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Portfolio Committee on Rural Development and Land Reform
3rd Floor
90 Plein St.
Cape Town
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To the Committee,

COMMENTS ON THE RESTITUTION OF LAND RIGHTS AMENDMENT BILL [B19-2017]

I am writing in response to the call for written comments issued by MP Ngwenya-Mabila, Chairperson of the Portfolio Committee on Rural Development and Land Reform, for comment on the Restitution of Land Rights Amendment Bill [B19-2017] with a deadline of 27 April 2018.

I am Associate Professor in the Department of Anthropology, University of California, Riverside (USA), and am currently a Fulbright Scholar and visiting researcher at the Land and Accountability Research Centre at the School of Law, University of Cape Town. I am the author or co-author of more than twenty peer-reviewed publications on aspects of land reform and conservation in South Africa, grounded in over two years field research since 1998 at Dwesa-Cwebe, in the Eastern Cape Province, the site of one of the earliest land restitution claims involving a protected area. As a cultural anthropologist, my work combines field work on this particular site with comparative analysis both within South Africa and internationally. My analysis here is based in particular on my 2015 article with Chris Beyers, "After restitution: Community, litigation and governance in South African land reform," in *African* Affairs 114(456): 432-454. I also draw upon recent evaluations of the restitution process (Genesis Analytics 2014, SAHRC 2013) and the decisions of the Land Claims Court.[1] The opinions expressed are my own and do not reflect the views of the University of California, the United States Government and/or LARC

My submission is grounded in the observations that land restitution at Dwesa-Cwebe and in much of South Africa has failed to deliver enduring, tangible benefits to claimants, and has instead sowed the seeds for disempowering and costly

[1] The Genesis evaluation considered the court's decisions through 2013 (de Satge 2014), and I have subsequently reviewed the case law from 2013 through 2017.

conflicts. I concur with the testimony of Ruth Hall before this committee in November of last year regarding the CPA Amendment Bill, in which she argued that Parliament must not act without considering the recommendations of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (henceforth HLP). I aim to consider the proposed legislation in the light of the analysis and alternative bill produced by the HLP, with an eye to ways in which measures proposed there might improve this bill.

The HLP's report offers three draft pieces of legislation: the National Land Reform Framework Bill, the Restitution of Land Rights General Amendment Bill, and the Restitution Judicial Amendment Bill. I focus on the former two acts here. The HLP's proposed legislation may be found in the Annexures to the HLP report,[2] available from at https://www.parliament.gov.za/high-level-panel. I also attach an document I prepared which compares clause-by-clause the proposed amendments under B19 2017 to the proposed amendments of the HLP's illustrative bills.

I would urge the committee to review the HLP's proposed legislation in detail. Parliament has an opportunity and a responsibility to assert its role in oversight of the restitution process, and concurrently, to restore court oversight of the process. The goals of restitution will be better served by producing a law with more tangible steps to optimise the outcomes of restitution by attempting to address widely noted problems in the process.

Measures Proposed in B19 2017

The measures in the proposed Restitution of Land Rights Amendment Bill [B19-2017] itself involve adjusting the dates and deadlines around restitution (in s 1(b), s 2, s 4, s 12, s 13, s14(a)), improving publicity of claims (s 3, s 5, s 6), adding criminal penalties for interfering with or fraudulently submitting claims (s 6), and adjusting the appointment of judges to the Land Claims Court (s 7-11). In particular, in re: dates and deadlines, the bill proposes to extend the deadline for submitting a claim for five years after its commencement; it also proposes that the commission first finalise all claims lodged by 31 December 1998, with the possibility of considering later claims that may affect the validity of earlier claims. In addition, like the HLP's proposed amendment bill, it calls for the creation of a National Land Restitution Register, to be open to the public (s 2).

There is nothing in these measures that I would strongly oppose, although I share concerns expressed by others that the term "finalise" requires clarification (IRR 2017:14-15; cf. Mogale 2014), and that the language regarding fraud should be extended to criminalise claims filed with an intention of defrauding others besides the government (IRR 2017: 16). My main concern is that the bill does not go nearly far enough in solving existing and widely recognised problems with restitution, protecting existing claimants, and providing a process that is likely to result in sustainable and enduring benefits to land claimants.

