



A century of racial land divisions in South Africa: Law-making and parliamentary oversight for reversal of the legacies of the Native Land Act, 1913

Ordinarily, there could be no appropriate, civilised, manner in which this Act could be marked, for, it cannot be celebrated. Doing so would be to add salt to the wound! But it can not be ignored either, because its dire social consequences are constant reminder that radical action is required to arrest those consequences.

Minister G Nkwinti, 15/05/2012

1. Background

This concept document proposes a Parliament-driven campaign, hereinafter referred to as the project, for reversal of legacies of the Native Land Act No 27 of 1913 (commonly known as the 1913 Land Act). On the occasion of the 2013 State of the Nation Address (SONA)¹, the President of the Republic of South Africa, Mr JG Zuma, remarked that this year marks a centenary for the 1913 Land Act. He noted that since its promulgation and commencement on 19 June 1913, the 1913 Land Act "...turned black people into wanderers, labourers and pariahs in their own land". It began an atrocious dispensation in the agrarian structure of South Africa, prohibited ownership and rental of land, by Africans, outside of designated reserves which constituted approximately 7.13 per cent of South Africa's total land area. Further provisions to segregate blacks were legislated under the Development Trust and Land Act, No. 18 of 1936 which provided for the conversion of the reserves into Bantustans or 'self-governing territories, thus achieving the objective to restrict black people to 13% of the total land area of South Africa, and later into 'independent states' within South Africa. In addition, separate development policy resulted in mass forced removals between the 1960s and 1970s, targeting the 'black spots' - areas where Africans had freehold title on land outside the 'Bantustans'. In terms of the provisions of the Group Areas Act No. 36 of 1966, the government introduced apartheid spatial planning in urban and rural towns, thus forcefully removing about 3, 5 million people from their homes².

South Africa is confronted by the challenges of unemployment, persisting poverty and deep inequalities. These challenges are partly the consequences of policy mechanisms legislated a century ago when land-based livelihoods for black people were disrupted and destroyed when land was taken from them. Redressing the land dispossession that occurred since 1913, unequal land distribution and tenure insecurity is a Constitutional imperative³. The Constitution equally guarantees protection of property rights of current owners against any arbitrary deprivation. The year 2013, apart from marking a centenary for the 2013 Land Act,

¹ The 2013 SONA was held on 14 February 2013 in Parliament of the Republic of South Africa, Cape Town

² Surplus Peoples Project (1983)

³ Section 25 (5), (6) and (7) of the Constitution provides mechanisms to ensure equitable secure access to land.

represents 18 years of attempts to redistribute 30% of white-owned agricultural land to the landless people and victims of colonial and apartheid land dispossessions and to ensure that all South Africans have legally secure land tenure. The President also announced that South Africa will not meet its own target to redistribute 30 per cent of white-owned agricultural land by 2014. To date, less than 10 per cent of white-owned agricultural land has been redistributed to the land reform programme (only 26 per cent of 24.5 million hectares have been redistributed)⁴. It thus suggests that the issue of unequal land distribution in South Africa remains unresolved, very emotive as noted by the President, and renders achievement of a socially cohesive society very difficult.

This project will be implemented in the midst of a range of activities to mark the centenary of the 1913 Land Act and public dialogue about reversal of the legacy of the 1913 Land Act. The project will be anchored on the reopening of the lodgement of land claims by those people who missed opportunities to lodge land claims as well as the members of the Khoi-San communities whose land dispossession occurred prior to the 1913 Land Act and were left out through institutionalisation of the cut-off date of 1913. This project mainly affects the Portfolio Committee on Rural Development and Land Reform, Portfolio Committee on Agriculture Forestry and Fisheries together with the counter-part Committee in the National Council of Provinces, and the Portfolio Committee on Public Works. However, the Portfolio Committee on Rural Development and Land Reform will champion this project, running for the remainder of this year but reaching its peak in June when the proposed debate in the National Assembly takes place.

The concept document situates this project within parliamentary mandate to make laws; ensure accountability of all executive organs of state; and to maintain oversight of the national executive authority, thus adopting evidence drawn from the findings of this project for policy development and law-making. Among elements of an efficient law-making process and oversight is facilitation of public participation to strengthen good governance, promote values of accountability, transparency and public involvement. Therefore, the intention is to create a platform for Members of Parliament to interact with the members of the public, interest groups and stakeholders about agrarian transformation broadly; in particular the successes and failures of the programmes of restitution and redistribution as well as mechanisms to increase the pace of redistribution.

