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The 1913 Cut-off Date for Restitution of Dispossessed Land in South Africa: A Critical Appraisal

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Abstract

Land is a vital resource whose ownership and control has been the most contentious issue in South Africa since the arrival of the white settler in the country. The early history of the country can, with some justification, be summed up as a gigantic struggle for land between the indigenous peoples and white settlers. The struggle for access to land remains a perennial problem in this country. This paper investigates the land restitution regime set up following the introduction of post-apartheid democratic constitutions of 1994 and 1996. It argues that the constitutional limitation on land restitution only to land dispossessed on or after the 19 June 1913 tilted the balance in the struggle over land between South Africans of African descent and those of European extraction, in the latter's favour. This defeats the indigenous South Africans' expectation that the ANC government will be committed to a new land policy that makes the unencumbered restoration of dispossessed land a human right.

Résumé

En Afrique du Sud, la terre représente une ressource vitale dont la propriété et le contrôle constituent un des plus épineux problèmes, depuis l'arrivée de l'homme blanc dans ce pays. Les premières heures de l'histoire de cette nation peuvent, à juste titre, être résumées par une lutte acharnée pour le contrôle de la terre, entre les populations indigènes et les colons blancs. La lutte pour l'accès à la terre reste toujours un problème permanent dans ce pays. Cet article analyse le régime de restitution foncière mis en place après l'introduction des constitutions post-démocratiques de 1994 et 1996. Il affirme que les limites constitutionnelles délimitant le principe de restitution aux terres ayant fait l'objet d'expropriation à la date du 19 juin 1913 ou après, a fait pencher la balance en faveur des Sud-

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africains d'origine européenne, au détriment des Sud-africains d'origine africaine. Cette situation met à terre les attentes des Sud-africains locaux, selon lesquelles le gouvernement de l'ANC mènerait une nouvelle politique considérant la restitution des terres expropriées comme un véritable droit humain.

The 1913 limitation date: A critique

The Restitution of Land Rights Act 22 of 1994¹ and Republic of South Africa Constitution Act 108 of 1996² both have identical provisions limiting restitution to the restoration of land dispossessed after the 19 of June 1913.³ This cut-off date of 19 June 1913 is significant because it is the date that the notorious Land Act 1913 came into effect. The Act set the foundation for subsequent laws and administrative fiats that saw whites appropriating eighty percent of the land in the country while squeezing the black majority constituting about eighty percent of the population into thirteen percent of mostly inhospitable land.⁴ This had a devastating impact on the rights of South African blacks to land and has influenced land policy profoundly thereafter.⁵ Miller and Pope⁶ have described the limitation of restitution claims to 1913 as a critical aspect of the process, resulting from a pragmatic compromise. These authors identified the basis of this compromise thus:

- (i) Aboriginal title should not form the basis of restitutionary claims because the countries in which they have been applied are historically and demographically different from South Africa;
- (ii) Aboriginal title is an inappropriate basis for land claims because (a) the ownership paradigm of ancient times is different from what it is now (b) some of the lands settled on by whites were *terra nullius*;
- iii) Fear that historical claims will create problems that will be impossible to solve as it may serve to awaken destructive tribal rivalries over land that have been possibly settled on by different ethnic groups.

B du Villiers⁷ equally agrees with the limitation of restitution to 1913 because 'it may be very difficult for many black tribes or ethnic group to demonstrate that their traditional title had not been extinguished through previous acts of government'. This paper concedes that the massive demographic shift, the absence of written record and the passage of time are formidable obstacles to any restitution claims.⁸ Despite this point, it is argued that this should not have led to the dismissal of the different views on the recognition of aboriginal titles.⁹ Bennett and Powell have indicated that aboriginal title can be a legitimate and working part of South African law.¹⁰ Reilly similarly stressed that on the basis of international and common law jurisprudence and practice, there are good reasons for South African law to support claims of aboriginal title.¹¹

It is in the light of the above unrealistic for the government to have assumed that fixing the cut-off date on the 19 June 1913 and thereby eliminat-

ing aboriginal title was the best way to go in the circumstances of the land history of South Africa. The historical and demographic differences in societies like Canada and Australia did not prevent South African courts from relying on precedents in these countries in support of constitutional interpretations in major decisions touching on significant areas.¹² Moreover, one only needs to turn to the Australian case of *Mabo v State of Queensland (No. 2)*¹³ to challenge the South African position in this respect. Firstly, the *Mabo* decision recognised aboriginal titles in the Murray Islands,¹⁴ in spite of the fact of the close similarities between the colonial histories of land in both countries. The Australian High Court, quite rightly, rejected the self-seeking contention that the lands in Australia were *terra nullius* before 1788.

