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3 *Delivery and disarray: the multiple meanings of land restitution*

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Time to take stock

2005 marks the tenth anniversary of the establishment of the Commission on Restitution of Land Rights,[1] the institution tasked with the primary responsibility for settling land claims in terms of the Restitution of Land Rights Act of 1994. This is also the year that President Mbeki identified in his 'State of the Nation' address of 2002 as the final year for the programme: a crunch year, by the end of which all outstanding land claims were to be settled and this unwieldy programme of constitutionally mandated redress closed.

As several analysts anticipated, the advice on which President Mbeki based his 2002 projections has proved unreliable. Despite the Chief Land Claims Commissioner's reaffirmation of the target as recently as January 2005 (*The Mercury* 18.01.05), in February 2005 Land Affairs Minister Thoko Didiza quietly acknowledged that 'it will take an additional two years to redress the injustices of land seized under apartheid'.[2] The Commission is now working to a new deadline of 31 March 2008 (Commission 2005). Nevertheless, the rate at which land claims are being processed has certainly speeded up emphatically in recent years, while the considerable boost to the restitution allocation in the 2005/06 national Budget confirms that the Mbeki government is determined to wrap up the programme as quickly as possible. By early 2005, approaching 75 per cent of the nearly 80 000 land claims lodged with the Commission were reported as settled (calculated from DLA 2005). As a result, and in contrast to its beleaguered status in earlier years when claim settlements were few and far between, restitution enjoys something of the status of flagship for the state in its larger land reform programme (encompassing land redistribution and tenure reform as well).[3]

As the volume of settled claims has grown and the deadline of 2005 drawn nearer, so the media has begun to show a more critical, if selective, interest in restitution. At the same time, the body of independent research on land claims is growing. This means not only that more is known about the programme now than before, but also that more probing questions are being asked about its achievements – and, with greater public scrutiny, the disjunctures and tensions embedded in the ideal of restitution are becoming more apparent. One example is the unhappiness voiced publicly in February 2005 by the South African National Parks Authority about the threat posed to its conservation mandate by 37 unresolved and hitherto unpublicised claims on the Kruger National Park. 'National Parks cannot be turned into "The Lost City"...which is what communities see when they think of making money through land claims,' the *Mail & Guardian* (18–24.02.05) quoted a Parks spokesperson as saying. Another example is the investigation into the Khomani San restitution settlement of 1999 that the South African Human Rights Commission (SAHRC) undertook in late 2004 – a settlement that President Mbeki hailed at the time as signalling 'the rebirth of a people' (Commission 1999: 5), but the SAHRC described five years later as severely dysfunctional. According to Jody Kollapen, SAHRC Chairperson, 'What we found...was a community beset with many problems...their farms are in disarray' (*The Sunday Independent* 06.03.05).

2005 is, thus, an appropriate juncture at which to take stock of the restitution programme and tease out from the jumble of inconsistent reports on national delivery and local disarray an assessment of its achievements so far – the provisional nature of such an exercise necessitated by the incomplete status of the programme, the obstinately multidimensional character of the claims that it has unleashed, and significant gaps in the information. What is known about the state of land restitution in terms of its geographical distribution and historical reach? What has its contribution to redress and reconstruction in post-apartheid South Africa been? What might we learn from this hugely ambitious yet persistently marginal attempt by the state to compensate in the present the victims of land dispossession and forced removals in the past? How successful has it been – what, indeed, are the criteria by which success should be judged?

These are the large questions informing this review of the state of restitution in 2005. The discussion is organised into three sections. The first section

provides an overview of the national numbers and discusses certain problems with an uncritical reliance on these figures as indicators of performance. The second section aims to ground the analysis in a more disaggregated account of the distribution of claims and the different types of settlement that have been reached. It highlights the significant but neglected urban dimensions of restitution and initiates a discussion on the fit between the current programme and the history of land dispossession that it is intended to address. In conclusion I point to the multiple meanings of land restitution and caution against what I term a 'misplaced agrarianisation' as the only lens through which to view its achievements. Restitution is not only about rural land reform and should not be judged simply by its contribution to this important national endeavour.

Given the limitations of space, the discussion is necessarily broad and important issues are neglected, including the extent of popular mobilisation around land, the range of responses from current landowners, and the worrying suggestions of corruption that have surfaced around land settlements in Mpumalanga.[4] The difficulties of community reconstruction once land has been restored to successful claimants are acknowledged but not discussed in any depth – this is a particularly important area, not simply for further research but, more urgently, for a serious and considered response by the state. The swirling debate on the merits and demerits of market-based land reform and the property clause in the Constitution is also dealt with only tangentially, although I raise a number of issues that are pertinent to it.

How much do the national numbers count?

Budgeting for restitution

The Restitution of Land Rights Act was the first piece of transformative legislation to be passed – amidst a standing ovation – by South Africa's newly democratic Parliament, in November 1994. At the launch of the Land Claims Commission a few months later, the African National Congress (ANC) Minister of Land Affairs, Derek Hanekom, declared triumphantly in a press release that restitution would put South Africa 'on the real road to reconciliation and reconstruction'. Redressing the massive land dispossessions suffered by black South Africans under white minority rule and protecting established (white) property rights were fiercely contested issues during the

constitutional negotiations, leading to a compromise that tried, judiciously, to provide for both. In terms of this, people who had been dispossessed of land rights after the passage of the Natives Land Act in 1913, as a result of racially discriminatory laws and practices by the former state, could lodge claims against the new state for restitution. Restitution could take the form of restoration of the original land, provision of alternative land or other state benefits, or payment of financial compensation.[5] The public was given until 31 December 1998 to submit claims to the Commission for investigation, verification and settlement.