Following this introductory section, this document discusses the rationale, purpose and objectives for this project. It further proposes a set of broad questions that the project will focus on, the strategic framework and approach/methodology for implementation of the project, and citing main activities. By way of conclusion, it highlights the meaning of this project in relation to the role of Parliament implementing a robust oversight and driving the agrarian transformation agenda of South Africa.

⁴ Minister of Rural Development and Land Reform, the Budget Vote Debate held on 15/05/ 2012. Further note that 30% of white owned agricultural land amounts to 24.5 million ha.

2. The rationale and objectives of this project

Given the persisting depth of rural poverty, unemployment and inequalities as well as the manner in which the history of land dispossession has turned many South Africans 'wanderers, labourers and pariahs' on their own land, the land and agrarian question remains a politically charged issue. Even so, 2013 representing 100 years of racial land divisions, South Africa has not met the targets for land redistribution, land restitution claims remain incomplete⁵, farm dwellers/workers live with insecure land tenure. As the Minister for Rural Development and Land Reform, Mr. G Nkwinti, acknowledged during the 2012 Budget Vote debated, the social consequences of the 1913 Land Act constantly remind all South Africans that radical action is required to address the challenges confronting land reform. Two major challenges facing land reform program at present are: need to speed up the transfer of land, and to support productive use of transferred land⁶. The Green Paper on Land Reform (2012) also acknowledges that South Africa needs radical mechanisms to reverse the consequence of colonial and apartheid land policies.

The vision of land reform for political and economic emancipation remains compelling. However, experience of the programme reveal discontinuities between land reform's founding vision and its practice, i.e. the relationship between land redistribution and restoration as well as the social and economic reconstruction on the ground⁷. Critics of the programme have questioned the wider redistributive reach of substituting a relatively small number of white commercial farmers with a relatively small number of black farmers. The programme, restitution in particular, remains confronted by the challenge to balance equity and redistribution of wealth with a pledge to restore land to former owners with the need to promote viable agriculture in a manner that foster large-scale commercial farming style production⁸. These issues shall be debated across South Africa during the events planned to coincide with the 100 years anniversary for the 1913 Land Act. Such activities include international academic conferences⁹ and government-initiated campaigns toward the reopening of lodgement of land claims. The proposed legislative changes to facilitate the reopening of the lodgement of land claims and a quest to find alternative approaches to the willing buyer-willing seller approaches imply critical parliamentary oversight over the executive action with regard to finding alternative approaches to enable the Commission on Restitution of Land Rights to speed up finalisation of land claims; and the approach of Department of Rural Development and Land Reform to redistribute land at a much faster pace. Provision of post settlement and agricultural support by the Department of Agriculture, Forestry and Fisheries to foster settlement patterns and production relations that support inclusive economic growth and development is equally important.

⁵ Although the majority of the land claims have been settled, i.e.95% of the total lodged, most of them were in cash compensation but 5856 settled translate into 1,443 million ha of land restored to claimants.

⁶ Greenberg (2010)

⁷ Walker C (2008)

⁸ James D (2000)

⁹ The Land Divided International Academic Conference 2013 to be held at the University of Cape Town is a collaboration of various universities and research organizations. The Land, Race and Nation in South Africa: A century of Dispossession will be held on 19-21 June 2013. The Department of Rural Development and Land Reform is reported to be planning a massive campaign around the reopening of the lodgment of land claims

Parliament, as the national legislative arm of government, will embark on a public participation process, engaging with stakeholders, government and non-government structures, as well as members of the public on the effects of the 1913 Land Act, to gauge what government has done to reverse the legacy, not only in terms of number of hectares but also the production relations, the changes in the lives of beneficiaries, and contribution to the local economic development. This approach links with the vision articulated in the National Development Plan (NDP), that "By 2030, South Africa's rural communities should have greater opportunities to participate fully in the economic, social and political life of the country... Rural economies will be supported by agriculture..."¹⁰ Land reform, together with job creation mechanisms, has been identified as one of the strategies to be utilised for attainment of integration of the country's rural areas.

