



Figure 1: Protesters on Human Rights Day marched to the Cape Town Civic Centre where the Social Justice Coalition handed over their demands to all levels of government. These demands included land, housing, security and dignity. /Gallo Images

Marking 110 years of the Natives Land Act: Reflecting on measures taken towards redistribution of land in South Africa

National Conference Report

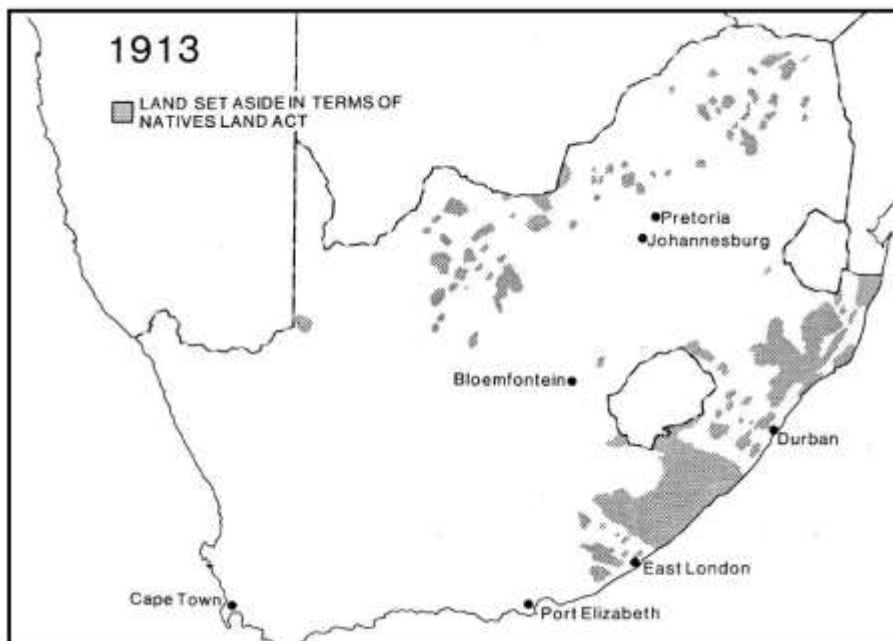
30-31 August 2023 South Africa



SOUTH AFRICAN HUMAN RIGHTS COMMISSION

National Conference: Marking 110 years of the Natives Land Act: Reflecting on measures taken towards redistribution of land in South Africa
30 – 31 August 2023
Boksburg, South Africa

Native reserves set aside in terms of the 1913 Natives' Land Act



Human Awareness Programme, 1989, D5

Figure 1: Map of the distribution of land according to the Natives Land Act, of 1913

“Awakening on Friday morning, June 20, 1913, the South African Native found himself, not actually a slave, but a pariah in the land of his birth,” Sol Plaatje.

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LIST OF ACRONYMS

AGSA	Auditor-General of South Africa
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
COGTA	Cooperative Governance and Traditional Affairs
CONTRALESA	Congress of Traditional Leaders of South Africa
CPA	Communal Property Association
CRC	Committee on the Rights of the Child
CRL	Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
CLARA	Communal Land Rights Act
CSO	Civil Society Organisations
DALRRD	Department of Agriculture, Land Reform and Rural Development
DCoG	Department of Cooperative Governance
DRDLR	Department of Rural Development and Land Reform
ESTA	The Extension of Security of Tenure
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMC	Inter-Ministerial Committee
IPILRA	Interim Protection of Informal Land Rights Act
GIAMA	Government Immovable Asset Management Act
LA	Land and Assistance Act
LASA	Legal Aid South Africa

LRAD	Land Redistribution for Agricultural Development
LRFM	Land Right Management Facility
MEC	Member of the Executive Council
NGO	Non-Governmental Organisations
NHRI	National Human Rights Institution
OCSLA	Office of Chief State Law Adviser
PLAS	Proactive Land Acquisition Strategy
SADT	South African Development Trust
SAHRC	South African Human Rights Commission
SALGA	South African Local Government Association
SAPS	South African Police Service
SLAG	Settlement and Land Acquisition Grant
SPLUMA	Spatial Planning and Land Use Management Act
SIU	Special Investigating Unit
TKLA	Traditional and Khoi-San Leadership Act
UPR	Universal Periodic Review

EXECUTIVE SUMMARY

The Natives Land Act 27 of 1913 (Natives Land Act) was enacted 110 years ago in the year 2023. On June 19, 1913, the Act imposed a legal limit on African land ownership to a modest seven percent (7%) in reserves and homelands, entrenching and legitimising African dispossession and segregation.