During the constitutional negotiations, activists, ideologues and pragmatists argued passionately the merits of various symbolically laden years – 1948, 1913, 1652 – as the most appropriate cut-off point for the history of land dispossession that the restitution programme should cover; this issue continues to simmer in political debate today. The special political and symbolic significance that land restitution has always carried in national debate has not, however, been matched by its ranking in terms of hard government priorities since 1994. As indicated by Table 3.1, the budget for land reform has always been tiny, while land restitution received no mention at all in President Mbeki's 2004 'State of the Nation' address, in which he outlined an extraordinarily detailed list of objectives and delivery targets for the ANC's third term of government (Mbeki 2004).

In 2005, however, the symbolic and the programmatic importance of land restitution appear to be moving closer together, as the state moves to wind up the programme. In this year's 'State of the Nation' address, President Mbeki invoked the fiftieth anniversary of the forced removal of Sophiatown in his opening remarks (Mbeki 2005a) and drew heavily on the 'covenant' represented by the constitutional agreement on restitution in defending his government's record on transformation in the parliamentary debate that followed (Mbeki 2005b: 5–6). At the same time, moving beyond rhetoric, Finance Minister Trevor Manuel approved a major injection of funds into the programme, with restitution garnering the bulk of the land reform budget.

Since 2001 the average annual increase in the restitution budget has been in the order of 54 per cent (National Treasury 2005). Although the total allocation of R9.9 billion for the period April 2005 to March 2008 falls well short of the R13 billion that Minister Didiza has said is required (*ThisDay*

20.10.04), it still represents a substantial investment in the process. Table 3.1 illustrates the minor place accorded the Department of Land Affairs (DLA) and its programmes in the national accounts since 1994, as well as the striking upward trend in the restitution allocation in recent years and its positive effects on the DLA budget.

Table 3.1 *Restitution budget, 1997/98–2005/06 (R'000s)*

Financial year	Restitution allocation (R'000's)	Share of DLA budget (%)	DLA budget as share of national Budget (%)
1997/98	64 147	9.3	0.20
1998/99	46 838*	5.9	0.35
1999/00	164 090	21.8	0.30
2000/01	265 138	29.6	0.36
2001/02	290 981	29.8	0.35
2002/03	394 265	36.6	0.36
2003/04	839 116	52.1	0.41
2004/05	1 156 144	56.9	0.55
2005/06	2 705 678	69.7	0.92

Sources: Walker 2001; National Treasury 2004, 2005
Note: * Actual expenditure, not allocation

Quantifying claim settlements

As the budget has increased and the Commission strained to meet its politically driven deadline, so the throughput of claims has gathered momentum. The official figures for settled claims have doubled in the past three years, rising from 29 887 at the end of January 2002 (Commission 2002) to 57 908 in March 2005 (Commission 2005); this figure likely excludes the approximately 2 500 claims found to be invalid by the end of 2002 (Commission n.d. [2003]).[6] This leaves a formidable but reassuringly bounded quantum of claims still to be processed – 17 866 in March 2005, of which 10 063 were reported as urban (which the Commission hoped to settle within 2005), and 7 803 rural (Commission 2005). The national statistics for the restitution programme in March 2005 are summarised in Table 3.2.

Table 3.2 *National progress on settling claims, April 1995–March 2005*

Settlement milestones	Amounts
Claim forms lodged with the Commission, April 1995 to cut-off date of 31.12.98	63 455
Adjusted number after several rounds of audit adjustments as of March 2005	79 696
Total number of claims settled in the first five years of the Commission	3 916
Total number of claims settled in the second five years of the Commission	53 992
Total number of settled claims as of March 2005	57 908
Total number of claims found not to be valid as of December 2002	2 544
Total number of claims still to be settled as of March 2005*	17 866
Total number of households benefiting from settled claims as of March 2005	170 485
Total hectares of land transferred through settled claims as of March 2005	854 444ha
Total value of financial compensation paid to claimants as of March 2005	R2.4 billion
Total value of restitution awards (land & financial compensation) as of March 2005	R4.7 billion

Sources: Commission 2001; Commission n.d. (2003); Commission 2005; DLA 2005
Note: * Subtracting the total number of settled, outstanding and invalid claims from the total number of lodged claims as reported by the Commission and DLA leaves a balance of 1 381 claims not accounted for.

Qualifying settlement claims

In her foreword to the Commission's Annual Report in 2004, Minister Didiza noted that 'we should all be delighted that 48 825 land claims have been settled during our lifetime, with more than 810 292 hectares of land transferred to more than 122 292 households' (Commission 2004: 3). But what do such aggregate numbers mean? How much do they count in terms of numbers and relevance for understanding the programme?

Although the Commission has undoubtedly made impressive progress in processing claims in recent years, the aggregate numbers should not be overly privileged in the analysis. Until now the national debate on restitution has concentrated on these apparently tangible measurements of performance (or non-performance). However, this information opens only a small window on the meaning of land restitution in post-apartheid South Africa. On their own the national statistics measure neither redress nor development and cannot be taken at face value as an accurate indicator of what is happening on the ground.

Even if completely reliable (which they are not), such figures say very little about the extent to which restitution is addressing the more subjective aspects of loss and redress and nothing about settlement quality. They also do not throw light on the relationship between restitution and broader developmental goals.