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[2] Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017), henceforth HLP Report 2017.

Challenges Facing Restitution

In the sections that follows, I identify three sets of challenges to restitution that appear particularly acute, based on my previous research and the literature reviewed in preparing these comments, and which are substantively addressed by the HLP proposals: the scale of claims, conflict among claimants, and post-settlement support.

The Scale of Claims

The first and most widely noted challenge facing restitution is, of course, the sheer numbers of claims. As the HLP notes:

> "There are still more than 7 000 unsettled, and more than 19 000 unfinalised, 'old order' claims (claims lodged before the initial cut-off date of 1998). At the present rate of finalising 560 claims a year, it will take at least 35 years to finalise all old order claims; new order claims (lodged in terms of the now repealed Restitution of Land Rights Amendment Act of 2014) that have already been lodged will take 143 years to settle; and if land claims are reopened and the expected 397 000 claims are lodged, it will take 709 years to complete Land Restitution" (HLP Report 2017: 233)

As the testimony around the LAMOSA challenge to the 2014 Act made abundantly clear, this has implications for new claims and also for existing claimants: reopening an already overburdened process creates the possibility for multiple claims on the same piece of land, thereby creating insecurity for existing claimants, and in the 2014, it was accompanied by a lack of clarity on prioritising claims.[3]

It is imperative that the push to rapidly resolve large numbers of claims not result in perceived or actual arbitrariness and administrative discretion. Addressing the concerns addressed in LAMOSA will require structured guidance and criteria for decision-making, and clarity and absence of vagueness in the legislation,[4] not just extended deadlines. Parliament should not miss this opportunity to address the quality as well as the quantity of restitution outcomes, by merely shifting the timelines of the process without requiring substantive changes.

Conflict Among Claimants

A second challenge is found in the fact that many existing claims are not providing the expected benefits to claimants, often leading to conflict within claimant groups, and between claimants and government. This can be related to the volume of claims, in that claims may be hurried or combined inappropriately, or insufficiently

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[3] See the Founding Affidavit of Constance Mogale in the LAMOSA case (Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others (CCT40/15) [2016] ZACC 22).

[4] While the first argument in the LAMOSA case focused on the process used by the NCOP, the argument in the alternative argued that the 2014 Act was unconstitutionally vague.

researched, in order to meet the quantitative goals of restitution. In our 2015 article in *African Affairs*, Chris Beyers and I noted that the rush to resolve a claim and add it "to a roster of nominally settled claims…may sow…the seed for future conflict among claimants that is likely proceed in courtrooms and mediation sessions remote from the attention of the media and the public" (Beyers and Fay 2015: 453). These findings are echoed by those of the HLP, which highlighted the prevalence of conflict among claimants.

It is clear that one cause of post-settlement conflict and litigation has been the practice of "bunching" communities with adjoining or overlapping claims together. The HLP wrote, a "method for speedily settling claims was to 'bunch' them together, creating artificial Communal Property Associations (CPAs) in the process….CPAs are often dysfunctional" (HLP Report 2017: 234), a point that was emphasised in the panel's public hearings (HLP Report 2017: 240); (see also Beyers and Fay 2015: 438). This has been promoted not only by the LCC but also by the NGOs involved in assisting claimants, and it might appear to be a reasonable response to the imperative to resolve claims under pressures of time and resources. However, it is a strategy that makes settlements vulnerable in the longer term, and which contradicts the Land Claims' Court's rulings in *Kranspoort*.[5] "Some of these cases, where claims have been 'bunched' and artificial CPAs created, stand little chance of success" in Court because of instances where "in doing this, the Commission ignored the definition of 'community' eligible to apply for restitution" (HLP Report 2017: 234). It also brought together groups that have "overlapping and conflicting claims" (HLP Report 2017: 234)

