key points from conversations with stakeholders, both government and non-government;
* It summarises analysis of observations and key lessons; and
* It concludes by highlighting key recommendations to the National Assembly.
1. **Approach to engagements**

The delegation held structured meetings with different stakeholders as demonstrated in Table 3 of this report. There was a deliberate attempt to interact with as many stakeholders as possible in order to obtain a holistic view of perspectives of policy makers, bureaucrats, interested and affected parties. Overall, the meetings were successful except one which was cancelled and the trip to the First Nations which could not be undertaken. Whilst majority of the meetings were structured in terms of question and answer approach, the facilitators were careful not to confine the members. At times, the meetings were conversations between the delegation and the Canadians they visited in order to allow space for the delegation to share its experience with South African land reform. In some meetings, Canadians were so much interested in the South African debates on land expropriation without compensation and what it means.

The programme for the study tour was limited in terms of the amount of activities it could carry out. For example, the delegation could not visit some of the First Nations reserves. Due to short period of stay in Ottawa, the delegation could not accommodate stakeholders who were not available for the meetings requested.

**Table 3:** Key activities and list of stakeholders that the Committee interacted with

|  |  |  |
| --- | --- | --- |
| **Date** | **Stakeholders** | **T**heme |
| **Name** | **Organisation** |
| 24/08/2018 | Ms Sibongiseni Dlamini-Mntambo, High Commissioner | South African High Commission | Introductions and political-economic overview and relations between South Africa and Canada |
| Mr Prakash Diar, Legal Counsel | Department of Justice | Constitutional (legal) framework for redressing the colonial land dispossession. |
| Executive Directors | Assembly of First Nations | Coordination of national and regional dialogue, advocacy and campaigns, legal and policy analysis in support of First Nations  |
| 25/08/2018 | Ms Nadia De Santi, Senior Project Manager; Planning, Landscape Architecture and Urban Design  | WSP Global | Overview of spatial planning and landscape architecture - reserves |
| Government Officials  | Crown-Indigenous Relations and Northern Affairs Canada  | Negotiations and implementation of modern treaties and self-government agreements, land management regimes and claims settlement |
| 26/08/2018 | TBC | Canadian Institute of Planners  | Overview of planning environment in Canada; Principles of working with Indigenous Communities and Indigenous Community Planning. |
| 27/08/2018 | TBC | Cooperatives and Mutual Canada | Lessons learnt from the Co-operatives Development initiative. Current co-operative development in Canada |
| Mr Robinson | Canadian Agricultural Partnership | Briefing on the [Agri Competitiveness Program](http://www.agr.gc.ca/eng/programs-and-services/agricompetitiveness-program/step-2-who-is-eligible/?id=1517336959326): Industry building on existing capacity and facilitating the sharing and expansion of skills, knowledge, and best practices. |
| Members of Parliament: Canada | Standing Committee on Indigenous and Northern Affairs | Parliamentary perspectives on the issues of indigenous communities and land rights |

1. **Overview of the inputs by stakeholders**
	1. **High Commissioner, Ms Sibongiseni Dlamini-Mntambo: Setting the context for engagements with Canadian government and stakeholders**

The South African High Commissioner for Canada presented a context to the relations between South Africa and Canada. Firstly, she outlined the functioning of the politics of Canada as a parliamentary democracy with a federal system of government. Canada is a constitutional monarchy in which the Monarch is head of state. It has a multi-party system in which many of its legislative practices derive from the unwritten conventions of and precedents set by the United Kingdom's Westminster Parliament. However, Canada has evolved variations: party discipline in Canada is stronger than in the United Kingdom and more parliamentary votes are considered motions of confidence, which tends to diminish the role of non-Cabinet Members of Parliament.

On 14 April 2013, Mr Justin Trudeau, son of former Prime Minister Pierre Trudeau, was elected leader of the Liberal Party. Following his win, support for the Liberal Party increased considerably. Despite the grim outlook and poor early poll numbers, when the 2015 election was held, the Liberal Party had an unprecedented comeback. Gaining 148 seats, they won a majority government for the first time since 2000. It was pointed out that the Liberal Party has since embarked on an ambitious and transformative policy agenda. It was highlighted that Prime Minister Trudeau, on 13 July 2017, approved the appointment of Ms Julie Payette as the next Governor-General of Canada and she was installed in 2017. Ms Payette succeeded Mr David Johnston, who served as Governor General since 1 October 2010.

Canada, just like South Africa, has an evil past which Canadians are not proud of. There is a recognition from the highest level of government that land injustices must be addressed. This starts with acknowledgement that the present Canada is established on land that belongs to the indigenous people. Canadians have been interested in the experiences of South Africa, especially the Truth and Reconciliation Commission. Their Commission has developed some action points which the government of Canada is committed to implementing them.

The High Commissioner also affirmed that there was good political relationship between South Africa and Canada. The relationship was a longstanding cooperation with Canada, dating back from the days of struggle against apartheid where Canadians played a major role in assisting South Africa to attain its freedom. South Africans should continue to explore areas possible future collaboration, especially in the field of agriculture and food security. For example, Canadian farmers only farm for a short period of time in the open fields because fields are, most of the year, covered in snow. South Africa should consider exploring partnerships and exchange programmes that could be beneficial to South Africa’s emerging sector. She however remarked that Canadians are also monitoring the debate on Section 25 of the Constitution. However, Canadians understand the context of the debate and expropriation of land without compensation, not the land grab, was well received within government circles. However, there are individual organisations representing particular sectors of the society who have protested against the idea of expropriation of land without compensation. Government of Canada has distanced itself from such activities.