The concerns expressed primarily by civil society about the reliability of the data are real. As anyone who has tried to research the status of claims can attest, the overviews presented in annual reports and the Commission website do not mesh satisfactorily with the information in regional files or held by past and present officials, nor with reality on the ground. The reasons include weak information management systems and inadequate monitoring and evaluation capacity in both the Commission and the DLA. In part the poor quality of the data can be explained by the very pressure on these institutions to deliver macro-level results that demonstrate that claims are being settled at scale and land is being restored to 'the people' – not enough resources are devoted to rigorous data collection and management, while official performance is valued more in terms of quantity than quality. The combination of weak information systems and relatively high staff turnover means that both institutional and project memory is thin.

Recently the Programme for Land and Agrarian Settlement (PLAAS) at the University of the Western Cape, which has tracked the numbers over the years, pointed out that between February and September 2004 there was a 'dramatic downward revision' of the numbers of hectares reported as transferred through restitution in Mpumalanga province (from 240 042 to 97 938 hectares) – yet the total area transferred through restitution in this period remained exactly the same, at 810 292 hectares, that is, the downward movement of the Mpumalanga figures was offset by a serendipitously equivalent upward movement of the figures for five other provinces (PLAAS 2004: 4). It has been suggested that rather than risk revising figures that are already in the public domain, the Commission preferred to wait till further land-based settlements would justify new, higher and, it is to be hoped, more accurate national tallies (as were presented by the Commission to Parliament in March 2005).

A different order of problem lies with the way in which the data are collated and interpreted. Initially, considerable confusion existed around the definitions of 'claim' and 'claimant', with the numbers fluctuating depending on one's unit of analysis – the individual claim form (which could contain

more than one claim), the claim as defined in law, the actual or projected number of households and/or of individuals standing to benefit from the claim, or the individual or group constituting the claimant (see Hall 2003.) Now a similar slipperiness applies to the definition of 'settlement', with comparable consequences in terms of uncertain accounting and premature conclusions. At what point is a claim settled and what does this mean in terms of the claim's status and national progress towards meeting the constitutional commitment to land restitution?

Many claims reported as settled in the national statistics are far from being resolved in the sense of land transferred or financial compensation paid or even, in some cases, negotiations finalised. For instance, in 2002 the Commission listed Knysna in a report to the World Summit on Sustainable Development on claims settled with land (Commission n.d. [2002]). The entry on Knysna reports that former victims of the Group Areas Act in this coastal town lodged a community claim in 1997 and 'after extensive negotiations an agreement was reached for the restoration of land rights to those claimants who opted for it and for other claimants...financial compensation' (Commission n.d. [2002]: 71). The settlement date is given as 25 February 2001, the day scheduled for a ceremonial cheque handover. However, this date did not represent the conclusion of the process. The initial negotiations had resulted in 1 079 claimants choosing financial compensation and 30 claimants settling for alternative land, but at the handover ceremony a third group of people complained to the Minister of Land Affairs that they had not known about the claim and, unusually, were allowed to join the process (Bohlin 2004). This resulted in the payout being delayed as well as the amount finally paid to claimants being reduced, as the original award was not recalculated but divided among the expanded group. Furthermore, by early 2005, four years after the claim was described as settled, the negotiations to acquire land owned by the Knysna municipality for the small group who had chosen land were in limbo. There were reportedly no state funds to purchase the land, its value had escalated wildly since 2001, and the municipality was reluctant to sell, arguing that this would unfairly benefit one small group.[7]

The national figures for beneficiaries and hectares can also not be read as proxy indicators of restitution's contribution to agrarian reform. The benefits of restored land cannot be assumed to devolve equally to all households, even less to all individual members of households who may be enumerated as

beneficiaries of land-based settlements. The gender dimensions of restitution settlements are particularly hard to track, as the data are rarely disaggregated in gendered terms.[8] The extent to which land that has been restored is actually being used can also only be established on a case-by-case basis in the field. For instance at Cremin, a former 'black spot' near Ladysmith, KwaZulu-Natal (which I have described elsewhere as a relatively successful claim [Walker 2004]), a total of 85 claimants had title to their land restored in 1997/98, but by early 2004 only 17 had re-established a residential presence on the farm, of whom an even smaller number were attempting to work the land in a sustained manner (without government support). Another example of the gap between the overview numbers and practice on the ground is the claim by 101 former labour tenants to a portion of the Baynesfield Estate outside Pietermaritzburg. The settlement proposal approved by the Minister of Land Affairs in January 2000 involved the transfer of 265 hectares of Estate land to the 24 claimant households who wanted land, and financial compensation for the 77 households who preferred money (Tong 2002). By late 2004 no households were living on the Estate – yet DLA documents list this as a 2000 land-based settlement that has benefited 101 (not just 24) households (DLA n.d. [2003]).

The numbers also do not address the widespread concerns about the quality of the development plans drawn up for communities whose land is being restored, as well as the inadequacy of what is rather opaquely referred to as 'post-settlement support' for claimants once their land has been transferred and Commission officials have moved on. Drawing on an evaluation of six land-based restitution settlements in Limpopo, Tomkova notes:

> The widespread inexperience in land-use and agricultural production among restitution beneficiaries has significantly threatened the sustainability of restitution projects. Degeneration and depreciation of formerly productive land and commercially viable farms has been a disappointing trend...Inadequate infrastructure and access to services, decreasing outputs, stagnating production levels and indebtedness are commonly observed. (2004: 2)

All this is not to suggest that the national numbers have no analytical utility. However, they have to be treated cautiously as at best approximations of a much more fragmented reality. They also need to be disaggregated to

more meaningful dimensions and regularly cross-checked against field-based information. As the following section indicates, that process has barely begun.