Bunching creates conditions of potential conflict, by pulling disparate groups together, and in the event that restitution fails to deliver on its promises — often because of failures of state and market support (discussed further below) — these potential lines of conflict become the basis for division originating both within the communities and from outsiders aiming to take advantage of the situation (Beyers and Fay 2015: 450). A significant consequence has been widespread litigation within claimant communities. The HLP reported that "a number of speakers referred to the conflict, and enormous waste of time and expense in litigation, caused by competing or overlapping land claims, or competing stakeholder interests in particular land under claim" (HLP Report 2017: 239), and Beyers and Fay provide a number of specific examples (2015: 438-439),[6] noting that "members

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[5] The SAHRC (2013) report summarises' the Court's ruling in Kranspoort with respect to the definition of community: "• At the time of dispossession it must be shown that, there were shared rules, which determined access to land, which was held in common by such community. Examples in this regard may include the existence of a Chief and his counsellors, etc.; • At the time when the claim was lodged – this can be the same community or a part of the community that was dispossessed of rights in land. It does not have to be the identical community in that changes in the constituent families, the admission of new members and the departure of other members mean that the face of a community changes over time" (SAHRC 2013: 20-21)

[6] These include claims in Port Elizabeth, Ndabeni, Chatha, Elandskloof, and the Richtersveld as well as Dwesa-Cwebe and District Six (the main case studies in the article). Additional litigation has been initiated re: District Six since the article's publication.

of claimant groups are now using the law…to make claims and levy accusation on one another through challenges to the new legal entities created through restitution" (Beyers and Fay 2015: 439). In some cases, we note that in doing so, litigants draw upon "lines of division that the apartheid state had exploited in the prior process of dispossession" (Beyers and Fay 2015: 452). This point was echoed in testimony before the HLP:

> some speakers said that the government actively encourages people to blame other groups for problems that the government in fact has caused. Specifically, speakers pointed out that the government was trying to exacerbate racial divisions between whites and blacks, and to blame traditional leaders, when in fact government officials are themselves capturing the benefits of land restitution at the expense of claimants, and government has given some traditional leaders 'unaccounted for powers'. (HLP Report 2017: 241)

While the details vary from case to case, it is clear that restitution is giving rise to conflict among claimant groups, for a number of reasons which include the practice of bunching and overlapping claims, and the failure of the state to plan for post-settlement and adequately support claimants.

Post-Settlement Support

Complex claim settlements have frequently foundered on the absence of promised governmental support. This challenges faced by claimant communities in this respect were highlighted at Dwesa-Cwebe in a report on the land claim Settlement Agreement in 2006; Palmer *et al*. described the "weaknesses in the settlement agreement":

> 1. There appears to have been an underlying assumption that the government parties would meet their obligations, but that the [Dwesa-Cwebe Land] Trust or communities might not.…3. The agreement consequently spells out provisions for non-performance by the Trust but barely refers to similar possibilities for government…Ironically the sustainability is now threatened by non-performance or reluctant performance by government parties rather than by the Trust (Palmer *et al*. 2006a: 41).[7]

This is just one of many cases that highlights the fact that claimants depend on state support that may not be forthcoming; land restitution does not occur in a vacuum but requires additional support to ensure that land can be utilised in a way that enhances the livelihoods of claimants. However, post-settlement support is not a matter for the Commission to handle in isolation; indeed, the judgment in the *Shongwe* case (LCC 46/2009)[8] holds that "Once a restitution award is made the Act

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[7] This language appeared in the Settlement Agreement despite repeated pleas by the claimants that "clauses referring to a potential breach of agreement should apply to all parties to this agreement" (email from André Terblanche, Tralso, 2001).

[8] An unreported case where judgment was delivered on 27 July 2012 by Meer AJP.

provides no further function for the Commission" (cited in HLP Report 2017: 249). As the HLP report notes, post-settlement support "places an unreasonable burden on the Commission to perform duties that are in the mandate of other government departments" and undermines its core mission to solicit land claims, investigate them and attempt to resolve them. It is thus necessary to provide a statutory mandate to other branches of government to support restitution.