The contention that some of the land occupied by settlers in South Africa was *terra nullius* and not appropriate for restitution is, with respect, not convincing. It seemingly reflects the tendency to devise exculpatory reminiscences by those who having unjustly enriched themselves with African lands, seek to frustrate its restoration. Although the passage of time may have blurred evidence of some acts of dispossession, a functional restitution of a historical claim is still perfectly possible in the country.

Klug¹⁵ has demonstrated that it is possible to identify land dispossession dating back to the 1880s. He gives three examples in which lands were dispossessed through a conscious process of corruption and fraud before 1913 and which are capable of forming the basis of claims for restitution. First in 1884, the Boers recognised two settlements and 95 farms as belonging by their own admissions, to Africans in the Thaba’Nchu area of the Barolong region of the Orange Free State. However, by 1900 only 54 of these farms remained in the hands of the Barolong landowners; the rest having been lost to whites through forfeiture as a consequence of dubious mortgages that the natives allegedly could not pay back.¹⁶

Second, the white settlers in Griqua land after the annexation of 1874 owned just 63 of the approximately existing 505 farms in the area. Subsequently these titles of the Griqua landowners passed into the hands of white merchants and speculators who insisted that debts be paid in land. This practice was so successful that the Griqua landowning community allied to the colonial administration became a community of landless people with a bitter grudge against their white allies.¹⁷

The third and Klug’s¹⁹ final example relates to lands lost to the lawyer and parliamentarian Va Fenner-Solomon. This lawyer claimed to have extended lavish loans including legal fees to the natives of the Kat River. Following the grant of titles to these natives after the Boedel Erven Act of 1905, he caused these natives to sign legal documents making their properties expropriable by him for any default. The natives were later to lose their lands en masse to

him because of so-called defaults in payment. It is obvious that had these victims been white, it would have been impossible for such fraudulent dispossession of their property to occur.

Limiting the restitution process to 1913 has clearly defeated claims to any of the above clearly identifiable dispossession. This is objectionable for two important reasons. The victims and their descendants are refused ownership of their land because ownership ought to include the right to reclaim one's thing from anyone who wrongfully retains it.¹⁹ This right should not be defeated by a mere passage of time.

The restitution process is based on the Aristotelian theory of corrective justice. Clearly, where as in the identified cases above, this could still be done; it would theoretically be unsound to foreclose it by an arbitrary limitation of time provision. This compels a re evaluation of the limitation of restitution process to 1913. The restitution claim through the LCC to the Constitutional Court in *Alexkor Ltd & Anor v The Richtersveld Community & Anor*²⁰ has introduced interesting insights on this issue. Although the case raised a claim based on the doctrine of aboriginal title, the LCC held that it did not have the powers to determine the issue of aboriginal title. It opined that the High Court could have the power to develop the common law to incorporate it. Equally interesting is the approach of the Supreme Court of Appeal (SCA). Although the court discountenanced the doctrine of native title as not neatly fitting into South African common law, the SCA's approach to the role of custom 'and its focus on indirect discrimination, stress the importance of the decision with regards to recognising claims for aboriginal title and its incidences'.²¹

The Constitutional Court deliberately used the language of aboriginal title and drew heavily from countries that have recognised the title. It held that it could competently assume jurisdiction on aboriginal title because this comes within the contemplation of issues bearing on or having a logical connection to the claim of the community.²² The Court noted that its approach is justified because of the Court's broad jurisdiction to determine constitutional matters and the need to avoid an artificial fettering of its function when obliged to determine a constitutional matter.²³

Case for the amendment of the limitation clause

This writer contends that the issue should no longer be whether the courts could accommodate restitution for land dispossessed before the 19 June 1913. It should rather be the extent to which this provision, that short shrifts the rights of millions to repossess lands wrongfully taken from their forebears, should be revised. The writer has adopted this view in spite of the Constitutional Court's recent decision in the *Alexkor Ltd* case that:²⁴

in the light of the judgment in *du Plessis and Others v De Klerk and Anor* the drafters of the Constitution were aware of the general rule against retroactivity. They obviously applied their minds to this aspect in relation to the restoration of land and land rights, which has always been an issue of supreme importance... Had there been any desire for the provision of the 1996 Constitution to have retroactive effect beyond this date, one would have expected this to have been so enacted. It was not.