Grounding the numbers

The provincial dimensions of restitution

Table 3.3 gives a provincial breakdown of lodged claims in terms of their urban or rural classification in March 2001, the last date for which this level of detail has been obtained.[9] National figures reported for 2005 show that the proportion of urban to rural claims has been revised upwards, to 77 per cent of the total since then.[10]

Table 3.3 *Provincial breakdown for lodged claims*

	Total claims		Urban		Rural	
	No.	%	No.	%	No.	%
Eastern Cape	7 392	11	6 588	89	804	11
Free State	2 769	4	2 668	96	101	4
Gauteng	11 898	17	9 863	83	2 035	17
KwaZulu-Natal	14 807	22	11 997	81	2 810	19
Limpopo	5 607	8	1 494	27	4 113	73
Mpumalanga	6 436	9	1 226	19	5 210	81
North West	3 945	6	2 473	63	1 472	37
Northern Cape	3 200	5	1 200	38	2 000	62
Western Cape	11 938	18	11 343	95	595	5
Total as of March 2001*	67 992	100	48 852	72	19 140	28
	[68 878]					
National audit adjustment	4 983					
Total as of March 2003	72 975			69		31
Claim adjustment 2003/05	6 721			No data		No data
Total as of March 2005**	79 696	100	61 455	77	14 319	18

Sources: Commission 2001; Commission n.d. (2003); Commission 2005

Notes: * The Commission's 2001 figures show a discrepancy of 886 between its summary national total and its detailed rural/urban numbers, which total 67 992.

** The urban and rural totals are calculated from adding together settled and outstanding claims; this leaves a balance of 3 922 (5 per cent) unallocated claims when subtracted from the national total.

Table 3.4 summarises data presented by the Commission to Parliament in March 2005 on settled claims as of February 2005.

Table 3.4 *Provincial breakdown of settled claims as of February 2005*

Province	Claims settled (land & financial settlements)		Beneficiary households		Hectares transferred (land settlements)	
	No.	%	No.	%	No.	%
Eastern Cape	15 995	28	41 882	25	52 655	6
Free State	1 674	3	3 442	2	45 748	5
Gauteng	11 945	21	12 948	8	3 555	0.4
KwaZulu-Natal	10 593	18	28 358	17	209 560	25
Limpopo	1 350	2	23 145	14	134 604	16
Mpumalanga	1 572	3	27 778	16	99 662	12
North West	2 505	4	13 948	8	71 925	8
Northern Cape	1 953	3	5 722	3	233 634	27
Western Cape	10 321	18	13 262	8	3 101	0,4
Total	57 908	100	170 485	100	854 444	100

Source: Commission 2005

A comparison of Tables 3.3 and 3.4 shows that the number of claims reported as settled in the Eastern Cape by February 2005 is twice the number of claims reported as lodged in that province in 2001. This can be explained, at least in part, by the upward adjustment of numbers as a result of the various internal claim audits within the Commission, but the discrepancy illustrates the difficulty of working with the national statistics – it is not possible, for instance, to calculate the number of claims settled in each province by 2005 as a percentage of the number of claims reported as lodged in 2001, because the data sets are not consistent. What Table 3.4 does show is that the Eastern Cape currently has the largest number of settled claims, followed by Gauteng, KwaZulu-Natal and the Western Cape. The sequence for households that have benefited from the programme is, however, somewhat different. Eastern Cape still leads, by a considerable margin, followed by KwaZulu-Natal, but the next largest cohorts of beneficiaries are found in Mpumalanga and Limpopo, which is indicative of the community nature of the many rural claims in those provinces.

Because of data deficiencies, it is difficult to disaggregate settled claims in terms of their urban/rural distribution and settlement category (land or financial compensation) in provinces.[11] Table 3.5 sets out the national figures as of February 2005, while Table 3.6 shows Commission figures for rural and urban claims still requiring settlement.

Table 3.5 *National settled claims by locality and settlement type, February 2005*

	Claim settlements			
	Land	Financial compensation	Other remedy	Total
Urban	15 035	33 880	2 477	51 392
Rural	3 217	3 283	16	6 516
Total	18 252	37 163	2 493	57 908
	Settlements as percentage of total claims			
Urban	26%	59%	4%	89%
Rural	6%	6%	0%	13%
Total	32%	65%	4%	100%

Source: Commission 2005 (appendix)

Table 3.6 *Claims requiring settlement, by regional office of the Commission, February 2005*

	Total claims		Urban		Rural	
	No.	%	No.	%	No.	%
Eastern Cape	3 834	21	2 869	29	965	12
Free State & Northern Cape	2 073	12	1 536	15	537	7
Gauteng & North West	723	4	71	0.7	652	8
KwaZulu-Natal	5 443	30	3 311	33	2 132	27
Limpopo	1 337	7	56	0.5	1 281	16
Mpumalanga	1 400	8	215	2	1 185	15
Western Cape	3 056	17	2 005	20	1 051	14
Total as of February 2005	17 866	100	10 063	100	7 803	100

Source: Commission 2005

As already noted, conclusions based on this high-level data must be treated with caution (more rural claims have still to be settled in the Eastern Cape in 2005 than were reported as lodged in 2001) and, given ongoing claim settlements, regularly reviewed against the updated numbers. Nevertheless, several points emerge about the profile of the restitution programme thus far.

