



RURAL WOMEN'S
ACTION RESEARCH
PROGRAMME

RESTITUTION OF LAND RIGHTS AMENDMENT ACT

August 2014

THE NEW RESTITUTION OF LAND RIGHTS AMENDMENT ACT

The new Restitution of Land Rights Amendment Act (the 'Act') was passed by the National Assembly and National Council of Provinces, and then signed into law by President Jacob Zuma. The period to lodge claims reopened on 1 July, 2014.

The new Act amends the Restitution of Land Rights Act (No. 22 of 1994), which was passed to great applause in 1994. Its goal was to offer a solution to people who had lost their land as a result of racially discriminatory practices such as forced removals. This included people who were dumped in Bantustans and put under traditional leaders. The deadline for lodging claims under the old Act was 1998.

WHAT'S IN THE NEW RESTITUTION ACT?

Reopening the lodgement period

Re-opens the lodgement period for restitution claims to allow people to put in claims until June 30, 2019.

Betterment

Explicitly allows people dispossessed under Betterment to put in restitution claims.

Prioritisation but not *ring fencing* of prior claims

Various groups and organisations made submissions to Parliament about the problems that the re-opening of claims is likely to cause for the many existing outstanding claims that have still not been processed 20 years after claims were first allowed. They argued that the Bill should be amended to 'ring fence' and protect existing claims from competition by new claims that could delay them for many years. The proposal for ring fencing existing claims was not adopted. Instead the law allows the Commission to **prioritise** claims lodged prior to the 1998 deadline, which have not yet been completely resolved, but it does not guarantee this will be done. This is stated in Section 6(1)(g):

“(1) The Commission shall, at a meeting or through the Chief Land Claims Commissioner, a regional land claims commissioner or a person designated by any such commissioner -

(g) ensure that priority is given to claims lodged not later than 31 December 1998 and which were not finalised at the date of the commencement of the Restitution of Land Rights Amendment Act, 2014.”

Definitions

Outstanding claims: Not yet settled at all. See the back page of this fact sheet for a map of these claims.

Finalised claims: All funds paid and all land purchased and transferred

Prior claims/claimants: People who lodged a restitution claims before the end of 1998

According to Commission on Restitution of Land Rights, **20 592 claims** (or **25.87** per cent of the total land claims registered with the Department) have not yet been finalised or the settlement agreement has not been fully implemented. Around **50%** of the land already acquired for restitution has still not been transferred to the beneficiaries. Several claimants have been waiting for over 10 years for the implementation of their settlement agreement.

The backlog of unresolved restitution claims raises concerns that claims filed in the new restitution period might further undermine the fulfilment of existing claims. Worse than that, the lodgement of new counter-claims may be used to justify the Commission and Department's refusal to honour transfer agreements and restitution awards that they would otherwise be legally bound to honour.

In light of these issues, submissions on the Restitution Act asked that the Act **ring fence** earlier claims by asking for court permission to handle counterclaims to the same land at the same time as claims lodged by the 1998 deadline. But the Act **stops short of ring fencing**. It only **prioritises** claims lodged before 1998. The Act says the Commission should consider the prioritisation of claims lodged by the 1998 deadline and it cannot ignore these claims or leave them to last because they are complex. BUT it does not say **how** the Commission should deal with prioritising claims lodged by the 1998 deadline. With the current words in the Act, if new claims are lodged on the same land as a claim submitted by 31 December 1998, **the Commission can deal with the new and old claims at the same time**. Therefore the Commission can decide that until they have investigated the new claim, the old claim cannot be prioritised. Therefore, the **prioritisation** provision in the Act does not protect prior claimants enough.

In order to hold the Commission to its commitment to prioritise claims lodged prior to 1998, you should monitor the claims that are being settled to see if they are prior claims. Also, groups who are still waiting for their claims to be resolved should approach the Commission with a short written motivation on the need to prioritise its claim and ask that something be done about it within a month. If nothing is done, it may create legal grounds for a court to review whether the Commission is actually prioritising prior claims as the Act says they should.

