



RURAL WOMEN'S
ACTION RESEARCH
PROGRAMME

RESTITUTION OF LAND RIGHTS AMENDMENT ACT

February 2015

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.

WHAT'S IN THE NEW RESTITUTION ACT?

Reopening the lodgement period

Reopens 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

The most vocal opposition to the Restitution Act came from among the 30,000 claimant groups still waiting for their claims to be settled or finalised. They argued that the Act should "ring-fence" and protect existing claims from competition by new claims that could delay them for many more years. The proposal for ring-fencing existing claims was not adopted.

Instead the Act allows the Commission to **prioritise** claims lodged prior to the 1998 deadline, which have not yet been completely resolved. But the Act does not guarantee prior claims will be protected. If new claims are lodged on the same land as a prior claim, **the Commission can deal with the new and old claims at the same time.** 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 claim before the end of 1998.

The backlog of unresolved restitution claims means that claims filed in the new restitution period **could significantly delay the resolution of prior 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 order to hold the Commission to account, you should:

- Monitor the claims that are being settled to see if they are prior claims.
- If you are still waiting for claim to be resolved, approach the Commission with a short written motivation on the need to prioritise your claim. Ask that something be done about it within a month. If nothing is done, you can take further action. For example, it may create legal grounds for a court to review whether the Commission is actually prioritising prior claims as the Act says they should.

RESTITUTION IN NUMBERS (as of 1 Jan 2015)

25%	of total claims lodged 1994-98 or
30 000	out of 80 000 claims still to be settled or finalised
50%	of land acquired for restitution not yet transferred to beneficiaries
10	number of years many claimants have been waiting for their settlement agreement to be implemented
379 000	number of new claims expected before 2019
12bil.	estimated budget required <i>per year</i> to settle new claims
2.7bil	actual budget per year provided to DRDLR to settle claims
121	number of years it would take to finalise pre- and post-1998 land claims if claims continue to be settled at the current rate

THE 1913 CUT-OFF DATE AND TRADITIONAL LEADERS' CLAIMS

Many traditional leaders 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. This means that if King Zwelithini 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.

Nevertheless, claims by traditional leaders “on behalf” of people raise the following concerns:

- **Section 18** of the **Constitution** protects the right to freedom of association. This means that you can choose how you want to identify yourself or your group when

you make a claim. It can be a problem if a traditional leader puts in a claim on your behalf **without your consent**.

- Claims by traditional leaders often do not take into account the complex history of the areas from which they come, in which there were many different groups (families, clans etc.) who occupied the same piece of land at different points in time.
- Claims by traditional leaders create confusion amongst other individuals, families and groups who have made claims on the same land. To lodge a restitution claim, you do not have to align with a traditional leader, council or tribe. Section 2 of the Restitution Act confirms that these are the only criteria for lodging a claim:
 - 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.

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. 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, the policy lists other groups too, including “the Nguni (Zulu and Xhosa speaking communities), the Sotho-Tswana, Sotho, Tsonga and Venda speakers” (quote from policy document).

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 is not clear if ownership, lease or use rights will be allocated).

Implications

This “heritage” policy is potentially worrying for many land restitution claimants. Under this “heritage” policy, traditional leaders 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.

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.

An example of where this is already happening is the Babanango area in KwaZulu-Natal. A group there filed a land restitution claim and labour tenants claim many years ago. These claims are 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 and advise you on steps to get post-settlement support.

If someone else lodges a claim on the same piece of land as your claim, the Commission must notify you.

What if you lodged a claim but someone has begun to develop that land?

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)
Phone	021 650 5693 or 021 650 3405 or 021 650 3360
Fax	021 650 3095
Email	cls.uct@gmail.com
Postal Address	Centre for Law and Society Private Bag X3 Rondebosch 7701
Physical Address	Centre for Law and Society All Africa House Middle Campus University of Cape Town Rondebosch Cape Town
Contact	Nolundi Luwaya, Tara Weinberg, Stha Yeni or Michael Clark

OUTSTANDING LAND CLAIMS

February 2014

SOUTH AFRICA