This project constitutes a range of mechanism through which Parliament, in a coordinated manner, can drive a campaign for agrarian transformation, locating land reform (redistribution, restitution and tenure reform) within broader strategies for rural development. Whilst this project will definitely deepen Parliament's understanding of the challenges of land reform and rural development broadly, it will further create space for enforcing accountability by the executive authority on matters related to the land reform, agricultural development and rural development. The fundamental importance of this project is that, on one hand Parliament will obtain the lived experience of claimants who have waited for the resolution of their restitution and labour tenants land claims, beneficiaries of land claims (both restitution and labour tenant claims), farm dwellers and farm workers without secure land tenure. On the other it will also engage with commercial farmers who, some of them, object validity of land claims, complain about uncertainty that the programme of land reform creates because of their inability to make major investments because of land claims on their farms, and lack of communication from the Commission on Restitution of Land Rights. In addition to these challenges, many farmers are continuously facing a squeeze due to market integration which brings different farm systems into competition with one another. In addition, the global agricultural trade patterns are dominated by structural surpluses from large-scale, highly mechanised farm sector of the temperate world¹¹.

2.1 The purpose and objectives of the project

As discussed above, the overall purpose of this project is to assess the extent to which the programme of land reform has reversed the injustices of racial land divisions initiated since the promulgation of the 1913 Land Act and creation of sustainable livelihoods for beneficiaries of the of the land reform programme. It will create opportunities for engagement with the members of the public and stakeholders about the opening of land claims and agricultural support for smallholders and emerging commercial farmers. It will further explore implications for the land policies and legislation.

¹⁰ RSA (2012) National Development Plan 2030

¹¹ Weis T (2007)

In view of the mandate of Parliament, the particular objectives for this project are:

- To understand the systems put in place for, and to monitor processes toward, the re-opening the lodgement of land claims so that the Commission on Restitution of Land Rights implements a programme that is fair and transparent for all South Africans.
- To oversee implementation of policies and programmes that will result in a faster pace of land redistribution in South Africa. In addition, explore the extent to which the release of state land can address some of the land needs of the rural and peri-urban residents.
- To take forward a debate on the potential of land reform and agriculture to create jobs and alleviate poverty by bringing much of communal land and redistributed farms into full production; in this debate, the benefits of smallholder farming as an alternative to large-scale capital intensive agriculture will be explored.
- To assess the extent to which integration of support mechanisms for the programme of rural development has impacted on productivity of agricultural land, infrastructure development in rural areas (including land reform farms and irrigation schemes). This discussion of agricultural support will focus on extension support and training and financing for input supply.
- To oversee implementation of the Extension of Security of Tenure Act No 62 of 1997 and the Land Reform (Labour Tenant) Act, no 3 of 1996 as an anti-eviction campaign. The oversight will centre on investigation of the extent to which legislation has enabled (or not) government to create long-term and secure access to land for farm workers and dwellers.
- To document the overall findings and observations of this project, explore policy implications and identify pertinent issues for further oversight and implementation by government departments.

In view of the rationale, and the objectives of this project, particular questions for this project are as follows:

2.1.1 Restitution

- What are the practical steps put in place by the Commission on Restitution of Land Rights to ensure the re-opening of the lodgement of the land claims by June 2013?
- Has the Commission developed clear guidelines to provide clear guidance with regard to who is entitled to claim and how they should go about the claiming process? This should address the question of betterment claims, Khoi-San communities and other claimants who may have missed the deadline of 31 December 1998.
- In view of the 18 years of experience in settling land claims, what are potential challenges for re-opening the lodgement of land claims and how are these addressed in policy/legislation?
- What are the impediments to expropriation in the public interests and how does government intend circumventing them?

2.1.2 Redistribution

- What are the policy guidelines towards implementation of alternatives to the willing-seller willing buyer approach to land acquisitions under the land reform programme?
- How has the Agricultural Land Holding Account - for management of all Proactive Land Acquisition Strategy (PLAS) - projects' leases performed?
- To what extent can the programme of redistribution assist towards creation of smallholder farmers in South Africa? Identify impediments to sub-division of agricultural land for smallholders and investigate solutions to the impediments to support a range of beneficiaries (commercial smallholders wanting to expand, commercial ready subsistence producers wanting to expand part-time farming, and landless households seeking small pieces of land for subsistence production)?