Although the Constitutional Court expressed the above strong views on the apparent finality of the limitation date, the judgment is nonetheless significant in so far as charting the future course for restitution is concerned. It seems plain from a careful reading of the entire judgment that the Court thinks the limitation of restitution for dispossession to 1913 ought to be subject to a reappraisal. This much is deducible from the court's statement that 'this does not mean that regard may not be had to racially discriminatory laws and practices that were in existence or took place before that date'.²⁵

It seems reasonable and safe to assume (from the language of aboriginal title used by the constitutional court) that the court felt called upon to pronounce on the effect of prior 1913 Acts on the land in question as an issue connected with a decision on a constitutional matter.²⁶ This much is borne out by the court's statement that:²⁷

A more difficult question is to determine whether this court has the jurisdiction to deal with all issues bearing on or related to establishing the existence of these matters. For example the question might be asked whether the issue concerning the existence of the community's rights in land prior to the colonisation of the Cape, or the content or incidence of such rights, constitute in themselves 'constitutional matters' the same might be asked concerning the continuous existence of such rights after the British Crown's annexation of the Cape in 1806, or after the 1847 Proclamation or the subsequent statutory and other acts thereafter.

It is imperative that the question of access to land through the restitution process that was characterised in this decision as 'of supreme importance' be viewed in relation to what has been achieved eleven years after democratic transformation. Recent comments on the *Alexkor* case by academics have suggested that the Constitutional Court employed the language of aboriginal title in the case deliberately. K Lehmann²⁸ has for this reason construed the decision as leaving open the possibility that 'the doctrine may yet at a future date find its way into the South African legal order, should an appropriate case come before a sympathetic bench'. Although Lehmann has criticised the doctrine as inappropriate for South Africa, he recognised that moving the restitution date backward represents at least for the proponents of the doctrine of aboriginal title a possible solution to the problem posed by the Restitution

Act as amended. Jeannie Van Wyk²⁹ was more categorical in her argument that the constitutional court is moving towards the recognition of aboriginal title. According to her, the court's finding that:³⁰

the Richtersveld's community had an indigenous law communal ownership of the land and minerals at the time of annexation in 1847, which was a separate form of ownership from the common law ownership we know today, should support the view that the doctrine of aboriginal title should be recognised in South Africa... the constitutional court decision begins to open the door to claims based on aboriginal title.

These views support the contention that on a reflective interpretation of the *Alexkor Ltd* decision one could reasonably attribute to it a justification for the amendment of the provisions of s 25(7) of the 1996 Constitution to accommodate the restitution of pre-1913 dispossession. Indeed, this writer agrees with AJ Van Wyk's interpretation of *Alexkor* as beginning 'to open the door to claims based on aboriginal title'.

That the judgement constitutes the green light for the extension of restitution to cover the restoration of land dispossessed prior to 1913 is also the reasonable inference to be drawn from the result attained by the two-pronged approach adopted in *Alexkor*. Firstly, by holding that it had jurisdiction to hear the case because it is an issue logically connected to a constitutional matter, it brought these acts of dispossession within the restitutionary framework contemplated by s 25(7) of the Constitution and s2 (1) of the Restitution Act as amended.

The second reason for this inference is based on the statement in the judgement that:³¹

For the same reason, this court has jurisdiction in relation to all intervening events in relations to which it could be suggested that the community had lost a right on land. This court likewise has jurisdiction to determine all issues relevant to the matters that has to be established under s 2(1) of the Act, whether anterior thereto or not.

This passage taken together with the writer's prior observations on the court's competence to determine the wider jurisdictional questions touching on what constitutes constitutional matters demonstrates the court's desire to see changes to the constitutional limitation date. This conclusion is irresistible because on the determination that a dispossession occurred before 1913 the consequential question of whether such a land should be restored falls within the definition of all the issues relevant to s 2(1) of the Act. Moreover, the question of the restoration of the land is anterior to a finding that a right in land had been lost. The court was, in this writer's opinion, clearly cautious

about the tendency to be schematic and artificially fetter its jurisdiction when it stated thus:³²

The wide construction is consistent with the purpose of the provision. It is intended to extend the jurisdiction of this court to matters that stand in a logical relationship to those matters that are primarily, or in the first instance, subject to the court's jurisdiction. This underlying purpose is to avoid fettering, arbitrarily and artificially, the exercise of the court's functioning when obliged to determine a constitutional matter.