1913 cut-off date remains

Despite President Zuma saying that the Restitution Act would be amended to allow people dispossessed before 1913 to lodge a claim, these amendments never took place. The Act still states that only people who lost land as a result of racially discriminatory practices after 1913 and before 1994 can lodge a claim. The next section discusses the 1913 cut-off date.

WHAT DOES THE 1913 CUT-OFF DATE MEAN?

Many traditional leaders especially in KwaZulu-Natal have made it clear that they intend to lodge land claims. King Goodwill Zwelithini, together with the Ingonyama Trust, intends to lodge a claim for possibly the entire province of KwaZulu-Natal - including the Durban Metro as well as sections of the Eastern Cape, Mpumalanga and the Free State. The aim of the proposed claim on behalf of the king is to claim land taken from the Zulu kingdom during the colonial period — from 1838 onwards — first by the Voortrekkers and then the British. Indeed President Jacob Zuma has been encouraging traditional leaders to make such land claims. In his speech to the National House of Traditional Leaders earlier in 2014, he told traditional leaders to get “good lawyers” so that they could put in land claims.

But according to the Restitution Act only people who were dispossessed of land **after 1913** qualify for restitution. If the King were to lodge a claim for land lost in 1838 that claim would not be valid. The same applies to any other traditional leaders who try to claim land lost

before 1913. Section 2 of the Restitution Act confirms that only people who meet the following requirements can lodge land claims:

- A person, community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices;

Definition

Community: The Restitution Act says community means any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group, and includes part of any such group;

- A direct descendant of a person who was dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices.
- An administrator of the estate of a person who was dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices.
- A person who was dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices but was compensated for the loss of that right in a manner which is just and equitable in line with section 25(3) of the Constitution.

Claims by traditional leaders do not take into account the complex history of KwaZulu-Natal, in which there were many different groups who have overlapping claims to land which various groups occupied at different points in time. These claims are invalid in terms of the Amendment of Land Restitution Act of 2014.

IMPACT OF 'HERITAGE' POLICY THAT ACCOMPANIES THE RESTITUTION ACT

The Minister of Rural Development and Land Reform, Gugile Nkwinti, has said (07/2014) that the government is going to create a policy and also possibly a law that recognises the claims to land of people dispossessed prior to 1913. This law would be separate from the Restitution Act. As things stand, this is not a law yet but a policy that is under discussion. Government officials refer to this policy as "exceptions to the 1913 cut-off date" or as the "heritage" policy. While this policy is spoken about in reference to the Khoi San, it includes other groups too.

What will be the focus of the policy?

According to a draft policy document by the government, it will focus on

1. **Land redistribution** rather than restitution to people dispossessed pre-1913;
2. **Allocating specific pieces of land as heritage sites and historical landmarks** (it's not clear if ownership, lease or use rights will be allocated).

It is unclear from the policy who can claim for this special form of redistribution, and to be allocated heritage sites and historical landmarks. The policy does not say if individuals or groups can claim. It does not define the groups that can claim but implies it will include:

"The Khoi, the San, the Nguni (Zulu and Xhosa speaking communities), the Sotho-Tswana, Sotho, Tsonga and Venda speakers"

What qualifies as a heritage site or historical landmark?

Deputy Land Claims Commissioner, Thami Mdontswa, defined these terms in April 2014 as follows:

- **Heritage sites:** places, buildings, structures and equipment of cultural significance; places to which oral traditions are attached or which are associated with living heritage; historical settlements and townscapes; landscapes and natural features of cultural significance; geological sites of scientific or cultural importance; topographical, archaeological and paleontological sites; sites that are important in terms of Indigenous Knowledge Systems
- **Historical landmarks:** Sites of significance relating to the history of land dispossession in South Africa; Graves and burial grounds including ancestral graves, royal graves and graves of traditional leaders, graves of victims of conflict, graves of important individuals, historical graves and cemeteries; landmarks that are important to the community or the pattern of South Africa's history; where uncommon, rare or endangered aspects of South Africa's natural or cultural heritage are located.

