Land Restitution in South Africa

Overview and Lessons Learned

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Introduction

My presentation to this seminar is a personal perspective, based on direct involvement in some of the processes described. I cannot speak of restitution as a legal expert, but only as a land rights activist who for four years during the 1990s became a restitution implementer in the South African restitution process.[1]

Between 1991 and 1996 I worked for an NGO called the Association for Rural Advancement (AFRA), based in KwaZulu-Natal, first as a fieldworker and then as the Coordinator of its land rights programme. In the early part of this period, we worked closely with communities who were resisting evictions, and others who were beginning to talk of going back to the land that had been taken from them. These courageous groups were often prepared to face the police and the military to defend what was theirs. Year by year their confidence and conviction that they would be able to return, grew.

For years we had been making demands for restitution of land, never sure whether it would happen in our lifetime. When it became clear that there would in due course be a democratically elected government, the possibility became real, and we started helping communities to research and formulate their claims. These were first presented to the Advisory Commission on Land Allocation (a weak and ineffectual body established by the National Party government) and later, from 1995 onwards, before the newly created Commission on Restitution on Land Rights and the Land Claims Court.

In 1996 I joined the National Department of Land Affairs, initially as policy director and later as programme manager of its Restitution section. Two years later, I was involved in managing the transformation process that integrated the department's restitution section with the Commission and designed a more administrative process for those claims settled through negotiation. I left the Commission in August 2000.

The relevance of these personal details is simply that any comments, conclusions and lessons that I might make in this paper are informed and influenced by a succession of rich, but at times tense and frustrating, experiences. I am therefore very pleased that BADIL will be going to South Africa soon to talk to many different role players in the process, as this will certainly provide them with more complete picture than the one I can provide.

Background to Restitution in South Africa

South African history has been shaped by a brutal and drawn-out process of conquest and dispossession of the indigenous people, which culminated in the *apartheid* policies of the National Party government from the 1950s to the early 1990s. The result of this process was that 80% of the population ended up eking a living on 13% of the land, leaving them with little option other than to seek work on farms and in cities owned and controlled by whites.

Between 1950 and 1980, anything between 3 and 5 million South Africans were forcibly relocated. This was part of a policy of racial designation of areas, separation of people, and the creation of various so-called *independent* states for African groups. That the best statistics we have of the total number of people affected remain so vague, in spite of many excellent research initiatives, bears testimony to the vast scale of the processes that were at work. The affected people were regarded as without rights - unimportant, in the way, invisible.

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[1] This paper should be read along with Monty Roodt, *Land Restitution in South Africa.* (available on the expert forum homepage of the BADIL website (www.badil.org). *Also see,* Ruth Hall, *Rural Restitution*, Programme for Land and Agrarian Studies, University of the Western Cape, Cape Town 2003 (No. 2 in the *Evaluating Land and Agrarian reform in South Africa Series*) (available at www.uwc.ac.za/plaas). References to Hall, *Rural Restitution,* are paginated according to the original manuscript.

During the 1970s and 1980s popular resistance to the *apartheid* system intensified. The State responded in a violent and repressive manner, which brought the country to the brink of bloody civil war in the late 1980s. After changes within the ruling party, a process of multi-party negotiations began, resulting in a transitional Constitution in 1994 (the interim Constitution)[2], the first democratic elections in April 1994, and a new Constitution in 1996 (the Constitution)[3].

From the outset the need for land reform was widely recognised. The future ruling party, the African National Congress, pledged to redistribute 30% of all arable land during its first five years of government.[4] There were to be three key instruments to achieve this goal: land redistribution, land tenure reform and the restitution of land rights. The interim Constitution, which came into force on 27 April 2004, prescribed that an Act of Parliament should provide for the restitution of land rights. In November of the same year the *Restitution of Land Rights Act 22 of 1994* (the Act) was passed.[5] This was widely hailed as a victory and a milestone in South African history.

The South African Restitution Process

Purpose and Outcomes

In terms of official government policy, the South African restitution process is intended to:

> *Restore land and to provide other restitutionary remedies to people dispossessed by racially discriminatory legislation and practice, in such a way as to provide support to the vital process of reconciliation, reconstruction and development.*[6]

The intended outcomes of the process are defined as:

- A significant number of substantial restitution awards given to claimants that meet the criteria specified in the Act
- An absence of disputes and conflict
- The preservation of public confidence in the land market
- Frameworks developed for land claims and demands that fall outside of the Act.[7]

Definition of Entitlement

The entitlement to claim restitution was subject to a definition that excluded certain categories of claimant. To qualify for restitution of a land right a claimant:

- Should have been dispossessed…
- of a right in land…
- after 19 June 1913…
- and as a result of past racially discriminatory laws or practices.