Besides, the Constitutional Court's finding that the Lands Claims Court (LCC) has jurisdiction to develop the common law as it relates to native title can also reasonably be construed as a green light for amending the provision under reference. Otherwise to what effect is this jurisdiction when the various provisions dealing with the limitation for the restitution of dispossessed land are so clear and unambiguous? Put differently, why should the LCC have the jurisdiction to develop the common law as it relates to dispossession dating back to the British crown when as the Constitutional Court itself observed dispossession that took place before the 19 of June are not actionable? It is plain that the court had in mind the desire to draw attention to the limitation of restitution as it now stands because it seemingly fetters its functioning artificially. The current state of the law is a matter of grave concern because it continues to tilt the scale of justice disproportionately in favour of the dispossessor while the dispossessed continues to live in desperation.

The general slowness of the land reform delivery rate expressed by Cousins, Chigara and Lahiff are well founded. In the specific case of restitution, it failed to deliver access to the majority of South African victims of forced removals because of the constitutional limitation. Although it can be suggested that this limitation was necessary for post-apartheid reconciliation, reconstruction and development, it must be criticised for failing to prioritise justice for previously disadvantaged indigenous people. The limitation ignores the fact that the dominant context of the country's land history is a recognition that land was taken from indigenous people in circumstances that to this day are a source of pain and tension. It will appear that the government endorsed the contention that rectifying past injustice through a radical restitution scheme represents a superficial understanding of the historic realities of South Africa that for some is the fact that the restitution of dispossessed land is not the best way to go.³³ The writer not only recommends this amendment but also calls for a further consequential revision of the Restitution Act as amended extending the time for the lodgement of restitution claims.

The amendment of the Constitution to accelerate a rule of law-based delivery of restitution of land should not in principle be objectionable because it is

both feasible and legitimate. Reference may here be made to the fact that Canada that has a similar history of dispossession has had to amend its constitution to accommodate claims based on aboriginal title.³⁴ In proposing these amendments, one is not oblivious of the fact that the limitation of restitution to the 19 June 1913 was influenced by certain concerns. It was alleged that to extend restitution beyond this date would create a potentially explosive situation capable of precipitating violent intra- and inter-tribe conflicts because of past overlapping claims over land. Secondly, it was thought that it would be difficult for persons and communities to establish their claims for dispossession were it to be extended beyond the prescribed date.³⁵

In dealing with the first concern and the writer's recommendation that the constitution be amended, it is imperative for South Africa to draw the right lessons from events currently taking place in Zimbabwe, because the latter's land dispossession history is intimately connected to that of South Africa.³⁶ The limitation placed on restitution for dispossessed land in South Africa is the result of compromises reached with parties representing the interest of white privilege in the same way as the independent Constitution of Zimbabwe was circumscribed by compromises exacted in the Lancaster House Agreement.

It is necessary for South Africa to avoid a situation whereby it would be stampeded by pressure from the landless into haphazardly amending the Constitution as Zimbabwe did, particularly in 2000.³⁷ A crisis-induced amendment as happened in Zimbabwe has led to land invasions, deaths and major disruptions.³⁸ There are indications that some South Africans are increasingly becoming impatient with the perceived slowness of the land restitution scheme which they see as the result of a deliberate policy of appeasement of present landowners.³⁹

The land situation in Zimbabwe has also demonstrated that extending the land restoration process to incorporate aboriginal title need not necessarily awaken and or prolong destructive ethnic and racial rivalries⁴⁰ amongst the different ethnic groups in the country. While it is admittedly the case that the different ethnic nationalities in Zimbabwe such as the Shona, Ndebeles etc., had in the past fought over land, this has not in anyway resurfaced in the context of the country's policy of land restoration which does not have any limitation period.⁴¹ The Zimbabwean experience rather shows that the danger to be avoided is to allow frustration with perceived impediments created under the present structure of s 25(7) and the Restitution Act as amended to cause the people to take matters into their own hand.⁴²

The *Alexkor Ltd* case has shown that the anxiety over how to establish pre-1913 dispossessions for the purpose of restitution is unfounded. Without expressly saying so, the Constitutional Court demonstrated that it is perfectly

possible to establish a dispossession *ante* dating 1913. The Court was able to adequately answer the question whether the Richtersveld community had rights over land and the content of this right as at 1847 prior to the British crown acquiring sovereignty over the land. It was pointed out that in making a determination of this nature, the adjudicating tribunal must do so by reference to indigenous law rather than the common law.