The South African Human Rights Commission convened a conference to reflect on the 110th anniversary of the Natives Land Act on the 30-31 August 2023, under the theme "Marking 110 Years of the Natives Land Act: Reflecting on Measures Taken Towards Redistribution of Land in South Africa. The conference brought together stakeholders from government, civil society, and academia working on land reform to collectively reflect on the measures the government has taken towards fulfilling its obligations under Section 25(7) of the Constitution and the progress it has made in addressing the legacy of the Natives Land Act; evaluate the extent to which the government has adopted measures to implement the findings and recommendations in the numerous reports and research briefs issued by Chapter 9 Institutions, Non-Governmental Organisations (NGOs), and other research institutions, and investigate the impact associated with these measures and the way Chapter 9 Institutions, Civil Society Organisations (CSOs), and others can collaborate to ensure that the government executes its constitutional obligations related to access to land.

Under Section 25 of the Constitution, land reform revolves around three pillars: restitution of land rights, land redistribution, and security of tenure. The Land and Accountability Research Centre, Women on Farms Project, Alliance for Rural Democracy, and other land rights advocates in attendance argued that, while the new Constitution anticipated reversal of the 1913 large-scale dispossession of land and equitable redistribution, such commitments remained limited to rhetoric and political imaginations. Land ownership patterns have persisted and remained unaltered from the Apartheid era. The distribution of land ownership based on ethnicity and sex demonstrates the country's current situation and the magnitude of the land ownership discrepancies. Individuals, companies, and trusts possess 39% of total land, whereas white people own 72%, multiracial persons own 15%, Indians own 5%, and Africans own 4%, based on the Land Audit report.¹ White commercial farmers continue to own a substantial percentage of agricultural land and continue to benefit from the Land Act, while informal settlements have increased from 300 in 1994 to over 3000 presently. South Africa is the most unequal country in the world because of the disproportionate acquisition of land.

¹ https://www.gov.za/sites/default/files/gcis_document/201802/landauditreport13feb2018.pdf

Former native reserves and homesteads continue to be impacted by the negative socioeconomic consequences of the 1913 and Native Trust Acts and are characterised by extreme levels of inequalities, poverty, and unemployment. South African women continue to encounter intersectional discrimination as it pertains to equal access, utilisation, and ownership of land on an equal basis with men. Statistics demonstrate that women have benefited the least from the country's land reform efforts, with women possessing a mere 13% of the land, exacerbating the socioeconomic inequality and gender-based violence that women endure.²

The government has significantly failed to accelerate land redistribution and restitution, and urban land redistribution continues to be excluded from the land reform and redistribution agenda. The land restitution programme is extremely inundated and crumbling, as the Commission on Restitution of Land Rights (CRLR) has currently 89 000 unprocessed claims which are projected will require 35 years to resolve. Many land redistribution beneficiaries have failed to improve their livelihoods due to inadequate post-settlement support and a lack of training. Government land reform processes tend to lack support for agrarian reforms that could improve agriculture functions within the country and increase food security.

Between 2011 and 2017, the Special Investigations Unit (SIU) investigated 148 land reform programmes and identified unlawful conduct 'on an enormous scale'. Corruption Watch and other similar investigations on corruption in the land reform programme exposed extensive corruption, misappropriation, embezzlement, and theft. The government has failed to define the extent to which Traditional Chiefs and Leaders should be involved in ensuring administration and compliance with the provisions of Section 25 of the Constitution. It has also failed to effectively implement the courts' jurisprudence to advance land reform and restitution for historically dispossessed communities. The country is immensely disgruntled with the sluggish progress of land reform, which has contributed to discrimination, racism, segregation, exploitation, suppression, oppression, and humiliation. While the government has acknowledged the slow progress of land reform, no immediate measures have been implemented to address the issue.

The government through its different departments has taken positive steps towards fulfilling its constitutional obligations under Section 25 of the Constitution. The National Land Reform Programme was one of the initiatives implemented by the government to address the

² <https://pmg.org.za/committee-meeting/21725/>

repercussions of discriminatory land policy which promoted disproportionate land ownership and prohibited the majority access to land.

Since 1994, the Department of Agriculture, Land Reform, and Rural Development (DALRRD) established multiple initiatives aimed at accomplishing land redistribution as follows: The Reconstruction and Development Program was established in 1998 to provide grants equivalent to subsidies for housing, which were subsequently replaced with blended funding through Land Redistribution for Agricultural Development, all on a freehold system. The Proactive Land Acquisition Strategy (PLAS) was adopted in the year 2007 and developed the foundation for a major policy shift from freehold to leasehold. The provision of the Land and Assistance Act was amended to provide for the acquisition of land, planning, development, improvement and disposal of property and the provision of financial assistance for land reform purposes. As a result, approximately 5,2 million hectares of land have been purchased since the inception of Land Reform (1994), benefiting an estimated 315 000 individuals, including labour tenants, farm dwellers, and the Extension of Security of Tenure (ESTA) residents. This includes 73 000 women, 37 000 young people, and 800 people living with disabilities.

Since inception until 31 December 2022 the Commission on Restitution of Land Rights has settled 82 761 claims. According to the CRLR, it has settled 90% of old order claims, with approximately 6,000 old order claims unresolved.³ CRLR has acquired over 3,8 million hectares of land. The total expenditure of the government on the restitution program to date stands over 53 billion.