2.1.3 Post settlement and agricultural support

- What are the support needs for all the categories of land reform beneficiaries, including the black commercial farmers with potential to become large-scale farmers and financially capable aspirant black commercial farmers? How has government responded to the needs of farmers, and what are the impacts of such responses and interventions?
- What are infrastructure development programmes on farming areas, especially in areas where there is high density of land reform projects?
- Are there any successful agricultural cooperatives supporting emerging commercial farmers? What are the lessons that could be drawn for the beneficiaries of land reform programme?

2.1.4 Land tenure

- How can the existing challenges confronting farm dwellers and workers on one hand, and commercial farmers or land owners on the other, be addressed? The known challenges relates to lack of adequate basic services on some of the farm dwellers residents on commercial farms (education facilities, clinics, etc), insecure tenure, various kinds of human rights abuses.
- What are the alternative and preferable tenure arrangements for citizens living in the former Bantustans?
- What are opportunities and constraints for expropriation as a mechanism to fast track restitution and land redistribution?

Table 1: Summary outline of issues and key stakeholders

Focus Area	Key themes	Key Stakeholders
Restitution	<ul style="list-style-type: none"> ▪ Audit of all restitution projects (research, negotiation, settled, finalised) ▪ Reopening of land claims ▪ Funding for restitution 	<ul style="list-style-type: none"> ▪ Department of Rural Development and Land Reform ▪ Commission on Restitution of Land Rights ▪ Institutions of traditional leadership ▪ National Treasury ▪ Claimants and land owners
Redistribution	<ul style="list-style-type: none"> ▪ Land acquisition mechanisms (PLAS) ▪ Alternatives to the willing buyer willing seller 	<ul style="list-style-type: none"> ▪ Department of Rural Development and Land Reform ▪ Department of Public Works ▪ Land owners/beneficiaries
Land tenure	<ul style="list-style-type: none"> ▪ Eviction Monitoring ▪ Provision of Legal Services ▪ Agri-villages ▪ Communal areas (former Bantustans) 	<ul style="list-style-type: none"> ▪ South African Police Services ▪ Department of Justice and Constitutional Development ▪ Department of Rural Development and Land Reform ▪ Department of Cooperative Government and Traditional Affairs ▪ Department of Labour
Agricultural support; Food security; and Training	<ul style="list-style-type: none"> ▪ Comprehensive Agricultural Support Programme ▪ Mafisa ▪ Extension support and training ▪ Recapitalisation and Development Programme 	<ul style="list-style-type: none"> ▪ Department of Agriculture, Forestry and Fisheries ▪ Department of Rural Development and Land Reform ▪ National Development Agency ▪ Land Bank ▪ Farmers Unions and Organisations ▪ Land owners, mentors and strategic partners ▪ Department of Science and Technology
State land audit	<ul style="list-style-type: none"> ▪ Comprehensive state land register ▪ State land is available for land reform. 	<ul style="list-style-type: none"> ▪ Department of Rural Development and Land Reform ▪ Department of Public Works ▪ Municipalities
Cooperatives	<ul style="list-style-type: none"> ▪ Functionality and support mechanisms ▪ Impacts on local economic development 	<ul style="list-style-type: none"> ▪ Department of Economic Development ▪ Department of Trade and Industry ▪ Department of Rural Development and Land Reform ▪ Department of Agriculture, Forestry and Fisheries
Infrastructure development	<ul style="list-style-type: none"> ▪ Rural infrastructure development 	<ul style="list-style-type: none"> ▪ Department of Public Works ▪ Department of Rural Development and Land Reform

3. Approach and methods for conducting the 'oversight'

According to the Manual for Parliamentary Committees (2011), oversight is broadly defined as involving the crucial function of Parliament and its various committees to oversee and even review the endeavours of the executive and Parliament. The concept of oversight is used here in its broad sense because the various activities involve monitoring and assessing the actions of the executive. A review of the objectives and key questions for this project suggests that a range of parliamentary committees should be involved (see Table 2 below).