**3.2 Legislative context for indigenous rights: Mr Prakash Diar, Department of Justice**

This meeting highlighted the current government processes to review laws and policies around aborigines’ land claims. The purpose is to update the old Comprehensive Land Claims Policy. Government sought to advance reconciliation and find long-term solution that would ensure that the needs and aspirations of indigenous communities are met. At the centre of the process is to ensure economic benefits to indigenous communities. Canada has a negative history of the discrimination and assimilation of the indigenous communities. For example, government policy sought to create Indian residential schools in the 1800s. These schools deprived children of their social fabric, family and self-identity as a people. The last school was closed in 1996. This is an example of some of the historical atrocities that the people of Canada are grappling with in order to ensure restorative justice.

Since 1701, in the British Colonies in North America (parts of Canada) the British Crown entered into treaties with indigenous groups. These treaties defined respective rights of Indigenous peoples and the Europeans on land that was originally occupied by Indigenous communities. Since 1763, treaties were signed to provide large areas of land (occupied by First Nations) to the Crown in exchange for reserves. Between 1701 and 1923, there were about 70 historic treaties that were signed. There has been challenges around the implementation of treaties.

**Table 4:** Summary of key provisions in the Historic and Modern Treaties

|  |  |
| --- | --- |
| Historic Treaties (1701-1974) | Modern Treaties (since 1975) |
| Land/reserves set aside for First Nations use only  | Consultation and participation |
| Annual payment of annuities to First Nations  | Ownership of land  |
| Hunting/fishing rights on unoccupied Crown land  | Wildlife harvesting rights |
| Government pay for reserves’ schools and teachers  | Financial settlements |
| One-time benefits (farm equipment, animals, etc.)  | Self-government  |
| Resource revenue sharing, participation in the economy  |

Over the years, Canada experienced a rise in a number of cases brought before the Courts to adjudicate some of these historical cases. However, it has become quite clear that the Courts might not be the best institutions to adjudicate on these matters. In this regard, the government, drawing from South Africa’s Truth and Reconciliation Commission (TRC), established its own TRC to consider the historical injustices and to look into some forms of compensation to the aborigines for the loss of their original land through government-sanctioned dispossession. Part of the terms of the recommendations was for the TRC to make recommendations of key action points for government. At the time of the visit, government of Canada was exploring the financial compensation option as a way of redress. The delegation was informed that government established a working group in 2013 to address a number of implementation issues.

In terms of the legislation, Section 35 of the Constitution Act, 1982 provides constitutional protection to the indigenous and treaty rights. These rights are recognized and affirmed. There is recognition, in the Constitution, that prior to the arrival of Europeans in North America the land was already occupied by Aboriginal societies. At the time of the visit, there were questions being raised about the reconciling the pre-existence of Aboriginal societies with the sovereignty of the Crown. Therefore, it was clear that processes to achieve reconciliation were necessary. The transfer of Aboriginal title was done in terms of the Royal Proclamation of 1763. There are many treaties that were never signed. This has been a major point of concern for many indigenous communities.

The Comprehensive Land Claims Policy emanates from the Supreme Court of Canada decision to recognize Aboriginal rights for the first time in 1973. Since then, about 25 treaties were signed. Some of them included right to self-government. These treaties provided for:

* Indigenous ownership of land and recognition of their initial rights before arrival of Europeans;
* Protection of traditional ways of life (including oral histories, fishing, hunting);
* Access to resource development opportunities; and
* Political recognition and self-government.

Section 35 of the Constitution opened platform for indigenous people to approach courts because government was not reciprocating with regard to the treaties. A key proposal to be considered by government was that there must be mechanisms outside the Courts to address the challenges confronting government and the Indigenous communities. The review process was expected to clarify some of the ambiguities in legislation and the constitution. What has become clear for many Canadians, through the Courts, is that government has a duty to consult, and where appropriate, accommodate Indigenous communities/groups when it considers development that might adversely impact Aboriginal rights or treaty rights.

**3.3 Standing Committee on Indigenous and Northern Affairs perspectives**

This section summarises conversation with the Canadian Members of Parliament serving in the Standing Committee on Indigenous and Norther Affairs. The Committee appreciates that Canadian government, being federal in nature, is structured differently. For that reasons, whilst some MPs from the South did not know about the land rights issues affecting the aborigines, it was mainly MPs from the North who had clear understanding of the concerns and issues.

The Committee recognises that land is pivotal to the culture and way of life for Indigenous peoples. Deprivation of access to and use of traditional territories has impeded social and economic prosperity.

Parliament was overseeing that the outcome of the TRC process, especially implementation of the 94 calls to action (recommendations). The Standing Committee emphasised that it was important for reconciliation process which government has committed itself to implementation. For them, redress of historical injustices is central to advancement of reconciliation. Settlement of claims is also seen as a central feature in addressing socio-economic conditions of Indigenous communities.