The first point, although perhaps obvious, is worth making in view of the national expectations of restitution, and that is that the character of the restitution programme is not uniform across all nine provinces and a full evaluation requires engaging with the different provincial profiles. As could also be expected, claims in Gauteng and Western Cape have been predominantly urban (mainly the product of the Group Areas Act). Less expected, however, is the strongly urban character of claims in the more significantly rural Eastern Cape, Free State and KwaZulu-Natal. In recent years claim numbers in the Eastern Cape have been substantially boosted by adjustments to the numbers to reflect large clusters of claims in East London (East Bank and West Bank), as well as Port Elizabeth (notably the Port Elizabeth Land and Community Restoration Association[12] group claim) and Uitenhage (Kaba-Langa). In KwaZulu-Natal over 5 000 claims were lodged in the Cato Manor suburb of Durban alone. The two provinces with the largest number of rural claims are Mpumalanga and Limpopo. In 2004 the Chief Land Claims Commissioner indicated the magnitude of the settlement challenges here when he reported that up to 50 per cent of Northern Limpopo and Eastern Mpumalanga were under claim.[13] In April 2005 Glen Thomas, then Acting Director General for the DLA, further suggested that the DLA was worried about the potential impact of these rural claims on the agricultural economy, given that 'agriculture is the backbone of the economy in KwaZulu-Natal, Mpumalanga and Limpopo' (DLA 2005: slide 11).

The second point is that thus far most claim settlements, both rural and urban, have involved financial compensation, not land. Even more noteworthy, as of February 2005 more urban than rural claims had been settled with land, while slightly more rural settlements had been settled with financial compensation than with land – a striking inversion of common assumptions. This does not, of course, mean that the bulk of the land transferred to black ownership through the restitution programme has been urban. Given the nature of urban development and population densities, the amount of land involved in urban settlements is generally small; as more rural settlements come through, the

rural proportion of land transfers will increase still further. Nor does it mean that the majority of households that have benefited from land restoration are urban, although the number of urban beneficiaries is not insignificant. Table 3.5 does, however, underscore the urban dimensions of restitution and the significance of financial compensation, issues which are returned to later.

Thirdly, thus far the contribution of restitution to broader land redistribution goals has been very limited. At 854 444 hectares (including urban land), its contribution is about one-quarter of the national figure of 3.5 million hectares transferred to black ownership through land reform by March 2005 (DLA 2005), although, as the remaining rural claims get settled, this could begin to shift. To date land restoration has been most extensive in the arid Northern Cape, a province that accounts for only five per cent of all lodged claims but, as of February 2005, held 27 per cent of all land transferred through restitution. The limited extent of land restoration before 2005 becomes even more evident when the Northern Cape statistics are unpacked to reveal that fully two-thirds of all land restored in that province – and almost one-fifth nationally – was accounted for by just three land-based settlements involving a few hundred households. All three of these claims have troubled social and economic histories: they are Riemvasmaak, involving 166 households and 74 562 hectares along the Orange River, and the interlocking Mier and Khomani San claims around the Kalahari Gemsbok Park, involving a couple of hundred households and a combined total of some 80 000 hectares of land adjoining the Park.[14]

Acknowledging the urban

Given South Africa's history of rural dispossession as well as extremely high levels of rural poverty, joblessness, and land-based conflict, rural claims certainly warrant prioritisation as part of a broader agrarian reform programme. However, the preceding figures demonstrate the significant urban dimensions of restitution, which mean that the programme cannot be analysed in terms of agrarian reform alone. Although making good use of the urban numbers in terms of aggregate throughput, the state tends to gloss the fact that so many settlements are urban and to conflate – inaccurately – urban claims with financial compensation. Some officials appear suspicious, even hostile, about the class and ethnic identity of urban claimants (about relative

wealth and the presumed preponderance of 'Indian' or 'coloured' claimants over 'African'), feeding perceptions about a hierarchy of victimhood in which rural claimants warrant more state resources than urban.[15] In the academic literature, urban restitution is most commonly analysed in the niche areas of heritage and identity studies, which operate somewhat apart from – parallel to – research on policy development and the political economy of land and housing reform. To the extent that urban claims are discussed in the land and housing literature, it is usually not as a significant component of restitution that is deserving of analysis in its own right, but as a somewhat awkward addendum to a programme that is conceptualised as essentially about rural land reform.

In fact, although most urban claims have been settled by means of financial compensation, there have been some important attempts to meld urban restitution to community restoration projects and to low- and middle-income housing development. District Six in Cape Town is probably the most prominent and best-studied example, but other interesting projects deserving of further analysis include the Port Elizabeth Land and Community Restoration Association-led redevelopment initiative around central Port Elizabeth, the East Bank and West Bank settlements already mentioned in East London, and the Kipi and Burlington housing projects in Pinetown, Durban. Urban restitution is also interesting for the perspectives it affords on the restitution programme as a whole. Urban claims have highlighted most sharply the policy difficulties and dilemmas embedded in the programme's commitment to land restoration as the premier form of restitution. A detailed examination of the different ways in which urban claims have been accommodated since 1994 would also be revealing of the different political and social dynamics at work in urban reconstruction in the major urban centres.

The rural bias in the restitution programme is a product not only of current developmental imperatives but also of history and politics. That the population relocation policies of the apartheid state cut deeply through urban as well as rural communities and landscapes is well established, and a number of urban land struggles have acquired an iconographic status in the history of resistance to apartheid – District Six, Sophiatown (evidenced by President Mbeki's invocation in his 2005 'State of the Nation' address), and Umkhumbane in Cato Manor. However, those who worked most actively to secure land restitution as a constitutional commitment in the early 1990s

were driven primarily by their experience in and knowledge of rural land dispossessions in the 1970s and 1980s (Walker forthcoming). Furthermore, at an early stage in the development of restitution policy, urban-sector specialists identified urban claims as a threat to, not an opportunity for, the reintegration of the apartheid city that forced removals had torn apart. These tensions were particularly acute in local authorities where prime vacant land was subject to claim, notably Cato Manor in Durban and District Six in Cape Town, and an early signal that the practice of land restitution was not always compatible with other public mandates, such as the provision of low-income housing, or with planners' blueprints.