The United Nations Human Rights Mechanisms, Chapter 9 Institutions, NGOs, and other institutions have over the years made various recommendations to the South African government regarding land. The SAHRC has made recommendations in the following reports amongst others:

1. *Report of the SAHRC Investigative Hearing Issues and Challenges in Relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa, 2003;*
2. *National Hearing on the Human Rights Situation of the Khoi-San in South Africa in 2016 and*
3. *Report of the High-Level Public Inquiry into the Impact of Rural Land Use and Ownership Patterns on Human Rights, 2019.*

The recommendations address a number of issues, including the need for the government to: capacitate the CRLR to enable it to effectively and expeditiously process land claims lodged

³ http://www.daff.gov.za/phocadownloadpap/Annual_Performance_Plans/crlr-app-2023-2024.pdf

with it; review, clarify and reform its policy on tenure security for farm workers and occupiers; and adopt an overarching framework law that guides and directs the land reform programme. Progress made towards implementing these recommendations has not always been effectively monitored, documented, and communicated. However, it is evident that the findings and recommendations made by the SAHRC and other bodies have received mixed reactions from the government. Some recommendations have been partially complied with, others fully complied with and others ignored. The non-compliance with recommendations made by the SAHRC nullifies its power to make effective and timeous interventions to protect rights.

Government departments face different challenges in carrying out their responsibilities and putting recommendations into effect. For example, the DALRRD faces resistance or unwillingness from current land owners to provide land for land reform purposes; and owners sought extravagant rates for the purchase of their land. Citizens frustrated at the sluggish progress of land reform have resorted to land invasion, further compounding the situation. In cases in which land was redistributed, the funding available for post-settlement support was often insufficient to meet the demands of those resettled.

A closer working relationship between civil society, Chapter 9 institutions, and all government institutions is required, as is collective accountability for land reform by all organs of state.

1. INTRODUCTION AND BACKGROUND

1.1 Introduction

The South African Human Rights Commission is an independent state institution, established under Chapter 9 of the Constitution of the Republic of South Africa 1996 (Constitution) to support and strengthen constitutional democracy. It operates in terms of the Principles Relating to the Status of National Institutions (Paris Principles) adopted by the United Nations General Assembly Resolution 48/134 in 1993. In terms of Section 184(1) of the Constitution, the Commission is mandated to promote respect for human rights and a culture of human rights; promote the protection, development, and attainment of human rights; and monitor and assess the observance of human rights in the Republic.

The Commission's constitutional mandate is further elaborated in the South African Human Rights Commission Act 40 of 2013 (SAHRC Act), The SAHRC Act details the powers and functions of the Commission under Section 13, and includes the

competencies to make recommendations to all organs of government regarding the fulfilment of human rights; review of government policies on human rights and make recommendations accordingly; undertake studies on human rights issues; and monitor the implementation of and compliance with international human rights norms. Section 13(1)(a)(iii) of the SAHRC Act allows the Commission to request any organ of government to supply it with information on any legislative or executive measures adopted by it relating to human rights. Further, Section 13(1)(b)(ii) of the same Act requires the SAHRC to liaise and interact with any organisation which actively promotes respect for human rights, and other sectors of civil society to achieve the objectives of the SAHRC.

The Constitution mandates the government to provide an accountable government for all and to ensure that all constitutional obligations are fulfilled diligently and without delay. The SAHRC plays a critical role of protecting, monitoring and promotion of human rights so that the government fulfills its constitutional obligations.

1.2 Background

The Natives Land Act became law on June 19, 1913, limiting African land ownership to 7%, which was eventually increased to 13% through the Native Trust and Land Act of South Africa in 1936. The Natives Land Act, through established Bantustans/Homelands, enacted the framework to separate socioeconomic development and constituted an integral part in the formation of what became racial and systematically segregated South Africa. The renowned scholar Sol Plaatje famously described the Act as a “legislative monstrosity whose objective was to steal a whole subcontinent.”⁴

In recognition of the gravity of the injustice of the Natives Land Act, Section 25 (7) of the Constitution affirms that, “a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.”

The SAHRC has undertaken various interventions to hold the government accountable in terms of the constitutional imperatives on land issues. Through public hearings and the resolution of individual complaints, the SAHRC continues to monitor the progress of land

⁴ B Willan *Sol Plaatje: A life of Solomon Tshekisho Plaatje 1876-1932* (2018).

reform.⁵ Overall, the findings of the SAHRC raise concerns about the government's lethargic approach to land reform.

In June 2001, the SAHRC conducted a *National Inquiry into Human Rights Violations in Farming Communities* in response to complaints of human rights violations in the farming sector.; its findings were published in August 2003.⁶ The report's principal recommendation was the establishment of a Farming Community Forum (Forum) in the Office of the Presidency, which allows farm dwellers, farm owners, and the government to interact and address the myriad difficulties faced in the agricultural sector. The report included numerous recommendations on land rights, labour, safety and security, and socioeconomic rights.