In summary, the following bullets summarise the highlights of the meeting:

* The Committee focus on a range of issues, mainly health care, poverty alleviation programmes, education in partnership with Indigenous communities
* Implementation of Aboriginal and treaty rights
* Economic development in the reserves
* Socio-economic challenges confronting the Indigenous communities. It was reported that Indigenous communities over-represented in prisons, hospitals. Poverty levels amongst them were very high.
* There has been delays in the claims processes, citing that it may take up to 18 years to settle a comprehensive land claim. In some cases, experiences of claimants (Indigenous people) suggests a process that is adversarial, not taking into consideration the cultural difference of Indigenous peoples.
* A need to alternative dispute resolution mechanisms other than the adversarial court processes.

The Committee oversees work of different government departments. For example, the Indigenous Service Canada and the Indigenous and Crown Relations Canada. It was important to highlight this in order to appreciate a need for inter-governmental coordination. Addressing the challenges cannot be achieved by silo approach of sector departments but a holistic intervention with long-term benefits. In summary, the Standing Committee has land claims, Indigenous and Treaty rights as one of its priorities. It often conductions hearings to understand the process and experiences of those who are affected by treaties. It further makes recommendations to the Indigenous and Northern Affairs Canada.

**3.4 WSP Global**

This section summarises inputs made by WSP Global in relation to planning across various levels of government. It further establishes the connection between national planning and the interest of Indigenous communities. As a Federal State, there are various legislative frameworks for different parts of Canada (federal, provincial and territorial governments).

About 1.4 million people are identified as Indigenous living in traditional territories. However, from a planning point of view, there are complexities around what makes a territory and boundaries. In traditional settings, there were no clear boundaries and the rights of indigenous communities overlap. What one finds on the ground is that different First Nation communities use the same land. These are some of the challenges that planners, who in most cases are outsiders, have to confront. Further local language poses problems during consultations and engagements. What planners have done was to secure reliable and trusted interpreters to assist. The Indian Act (1876) defines how government interact with 614 First Nations bands in Canada. The following are some of the provisions: It prescribed development planning and the involvement of communities of indigenous people. Often, planners find that there are tensions between development and Indigenous peoples’ aspirations. Trading-off on priorities has not been an easy task. Canada does not have a one size fits all approach to planning. Canadian Environmental Protection Act places aboriginal participation with federal and provincial governments. Therefore, participation of Indigenous communities is central to sustainable planning.

In terms spatial planning, the following were key observations: Every territory has a different framework. Each Province delegates municipalities to conduct planning. In areas where there is no municipality, the province takes over planning responsibilities. However, there are challenges with regard to accountability. For example, in matters relating to budgets and accounting for development funds allocated to bands. The overarching guidance is that all planning must be consistent with the Provincial Policy Statement. The statement has a section of interest o aboriginal communities conserving cultural heritage and archaeological resources

In summary, Spatial Planning authority has been given to municipalities. Where no municipalities exist, the Province maintains jurisdiction over planning. Planners work with Indigenous communities, drawing on elder’s knowledge of the area. All land use planning decisions must be consistent with 2014 Provincial Policy Statement (PPS). PPS prioritises the interests of the aborigines. The techniques were reported to involve engaging indigenous people early in the process, understand and celebrate indigenous culture, be respectful and share experiences and further acknowledge in a caring way, and not by a know it all attitude, ask the elders to participate and invite them to participate.

**3.5** **Crown-Indigenous Relations and Northern Affairs Canada**

**3.5.1 Indigenous and treaty rights status quo**

This section records discussion with government officials in the Department responsible for Indigenous relations and affairs. They gave a historical overview Indigenous Self-Determination after contact with the Europeans. The first contact was with military and trade allies, and the creation of Metis, a distinctive people who in addition to their mixed ancestry, developed separate identities from their Indian and European forebears. As more Europeans arrived, First Nations land and Metis land was required for settlement. Further, there was concerted effort to ‘civilise’ Indigenous people.

The Constitution Act (1867) gave the federal government jurisdiction over Indians and land reserved for the Indians. The Indian Act created a paternalist and cradle-to-grave control over First Nations and their reserves. The Royal Proclamation of 1763 provided for protection of Indigenous lands. They could only dispose of their land through a voluntary cession to the Crown. Over the years, the Crown and Indigenous people have been negotiating rights and settlement of grievances through comprehensive land claims (modern treaties), self-government agreements and specific claims. As discussed above, with the Supreme Court of Canada’s recognition of Indigenous title in 1970s, comprehensive land claims policy in 1973 as well as Constitutional protection of Aboriginal rights (1982), there was a need to review the approach to the treaty and Indigenous rights. The modern treaties, intended to address Aboriginal rights and title, it provided clarity with regard to: land and resource rights, ownership and access rights; intergovernmental relations and governance over settlement areas; and self-determination and self-reliance. Self-government agreements enable Indigenous peoples to assume responsibility for matters internal and integral to their communities. There are jurisdictions that are negotiable and those that are non-negotiable.

Implementation of modern treaties and self-government agreements has been a long standing issue. There are 24 Modern Treaties and 18 self-government agreements in place. These establish specific legal obligations for all signatories. For Canada, the obligations are held by the federal Crown as a Whole. Obligations are binding on Canada. Implementation required a Whole government approach. In July 2015, there was a Cabinet directive on the Federal Approach to Modern Treaty Implementation and Statement of Principles on the Federal Approach to Modern Treaty implementation.