In addition, the claimant:

- Should not have received just and equitable compensation in terms of the Expropriation Act
- Should have lodged the claim between 1 May 1995 and 31 December 1998.

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[2] RSA Government, *Constitution of the Republic of South Africa, Act 200 of* 1993 [Assented to 25 January 1994. Date of Commencement: 27 April 1994].

[3] RSA Government, *Constitution of Republic of South Africa 1996* [As adopted by the Constitutional Assembly on 8 May 1996, and as Amended on 11 October 1996].

[4] Some years later the target would be reset to 2015.

[5] RSA Government, *Restitution of Land Rights Act (Act 22 of 1994)* [Assented to 17 November 1994. Date of Commencement: 2 December 1994. Note: Various Amendments].

[6] *White Paper on South African Land Policy*, Department of Land Affairs, Pretoria, 1997, at 50.

[7] *Id.*, at 52.

The 1913 cut-off date, the result of compromise at the multi-party negotiating table, was roundly criticised from many quarters, as it had huge implications for the many groups who had been dispossessed of land prior to the passing of the 1913 Land Act. The redistribution and tenure reform programmes were intended, in part, to compensate for this gap.

Definition of a Right in Land

In terms of the Restitution Act, a right in land is defined as:

> *Any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question.*[8]

Note: While housing and other improvements lost during the dispossession are not explicitly mentioned in this definition, it has been the policy and practice of the restitution programme to include loss of such assets in the calculations and considerations during assessment of claims. In addition, the Restitution Act does prohibit current owners of land subject to a claim from removing or destroying such improvements without permission.[9]

Remedies

The possible restitution remedies were also defined by policy and law. While the government has stated a preference for restoration of the actual land lost, restoration is not a right. In cases where restoration is not feasible, the claimant is entitled to an alternative remedy ("equitable redress") in the form of:

- Provision of alternative land
- Payment of compensation
- Priority development assistance; or
- A combination of the above.

Note: Particularly in the case of rural communities, rights in land were often held in common, by a group, prior to the removal. In such cases a restitution award could be made to a group. A special legal land holding mechanism, called a Communal Property Association, was available to assist land reform (including restitution) beneficiary groups to hold land in common.[10]

Role of the State

Restitution claims are against the State, which has to fund the entire process (including all awards), implement it and also act as respondent when claims land in court.

Current Owners

Current owners of land being claimed are able to contest claims, and are entitled to "just and equitable" compensation should their land be awarded to the claimant.

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[8] *Restitution of Land Rights Act (Act 22 of 1994)*, *supra* note 5, under definitions in the Act.

[9] Note that housing as a right is dealt with separately from the restitution process, in s.26 of the Constitution:

> 26. (1) Everyone has the right to have access to adequate housing.
> (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
> (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

[10] RSA Government, *Communal Property Associations Act (Act 28 of 1996)*.

Key Institutions

The interim Constitution did not only establish the entitlement to claim restitution and direct that a law should be passed to give effect to this. It also made an important institutional prescription, for the establishment of a *Commission on Restitution of Land Rights* that would receive and investigate claims, mediate and settle disputes arising from claims, and report to the courts on any unsettled claims. When the Restitution Act followed a few months later, it expanded on the powers and functions of this Commission.

The Act also provided for the establishment of a dedicated *Land Claims Court* to hear cases, to consider and ratify recommendations made by the Commission, and other functions.

The third key institution in the restitution process, the *Department of Land Affairs*, was given responsibility for administering the Restitution Act, which would involve the multiple roles of negotiator on behalf of the State, respondent before Court, implementation agency, and financial manager of the process.

These are the three key institutions tasked with processing claims. In the course of 1995 these institutions began to establish themselves and develop the necessary systems and mechanisms.

From 1 May 1995 restitution claims began to stream in. By the time the final deadline of 31 December 1998 had passed, more than 63 000 restitution claims had been lodged. This number has subsequently risen, as the Commission sorted through the claims and found need to split up some of them (the last figure quoted was 72 975). While many of these are urban, mostly individual claims, a significant number, between 20 and 25%, are rural, mostly group claims. Group claims often represent groups or communities of hundreds and even thousands of families. Clearly the institutions established to deal with these claims would have their work cut out for them.