At one stage consideration was given to excluding urban claims from the restitution process altogether, but this was rejected on equity grounds (see Walker forthcoming.) However, as a result of lobbying by certain alarmed urban planners, the restitution legislation allowed local authorities to apply to the Land Claims Court to exclude land restoration as a settlement option in localities where this was deemed not in the public interest. After 1994 both the Durban and Cape Town Metropolitan Councils tried to use this provision to subordinate land claims to their redevelopment plans for the strategically located sites of Cato Manor and District Six. The bruising legal and political battles that ensued tied up considerable Commission resources in its first term, with different outcomes in each site – in Cato Manor land claims were effectively sidelined from the redevelopment of the area for low-income housing, while in District Six a more formally claimant-centred process of urban renewal is still unfolding uncertainly (see, for example, Boyce 2003; Beyers 2004).

The historical dimensions of dispossession

In assessing the achievements of the restitution programme, one has to consider not only its geographical but also its historical reach – to what extent has it succeeded in reaching those who were eligible to claim in terms of the constitutional mandate hammered out in 1993? The answer requires extensive research and the following discussion must be considered provisional and exploratory.

No ready estimates exist for the scale of state-sanctioned land dispossessions between 1913 and 1948, but major forces at work in this period included the extension of white individual or corporate title over various tracts of black communal land that were not protected as 'native reserves', as well as the proclamation of conservation areas, including the Kalahari Gemsbok Park. Areas strongly impacted in this way include parts of Limpopo, Mpumalanga, the Northern Cape and northern KwaZulu-Natal.

The removals of the apartheid era are much better documented. The Surplus People Project (SPP) estimated that between 1960 and the early 1980s, when population relocation was at its most intense, some 3.5 million people (not households) were moved in seven major categories, while a further 1.9 million people were under threat of removal in 1983. (The SPP figures did not include the very large numbers moved in terms of 'betterment' planning in the reserves.[16]) The SPP estimates are summarised in Table 3.7. The totals and relative ranking for each category are merely indicative of the scale of dispossession under apartheid nationally, as removals began before 1960 and continued in varying degrees of intensity through the 1980s. The total number of people affected by 'black-spot' removals under apartheid was probably in the region of 700 000 (Walker 2003).

How well do the number and categories of post-1994 land claims correspond with this history?

Table 3.7 *Categories and scale of land dispossession, 1960–1983*

Category	People moved	%
Farmworkers and dwellers on white-owned farms	1 129 000	32
Landowners and tenants affected by the Group Areas Act	860 000	24
Residents of deproclaimed black townships situated in 'white' areas	730 000	21
Landowners and tenants on black- and church-owned 'black spots'	475 000	13
Residents of deproclaimed reserves affected by bantustan consolidation	139 000	4
Residents of cleared informal settlements	112 000	3
People moved for development, including forestry and strategic reasons	103 500	3
Total 1960–1983	3 548 500	100

Source: SPP 1983: 6

Clearly, the total number of households that have reportedly benefited from restitution to date (over 170 000 in early 2005) falls far short of the total number of households dispossessed of land rights for racially discriminatory purposes after 1913 – Table 3.7 suggests that upwards of 600 000 households were affected during the heyday of apartheid alone.[17] What is not certain at this stage is the impact of unsettled claims on this finding, in particular the nearly 8 000 rural claims. They are likely to boost the total number of beneficiary households substantially, but until the dimensions of each claim are known, the extent of this is unknown.

However, simply comparing the total numbers of restitution beneficiaries and dispossession victims is unsatisfactory, as the aggregate numbers do not compare actual dispossessions with actual settlements and may conceal major variations among the different categories of dispossession. Again, given the paucity of information on unsettled rural claims, it is premature to make confident projections about the eventual profile of rural restitution. What is probable is that former 'black-spot' communities will be disproportionately represented compared to former farm dwellers. Many black freehold communities were prominent in resisting relocation and campaigning for the restitution process (see Walker forthcoming). In addition, former black landowners and their descendants tend to be better educated and resourced than most rural dwellers, hence more likely to have known about and accessed the restitution programme in the mid-1990s.[18]

With regard to the historical reach of urban restitution, it is possible to be more categorical and conclude that this definitely falls far short of what was potentially possible. Most urban claims are individual claims stemming from the apartheid era and the application of the Group Areas Act and urban relocation policies. According to SPP, between 1960 and 1983 approximately 1 590 000 people were affected by these categories of dispossession. Assuming an average of six people per household, this translates into some 260 000 households – or, potentially, some 260 000 claims. However, as Tables 3.5 and 3.6 indicate, urban claims (settled and unsettled) amount to less than one-quarter (61 455) of this figure.

What requires further investigation is why so many potential claims were not lodged before the 1998 cut-off date. Critics have charged the Commission with not doing enough to make people aware of their rights and the cut-off date for lodging claims, although it did mount an extensive public awareness campaign in the latter part of 1998, which certainly led to a strong surge

in lodged claims. For victims of forced removals who did know about the programme but still held back, anecdotal evidence suggests a variety of explanations, ranging from alienation and deep scepticism that the state would deliver, to reluctance to reopen old wounds, to political or moral discomfort with making such claims on the new, post-apartheid government.