In 2007, the SAHRC convened an *Investigative Hearing on Land Tenure Security, Safety, and Labour Relations in Farming Communities since 2003*. According to the SAHRC, progress towards tenure security for farm dwellers and labour tenants has been slow. The recommendation was that the Department of Land Affairs engage its key stakeholders promptly to determine, consult, and amend farm workers, tenureship, and security policy.⁷

The land restitution process in South Africa faces systemic obstacles. The main challenges identified were as follows: -

- limitations on the development of claimed land,
- Inefficient utilisation of reclaimed land and
- Lack of government support.⁸

The key recommendations emphasised the importance of capacitating the Commission on the Restitution of Land Rights (CRLR) to enable it to effectively and expeditiously process land claims lodged with it.

⁵ Appendix 1: Table of Summary of engagement by the SAHRC on land issue and the recommendations made.

⁶ South African Human Rights Commission *National Inquiry into Human Rights Violations in Farming Communities* (2003).

⁷ South African Human Rights Commission *Progress made in terms of Land Tenure Security, Safety and Labour Relations in Farming Communities since 2003* (2008).

⁸ South African Human Rights Commission *Monitoring and Investigating the Systemic Challenges Affecting the Land Restitution Process in South Africa* (2014).

In 2018, the SAHRC convened a high-level inquiry into *Rural Land Use and Ownership Patterns on Human Rights*.⁹ The SAHRC and other institutions noted that there continues to be a conflict between a common law model that favours private titles over customary property rights and, in particular, unfairly discriminates against mining-affected communities.¹⁰ Furthermore, the SAHRC found that land redistribution has been slow when compared to both its own and society's goals, and has benefited women far less than men.¹¹

The SAHRC recommended that Parliament should adopt an overarching framework law that guides and directs the land reform programme.¹²

In 2018, the SAHRC made a further submission to the Portfolio Committee on Rural Development and Land Reform on South Africa's land reform process. The submission maintained that the government's redistribution process was sluggish and that the "willing buyer, willing seller" approach was inadequate for a country requiring significant reform to happen. Restitution failed in its attempt to transform land use patterns in South Africa for various reasons, including the cut-off date for restitution. When decisions had to be made on restitution for dispossessed land, the government often chose to compensate applicants in monetary form. Additionally, the overlap of restitution claims (i.e., more than one claimant for a piece of land) stymied the CRLR, and in these cases, communities resorted to legal measures, which meant that poorer communities, which may be the rightful claimant of the land, were unable to afford legal representation and were therefore disadvantaged. In addition, the SAHRC's submission noted the denial of land rights by Traditional Authorities in cases of mining, the regular relocation of communities to barren areas farther away from economic opportunities; regular complaints of unlawful evictions from informal settlements and housing structures in urban areas; and the lack of transformation in land ownership patterns.¹³

In 2019, the SAHRC produced a research brief on *Land, Gender, and Socio-Economic Rights*. The research brief sought to center women in the land debate by highlighting the intersection between women's land and socio-economic rights challenges. It found that

⁹South African Human Rights Commission *Report on the High-Level Inquiry on the Impact Rural Land Use and Ownership Patterns on Human Rights* (2017).

¹⁰ Ibid 25.

¹¹ Ibid 25.

¹² Ibid 29.

¹³ Speakers Forum *Report of the High-Level Panel on The Assessment of Key Legislation and the Acceleration of Fundamental Change* (2017).

women remain in conditions of insecure land tenure and thus have difficulty accessing other socio-economic rights. Women do not appear to be a priority in the government's land redistribution programme, even though they remain the most vulnerable and marginalised members of society. The research brief highlighted serious concerns that women remain vulnerable and dependent on male relatives or partners for access to land. The SAHRC recommended that the government institute measures to address the specific issues and challenges faced by women in securing land, which will assist with the realisation of housing rights and the linkages to economic advantages such as access to credit, food, and basic services; which ultimately leads to a reduction in poverty for women and a realisation of their inherent dignity.

1.3 Conference Objectives

The focus of the conference was to critically assess the extent to which the government has complied with all the previous recommendations and findings made by various institutions such as Chapter 9 bodies, civil society, academia, and the government itself, on land reform. To achieve this the conference sought as part of its objectives to:

- a. Unpack the legal framework, in particular Section 25 of the Constitution.
- b. Present the work of the Commission and submissions/inputs from other relevant institutions on the issue of land.
- c. Discuss approaches from traditional councils and traditional leaders' approaches to the land question.
- d. Discuss submissions from the government on measures taken towards implementation of the right to property.
- e. Deliberate on possible solutions to address the existing challenges to ensure adherence to constitutional imperatives on the land question.

1.4 Structure of Conference

The conference sessions were live-streamed on the SAHRC's social media platforms in a hybrid manner.¹⁴ The conference included plenary sessions and discussions on critical land issues led by specialists and experts. The conference was structured to optimise experience sharing, interaction, participation, and collective deliberation across a broad cross-section of stakeholders active in land reform.