Workflow

Under the South African restitution system, any given claim is processed through six broad phases:

1. Lodgement and Registration
Including claim received, acknowledged and registered.

2. Screening and Categorisation
Including background research, screening, feasibility check, batching.

3. Determination of Qualification
Including consideration, decision, claimant response, possible referral to court for declaratory order, decision on priority, publication in Government Gazette, notification of interested parties.

4. Preparation for Negotiations
Including calculation of monetary value of claim, developing of remedy options, informed choice by claimant, identification of interested parties, outstanding research, development of negotiating positions.

5. Negotiations
Including meetings of parties, negotiations process, mediation, resulting in:
EITHER
agreement between parties → deed of settlement → Ministerial approval
OR
no agreement → referral to court.

6. Implementation

Including transfer of asset (land transfer, payment of compensation, other), settlement and development planning, post-award support.

Progress

The achievements of the South African restitution process are substantial. In a relatively short time laws were passed, mechanisms created and claims resolved.

- In 1990 there seemed to be no realistic hope of any genuine restitution programme in South Africa.
- However, by 1995 the right to claim restitution had been constitutionally acknowledged, a law had been passed to give effect to that right, and a dedicated Commission and Court had been established to implement the process.
- By 2000 a number of legal and institutional obstacles and blockages had been identified and, to some extent, dealt with.
- And by 2003 around half of the lodged claims had been settled.[11]

Overall, there is no doubt that the process has delivered positive results for many South Africans. Admittedly the start was very slow. In the first five years a great deal of time was taken up simply receiving and sorting through the thousands of claims received, and sorting out legal and institutional blockages. Five years into the process, scarcely 50 claims had been resolved. However, by April 2003 the number of resolved claims was reported as 36,488.[12]

Problems and Challenges

Implementing restitution in South Africa was always going to be a difficult task. The process was, after all, trying to address the effects of decades of systematic dispossession and the forced relocation of millions of people. In this section some of the main challenges faced are identified.

Onerous Information Requirements

Various investigations are required to obtain the level of evidence needed to prepare a claim properly for decision and resolution, resulting in a resource-intensive, cumbersome process.

For example: For a ruling to be made on whether a case qualifies for lodgement, substantial information is required, including: Was the claimant dispossessed of a right? Was this dispossession linked to a racially discriminatory law? Was the right lost during the specified period? Was compensation received and if so how much?

To process the claim further, the nature of the claim and the feasibility of the preferred remedy has to be established: What remedy is sought by the claimant? Are there any other claimants? Where is the land being claimed? Is restoration feasible?

In terms of the Constitution the rights of the current owner/s of the claimed property are protected. Hence it is necessary to establish: Who is the current owner? What is their response to the claim? Do they dispute it? Can they be convinced to sell the land by voluntary agreement?

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[11] There are some questions around how claims resolved have been counted and whether the percentage is in fact this high. *Also see,* Hall, *supra* note 1, at 27. However there is no doubt that significant progress was made in terms of sheer numbers of claims settled.

[12] Thoko Didiza, Minister of Land Affairs, during her budget vote in Parliament, April 2003, as reported in IRIN, *South Africa: Long Road to Empowerment under Land Reform* (available at www.irinnews.org/webspecials/landreformsa/South-Africa.asp).

Financial issues also have to be determined: What is the total value of the claim? What improvements were on the land at the time of dispossession? What improvements are there now? Did the claimants receive compensation and, if yes, should this be factored in? [13]

Collecting all this evidence, pertaining to events that took place a long time ago, in some cases involving large groups of people and many portions of land, is a cumbersome process requiring significant resources. Records are often inaccurate, incomplete or non-existent. At times new evidence comes to light, such as the discovery that the same land has been claimed by another individual or group, calling into question the evidence already collected.

Duplication and Confusion of Institutional Roles

The number of institutions involved further complicated the processing of claims. The Commission, the Court and the Department of Land Affairs each developed their own set of rules and procedures to deal with cases. In the early years of the programme, a great amount of duplication and second-guessing took place.

The initial idea of an independent Commission, to investigate and resolve claims, was a good one, particularly if was to be fully autonomous, armed with quasi-judicial and financial powers, and well resourced.