**Table 5:** Modern Treaty Arrangements

|  |  |
| --- | --- |
| Negotiable  | Non-negotiable |
| * Governing structures, internal constitutions
* Membership
* Aboriginal language, culture, religion
* Education, health, social services, child welfare, adoption, housing
* Ammonisation/ enforcement of Aboriginal laws
* Control of administration of land and resources
 | * Powers related to Canadian sovereignty defence and external relations (e.g. national defence and security, international treaty-making, immigration and international trade.
* Other national interest powers
 |

The approach entailed the following: Modern treaty Implementation Office; creation of the Deputy Minister’s Oversight Committee on Modern Treaty Implementation; Requirement for the completion of an Assessment of Modern Treaty Implications on all proposals to Cabinet; and creation of a Performance Measurement Framework and Annual Framework. All the above were underpinned by accountability, oversight and awareness (transparency).

Some of the implementation challenges were summarised as follows:

* Governance: Indigenous groups lack adequate capacity to implement self-government;
* Finance: It is difficult to ensure predictable, stable, appropriate level of funding
* Sustainability: self-government agreements are meant to be lasting arrangements therefore require commitment of resources that will be needed for the ongoing implementation
* Process: long-winded negotiation process for self-government

Specific claims are claims made by a First Nation against federal government relating the administration of land and other assets and to the fulfilment of pre-1975 treaties. The existing policy provides the framework for voluntary alternative dispute resolution process that allows the federal government to discharge its outstanding legal obligations through negotiated settlements rather than litigation. It thus reduces the Crown’s contingent liability; and promotes reconciliation. Between 2008 and 2018, an average of 48 claims have been submitted annually ad 60% of the claims have been accepted and are at various stages, i.e. assessment (172) and negotiation (264).

Institutional Arrangements can be summarised as follows:

In 2008, government established Specific Claims Tribunal, a statutory body that was established simultaneously with the Assembly of First Nations. It is an independent adjudicative body with authority to make binding decisions in respect of the validity of specific claims and to award monetary damages to a maximum of $150 million. Members of the Tribunal are provincial superior court judges.

**3.5.2 First Nations Land Management**

First Nations land refers to what is commonly referred to as the Reserves. These are federal lands that haven set apart by Her Majesty for the use and benefit of a group of First Nations people. The total land amounts to 8.8 million acres (i.e. about 3.6 million ha). It amounts to 3.6 percent of the total land mass of Canada. The land title is held by Her Majesty; First Nations have exclusive use and occupation rights. The land cannot be seized by legal process. The land is administered in terms of the Indian Act. The Committee also noted that about 4 million acres of land is owed to First Nations to fulfil legal and treaty obligations. This is seen as an important component part of achieving Canada’s reconciliation efforts.

1. **The significance of land management**

Land is the most important cultural and economic assets to first nations. However, their cultural and economic life was interrupted by the reserve creation process, Indian Act administration and regulatory gaps. This in turn contributed to the following: non-contiguous lands, survey, boundary and title uncertainty, environmental issues, encroachments and poor land value and location. The process of reconciliation should see to it that these issues are address through the reconciliation process.

First Nation Land Management (FNLM) provides a formal mechanism to expose and address legacy land issue, restore jurisdiction at the local level and foster clarity and certainty on existing and new reserve lands. About 124 communities are under the First Nation Land Management. They operate under community-developed and approved land code that enables them to manage their reserve land, resources, environment in terms of their cultural values, community priorities and objectives. FNLM is a sectoral self-government. Evidence from these communities suggest that FNLM contributes to more jobs, higher incomes, and a larger degree of investment on reserve, and contribute to community-based governance and cultural land management. The FNLM is supported by key institutions that are seen as partners to the FNLM (see table below)

Table 6: Land Management by First Nations (Continuum)

|  |  |
| --- | --- |
| Legislative Instrument  | Character  |
| Indian Act  | Federal Stewardship  |
| Reserve Land Management Programme (RLEMP) | Delegated authority  |
| First Nation Land Management(FNLM)  | Sectoral Self-Government |
| Self-Government Agreement | Comprehensive Self-Government  |

The chronology of First Nation Land Management can be summarised as follows:

In 1991, a group of First Nations Chiefs approach INAC with a proposal to enable First Nations to opt out of the 33 sections of the Indian Act related to land and environmental management. As a result, Framework Agreement on First Nation Land Management between Canada and 14 First Nations was signed in 1996, paving way for the signing of the First Nation Land Management Act in 1999.

Table 7: FNLM Partners

|  |  |
| --- | --- |
| Institution  | Role |
| Land Advisory Board (LAB) | A political body comprised of representatives from chiefs and councils of operational signatory to First Nations  |
| First Nation Land Management Resource Centre | A co-facilitator of FNLM and the technical arm of the LAB. It assists interest First Nations with the entry process; strengthens capacity through models, templates, course curricula and training programmes; and coordinates the First Nations component of the FNLM developmental process (e.g. land codes, community ratification plans, ratification votes)  |
| CIRNAC Headquarters | Responsible for national policy coordination, financial management and operation support for Regional offices and external partners.  |
| CIRNACISC Regional Office | Co-facilitators of FNLM and the point of contact for many First Nations. Provide services such as promotes FNLM, and assess readiness for First Nation FNLM entry readiness; capacity building, coordinating federal component of the FNLM developmental process; and advising on legacy land issues exposed through research reports and land description reports.  |
| Natural Resources Canada | It provides technical expertise in the areas of surveys instructions, research reports and land description reports.  |

The progression process entails the following:

* **Pre-entry phase:** It focuses on identification and recruitment of interested First Nations for entry. It is a joint Federal and LAB effort. Pre-readiness projects and training are delivered through existing programmes.
* **Entry phase:** First Nations, the Chairperson of the LAB and the Minister sign the Adhesion to the Framework Agreement. First Nation signatories are formally added to the Schedule of the FNLMA
* **Developmental phase:** Participating communities complete a developmental process over 24 months’ period.
* **Community approval phase:** Ratification vote is held on the land code and individual agreement
* **Operational phase:** First Nations operate under their own Land Code outside of the restrictions of the Indian Act.