¹⁴ <https://www.facebook.com/SAHumanRightsCommission/videos/948756949560394>.

The national conference on land reform comprised panel discussions on the following topics:

- i. Unpacking Section 25 of the Constitution
- ii. Unpacking the work of relevant institutions that deal with the issue of land
- iii. Presenting the work of Chapter 9 Institutions on land
- iv. Submissions by traditional councils and traditional leaders on challenges experienced
- v. Submissions by Civil Society Organisations and Non-governmental organisations.

1.5 The Position of the SAHRC

Land is dignity. All unreasonable delays in restoring land to the rightful people amounts to a continuation of the erosion of people's dignity. The significance of land in South Africa and the world over can never be overstated especially in view of the history of black people's dispossession of land by white people.

The Commission regards land reform as the key process through which South Africa's legacy of spatial apartheid will be addressed. It moreover considers pro-poor land reform, that centers black women, children, people living with disabilities, the elderly and those living in far flung villages at the center, as an essential mechanism to achieve social justice and substantive equality.

As stated by the Constitutional Court, "Restitution of land rights equals restoration of dignity... the availability of land – a commodity which was pie in the sky for many – also facilitates the enjoyment of other constitutional rights... [such as] privacy and housing [among others]. Lack of land results in unacceptably high levels of population density. This in turn does not conduce to a healthy environment. Restored land affords the recipients a wholesome environment."

The government is the Constitution's primary agent for ensuring land justice. It has been given formidable powers and resources which must be used in ways that are consonant with the Constitution's values and principles. The SAHRC urges government to use these powers and resources, including the tool of expropriation where need be, to ensure land justice in South Africa.

This is one of the most important ways in which the government can fulfill the vision of the Constitution of *"Establish[ing] a society based on democratic values, social justice [human dignity] ... improve the quality of life of all citizens and free the potential of each person."*

The SAHRC bemoans the slow process of land reform in South Africa. As the Constitutional Court stated in *Speaker of the National Assembly and Another v Land Access Movement of South Africa and Others*.¹⁵ “The continued delay in the proper processing of land claims is having a debilitating effect on the land reform project. An expeditious land restitution process will not only increase the number of claims settled, but could also contribute to a wider, more striking consciousness that centres on the constitutional values of equality and dignity, and give rise to ideals of social justice, identity, the stimulation of economic activity, the promotion of gender equality and a contribution towards the development of rural livelihoods.”

This delay in the land reform process is a violation of the Constitution! The Constitution does not merely obligate Government to fulfill constitutional rights, it is ordered to do so, diligently and without delay.¹⁶

2. REFLECTING ON THE LEGACY OF THE NATIVES LAND ACT OF 1913

Speakers:

Advocate Bongani Majola – Chairperson, South African Human Rights Commission

Mr Jonas Sibanyoni – Commissioner, South African Human Rights Commission

Programme Director:

Dr Thina Nzo - Public Affairs Research Institute

Session overview and objectives:

The inaugural session established the tone for the conference by providing context and exploring the fundamental challenges around the Natives Land Act, in addition to evaluating the progress over the past 110 years.

Advocate Majola reflected on the genealogy of land dispossession in South Africa and the catastrophic effects on black South African's economic, social, and cultural rights. The 1913 Natives Land Act accelerated and reinforced the dispossession and segregation of black South Africans by prohibiting Africans from participating in an agreement or transaction in the purchase, hire, or acquisition of land from any individual other than a native. The Act

¹⁵ [2019] ZACC 10; 2019 (5) BCLR 619 (CC); 2019 (6) SA 568 (CC) at para 66.

¹⁶ Constitutional of the Republic of South Africa, 108, section 237.

apportioned 8% of South Africa's land area as reserves for Africans, this was subsequently increased by 5% to a total of 13%, which resulted in 80% of the population being restricted to under 13% of the land whereas a mere 20% of the population owned over 80% of the land. The impact was enormous because it enslaved black individuals and prevented any alternative avenues of advancement for black citizens besides employment by white farmers and aristocrats.

He emphasised that the dispossession of land of black citizens did not commence through the Natives Land Act, but rather was inherent to colonialism and apartheid as the Khoisan tribes were the initial victims. In *Daniels v Scribante and Others*, the Constitutional Court ruled that "land dispossession initially occurred through the barrel of a gun and trickery." This was followed by an assortment of colonial-era statutes, the most prominent was the Natives Land Act.¹⁷ Notably, dispossession has been predominantly violent, with exploitation, enslavement, forced labor, torture, and protracted conflicts.¹⁸

In its report to the Joint Constitutional Review Committee on Section 25 of the Constitution, the Commission emphasised that "land is dignity; tragically, the majority of South Africans remain landless because of the legacy of colonialism and apartheid".¹⁹ Despite the Constitution's recognition of the intrusion aggravated by the Natives Land Act and its obligation for reparations, the 1913 land apportionment remains relatively unaltered 110 years later. Adv Majola explained that the SAHRC has issued numerous investigative reports, research briefs, and various submissions to Parliament on land-related Parliamentary Bills throughout the years and has convened the conference to reflect on the extent to which the obligation in Section 25(7) of the Constitution has been fulfilled and to evaluate the progress South Africa has made to address the consequences of the Natives Land Act. The conference sought to discuss the measures undertaken by the government to fulfill its constitutional obligations regarding land, particularly the commitments in Section 25 (7) of the Constitution, in addition to the implementation of the recommendations outlined in the various reports and research findings by Chapter 9 institutions, and the implications if no measures were taken.