However the Commission that was established was given limited resources, investigative powers only, and so able to do little more than make recommendations to the Minister and the Land Claims Court. In cases referred to Court, the Court felt obliged to check all information, using much stricter rules of evidence. The result was a legalistic more than a developmental approach.

The Commission also lacked any financial authority. Instead it was dependent on the Department of Land Affairs, the very institution that was supposed to represent the State as respondent in cases. In this context delays occurred and frustration grew, resulting in mistrust and conflict.

The problems of duplication, over-legalistic interpretation and mistrust between the key institutions was the subject of a Ministerial review which brought about a number of positive changes, allowing for much closer cooperation between the Department and the Commission, and also for the adoption of a more administrative approach to claims resolution from 1998 onwards.[14]

Nature of Claims Settled

The overwhelming majority of resolved claims are individual, urban claims, settled through payment of compensation.[15] This tendency to go for the easier, quicker option, by paying compensation rather than restoring land, has been criticised by NGOs, who argue that the State has failed to integrate restitution properly with the broader land reform programme, and in the process lost the opportunity to shift the skewed racial patterns of land ownership in South Africa:

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[13] *Also see,* Hall, *supra* note 1, at 12: "The MVOC [Monetary Value of a Claim] can be calculated in different ways and the CRLR has not specified which approach is to be used by the [Commissioners]. One approach is to establish the *current value* of the land that was lost or of equivalent land nearby. This approach is usually used where there have not been substantial improvements on the land and where claimants received no, or insignificant, compensation. Another approach is to determine the *historical value* of the land rights at the time of dispossession, less the compensation received at the time and plus current rand values using the consumer price inflation index excluding mortgage costs (CPIX). Compensation received at the time of dispossession can be taken into account when calculating the value of the land rights lost, but is not always simply discounted.

[14] The main example of enabling powers to effect the administrative approach, *see Restitution of Land Rights Act (Act 22 of 1994), supra* note 5, s.42D attached as Annex A.

[15] *Also see,* Hall, *supra* note 1, at 28.

> *As of the end of 2001, less than 2% of the land has changed hands from white to black through the land reform programme… While monetary compensation is one form of redress, it is not land reform because it does not involve the transfer of land rights. The urban bias of restitution delivery also means this programme has so far done little to transform rural property relations, with most rural restitution claims still outstanding.*[16]

These points are certainly valid, although there is no denying that many claimants do prefer compensation and have the legal right to opt for it as a remedy. This is the case especially where the next generation has made a life for themselves in new communities and do not want to relocate. In some cases claimants have tactically insisted on full restoration until the last possible moment, and then opted for compensation. This might be due to the symbolic power of 'the return', or the fact that land is a tangible asset while monetary value is a more slippery concept and so feels less secure in negotiation, or a combination of both.

In rural cases individuals and groups are often more determined to have original land returned to them, either for fulltime settlement, or for part-time use, or in the hope of using in the future. The problems that have arisen relate to support and development needs. Many of these settlements are remote and so difficult and expensive to service and support. Others are in the middle of highly developed commercial farmland, which presents another set of development challenges. The level of settlement and development support provided by the State to restitution claimants has been particularly weak.

Legal Constraints

A number of legal constraints also remain. For example, the process of acquiring land on a *willing-seller* basis from current owners (with the only alternative being to refer the matter to Court) slows down land restoration cases and increases costs. In an attempt to deal with this problem, amendments to the Act currently before Parliament propose to give the Minister substantial expropriation powers.[17]

Group and Communal Claims

Rural claims generally involve more claimants, larger tracts of land and more complex development challenges. Restitution officers have therefore found processing such claims to be much more complicated, and requiring a wider range of skills and input. As Ruth Hall points out:

> *Groups of people jointly claiming land are usually internally differentiated along lines of gender, generation and class. Some dispossessed communities were geographically scattered across the country. These differences often manifest in a degree of contestation regarding how the land is to be used and managed and how decisions should be taken. For this reason, intensive facilitation of claimant groups is crucial from the point at which options for claim settlement are discussed. A number of practitioners cited experiences in which community representatives do not report back to the rest of the claimants, giving rise to later conflicts. The danger of the more vocal and powerful 'representatives' acting unilaterally also exists after the transfer of land when the stakes are raised as decisions need to be made about access to infrastructure, land and other natural resources. For example, who will be able to occupy a farm house, who will have access to what land and who will be able to chop down trees to sell firewood?*
>
> *Trusts and communal property associations (CPAs) formed in terms of the Communal Property Associations Act are two types of legal entity that restitution claimants have used to jointly acquire, hold and manage land in terms of a written constitution or a trust deed. A CPA has an elected committee, accountable to all its members. Most CPAs stipulate that at*