Towards Legislative Solutions

Parliament should not hesitate to address these issues as it prepares to further amend the Restitution Act. Fortunately, the HLP has provided well reasoned and informed legislative models to do so. The first set of measures concern clarifying and elaborating the terms of Parliamentary and Court oversight over restitution, in ways that can facilitate addressing large numbers of claims while reducing potential problems with community and conflict, and avoiding the charges of vagueness that formed the applicants' argument in the alternative in the LAMOSA case.[9] The second set address the challenges of post-settlement support, by moving post-settlement out of the purview of the Commission while providing statutory mandates to other bodies of government.

Restore the Oversight of the Court to Include Confirming Settlement Agreements

The HLP makes a number of important recommendations regarding the Land Claims Court. As I noted above, I do not address its proposed Restitution Judicial Amendment Bill in detail, but I would concur with its recommendation that judges should be appointed to the Court on a permanent basis. The restitution process is ultimately a legal process, and the transactions required to settle a land claim are complex property transactions, but "despite the enormous volume of often very complex cases, there are no permanent judges of the Land Claims Court" (HLP Report 2017: 235).

Coupled with this recommendation, the HLP proposes restoring and enhancing the role of the Court in the process. The HLP's proposed amendments include amending sections 14(3) and (3B) to require Court confirmation of all settlement agreements.
Furthermore, it adds a new s 14(3C) which identifies criteria for the Court to follow in determining whether to confirm an agreement, including giving explicit attention to whether a settlement "can be implemented within a reasonable time" (14(3C)(c)), ensuring that "no provisions unduly benefit any party" (14(3C)(e)), and ensuring that

> if the claimant is a community, any provisions with regard to the manner in which the rights are to be held…ensure that the holder of the rights is accountable to community members and that community members are in a position to enforce their rights under the agreement, including the possible amendment of constituting documents of the

[9] See the Founding Affidavit of Constance Mogale, *op cit.*, para. 421-446.

holder to ensure achievement of the objects of the holder entity, the community claimant and this Act (14(3C)(f)).[10]

By spelling out criteria and reducing the scope for administrative discretion or negotiated settlements that (actually or in perceptions) disadvantage a subset of claimants, and providing oversight through certification, the Court should reduce the liability of the Commission and the new landholding legal entities to subsequent legal challenges, improve the fairness and transparency of the process, and increase the security of tenure of claimants who receive land. The measures in 14(3C)(f) in particular have the potential to mitigate the possibility of intra-community and intra-claimant group conflicts that have generated costly litigation in recent years. While the HLP's proposed amendment may not solve the problem altogether, unlike the existing amendment bill, they acknowledge it and aim to correct it.

Allow the Court Oversight Over Existing Agreements

The HLP's proposed bill amends section 22 to give the Court the power to intervene in existing settlements and make recommendations to the Commission and Minister.[11] These measures will allow the Court to adjudicate the "validity, enforceability, interpretation or implementation of an agreement" *even if* the agreement provides otherwise, specifying a range of powers. The Court will have the exclusive powers to direct parties to amend an agreement, to direct rights-holders to amend the constitution of landholding legal entities to achieve objects of the Act and to provide for exit of members. Furthermore, under the proposed amendments, the Court would have the additional powers to to recommend that the Minister exercise s. 42C (award of grant or subsidy) and 42E (acquisition of land) powers in relation to any restitution award or settlement agreement. Again, these measures will allow the Court to take measures to mitigate or resolve existing intra-community and intra-claimant group conflicts.

Define the Criteria for Feasibility of Restoration of Land and Equitable Redress

The HLP legislation also promotes clarity and administrative fairness by providing further guidelines for the Court to consider the circumstances under which a settlement should include an award of land. It proposes to amend section 33(cA) which requires the Court to have regard to the feasibility of restoration if restoration of a right in land is claimed, spelling out ten specific criteria for assessing feasibility, focused on current and past land use, the size of claimant group, and the availability of support.[12] Notably, it specifically enjoins the Court that "the cost of acquiring the land shall not be taken into consideration for purposes of feasibility" (33)(cA)(x). This is consistent with the position that expropriation without compensation or with sub-market compensation may be appropriate to achieve the aims of restitution, while allowing for alternative remedies to be deployed where appropriate.