**3.6 Canadian Agricultural Partnerships**

The presentation focussed on agri-competitiveness programme to national not-for-profit organisations to support sector-led activities such as farmer-oriented seminars, conferences, and exchange programmes to share knowledge and best practices; creation and dissemination of agricultural awareness and tools. Agri-competitiveness programme aims to help the agricultural sector to leverage, coordinate and build on existing capacity share best practices, provide mentorship opportunities as well as agricultural awareness, farm business management and farm safety information. The programme supports industry-led efforts to provide producers with information needed to build capacity and support the sectors development. There is funding commitment of $20.32 million over five years.

Some of the key lessons from this programme are as follows:

* It sets clear parameters for applications and selection criteria for beneficiaries,
* It pays $1 million per year per recipient up to a maximum of $5 million over five years. It is important to note that the fund goes to organisations that help implement the programme.
* It prescribes the activities that can be funded under this programme. For example, sharing and expansion of skills and knowledge among industry development, development of business management, assessment and planning capacity and others.

**Assessment criteria**

The criteria set looks at the following:

* The applicant’s capacity to deliver the project;
* How the proposed activities support the programme objectives?
* Reasonableness of the overall projected costs given the projected outcome
* Other sources of funding

Given the criteria set above, the program prioritises projects that -

* Help industry further development entrepreneurial capacity throughout the sector and help facilitate the sharing and expansion of skills, knowledge and best practice among industry members
* Can demonstrate a current or potential market need
* Demonstrate the impact to stakeholders and how the project will benefit the sector
* Can contribute to economic and sector growth.

Among the recipients of the programme are organisations that focus on youth development programmes. The programmes include **Agricultural Youth Green Jobs Initiative** which help fund internships for post-secondary graduates and high schools structure working in the agricultural industry. The internships include activities or projects that benefit the environment. For this purpose, funding is available through the Green Farms Stream and the Green Internship Stream. Secondly, the **Career Focus Program** provides funding to organisations for the creation of agricultural internships that provide career related work experiences for recent graduates. Thirdly, the **Canadian Agricultural Loan Act Program (CALA)** which is a loan guarantee programme designed to increase the availability of loans to farmers and agricultural cooperatives. Farmers can use these loans to establish and improve and develop farmers while agricultural cooperatives may also access loans to process, distribute and or market the products of farms. Under CALA, the federal government guarantee, to the lender, repayment of 95% of a net loss on a liable loan issued. Maximum loan is $500 000. Lastly, **Farm Credit Canada’s Young Farmer Loan (FCC).**  It lends money and provides services to primary producers, agri-food operations and agribusiness that provide inputs or add value to agriculture. The fund reports to Parliament through the Minister of Agriculture and Agri-food. Eligible farmers must be under 40 years of age. Its features are purchase of agricultural related assets up to $1 million.

**3.7 Assembly of First Nations**

Assembly of First Nations (AFN) is an advocacy body that promotes the rights and interest of First Nations. The AFN brings together all the Chiefs. The focus of the AFN is on land rights, implementation of modern treaties, and comprehensive claims. The national chief is elected by about 600 chiefs across Canada. They further elect 10 Chiefs who sit on the Board of the First Nations. The Board deliberates issues of interest to First Nations and take resolutions which become key advocacy points and further inform policy positions for the First Nations. The national body engages the Federal government on behalf of the First Nations in matters such as funding from the Federal government and other policy matters. It also plays a significant role in coordination across different regions.

One of the critical issue they have fought for is to opt out of the 33 sections of the Indian Act as stated above. The Indian Act controls every aspect of First Nations. They had to request for permission on anything they do. The Act created dependency on the Federal government. However, self-government is an attempt to get the First Nations out of government control and let people do things for themselves. The success of the process, according to the Assembly of First Nations requires: independence of the processor of claims, claims tribunal closest to the people, oversight of the work of the tribunal. They recognise a need independence, efficiency and responsiveness of the Tribunal. This Tribunal will be an independent commission that reviews the claims. There must be judicial oversight based on the legal principles. It should be noted that the tribunal is an important institution, however it is not the court.

**3.8 Cooperatives**

Co-operatives are seen as community-focusedbusinesses, legally incorporated and are owned by members who use cooperative’s services and purchase their products. Cooperatives balance people, planet and profit. They can provide virtually every product or service and can be either for-profit or non-profit enterprises.  The basis for formation of cooperatives is the existence of a void that has to be filled in a community and seizing of local opportunities to meet the needs of members (owners). Members, customers, employees or residents, have an equal say in what the business and sharing of profits which are proportional to the amount of business a member do with a co-operative. From a local economic development perspective, co-operative businesses keep the money circulating within the local economy, provide secure employment, and help revitalize, build and sustain healthy communities.