The court's view that 'the undisputed evidence shows a history of prospecting in minerals by the community and conduct that is consistent only with ownership of the minerals being vested in the community'⁴³ is instructive. It shows that indigenous land rights and the manner in which this matter had been dealt with can be conveniently ascertained even when this occurred before the limitation period. It also stated quite graphically the way forward with regard to how this should be done.

Such evidence of what one might call the root of title and the subsequent dispossession of the indigenous people could be derived from witness testimonies and writers' accounts. The sources included in the particular case of the Richtersveld community 'a text describing the long history of copper mining in Namaqualand by the indigenous peoples'.⁴⁴ There is no reason why it should not be possible to amend s 25(7) particularly as the reasons for its enactment are untenable in the first place.

Conclusion

The specific issue of dispossession and access facilitation measures to land for the dispossessed through legislation is in a take-off stage. Scholars such as B. Cousins⁴⁵ and B. Chigara⁴⁶ have in recent studies criticised the country's land delivery rate as slow. Indeed, the former describes the reforms introduced by the property clause of which land restitution is a central part as 'minimalist'.⁴⁷ Cousins pointedly notes that there is a gap between legislation and implementation because of the compromises that were agreed upon in the negotiations preceding the 1994 elections.

Chigara for his part points to the frustration caused by the slowness of the reforms to deliver access to the dispossessed, and argues that this has potential risks for the country. Chigara observes in this regards that the Land Access Movement of South Africa (LAMOSA)⁴⁸ has considered the Zimbabwe style land invasion a viable option to the South African approach. It is difficult to dispute the conclusions of these studies because cumulative statistics of settled restitution claims from 1995 to March 2004 reveal that only 17,631 hectares of land have been restored to 662,302 beneficiaries so far.⁴⁹ The slowness of land restoration through the restitution mechanism makes the alternative of a disorderly people-driven land invasion tempting and appealing.

An amendment to broaden the restitution process in terms of the arguments in this paper will help dispel the misgivings of the landless that the ANC is pandering to white interests - the core of which is to ensure that dispossessed land was to remain white property forever.⁵⁰ Such an amendment would demonstrate that South Africa would have broken clean of a land policy which was expressed by the colonial administrator Sir Cradock in 1811 as requiring each white land owners to look upon it as his eternal estate, of which 'no future event can injure him, or render it unproductive but the want of industry or his own mismanagement'.⁵¹ This amendment will make the right to land through the restitution scheme look like one flowing from the ownership of the indigenous peoples rather than a benefice or handout generated by the Restitution Act as amended.

Notes

1. A publication of Human Awareness Programme, *Land in South Africa*, Grantpark 1989, p.1.
2. Geoff Budlender and Johan Latsky, 'Unravelling Rights to Land and to Agriculture in Rural Race Zones', 1990, SAJHR 150.
3. S 2(1) This Act also limited the lodgement of restitution claims to December 1998 but this restriction was subsequently extended to December 2000.
4. S25(7).
5. See also S 121-123 of the interim constitution of 1993.
6. H Mostert, 'Land Restitution and Development in South Africa', 2002, 119 SALJ 401.
7. Geoff Budlender and Johan Latsky, op cit., p. 150.
8. D.L.C. Miller and A. Pope, *Land Title in South Africa*, Kenwyn, Juta & Co Ltd, 2000, p. 428.
9. B. de Villiers, *Land Reform: Issues and Challenges; A comparative overview of experiences in Zimbabwe, Namibia, South Africa and Australia*, Johannesburg, Konrad-Adenauer-Stiftung, 2003, pp. 61-2. Although he accepts that native title may find fertile ground in South Africa, he believes that it can better be done through a rule of customary international law, Roman Dutch law or as part of the English common law.
10. Ibid.
11. Jeannie Van Wyk, 'The Rocky Road to Restitution for the Richtersvelders', 2004, 67, THRHR, p. 485.
12. Ibid. See Reilly, 'The Australian experience of aboriginal title: Lessons for South Africa', 2000, SAJHR, pp. 512-534; Bennett and Powell, 'Aboriginal title in South Africa Revisited', 1999, SAJHR, pp. 449-485.
13. Ibid.
14. See *S v Makwanyane* 1995 (3) SA 391 (CC), *S v Zuma* 1995 2 SA 642(CC).
15. 1992 175 CLR 1.
16. Ibid.