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[10] HLP RLRGA Bill, pp. 11-12.

[11] HLP RLRGA Bill, pp. 12-13.

[12] HLP RLRGA Bill, pp. 14.

The proposed legislation also provides further guidance for those cases in which restoration of land is not feasible or desired by the claimants. In this respect, the HLP report is critical of inconsistencies in the terms of alternative remedies in existing settlements, raising concerns that these frequently inadequately compensate claimants (HLP Report 2017: 234-5).[13] It addresses this issue by proposing amendments to section 33(eC) of the Restitution Act that would define specific criteria for determining financial compensation in cases of equitable redress: to i) seek equivalence with pre-dispossession state and value of restored land; ii) take into account the impact of the dispossession and the costs of re-establishing livelihoods; iii) ensure fairness between and within classes of claimants.[14] Given the history of uneven and sometimes disadvantageous financial compensation in existing claims, these measures would move towards rectifying the process.

Other Measures to Enhance Oversight

Finally, the HLP proposals enhances Parliamentary and Court oversight of restitution, as its proposed section 6(6) spells out the contents required for the Commission's annual reports to the Court and Parliament.[15] In doing so, it enhances the oversight role of the Court; the Court has had an oversight role in practice through its rulings on the cases before it,[16] but the urgency of the situation and the failings of the Commission point to the need to restore a formal supervisory role. It would require the Commission to report on its activities, targets and progress towards resolving claims (6)(6)(a-c), the results of mandated monitoring, advice given to claimants on the status of their claims (6)(6)(f), acquisition of alternative land (6)(6)(g), provision of legal representation to claimants (6)(6)(i), and detailed estimates of expenditure under seven specific headings (6)(6)(k).

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[13] These are particularly acute in cases like Dwesa-Cwebe in which the land claimed is a protected area. Dwesa-Cwebe was an early case in which it was agreed to transfer the land to the claimants. Subsequently, policy has focused on cash compensation in claims on protected areas. These settlements vary as to whether ownership is actually transferred to the claimants, but in May 2007, "the Minister of Agriculture and Land Affairs and the Minister of Environmental Affairs and Tourism. . .came to a formal, legally binding agreement to use comanagement as the only strategy to reconcile land reform in protected areas" (Kepe, 2008, p. 312), allowing for transfer of title when feasible (Walker, 2008, p. 110).

[14] HLP RLRGA Bill, pp. 14-15.

[15] HLP RLRGA Bill, pp. 8-11.

[16] The Court has been highly critical of the Commission in a number of cases, for example: "This case, like many others, demonstrates that the Commission has simply not been able to discharge these responsibilities effectively. The result is that many of the cases brought before the Land Claims Court in recent years are claims for judicial review of the Commission's administrative action or lack thereof" (2013 ZALCC 14 - Niehaus)

"The Applicants' restitution claim has been outstanding for almost 20 years. The conduct of the First Respondent must be condemned in the strongest term possible. Such conduct by an organ of State can only be described as appalling and manifestly horrendous" (ZALCC in Nongoma Commonage)

Like B19-2017, the HLP proposals call for the creation of a National Land Restitution Register, but the HLP proposals go further in requiring that s 6(5) be added, requiring the register be made publicly available on the internet, and that the state and progress of the register be addressed in the annual reports to the Court and Parliament.

Positive Obligations of the State

The HLP argues that "the focus on providing post-settlement support has not dramatically improved outcomes and places an unreasonable burden on the Commission to perform duties that are in the mandate of other government departments" (HLP Report 2017: 235). This point is also emphasised in the Genesis Analytics (2014) review of the restitution program.