Commissioner Sibanyoni recited the poem *uKhalelani, Nkonyane KaNdaba* (What are you crying about?) written by Thomas M'zwenduku Masuku, who was one of South Africa's first black lawyers. The poem, which is part of a collection of 33 poems, purports to be a poem

¹⁷ *Daniels v Scribante* 2017 (4) SA 341 (CC).

¹⁸ *Ibid.*

¹⁹ South African Human Rights Commission *Submission to the Joint Constitutional Review Committee Regarding Section 25 of the Constitution* (2018).

about love, however, when analysed critically, it serves as a bereavement of the black citizen's land dispossession. Thomas concludes his poem with the conviction that oppressors will ultimately be defeated through their own weapons. The Native Land Act was one of the tools used to deprive black citizens of their land; similarly, legislation will be used to reclaim the land and provide hope to the country.

3. UNPACKING SECTION 25 OF THE CONSTITUTION

Speakers:

Ms Shanelle van der Berg - United Nations High Commissioner for Human Rights

Ms Mpho Raboeane - Ndifuna Ukwazi

Ms Nolundi Luwaya - Land and Accountability Research Centre

Ms Carmen Louw - Women on Farms Project

Moderator:

Ms Philile Ntuli – Commissioner, South African Human Rights Commission

Session overview and objectives:

The panel discussion aimed to create an awareness of the imperatives of Section 25 of the Constitution, and to discuss the way it has been interpreted and comprehended since its adoption.

Ms Shanelle van der Berg illustrated the crucial role of land as a human right under the international human rights framework. Access to, use of, and control over land directly impacts the realisation of a broad spectrum of human rights, such as the right to a clean, healthy, and sustainable environment; the right to an adequate standard of living (including the right to food and the right to housing); and the right to development. Although there is no explicit reference to a general human right to land in international human rights law, several international human rights instruments, most notably the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Article 14), and the International Covenant on Civil and Political Rights (ICCPR), refer to it.²⁰The ICESCR incorporates significant international legal provisions pertaining to land issues. South Africa is a signatory to the ICESCR and all the above-

²⁰ OHCHR *Land and Human Rights. Standards and application* (2015).

mentioned treaties.²¹ Under the ICESCR, South Africa is required to ensure equality and non-discrimination in land restitution and redistribution programmes, in addition to meaningful participation, consultation, and transparency in land reform programmes, and the development of laws and policies and their implementation. South Africa has an obligation to protect, promote and respect the rights specified in the ICESCR which pertain to land.

The government's obligations under the ICESCR include the duty to: -

- Desist from violent evictions and define precise requirements for non-government entities such as extractive companies.
- Ensure secure, equitable, and long-term access to, use of, and control over land for individuals who depend on it to achieve their Economic, Social and Cultural Rights (ESCR).
- Recognise the social, cultural, spiritual, economic, environmental, and political importance of land for communities with traditional tenure systems.
- Utilise all available resources to progressively attain the right to access productive resources and a decent standard of living.
- Combat corruption in the administration of land reform and ensure the safety of human rights defenders who work on land issues, and climate change.
- Prioritise women, indigenous individuals, peasants, and other rural workers in South Africa's land reform initiatives.
- Consider recommendations, legislation, and guidelines made by CESCER while analysing and rethinking Section 25 of the Constitution.

The United Nations Human Rights Mechanism has issued several recommendations to South Africa pertaining to land over the years including most recently from the Universal Periodic Review (UPR) in 2022; CEDAW 2021; CESCER in 2018; Committee on the Rights of the Child (CRC) in 2016; Committee on the Elimination of Racial Discrimination (CERD) (2016) and Human Rights Committee (2016). These recommendations, which should be implemented, address a number of issues, including the government's failure to accomplish its own land redistribution and restitution objectives, the continued discrimination against women in rural areas seeking access to land, and the eviction of Khoisan people from their traditional land. Many of these recommendations are like those presented by the SAHRC over the years.

²¹ In addition there are a number of primary international human rights soft law source that deal with land including: Universal Declaration of Human Rights (UDHR) (Article 17 – property; Article 25 – adequate standard of living); United Nations Declaration on the Rights of Indigenous Peoples United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas Committee on Economic, Social and Cultural Rights (CESCR): General comment No. 26 (2022) on land and economic, social, and cultural rights.

Ms Van der Berg proposed the use of the Human Rights Council's Special Procedures and ratification of the Optional Protocol to the ICESCR as potential methods to strengthen accountability on the international stage. Special Procedures contribute to the development of international human rights standards and can provide normative assistance in the interpretation and development of Section 25 of the Constitution.