[16] Wellington Didibhuku Thwala, "*Land and Agrarian Reform in South Africa*", National Land Committee, n.d. (available at www.nlc.co.za/pubs.htm).
[17] *See,* RSA Government, *Restitution of Land Rights Amendment Bill*, B 42B-2003.

30–50% of the committee members must be women, but in practice women are often marginal both in numbers and in their ability to speak and to influence decisions. The potential for restitution to impact positively on the livelihoods of poor rural communities is strongly related to the viability of these important institutions. Complexities in how CPAs are constituted and how they function have rendered many ineffectual or defunct, with an undisclosed number having been liquidated – in effect, reversing the land reform gains they promised.[18]

The Broader Land Reform Context

As indicated above, restitution was envisaged as part of a comprehensive land reform programme, which included two other programmes: land redistribution and land tenure reform. Progress on both these other programmes was stalled for a number of years in the mid-1990s, due to a shift in policy following on a change in Ministers, and although some progress has since been made, it is almost negligible if measured against the targets government had set itself. The extent of the problem is illustrated in the report below:

The notes of a think-tank meeting in Pretoria ... organised to seek ways out of the impasse on land reform in the region, reflect the results of these difficulties: "Land redistribution to provide land for the landless in rural areas has been very slow, and falls far below the government's target of transferring 30 percent of agricultural land by 2015."
"At the current rate, it is unlikely to reach 5 percent by that date," the meeting concluded. Also noted was the "general failure to deliver post-transfer support services to land reform farmers". The recently announced budget of R1.9 billion (about US $253 million) over 2003/04 and 2004/05 for the land sector was welcome. However, it was not clear "how this relates to the plans for land reform".
The failure to make substantial headway against the large number of outstanding rural claims (reported as 10,040 by the minister in her budget speech of April 2003) is a growing cause of concern, because this is where grievances are most likely to spill over into violence," the think-tank commented.[19]

Thus, in spite of relatively significant progress made by the restitution programme, this is negated by the inadequate progress made, both in processing rural claims, and by land reform as a whole. Land issues in South Africa are currently the subject of heated debate and the cause of dangerously high levels of tension. A combination of widespread poverty, tenure insecurity and landlessness; contradictory land reform policy; delayed implementation; and obstructive resistance to land reform by small but powerful economic interest groups, has caused conflicts between and within communities, NGOs and government. Developments around land reform in neighbouring Zimbabwe have raised the stakes considerably, adding to the tension.[20] As one commentator has summed up:

In short, for the sake of long-term political and economic stability, it is better for a country like South Africa, with the highest income disparity in the world, to face the pain of a radical redistribution of assets through land reform now, than to face the long-term instability which will emanate from delaying the resolution of the land question.[21]

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[18] *Also see,* Hall, *supra* note 1, at 21-22. *See also* the report on the problems experienced by the CPA of the San community of the Northern Cape in "Government Prevents San Land Sale", *Business Day*, 25 September 2002 (available at www.bday.co.za/bday/content/direct/1,3523,1184555-6099-0,00.html).

[19] Reported in, *South Africa: Long Road to Empowerment under Land Reform*, *supra* note 12.

[20] *See,* Ben Cousins, "The Zimbabwe Crisis in its Wider Context: The Politics of Land, Democracy and Development in Southern Africa", final edited draft, July 2003 (copy with author); *also see* statements by Chief Land Claims Commissioner, Mr Tozi Gwanya, in "SA Not Going the Zim Way", *News24*, 8 September 2003 (available at www.news24.com/News24/South_Africa/News/0,,2-7-1442_1413382,00.html; and "South Africa: Potential for Conflict over Land", IRIN News (available at www.irinnews.org/report.asp?ReportID=31207).

[21] Didibhuku Thwala, *supra* note 16, at 19

Lessons

For me one of the main lessons from the South African restitution process, which might be of relevance to other post-conflict settings, is of an apparently inescapable tension between two urgent and important objectives, namely:

1. The need to reconcile a bitterly divided population, and
2. The need to return to people what was cruelly and unlawfully taken away from them.