Evaluating financial compensation

As Table 3.5 makes clear, the restitution programme has leaned heavily towards the payment of financial compensation. Since the late 1990s there has been a lively debate within the Commission about what has come to be called, disparagingly, 'cheque-book restitution' – even as the Commission has relied on cash settlements to move the national tallies along. For most land activists cash settlements compromise the very essence of restitution as land reform. Thus Nkuzi, a prominent land-sector non-governmental organisation (NGO) in Limpopo, responded to President Mbeki's invocation of the Sophiatown removals in his 'State of the Nation' address in February 2005 in the following terms:

> The President did not mention that those removed from Sophiatown, hundreds of whom lodged land claims, have not had their land returned. While the validity of their claims was undeniable the government decided that 'restoration of the land was not feasible...and alternative land within the same magisterial district was not available'...and therefore they offered only financial compensation to the claimants...If the removal of Sophiatown sent a message in the strongest terms that 'South Africa did not belong to all who live in it' and was a 'triumph for white supremacy', what does the failure to return those removed signify? What is the unequivocal message sent by the government of today when those dispossessed receive no land and the settlement of Triomf remains in place? (Nkuzi 2005: 9)

The issues at stake are, however, rather more complex than the standard criticisms of cash compensation suggest. Undoubtedly the unaccustomed windfall of relatively large sums of money (R17 500 and upwards)[19] can be quickly dissipated in poor households, without producing lasting benefit or a sense of closure around the injustices of the past. Undoubtedly, too, the

option of money rather than land does not constitute the first choice for many claimants. In Cato Manor, for instance, several hundred former landowners objected to the court application by the Metropolitan Council to rule out land restoration. Most were driven by strong feelings about the injustices of the Group Areas Act and vivid memories of the community that they had lost.[20] However, as the difficult negotiations to acknowledge land claims in the redevelopment of Cato Manor wore on, many claimants resigned themselves, some in great bitterness, to financial compensation as the most pragmatic resolution – the Cato Manor being redeveloped on the hills where the market gardens and landmarks of their youth once stood was not the Cato Manor that they recalled.

However, as the urban planners who lobbied against the automatic presumption of land restoration argued, in many cases restoring land may not be feasible or desirable from a broader developmental perspective – land use, land values, zoning priorities and regional economics have not stood still in the intervening years. Clearly, as the Cato Manor case demonstrates, the decisions around what is feasible involve political, not simply technical, policy choices. The point is, however, that at times land restitution is not the only public interest at issue. Similar conundrums are coming to the fore in the rural context as well, around claims on conservation areas and, more controversially, on some highly productive, capital-intensive agricultural enterprises.

Furthermore, financial compensation does not always represent a coerced or inferior option for claimants (although they may complain about the amount of money received). In the rural Nazareth claim in KwaZulu-Natal, claimants divided over the choice between land restoration and financial compensation in interestingly gendered ways. Here a minority of claimants, mainly men, insisted on getting land while the majority, mainly older women, regarded money as more developmentally appropriate at their stage of life. They did not wish to relocate to undeveloped land again, but wanted to invest their restitution awards in their houses in the better-serviced closer settlement where they had been living for the past 20 years (Walker 2000). Bohlin's (2004) analysis of two very different Western Cape communities where financial compensation was paid (Riebeeck Kasteel and Knysna) describes the complex and context-specific dynamics shaping the different responses of individual claimants to their awards – as signifiers of both loss and gain, recognition and marginalisation, closure and further contestation.

The dominant discourse on restitution is heavily developmental. However, the motives for lodging a claim are not necessarily primarily economic. Furthermore, while the importance of land for livelihoods is a major argument driving the wider land reform programme, the linkages between land rights and individual or household well-being are neither inherent nor automatic.

The multiple meanings of restitution

Since 1995 the restitution programme has travelled an erratic path, alternatively lauded for its contribution to redress and redistributive justice, condemned for the limitations of its reach and berated or praised for its record of delivery. The discussion in this chapter suggests that major disjunctures lie at the heart of the programme – between its symbolic significance and its developmental reach as well as between the need to invest time and resources in developing robust, case-specific settlements and the political imperative to show delivery at scale. The particular symbolic significance of land restitution in national political debate – as marker of dispossession in the past and redistribution in the present – has not been matched by its consistently low ranking in terms of the ANC's developmental priorities. Restitution in practice, as opposed to restitution as an ideal, has found itself competing for budgets, attention, even legitimacy on occasion, in relation to other public goals.

What is clear is that compared to the ambitions vested in restitution in the early 1990s, its achievements have thus far been modest indeed. Historical reach, developmental impact, contribution to land reform – in all these areas the programme has fallen far short of what was hoped. The goals of social justice, redress and rebuilding communities have turned out to be more elusive than previously imagined. However, I am also arguing that more work is needed to deepen our understanding of what restitution has achieved, and that 2005 is an opportune time to reassess the criteria by which the programme is being judged.

Part of the challenge lies in the extraordinarily dense tangle of issues that restitution encompasses, dealing as it does not only with rural and urban histories of dispossession and reconstruction, but also with the intersection of the symbolic and the material, of rights and development, of the local as well as the national. In order to analyse restitution as a complex whole, one has

to appreciate that it operates very differently at different levels. The measures of success that circulate in national political debate are not always congruent with those operating at the regional or sectoral level, where more hard-nosed questions about land-use impacts are likely to be asked by non-claimants, and not only those opposed in principle to restitution. At the level of individual claims, the assessment of success or failure, the meanings of redress and of reconstruction, are even more diverse and context-specific. There is no single 'community' or claimant response, no single moment of restitution either – hence no single, unilinear assessment of success or failure can be made. All the evidence points to multiple responses, depending on the location of the respondents in terms of age, gender, geographic location, class, social history, economic options and levels of social integration.

Misplaced agrarianisation?