Ms Mpho Raboeane dealt with the extent to which the rights set out in Section 25 (5) of the Constitution had been partially fulfilled and the factors that had hampered the full realisation of these rights. She argued that, despite the advent of democracy and the Constitution in 1994, the country has not seen the desired reversal of the impact of the 1913 Natives Land Act. She further stated that the country is amid a catastrophic land and housing crisis, with more visible homelessness than at any other time in its history, which has contributed to an unprecedented growth of informal settlements from 300 in 1994 to over 3000 currently.

It was her contention that the government owns hundreds of thousands of hectares of vacant and underutilised public land that could potentially be used to address the country's crisis. While the government recognised that the sluggish progress of land reform is an impediment to developing an equitable society and has the potential to provoke societal unrest, no committed action to address the issue has been taken.

The subject of urban land reform and redistribution is predominantly excluded from government discussions and decisions on land reform. This is despite the fact that urbanisation was estimated to account for 67,85% of the population in 2021, and trends indicate that this percentage will rise further as cities expand. According to recent research by the South African Cities Network, the urban land dispute remains one of the most frequently neglected issues in post-apartheid South Africa, despite being a critical issue; as a result, debates around rural land reform have dominated the discussions.

She argued that the government seemed reluctant to confront urban land reform due to the potentially explosive disruption to wealthy minority financial interests and thus the economy. It is estimated that 1% of South Africans control at least half of the country's wealth, while much of this wealth is invested in metropolitan real estate.

From Ndifuna Ukwazi's experience, the tangible implementation of Section 25(5) has been hampered by a combination of a weak legislative framework, a lack of political will, a lack of societal re-imagination, and entrenched financial interests that unduly influence land and land use decision making. As a result, geographical and spatial inequities reoccur. She argued that, despite a plethora of legislation addressing various aspects of land issues, such as the Land and Assistance Act 126 of 1993 (LA), the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA), and the Government Immovable Asset Management Act 19 of 2007

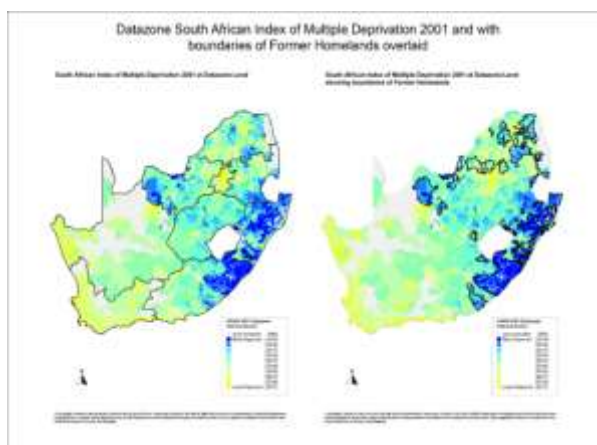
(GIAMA), there is a legislative lacuna, as there is no specific framework to provide guidance for and direct urban land redistribution as constitutionally mandated. Furthermore, she stated that a number of these legislations contain weaknesses which restrict the ability to fulfil the objectives of Section 25(5). The LA, for instance, fails to define equitable access in an appropriate manner, and while the GIAMA provisions are progressive, they provide the government with an excessive amount of authority without checks and balances.

She stated that the SAHRC and other Chapter 9 institutions should assist communities around the country in their efforts to urge the government to donate land to individuals under the government Land Disposal Act No. 48 of 1961. The Commission should encourage parliament to establish legislation aimed at urban land redistribution, address the legislation lacuna, and investigate bi-laws within the local government sphere that appear to have an impact on dispossession and the displacement of the urban poor.

Ms Nolundi Luwaya presented a series of maps that illustrated the inequitable land apportionment that resulted from the 1913 and Native Trust Acts. She indicated that 110 years later, recent maps reflect current levels of poverty in former native reserves and homesteads, revealing that these areas have not recovered from the detrimental socioeconomic impact of these acts and are characterised by significant levels of poverty that have remained constant.

The restitution programme is extremely overwhelmed and crumbling under the presumption that land claims will be addressed. The redistribution programme has not materialised in the manner that citizens had envisioned.

Figure 2: Southern African Social Policy Research Institute (SASPRI)



In her perspective, Chapter 9 institutions, such as the SAHRC, have the potential to accelerate the land reform process through intensified advocacy for land restitution for individuals who were evicted from their land under the 1913 Land Act. She emphasised that Chapter 9 institutions and civil societies are entrusted with protecting the country's Constitution and must

collaborate to ensure that the government is held accountable for fulfilling its Section 25 obligations, and additionally support the implementation of recommendations made by the Presidential Advisory Panel on Land Reform and Agriculture and the High-Level Panel on Land Reform.