Table 2: Proposed Parliamentary Committee that could be interested in this project

Some of the focal areas	Committees
<ul style="list-style-type: none"> ▪ Restitution/reopening of lodgement of land claims ▪ Alternatives to the willing buyer – willing seller approach ▪ Expropriation 'in the public interest' ▪ Funding for restitution 	<ul style="list-style-type: none"> ▪ Rural Development and Land Reform ▪ Public Works ▪ Agriculture, Forestry and Fisheries ▪ Standing Committees on Finance and on Appropriations
<ul style="list-style-type: none"> ▪ Alignment of agricultural support programmes: MAFISA, GASP, RADP 	<ul style="list-style-type: none"> ▪ Agriculture, Forestry and Fisheries ▪ Rural Development and Land Reform
<ul style="list-style-type: none"> ▪ Evictions ▪ Alternative and emergency accommodation for victims of evictions ▪ Legal services to farm dwellers ▪ Intersection of labour and tenure rights 	<ul style="list-style-type: none"> ▪ Rural Development and Land Reform ▪ Police ▪ Human Settlements ▪ Cooperative Government and Traditional Affairs ▪ Justice and Constitutional Development ▪ Labour
<ul style="list-style-type: none"> ▪ Completeness of state land register 	<ul style="list-style-type: none"> ▪ Public Works ▪ Rural Development and Land Reform
<ul style="list-style-type: none"> ▪ Functionality and support mechanisms for agricultural cooperatives 	<ul style="list-style-type: none"> ▪ Economic Development ▪ Trade and Industry ▪ Rural Development and Land Reform ▪ Agriculture, Forestry and Fisheries
<ul style="list-style-type: none"> ▪ Rural infrastructure development 	<ul style="list-style-type: none"> ▪ Public Works ▪ Rural Development and Land Reform

NB. This concept document identified the Portfolio Committees on Rural Development and Land Reform (land reform & coordination of rural development); on Agriculture, Forestry and Fisheries (food security and support to smallholders and emerging commercial farmers), and on Public Works (expropriation in the public interest) as main participants.

The various techniques for engagement with the members of the public, non-government and government agencies that will be used include: briefings by departments and public entities, public hearings/participation, site inspection/visits, panel discussions and others.

3.1 Approach and techniques

The project will be implemented as follows:

- 3.1.1 **The three identified Portfolio Committees shall consider this concept document, deliberate and take a resolution to support and participate in this project.** The main aim of this initial meeting is to provide a platform for the collective of Portfolio Committees and counterparts in the NCOP to discuss and endorse the project and identify other critical areas of focus and the sites which the Committees should visit. (See Table 1 and 2 for list of focus areas of this project and Committees that could be interested).
- 3.1.2 **Coordinate a buy-in and collaboration of the Provincial Legislatures on this project.** It is proposed that the coordinating committee facilitate buy-in of the provincial legislatures on this project, especially the relevant portfolio committees. The roles and responsibilities on this project should be clearly spelt, especially on coordination and funding for the project.
- 3.1.3 **Review reports from the departments, committees, and other relevant research material:** The content advisers and researchers will conduct rapid evidence assessments on the pace of land reform, its impact over the last 15 years. The assessments will focus on restitution, redistribution and farmer support programmes (including recapitalisation and development programme) and smallholder agriculture. The rapid assessment should provide a rich analysis of the current trends and challenges with agricultural land reform.
- 3.1.4 **The delegation conducts site visits in all the nine provinces.** The visits should be focussed on the locations with high number of unsettled restitution and labour tenants claims and other areas that the Provincial stakeholders may suggest. In order to reach all the provinces within limited timeframes, the document proposes that the delegation be split into four groups, each visiting two provinces (one group will combine North-West and Gauteng). The visits will involve briefing sessions, farm visits, and stakeholder engagement sessions.
- Initial briefing sessions involving the MECs, relevant portfolio committees in the legislatures, senior officials from various national and provincial government departments. The meeting will layout the progress made to redress the legacy of 1913 Act, in particular their strategies to support land reform beneficiaries.
 - Site visits to particular locations on farms, communal areas, and irrigation schemes and other rural development projects. Each delegation should be accompanied by members of the legislature and provincial government officials. The delegation will hold structured discussion with members of the public, recording observations and own assessments of the situation. The delegation will be provided with discussion

guides to assist in various policy-related discussions (e.g. the 1913 Land Act and the reopening of the land claims).