The High Level Panel addresses this challenge with the proposed addition of an entirely new chapter to the Restitution Act, entitled "Positive Obligations on the State." It offers a vision which is consistent with a national re-commitment to the moral and political project of land restitution as a constitutionally-mandated priority, incumbent upon all branches and levels of government. It will also give Members of Parliament an essential role in practice because of their capacity to see the actions of government as a whole, through their participation on a range of committees, rather than through the lenses of departmental or local priorities.

The HLP's proposed amendments to the Restitution Act would require the Minister to report to the Commission and the Court on "planning by the national sphere departments….insofar as they relate to restitution and land reform" (42G)(1)(a), "policies necessary to achieve the objectives of restitution, including the measures…to monitor and support other spheres of government in the performance of their land reform….functions" (42G)(1)(b). It further requires *all* government departments to provide sector inputs to land reform implementation frameworks (42G)(2)(a), "ensure that the requirements of any law relating to restitution and land reform are met timeously" (42G)(2)(b), and "ensure that their policies and procedures are clearly set out in order to inform and empower land claimants and beneficiaries" (42G)(2)(c).[17]

The additional measures proposed here interlock with those in the HLP's proposed Land Reform Framework Act. Section 9 of the HLP's proposed Land Reform Framework Act establishes District land reform implementation frameworks which aim (among many other things) to allow for identification of alternative land for restitution and demonstrate how equitable access to land is being advanced through restitution. The HLP's Restitution Amendment Bill in turn requires the Minister to "take account of any applicable district land reform implementation framework" in decision making (42G)(3) and to "notify the relevant municipalities of any land claims in which claimants are granted rights in land for purposes of inclusion in district land reform implementation frameworks" (42G)(4).[18] These

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[17] HLP RLRGA Bill, pp. 17-18.

[18] HLP RLRGA Bill, pp. 17-18.

measures aim to address the overburdening of the Commission with post-settlement support by providing a basis for compelling other branches of government to support the goals of land reform and take responsibility for post-settlement support.

Concluding Notes

In conclusion I would like to briefly address the issues of the deadline for submitting claims, the cutoff date, the question of expropriation, and the constitutionality of the proposed legislation.

Given the scale of the task and the uncertainties and *de facto* insecurity of tenure (for existing landowners and claimants alike) created by outstanding claims, I would argue that deadline of 2029 for admitting proposed in the HLP illustrative bill should be taken as a maximum. The Minister might be given discretion to close the process any time after five years with one year's notice.

In re: the 1913 cutoff date for land claims, I would concur with the HLP's recommendation that this date be retained. Restitution was not intended by the framers of the Act as the basis for a comprehensive land reform program; it was intended to address specific categories of forced removals subsequent to the 1913 Land Act, while land redistribution would provide for those who could not successfully claim restitution (cf. HLP Report 2017: 236). The HLP's proposed Framework Act addresses this issue wisely in sections 5(4-5), under the heading of "Land restitution principles", allowing the Minister to grant preferential status in redistribution to people with historical claims to land which do not meet or predate restitution criteria, and requiring the Minister to provide such person with reasons as to whether and why they will or will not receive priority within redistribution.

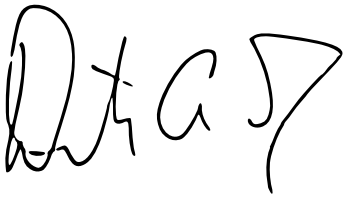
Regarding the question of expropriation, as others have noted, there are sufficient statutory and constitutional provisions (including section 25(3)) to allow for expropriation without compensation (see comments by Geoff Budlender and Thembeka Ngcukaitobi in Paton 2018 BD article). Nonetheless, as Ngcukaitobi argues in the article cited above, there may be a political value to providing explicit language to this effect. In this respect, the HLP Bill expands the provision in section 35(1)(b) which allows the Court to grant a right in alternative state-owned land, allowing the State to purchase, acquire or expropriate alternative land for a restitution award. This measure would expand and clarify the options for claimants who prefer land but whose former land is unfeasible for restoration.