In the last, heavy days of apartheid Colin Murray proposed that apartheid-era population relocation policies constituted a form of 'displaced urbanisation' – a term used to describe 'the concentration of black South Africans…in huge rural slums which are politically in the Bantustans and economically on the peripheries of the established metropolitan labour markets' (1988: 111). What I want to propose in conclusion is that, in large part in reaction to this grim history, the restitution programme has suffered from a kind of 'misplaced agrarianisation' in its original conceptualisation, and now in its evaluation. This article has highlighted a number of areas where this operates – the underestimation of the urban dimensions of restitution, the emphasis on measuring the success of restitution principally in terms of land-based development, and also what might be described as a sort of developmental moralism which insists that claimants ought to choose land restoration and that anything else is a betrayal of restitution principles.

The disintegration of the Khomani San settlement is an extreme illustration of the inadequacy of land restoration as a panacea for the far larger problems of historical marginalisation and social and economic dispossession, and the restitution programme cannot be expected to address these on its own.

Notes

1 Commission on Restitution of Land Rights is the formal name for this body but it is commonly called the Land Claims Commission. This, or the abbreviated 'Commission', is the term I use.

2 South African Press Association, report on media briefing by Minister of Agricultural and Land Affairs, 17.02.05, Sabinet online, Cape Town.

3 South Africa's post-1994 land reform programme comprises three main sub-programmes: land restitution for those who were dispossessed of land rights as a result of racially-discriminatory laws and practices after 1913; land redistribution for the landless and land-hungry who do not qualify for restitution; and tenure reform for those whose tenure is insecure, primarily workers and their families living on white-owned farms and residents on communal land in the former bantustans. The state has set itself a target of transferring 30 per cent of white-owned commercial farmland into black ownership by 2015 through land redistribution and restitution. As of March 2005 only 4.3 per cent of the total had been transferred nationally (DLA 2005). This total obscures significant regional variation; it also includes non-agricultural land from the urban component of restitution and former state land. The Land Claims Commission currently operates as a semi-autonomous branch within the Department of Land Affairs (DLA). Land redistribution and tenure reform are not discussed here, although a full assessment of land reform requires an integrated analysis of all three sub-programmes.

4 The Regional Land Claims Commissioner for Mpumalanga was suspended in late 2004 pending an investigation into these allegations. See Agriculture and Land Affairs Portfolio Committee 2005.

5 The Natives Land Act of 1913 scheduled seven per cent of the country as 'native reserves' and provided for the 'release' of additional land for these areas. The 1936 the Native Land and Trust Act set the total area for the reserves at approximately 13 per cent of South Africa.

6 The validation campaign involved the Commission screening all claim forms lodged with it to weed out duplicates and non-claims, establish information gaps and clarify the number of valid claims in the system.

7 Bohlin 2004, pers. comm.

8 My thanks to Ruth Hall for confirming this point.

9 The distinction between urban and rural is not always easy to draw. The initial classification is made in regional offices, generally in terms of the locality of the dispossessed land.

10 All percentages are rounded to the nearest whole number, and should be treated as illustrative of approximate proportions; thus some totals equal 101 per cent.

11 Hall (2003) provides a detailed assessment of rural, land-based settlements.

12 The Port Elizabeth Land and Community Restoration Association is a claimant organisation which organised individual claimants effectively from the early 1990s to work for the restoration and redevelopment of vacant land from which they had been removed under the Group Areas Act.

13 'Blacks claiming 20% of farms,' 07.01.04. Available at http://www.news24.com/News24/South_Africa/News. Accessed 08.01.04.

14 Claimants also received access to 50 000ha in the Park, which remained a conservation area (Commission 1999; Tong 2002).

15 I have witnessed this in the negotiations around the restitution framework for Cato Manor, Durban.

16 The 'betterment' issue is complex and not addressed here. There were questions whether these removals qualified under the Restitution of Land Rights Act, and initially the Commission discouraged such claims. The Chatha claim in the Eastern Cape was a prominent exception; its successful settlement led to unsuccessful calls for the claim period to be reopened to accommodate further 'betterment' claims.

17 This number is merely illustrative, calculated by dividing 3.5 million people by six (assuming an average of six people per household). Once descendants of those dispossessed in the apartheid era are factored into the equation, the number of beneficiary households per claim would multiply still further.

18 Between 1960 and 1983 a total of 247 black-owned farms, encompassing some 150 000ha, were removed as 'black spots' (Walker 2003); these communities comprised both landowners and tenants.

19 The amount awarded to individual claimants has varied hugely, depending on the value of the original land right and the quality of legal or other representation. Developing consistent policy on the valuation of historical land rights was a major challenge for the Commission. Since 2000 there has been a move towards a 'Standard settlement offer' to individual claimants within groups sharing similar histories of dispossession, as a way of expediting the process.

20 This section draws on my personal observations of the process. I was Regional Land Claims Commissioner for KwaZulu-Natal from 1994 to 1999.

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STATE OF THE NATION

South Africa 2005–2006

Edited by Sakhela Buhlungu, John Daniel,
Roger Southall & Jessica Lutchman

HSRC PRESS

First published in South Africa by HSRC Press
Private Bag X9182, Cape Town, 8000, South Africa
www.hsrcpress.ac.za

Published in the rest of the world by Michigan State University Press
East Lansing, Michigan, 48823-5202, United States of America

First published 2006

Copy editing by Vaun Cornell
Typeset by Jenny Wheeldon
Cover by Farm
Cover photograph by Elsabe Gelderblom
Print management by comPress
Printed in the Republic of South Africa by Creda Communications

Distributed in South Africa by Blue Weaver Marketing and Distribution
PO Box 30370, Tokai, Cape Town, 7966, South Africa
Tel: +27 +21 701-4477
Fax: +27 +21 701-7302
email: orders@blueweaver.co.za

In South Africa
ISBN 0-7969-2115-6
In the rest of the world
ISBN 0-87013-778-6

Contents