- Panel discussion and public meetings will bring together government and non-government actors (municipalities, institutions of traditional leaders, organized agriculture, unions and NGOs) and the public to debate the issues of land and agrarian reform in their respective provinces. These meetings will involve government departments across the different spheres, municipalities, traditional leaders, organised agriculture, unions and Non-Governmental Organizations (NGOs).
- Facilitation of provincial workshops to collate and debate the issues emerging from the visits and stakeholder engagement processes
- It is proposed that the provincial process conclude with debates in the provincial legislatures on the 'land question'.

3.1.5 The delegation will convene a national roundtable discussion on the legacy of the 1913 Native Land Act and the vision for land reform and the agrarian structure..

This event draws on the findings and observations from the rapid assessment reports, reports from the site visits and stakeholder engagement processes. Whilst it would highlight the successes and failures of the programme of land reform, it specifically is intended to chart the way forward in terms of policy direction as well as the implications for an effective oversight by Parliament as a legislative and an oversight authority.

3.1.6 The delegation will table a report on this campaign and further motivate for a debate in the House. The debate will be the crux of this campaign whereas the report shall highlight crucial findings from this project. The report will further chart a way forward for the post-project period. Various Portfolio Committees will be requested to follow up on the recommendations which relate specifically to their areas of responsibilities.

4 Communication Plan

Effective communication is a critical component of a successful project. Without communication, key role players (and stakeholders) may be left out of the process, thus hampering the purpose of this campaign. This communication plan puts forward an attempt to ensure that various portfolio committees with interest in this matter can participate in the project or are kept abreast with the developments before and after the campaign.

The following process is proposed:

- Circulate the concept document to all participating Portfolio Committees and encourage them to provide feedback to the Chairperson.

- Engage with the participating Portfolio Committees in provincial legislatures about this project and secure their participation during the oversight visits and in the round table discussion proposed in this concept note.
- Key stakeholders at the national level should be invited to participate in the round table whereas provincial and local level stakeholders will participate at provincial stakeholder engagement processes.
- Engage with the Parliamentary Communication Section of Parliament for assistance with the Communication Plan.

This document does not prescribe the communication tools. It, however, acknowledges that different types of tools can be used at different stages of project implementation, such as print and electronic media.

5. Conclusion

There is wide acknowledgement that the programme of land reform, including restitution, has not redistributed land at the pace anticipated and has failed to reach the target set. Through this project, Parliament will have an opportunity to engage the society about this very important matter, affecting the majority of the poor. It will further enforce its mandate to ensure that members of the public are central to all aspects of oversight and ensuring that the Executive is accountable for its actions. The project is thus one of the mechanisms for robust oversight by Parliament whilst simultaneously advancing the cause for agrarian transformation in South Africa.

Main outputs		March				April				May				June			
		Wk1	Wk2	Wk3	Wk4	Wk1	Wk2	Wk3	Wk4	Wk1	Wk2	Wk3	Wk4	Wk1	Wk2	Wk3	Wk4
1	Project endorsement and approval																
1.1	The 3 PCs adopted the project		X														
1.2	The project is adopted as an institutional project				X												
1.3	Other portfolio committees endorse the project				X												
1.4	Provincial portfolio committees endorse the project				X												
1.5	Budget proposal for the project drawn				X												
2	Technical & Logistics																
2.1	The budget (including provincial commitments) secured								X								
2.2	Rapid assessment reports and discussion guides produced			X	X				X								
2.3	The four delegation teams in place & support personnel allocated								X								
2.4	Sites to be visited by the delegation identified								X								
2.5	Preparations for provincial site visits reports underway				X				X	X							
3	Site visits																
3.1	Briefing session and farm visits (including communal areas)									X							
3.2	Public meetings held									X							
3.3	Panel discussions facilitated									X							
3.4	Provincial workshops									X							
3.5	Provincial legislatures debates held										X						
3.6	Media briefs and interviews: radio stations etc									X	X				X	X	
3.7	Reports on the proceedings and the findings completed														X		

Main outputs	March				April				May				June			
	Wk1	Wk2	Wk3	Wk4	Wk1	Wk2	Wk3	Wk4	Wk1	Wk2	Wk3	Wk4	Wk1	Wk2	Wk3	Wk4
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