Finally, It should be abundantly clear given the fate of the 2014 Amendment Bill that any legislation will need to be subject to a participatory consultative process with a wide range of stakeholders. Other commenters on the proposed legislation have focused on the process, and I have little to add here except to note that existing claimants, whether their claims have been resolved or not, are an important category of stakeholders whose voices must be taken into account. There is much to be learned about the existing failings and shortcomings of restitution from the experiences of the communities and individuals who have claimed land already, and

it is essential that legislation take into account what has been learned about the challenges of the existing process.

Thank you for your consideration of my comments. I look forward to the opportunity to discuss the issues further.

Yours sincerely,



Derick A. Fay, Ph.D.

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Section in Act	B19 2017 (Mnguni) proposed changes	HLP proposed changes
preamble		replaces preamble with longer version emphasizing s. 25-27 of the Constitution; social, economic and environmental rights; land use planning and management;
1		revises definition of community, with two possible options for revision
1A (proposed)		adds objects of Act, emphasising planning, enduring benefits for claimants, sustainable and efficient land use, decision-making and equity among claimants, consideration of traditional knowledge (see s 33 below where Court is required to have regard to these)
2(1)(e)	revises deadline to 30 June 2019	revises deadline to 30 June 2029 — see note below re when this comes into effect
6(1A)(a)	revises National Land Restitution Register to require entry of all claims from 1 July 2014	
6(2)(a)		specifying and limiting powers of the Commission
6(4) (proposed)		empowers Commission to apply for relief including an interdict or amendment of existing settlement if it a) defeats objects of the Act, b) undermines rights of members to equity, or c) fails to provide for sustainable occupation or use
6(5) (proposed)		revises National Land Restitution Register to require that it be open to the public, online and reporting annually to the Court and Parliament
6(6) (proposed)		Commission shall report annually to the Court and Parliament re: activities, targets, progress, appt. of RLCC commissioners, etc. (7 other items)
11(1)(c)	adds requirement to publish notice of claims in national and provincial media	
12(1)(5)		revises deadline to 30 June 2029 — see note below re when this comes into effect
12(5)	adjusts date after which claimants may lodge claims after expiration of deadline	
14(3)		mandates submitting agreements to the Court / restoring supervisory role of the Court
14(3b) (proposed)		mandates submitting agreements to the Court

Section in Act	B19 2017 (Mnguni) proposed changes	HLP proposed changes
14(3c) (proposed)		sets out criteria for Court to confirm a settlement agreement: a) complies with Act, b) consistent with objects, c) can be implemented within a reasonable time, d) compensation consistent with s 25(3) of Constitution, e) no undue benefit to any party, f) landholding legal entities are accountable to community (see text)
16A(1) (proposed)	Upon finalisation of claims lodged before 31 Dec 1998, CLCC shall publish notice in Gazette and media indicating date on which Commission shall start processing later claims	
16A(2) (proposed)	Notwithstanding the above, the Commission may consider a later claim in determining the validity of an earlier claim	
17(a-e)	Increases penalty for fraudulent claims	
22(1)(cE)		allows Court to adjudicate “validity, enforceability, interpretation or implementation of an agreement” even if the agreement provides otherwise
22(1)(cF) (proposed)		allows Court to direct parties to amend an agreement
22(1)(cG) (proposed)		allows Court to direct rights-holders to amend constitution to achieve objects of the Act and provide for exit of members
22(1)(cF) (proposed)		allows Court to recommend the Minister to exercise s. 42C and 42E powers
22(1)(cF) (proposed)		allows Court to issue recommendations based on reports of Commission and Minister
22(3-7)	(proposed changes appear identical to existing text)	requires a Judge President and at least four additional judges
22(8)	allows Minister of Justice and Correctional Services to handle vacancies, rather than the President of the Republic	if the office of Judge President is vacant, the longest serving judge steps in (see also 22(12) below)