*3.8.1* **Types of Co-operatives**

There are different types of co-operatives operating in many different business sectors. The foremost kinds of co-operatives include: consumer, producer, marketing, worker, financial, and housing. Cooperatives can provide a diverse range products and services such as agricultural products and services, tourism, art and culture, child care, housing, retail goods, transportation, social services, natural resources, financial and insurance services, and even funeral services. They can be large businesses, medium-sized operations or small organisations.

The Committee was informed that Canada has a long history of co-operatives and in alliance with the global network of cooperatives. There are about 9 000 co-operatives, credit unions, and mutual with an approximately 18 million members. Co-operatives employ large pool of labour in excess of 150 000 people. It thus became evidently clear that co-operatives play a major role in the economy and access many sectors in Canada. For example, about 1 200 agricultural co-operatives occupied 15 to 20 percent of the market. Most of these co-operatives are in processing, marketing, farm supply, and farm equipment.

**3.8.2 Principles of cooperation**

The Co‑operatives in Canada, as is the case around the world, are organized according to the seven international principles of co‑operation listed below.

* Voluntary and open membership
* Democratic member control
* Member economic participation
* Autonomy and independence
* Education, training, and information
* Co-operation among co‑operatives
* Concern for community

**3.8.3 How are co‑operatives structured?**

The discussion above points to the fact that co‑operatives are just another form of business enterprise with particular differences in their governance structure. What sets cooperatives apart from other businesses is that the power of a corporation in the hands of the people. Co-operatives are democratic in their form and structure. A cooperative consists of a volunteer board of directors which is elected from among the membership, may have different committees, and members. The board and committees govern the co‑operative, oversee management and report to the members through annual general meetings or member meetings. There is a difference between the Board of Directors and management or a business structure. These structures report to the Board of Directors whose responsibility is oversight of the day-to-day operations of the cooperative.

The following bullets summarise some of the highlights shared with the delegation

* Canada, being a federal state, allows for provinces to pass legislation to govern cooperatives. Each province has regulatory body, regulated at a federal level. There are 27 regulatory bodies. However, not all the Acts support one another.
* Those not in compliance with the governing legislation as declared illegal. However, government has been careful not to destroy the informal economy with legislation governing cooperatives.
* It is understood that cooperatives occupy 3.5% of the total GDP. However, the difficulty with cooperatives is that they find it difficult to speak in one voice, especially when it engages government. Coordination and alliance of cooperatives is vitally important.
* Cooperatives require effective capacity building for them function in the formal economy.
* Cooperatives thrive where there is need. Without that need, it impossible for them to thrive.
* There is a dedicated effort to bring youth participation, not only at an operational level but at leadership and governance levels too. Therefore, has been concerted to reserve space for youth.
* Over the years, there has been an increase in worker cooperatives where employees own cooperatives. Because of their values, young people like the idea. Youth want to be involved in the cooperatives, could be in any field and these initiatives have been empowering to youth.
* Cooperatives Development Initiative (CDI) provides an advisory service, innovation co-op development, and research. It also plays a lobbying role at the federal government level to support co-operatives development.

**4. Summary of key observations and lessons**

Colonialism, in many parts of the world, left a path of destruction resulting in the struggles by Indigenous people of First Nations of the World and their descendants to reclaim what was rightfully theirs and to build a sustainable future. Such state of Affairs is equally true for both Canada as demonstrated in this report and South Africa. This study tour offered the Portfolio Committee on Rural Development and Land Reform to reflect on progress South Africa has made against the experiences of Canada.

This sections teases out key lessons for South Africa and links the lessons to relevant government programmes. In like with the key questions of this study tour, the section summarises the lessons in five broad areas; namely, (1) legislative and policy framework to enable citizens and government to work together to resolve the challenges; (2) Claims making process and Indigenous peoples’ experiences; (3) Settlement and development support; and (4) parliamentary oversight and accountability.

**4.1 Legislative framework and implementation**

There has been a fundamental shift from the Constitution Act (1867) to the 1982 Constitution (Section 32). One critical issue was the Constitutional protection of Aboriginal rights. It is exemplified by commitment to provide clarity, in legislation, land and resource rights, ownership and access rights, intergovernmental relations and governance over settlement areas as well as self-governance and self-reliance. The reality as experienced by First Nations was that it took time to implement and honour the modern treaties and self-government agreements, hence renewed efforts to drive process of reconciliation. This commitment is exemplified by national recognition of the fact that Canada is established on land previously owned by the Indigenous communities.

At the time of the visit, the Committee was informed of a comprehensive review process which seeks to avert overreliance on Courts to settle the land rights disputes between Indigenous communities and government. However, Canadians also welcomed the role that the Courts played in interpreting the Constitutional provisions regarding the extent of protection of the land rights of the Indigenous people. For example, the decision of the Supreme Court of Canada to recognize Aboriginal rights for the first time in 1973 was ground breaking. Therefore, creation of independent and efficient institutions to deal with land claims by Indigenous communities was cited as one of the greatest achievements.

The Constitution and treaty agreements affirm Indigenous ownership of land and recognition of historical rights before the arrival of the Europeans, protects traditional ways of life, protects access to resource development opportunities and assures political recognition and self-government. Inadequate progress in resolving treaty and self-government agreements has not been due to lack of legal instruments. As representatives of the Assembly of First Nations stated, it was due to lack of political will to do so. However, stakeholders have expressed trust in the renewed commitment to fast-track reconciliation and legal review to clear any ambiguity in legislation and policy.