Implications

This 'heritage' policy is potentially worrying for many land restitution claimants. Under this 'heritage' policy, traditional leaders in KwaZulu-Natal could put in claims to areas such as royal graves or sites of colonial-era battles. Such heritage claims could be on the same pieces of land as already existing restitution claims and delay the settlement of such claims. It could also mean that certain pieces of land are not restored to people through restitution because a traditional leader has claimed that the land must be 'protected' as a heritage site or historical landmark. Typically, however, declared heritage sites constitute clearly identified areas, as opposed to vast swathes of land.

An example of where this is already happening is the Babanango area. There a group with long-standing historical and current connections to the land filed a land restitution claim over a decade ago which is still 'being processed'. King Zwelithini has recently begun laying the foundations for the building of a royal palace on the Babanango land. The King is negotiating use of Babanango land through the Amafa Heritage Council on the grounds that the area is an important Zulu heritage site. Any declared heritage site is subject to various levels of protection and regulation. Permission to develop new private dwellings and private businesses on heritage sites would require due process including impact assessments. Moreover the restitution rights of people who were dispossessed after 1913 would have to be taken into account in any settlement.

MONITORING THE RESTITUTION CLAIMS PROCESS

You may have already lodged a restitution claim prior to the end of 1998. If so, this check list is still important as it tells you what the Restitution Commission *should* have done/do to settle your claim. Has the Commission fulfilled all these steps?

1. Publish a notice of the claim in the Gazette.
2. Notify the owner of land claimed and any other interested person who might have interest in the land (this is often called a 'stakeholders' meeting)
3. Come to visit your land and investigate the claim
4. Send you a letter/email to confirm that your claim is valid
5. Enter into negotiations with land owners and claimants
6. If you are a group of claimants rather than an individual, hold a workshop with you to help you set up a CPA or Trust

7. Register your CPA or Trust once your group has submitted the correct documentation
8. Sign all necessary agreements
9. Hand over the land you were due to have restored to you, alternative land or monetary compensation
10. Tell you about relevant development grants you can apply for

If someone else lodges a claim on the same piece of land as your claim, the Commission must notify you. If you hear that someone has put in a claim on land you claimed, alert us.

Also note:

- Once a claim has been gazetted no one is allowed to*
- Obstruct the passage of the claim;
 - Sell, exchange or donate, subdivide, rezone or develop the claimed land without giving the Commission one month's written notice of his/her intention to do so;
 - Remove or evict a claimant who occupied the land in question at the date of commencement of the Restitution Act without the written authority of the Chief Land Claims Commissioner;
 - Remove, destroy, damage or make any improvements upon the land without the written authority of the Chief Land Claims Commissioner;
 - Enter upon and occupy the land under claim without the permission of the owner or lawful occupier.

Please alert us if anyone has been using the land you claimed in one of the ways described in the box above. Please also alert us if you hear of a traditional leader making a claim on land you live on and/or have claimed during the previous restitution period.

To alert one of us, use these contact details:

	Centre for Law & Society (CLS)	Association for Rural Advancement (AFRA)	Legal Resources Centre (LRC)
Phone	021 650 3405	033 345 7607	011 836 9831
Fax	021 650 3095	033 345 5106	011 838 4876
Email	cls.uct@gmail.com	afrakzn@gmail.com	thabiso@lrc.org.za
Postal Address	Centre for Law and Society Private Bag X3 Rondebosch 7701	AFRA P O Box 2517, Pietermaritzburg, 3200	LRC P O Box 9495, Johannesburg 2000
Physical Address	Centre for Law and Society All Africa House Middle Campus University of Cape Town Rondebosch Cape Town	123 Jabu Ndlovu (Loop) Street Pietermaritzburg, KwaZulu-Natal, South Africa	15th and 16th Floor, Bram Fischer Towers, 20 Albert Street, Marshalltown, Johannesburg
Contact	Tara Weinberg or Nolundi Luwaya	Mike Cowling	Thabiso Mbhense

OUTSTANDING LAND CLAIMS

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SOUTH AFRICA