The mechanics of receiving claims, calculating losses, finding records, hearing testimonies, tracing relatives, determining boundaries, and so on, is not easy. However, with the right resources, a willingness to be flexible, and enough determination, they can be done.

Much more daunting a challenge is to implement restitution in such a way that genuine reconciliation is promoted rather than undermined. In some cases, of course, return of what was lost will be relatively uncomplicated. But in other cases quite the opposite is true, and you soon find yourself trying to deal with multiple claims over the same asset, with conflicting rights, and with obstructive groupings who also have rights, in spite of the fact that they and their predecessors not long ago systematically denied those very rights to others.

In my view it took extraordinary courage for the majority leadership in the pre-election negotiations in South Africa, to agree to as much protection as they did for the mostly white beneficiaries of colonial dispossession, Union and apartheid. They agreed to the adoption of a Constitution which gave equal rights to all, and put in place a land reform programme - including restitution - which implicitly let the beneficiaries of dispossession off any responsibility for the illicit benefits they had received. As a result the new State took upon itself full responsibility for restitution.

In doing so the State ended up with the responsibility not only to settle every valid restitution claim, out of its coffers, but also to stand trial, as respondent in the Land Claims Court, in every case not amicably settled outside of Court. The benefits of this compromise were clear: without agreeing to this path, it is highly unlikely that there would have been a peaceful settlement at all.

But the compromise came at a price and the resulting restitution process was institutionally confusing, painfully slow and, in the eyes of many, grossly inadequate. Exactly how high that price will be in the South African case, is not yet clear. The example of Zimbabwe, right next door, certainly serves as an incentive for all parties to find a way to keep it as low as possible.

In Conclusion

Is restitution complex?	YES
Is restitution difficult?	YES
Does restitution at time seem impossible?	YES
Is restitution frustrating, tense and riddled with conflict?	YES
Are the outcomes to restitution often contradictory?	YES
Will all the objectives of a restitution process ever be met?	NO
Will claimants be satisfied with their restitution awards?	NO
Is restitution possible?	YES
Is restitution important?	YES
Is restitution worth it?	UNDOUBTEDLY

Why? Because by taking restitution seriously, and working hard to realise it, we declare our solidarity with individuals and communities the world over who have arbitrarily and illegally been deprived of their land, housing and property. We re-affirm their rights and pave the way for them to receive some remedy.

At the same time we send a signal to oppressive regimes everywhere that, in the long run, their actions and policies will be legally challenged and reversed; and that their abuse of the vulnerability of people, by taking away their homes and land, breaking up their communities and deliberately impoverishing them, will not go unpunished.

Annex
Extract: Restitution of Land Rights Act 22 of 1994

42D POWERS OF MINISTER IN CASE OF CERTAIN AGREEMENTS

(1) If the Minister is satisfied that a claimant is entitled to restitution of a right in land in terms of section 2, and that the claim for such restitution was lodged not later than 31 December 1998, he or she may enter into an agreement with the parties who are interested in the claim providing for one or more of the following:

(a) The award to the claimant of land, a portion of land or any other right in land : Provided that the claimant shall not be awarded land, a portion of land or a right in land dispossessed from another claimant or the latter's ascendant, unless-

(i) such other claimant is or has been granted restitution of a right in land or has waived his or her right to restoration of the right in land in question; or

(ii) the Minister is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land;

(b) the payment of compensation to such claimant;

(c) both an award and payment of compensation to such claimant;

(d) the acquisition or expropriation by the State of such land, portion of land or other right in land;

(e) the manner in which the rights awarded are to be held or the compensation is to be paid or held; or

(f) such other terms and conditions as the Minister considers appropriate.

(2) If the claimant contemplated in subsection (1) is a community, the agreement must provide for all the members of the dispossessed community to have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including a tenant, and which ensures the accountability of the person who holds the land or compensation on behalf of such community to the members of the community.

(3) The Minister may delegate any power conferred upon him or her by subsection (1) or section 42C to the Director-General of Land Affairs or any other officer of the State or to a regional land claims commissioner.

(4) The Director-General of Land Affairs may with the consent of the Minister delegate to any officer of the State or a regional land claims commissioner any power delegated to the Director-General under subsection(3).