Insofar as legislation and policy is concerned, it appears that South Africa and Canada are somewhat confronting the pressing colonial legacy issues by reviewing legislative instruments. In South Africa, legislative apparatus to address tenure rights in the former reserves have not been achieved. Whilst there are adequate provisions in the Constitution, Section 25(6) of the Constitution, there is legislative vacuum because the existing legislation is a stop-gap measure, in the name of Interim Protection of Informal Land Rights Act, in the absence of a comprehensive tenure legislation. Parliament should consider reviewing legislative instruments to protect land rights in the former reserves, i.e. access and control of land and resources.

**4.2 Indigenous claims (comprehensive land claims)**

The legacy of Royal Proclamation (1763) and the Constitution Act (1867) continues today. The ceding of land to the Crown and the ongoing struggles to reclaim the land is something the Assembly of First Nations and many other Indigenous people of Canada continue to struggle for. The 24 Modern Treaties and 18 Self-government agreements required whole government approach, from federal, provincial to territorial governments. The 2015 Cabinet directive on Federal Approach to Modern Treaty Implementation (FMTI) and Statement of Principles on the FAMTI. One of the critical elements to the approach was creation of an implementation office, an Oversight Committee in the Office of the Deputy Minister (Crown Relations and Indigenous Affairs), and creation of Performance Measurement Framework. The Committee noted the challenges around governance, finances, sustainability and long-winded processes.

Whilst the Department of Rural Development and Land Reform, as well as the Commission on Restitution of Land Rights, have internal directorate responsible for monitoring and evaluation, the effectiveness of internal M&E is yet to be demonstrated. Given the Committee’s concerns around the reliability of data from both the Commission and the Department, especially about the number of claims settled, finalised and outstanding, there is a need for renewed efforts on internal M&E and collection of baseline data to measure not only performance but the socio-economic impact of government interventions. Another key area that the Committee has noted is the extent to which South Africa can shortened the bureaucracy around access to land (redistribution) as well as the settlement of land claims.

**4.3 Development support**

Each Comprehensive Land Claims Agreement is accompanied by plans indicating implementation actions, timeframes, and responsibilities for role players and is costed. Oversight mechanisms in the Deputy Minister’s office appears to be a step in the right direction to ensure transparency and accountability. In South African context, each land claim settlement agreement provides high-level statements of intent and commit support from line function departments. Most of the details are left for project specific plans and business plans. To ensure accountability of government officials, in ensuring implementation of support, South Africa should consider ensuring that settlements are accompanied by clear and specific plans, with time frames and costed allocation of resources.

Development support is also in the form cooperatives development support. Whilst government plays a critical part in funding support, most cooperatives are member-initiated and driven. Co-operatives for the indigenous communities are allowed to develop from below rather than heavy reliance on government. Government should not drive cooperatives because they tend to not succeed if they are run by government due to reliance on government funding. Coordination and network is facilitated by civil society and community-based organisations outside government. Government plays a critical role in setting legislative parameters. As a federal state, each province is allowed to set legislative parameters for cooperatives within its jurisdiction. Civil society organisation Proper care is taken to ensure that legislation does not destroy an informal economy whose contribution in the economy is appreciated.

Agri-competitiveness programme provides partnerships between government and not-for-profit organisations to run sector-led activities that seeks to build capacity among farmers. This initiative has proven that civil society organisations and governments can enter into partnerships to advance development. In the South African context, this approach could add value in the support of Communal Property Associations which have been reported to be struggling and various government interventions have not yielded desirable outcomes.

The not-for-profit organisations have dedicated programmes for youth development. The Agri-Competitive Programme has also set its focus on youth development. Funding that has specifically targeted youth has a potential to make a difference in terms of job creation and investment in future generation. In this case reference is made to the work of the Agricultural Youth Green Jobs Initiative, Career Focus Programme, the Canadian Agricultural Loan Programme, Farm Credit Canada’s Young Farmer Loan. These initiatives are indications of targeted programme for youth development. Similarly, special programmes targeting women, rural women in particular, could make a difference. What has become clear is that silo approach to development will not yield positive results. Therefore, an integrated and whole government approach to development is required rather than boxing rural development in a single department.

**4.4 Institutional arrangements**

South Africa has advanced in terms of setting up institutions to advance land and agrarian reform. For example, the Land Claims Commission and the Land Claims Court have been set to represent the interest of the landless and facilitate resolution of their land claims. Further, the amendments of the Restitution of Land Rights Act to enable settlement of land claims through an administrative process has been a major advancement in how government of South Africa has dealt with land claims. Given increasing tensions and conflicts within and across communities as well as communities and land owners against government, the idea of Tribunal to resolve land rights disputes appears to be a reasonable proposal which lessen the burden of cost of legal route. As the High Level Panel proposes, South Africa should consider the idea of a Tribunal or a Land Rights Protector. The status of this office and its roles should further be clarified.

**4.5 Parliamentary oversight**

Interaction with Standing Committee on Crown Relations and Indigenous Affairs, in the House of Commons, has elucidated some points for reflection. Whilst majority of the members of the Committee were not conversant with the land issues mainly because of the geographical location they came from and the constituencies they represented, some members who represented constituencies in the Northern had critical issues and important lessons to share with the Committee. Special reference was made to the TRC process and calls to action made which government of Canada was committed to. Therefore, the fact that each member of Parliament in the House of Commons represent an electoral district (commonly referred to as a riding) and directly elected by Canadian voters, their issues do not fall under the radar. However, it was entirely clear why some of the members of the Committee, including the chairperson, were not so conversant with the challenges. The only explanation could be that the committee has prioritised education, health and other social problems amongst the Indigenous communities. A report which the committee made reference to indicates that there are serious challenges with regard to implementation of treaty agreements. However, clear recommendations have been made to the Executive. Perhaps this stance of Parliament confirms whole government commitment and explains the renewed commitment and interest in dealing with the treaty agreements and Aboriginal rights.