Section in Act	B19 2017 (Mnguni) proposed changes	HLP proposed changes
22(9-11(b)) (proposed)		re remuneration and terms of employment of judges
22(12)		allows Minister of Justice to handle vacancies in consultation with Judge President and in accordance with s 175(2) of the Constitution, rather than the President of the Republic
22A	(proposed changes appear identical to existing text)	transitional arrangements
23	repeals - re qualifications of judges	repeals - re qualifications of judges
26 and 26A	repeals - re remuneration, secondment, etc. of judges	repeals - re remuneration, secondment, etc. of judges
29(4)		adds explicit language re: considering ability of claimants to afford legal representation in allowing Commissioner to take steps to arrange representation
33		requires the Court to have regard to objects set out in s 1A
33(cA)		sets out 10 criteria for assessing feasibility of restoration of land, focused on land use, size of claimant group, availability of support
33(eC)		sets out criteria for determining financial compensation in case of order for equitable redress: i) seek equivalence with pre-dispossession state and value of restored land; ii) take into account the impact of the dispossession and the costs of re-establishing livelihoods; iii) ensure fairness between and within classes of claimants
35(1)(b)		allows Court to order Minister to purchase, acquire or expropriate alternative land, rather than limiting to existing state-owned land
35(13-15) (proposed)		mandates transfer to be executed within 12 months of settlement agreement, including existing agreements that have been outstanding over 12 mos., and allows Court to extend the period “for good reason”
38B(1)	revises deadline to five years after the commencement of the Amendment Act	revises deadline to 30 June 2029 — see note below re when this comes into effect
38D(1)	revises deadline to 30 June 2019	revises deadline to 30 June 2029 — see note below re when this comes into effect

Section in Act	B19 2017 (Mnguni) proposed changes	HLP proposed changes
42D(1)(a)	revises deadline to 30 June 2019	revises deadline to 30 June 2029 — see note below re when this comes into effect
42D(3)(1A) (proposed)		requires the Minister to have regard to objects set out in s 1A and factors set out in s 33
42D(3)(3)	allows Minister to delegate s. 42C and 42E powers to DG of RDLR, CLC Commissioner or a RLC Commissioner	allows Minister to delegate s. 42C and 42E powers to DG of RDLR, CLC Commissioner or a RLC Commissioner
42G (proposed Chapter 5)		adds “Positive Obligations on the State”
42(G)(1) (proposed)		requires Minister to report to Commission and Court on planning by and policies of national departments to support restitution
42(G)(2) (proposed)		requires all government departments to a) provide input into land reform implementation frameworks, b) follow law timeously, c) ensure policies and procedures are set out to inform and empower land claimants and beneficiaries
42(G)(3) (proposed)		requires Commission, Court and Minister to take account of National Land Framework Act (also proposed by HLP - see below)
42(G)(4) (proposed)		requires Commission, Court and Minister to inform municipalities of land granted to claimants “for purposes of inclusion in district land reform implementation frameworks”

Notes:

1. Under the HLP proposed amendments, the new 30 June 2029 deadline only comes into effect once all existing claims have been resolved.
2. Unshaded cells in the HLP column refer to HLP proposed Restitution of Land Rights (General) Amendment Bill
3. Shaded cells in HLP column refer to HLP proposed Restitution of Land Rights Judicial Amendment Bill
4. The HLP also proposes a National Land Reform Framework Bill with the following sections speaking directly to restitution:
   - **A.** s 5(1) - claimants have a choice as to the form of restitution award
   - **B.** s 5(2) - claimants are entitled to opt in/out of group claims
   - **C.** s 5(3) - claimants within the same claim have a choice as to the form of restitution award, and the Commission shall facilitate such choices by allowing subdivision of group claims

D. s 5(4) - people with claims which do not meet or predate restitution criteria may be granted preferential status in redistribution
E. s 5(5) - the Minister must provide reasons to such people as to why they do or do not receive priority in redistribution
F. s 9 - establishes District land reform implementation frameworks which aim (among many other things) to allow for identification of alternative land for restitution and demonstrate how equitable access to land is being advanced through restitution
G. s 11(3-4) - acquisition of land must take into account demands for restitution, informed by area-based planning
H. establishment of Land Rights Protector with mandate (among many other things) to protect land rights subject to and conferred by restitution claims