17. H. Klug, 'Historical claims and the right to restitution', in J Van Zyl et al., eds., *Agricultural Land Reform In South Africa: Policies, markets and mechanisms*, Cape Town, Oxford University Press, 1996, p. 394.
18. Ibid.
19. Ibid.
20. Ibid.
21. W. A. Joubert, *The Law of South Africa*, Durban, Butterworth, 2002, p. 218. One is conscious of the fact that a major consideration in the whole process is the fact that restitution should take place without major social disruptions. It is, however, the present writer's view that owners of dispossessed land should be paid compensation in lieu of actual restitution in circumstances where actual restoration will be disruptive.
22. 2003 12 BCLR 1303 (CC).
23. J. V. Wyk, op cit. at 486.
24. See Paragraph 16.
25. Alexkor case at paragraphs 24 and 30.
26. 'Alexkor Ltd and Another v The Richtersveld Community and Another', Supra at paragraph 40.
27. Ibid. See paragraph 40.
28. Ibid. See Paragraph 24.
29. Ibid. See Paragraph 24. Contrast this with the fact that it could well be construed as the court having to undertake a review of the historical background of the case so as to place the actual dispossession which occurred in the 1920s in perspective.
30. K. Lehmann, 'Aboriginal Title, Indigenous Rights and the Right to Culture', 2004, Vol. 20, SAJHR, p. 88.
31. J. Van Wyk, 'The Rocky Road to Restitution for the Richtersvelders', 2004, 67, THRHR, p. 486.
32. Ibid.
33. See paragraph 32.
34. See paragraph 30.
35. Ibid.
36. See s 35(1) of the Constitution Act 1982 of Canada.
37. D. Miller and A. Pope, 'South African Land Reform', 2000, 44, JAL, p. 178.
38. E. Lahiff and B. Chigara have made a connection between the two regardless of the distinctions in the property clauses of the two states. See E. Lahiff, 'The Politics of Land Reform in Southern Africa', Research Paper Series on Sustainable Livelihood in Southern Africa: Institutions, Governance and Policy Process <http://www.ids.ac.uk/slsa>. Accessed on 15 October 2004; B. Chigara, *Land Reform Policy: The Challenge of Human Rights Law*, Aldershot, Ashgate Publishing Ltd, (2003, pp. 20-1.
39. S16A (1) of the Constitution (Amendment No.16) Act No. 5 of 2000. This amendment was purely for the political reason of winning the 2000 presidential election in Zimbabwe and reflects the regime's recognition that disaffection

- with land reform was widespread and could be tapped to achieve political goals in spite of the poor performance of the government. T. K. Chitiyo, 'Land violence and compensation', <[www:http://ccrweb.ccr.uct.ac.za/two/9_1zimbabwe.html](http://ccrweb.ccr.uct.ac.za/two/9_1zimbabwe.html)> Accessed July 2003.
40. T.K. Chitiyo, 'Land violence and compensation', <[www:http://ccrweb.ccr.uct.ac.za/two/9_1zimbabwe.html](http://ccrweb.ccr.uct.ac.za/two/9_1zimbabwe.html)> Accessed July 2003
 41. Land invasions are increasingly becoming a problem in South Africa. The National Landless People Movement identified 2003 as being the year of land occupations. See B. de Villiers, *op cit*, p. 71.
 42. Miller and Pope (note 2) *loc cit*.
 43. The Namibian land reform programme does not include the restoration of ancestral lands. But this has been criticised as reflecting political bias by SWAPO. It has been suggested that SWAPO was not interested in the restoration of ancestral land because ancestral lands were not dispossessed in Ovamboland, which constitutes its main base. Namibia presumably has the lowest land restoration scheme in southern Africa, probably because of its land reform approach. B. de Villiers, *op cit*, p. 35.
 44. See note 8.
 45. Alexkor Ltd case (*supra*) at paragraph 60.
 46. See paragraph 61 of the decision.
 47. Cousins, *op cit* at 2.
 48. Chigara *op cit.*, 20. See also E. Lahiff who also states that land redistribution has moved at a slow pace and attributes this to the preservation of a land structure driven by market forces. Lahiff, *op cit.*, at 5.
 49. Cousins, *op cit.*, at 1.
 50. A loose group which claims to represent those dispossessed during apartheid and farm workers who have been evicted after the introduction of democratic governance. Chigara, *loc cit*.
 51. Database of the Land Restitution Commission.
 52. Land leases granted to free burgers by the Dutch East Indian Company were made on terms that suggested perpetual ownership. T R Davenport and Hunt, *The Right to Land*, Lansdowne, Juta & Co, 1974, p. 54.
 53. L.C. Duly, *British Land Policy at the Cape 1795-1844: A study of administrative procedure in the Empire*, Durham, Duke University Press, 1968, p. 46.