**5. Recommendations**

In view of the observations, key lessons and implications for South African land reform and agrarian reform discussed above, the Committee recommends the following:

**Recommendation #1:** *The National Assembly should consider ensuring the various legislative review, including the Report of the High-Level Panel on Assessment of Key Legislation and Fundamental Change, Report of the Constitutional Review Committee on the Review and amendment of Section 25, and the Ad Hoc Committee on Amendment of Section 25 of the Constitution, are followed by clear policy review that will result in a national vision for land and agrarian reform documented in a comprehensive White Paper on South African Land Policy. The White Paper must be an outcome of wider consultation process with citizens.*

The Committee has observed how the Department of Justice in Canada is in the forefront of legislative and policy review so that the government of Canada can deal with the historical injustices. South Africa, with the comprehensive review commissioned by the Speakers forum, the Report of the Constitutional Review Committee regarding review and amendment of Section 25, has adequate evidence and empirical material to shape the long awaited Land Policy in a form of a White Paper.

**Recommendation #2:** *Minister of Rural Development and Land Reform should coordinate relevant Ministers and Departments, especially Water and Sanitation and Agriculture, Forestry and Fisheries, and Small Business Development, to develop a whole-government comprehensive strategy for settlement support to land reform beneficiaries and other producers.*

Adequate institutional mechanisms enable Canada, as a Federal State, to coordinate federal, provincial and territorial governments with multiplicity of legislative apparatus, to address the pressing challenges confronting Indigenous people. South Africa, as a unitary state, with coordinated policy and legislation could make a difference if there is intergovernmental cooperation in development and agreement on key priorities and areas of focus. What is lacking is institutional arrangements to drive coordination. It is vitally important that a semi-government (parastatal) structure be established to drive this work. For example, the Rural Development Agency that was to be introduced in the last five years.

As observed in Canada, area of great need is development focusing on youth and women. One of the areas of great interest in South Africa could be strengthening cooperatives and implementing capacity building programmes as well as funding programmes. However, the cooperatives should be owner-driven and not government-driven because it risks dependency and dysfunctionality.

**Recommendation #3:** *The Minister of Rural Development and Land Reform should consider prioritising addressing the land needs of the descendants of the Khoi & Sans in terms of the Redistribution programme. This approach implies that there has to be a programme to interact and identify land needs of the people through an area-based approach so that their needs and aspirations are met.*

The struggles of the Khoi & San descendants and other tribes relegated to the former reserves whose lost land rights cannot be address under the current legislative regime for restitution will not quieten or disappear until their grievances are met and restorative justice is awarded. These communities and groups, through the needs analysis facilitated at local municipal level, should be encouraged to use historical evidence to target the respective areas they lost land rights from. The Minister of Rural Development and Land Reform should use available revenue to acquire the land for these groups, including expropriation if necessary.

**Recommendation #4:** *The Minister of Rural Development and Land Reform should, in line with the Section 25(6) of the Constitution, develop a comprehensive land tenure policy to secure land rights, access and control of land-based resources, of people living in the former homelands or reserves.*

The renewed interest and commitment of Canadian government to streamline legislation and policies to address treaty rights and secure people’s tenure rights on their land has ignited the spirit of reconciliation across all sectors of the society. Similarly, South Africans in the former homelands have been left with a weaker interim measure (IPILRA) to defend their informal land rights. There is a need for wider public consultation around the kinds of tenure rights people in the former reserves wish to have. As observed, treaty agreements also included keeping the way of life of the Indigenous communities including tenure rights. It therefore suggests that titling land cannot be the only solution. Other means of recordable social tenures should be explored.

Comprehensive policy must also address limitations in the farm tenure legislation. This could potentially involve consideration of the recent amendments and revision of the Regulations to make ESTA more effective. The Minister must pay attention to implementation of ESTA and other tenure related legislation in protection of the rights of the poor.

**Recommendation #5:***The Minister of Rural Development and Land Reform, together with the Minister of Justice and Constitutional Development should consider building capacity in the Land Claims Court as a matter of urgency in order to address some of the emerging legal disputes in the land sector. However, not all disputes should end up in Court. Therefore, the Ministers must development alternative dispute resolution mechanisms outside the formal court process in order to improve accessibility.*

Experience from Canada show that the idea of a Tribunal with different committees has gained much traction within government and across the stakeholders and interested parties. In South Africa, the High-Level Panel report has recommended that a Land Rights Protector be instituted to address land tenure disputes, inter community disputes against government, landowners dispute against government and *vice-versa*.

**Recommendation #6:** *The Minister of Rural Development and Land Reform should, without delay, restore the independence of the Commission on Restitution of Land Rights as envisaged in the Restitution of Land Rights Act.*

The independence of the Commission is of great importance to the process because all land claims are lodged against the State.

**Recommendation #7:** *The oversight strategy of the Committees of Parliament should find mechanisms of formally creating space to address queries submitted to the Committee and members’ issues from the Constituency work.*

Report to be considered.