The recommendation is to make the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA) a permanent law and to develop regulations to implement it. IPILRA protects certain rights and interests in land held by customary rights holders in their former homelands for a limited time. It was meant to be a temporary law that safeguarded people's land rights until a more comprehensive, permanent law could be enacted. No such law has been enacted leaving rights holders vulnerable.

She cautioned against relying on the law as a tool and instrument for social transformation. She emphasised that the law has limitations, as evidenced through its application to condone the violent and forceful evacuation of black citizens from their land. Furthermore, the legal instruments developed are insufficient to deal with land restitution and redistribution and merely enable them to address a portion of the land issues. As a result, Chapter 9 institutions must create additional social interventions in addition to legislative measures.

Ms Carmen Louw concurred with her fellow panellists on the inadequacy of current legislation to effectively deal with the various aspects of the land issue. She explained that, while the Constitution makes provision for women and individuals living and working on commercial farms to have access to land, there is a lack of appropriate legislation to adopt these provisions in reality, and there is a need to enact a law that deals with land redistribution that prioritises women, particularly black women in rural areas.

Statistics indicate that women are disproportionately affected by landlessness, and women benefited the least from the country's land reform efforts. Land inequality and the associated economic, social, and economic inequality affect women; without access to land, women working on farms and their families' livelihoods remain fragile. Seasonal work does not generate adequate consistent income, resulting in poverty and food insecurity. This insecurity has a severe influence on the physical and emotional health of such women. Women on farms face stigma, have their dignity threatened, and have their rights violated. They struggle to access institutional support, in addition to justice and legal aid to address the violations they encounter. Even though legal aid is free, the women farmworkers lack the financial resources needed to travel between the farms and the courts. Despite voting for the adoption of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural

Areas²², the South African government has taken no measures toward implementing its provisions. According to recent findings by the United Nations Special Rapporteur on Toxics and Human Rights on her visit to South Africa, farm workers, particularly women, are exposed to harmful pesticides that are banned in their countries of origin. Cancer, respiratory diseases, and other health issues are attributed to these substances.

Ms Louw further remarked that in comparison to other provinces, the Western Cape province had minimal land reform, with a substantial proportion of farms being still owned by white commercial farmers who benefited from the Land Act. Current commercial agriculture and ownership patterns create structural inequality, contribute to food insecurity for farm workers, and degrade the environment, resulting in an extensive number of diseases and fatalities. Government land reform processes typically do not promote agrarian reforms that would transform the way agriculture functions in the country. She criticised the unequal implementation of the Extension of Security of Tenure Act 62 of 1997 (ESTA), claiming that when farm workers and dwellers are evicted from the farm, the entire weight of the law is brought to bear on them, but when they are illegally and violently evicted, the police are hesitant to intervene. The failure of the South African Police Service (SAPS) to properly enforce Section 23 of the ESTA has resulted in the denial of farm dwellers' rights, as farm owners are aware that they can execute illegal evictions with impunity.

Discussion Summary:

In response to a question on the role of traditional leaders in relation to land reform under international law, Ms van der Berg stated that the human rights framework applies to traditional leaders and individuals living under customary law and that traditional leaders are subject to the same standards as the government. Civil society is funded by donors bringing their independence and ability to set their own agenda into question, particularly on issues such as expropriation without compensation. Ms Luwaya acknowledged that the issue was significant and was regularly discussed in civil society; nevertheless, she pointed out that her organisation receives financial support from South African donors. In contrast to the 1980s, when agenda setting was more centralised, agenda setting now occurs in numerous locations. However, most organisations have become more conscious of positionality and the importance of ensuring agenda-setting is led by communities and those directly affected.

²² United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (adopted by the Human Rights Council on 28 September 2018).

The participants noted that the conference's discussions remained focused on land reform in the rural context rather than the urban context. Panellists acknowledged that the myth that land reform was primarily concerned with agrarian or rural land needs to be challenged. Several claims against urban land had been settled through compensation during the initial stage of the restitution process, squandering a vital chance to improve apartheid's spatial architecture. It is vital to identify viable solutions for the issue that involves state-owned land.

Key emerging issues: -

- The South African Constitution provides that when interpreting the Bill of Rights international law must be taken into consideration; and that when interpreting any legislation, any reasonable interpretation consistent with international law must be preferred over any other interpretation that is inconsistent with international law. The implication is that South Africa must therefore consider international law and its obligations under it in relation to land as well as take heed of recommendations, jurisprudence, and guidance emanating from the United Nations Human Rights Mechanism relating to land in interpreting, applying and reimagining article 25 of the Constitution.
- Communities that have experienced dispossession require affirmation and recognition of their pain in addition to restitution and redress. Chapter 9 Institutions can play a key role in helping to heal the wounds of the past.
- Arguments were put forth that Section 25 of the Constitution does not need to be amended but should be interpreted differently. Most amendment supporters argue that there is a conflict between Sections 25(1) to (4), which are typically defined as laws that safeguard the property rights of individuals who possess land and property, and Sections 25(5) to (9), which are concerned with land reform, reparation, and restitution. This viewpoint creates a conflict between preserving white wealth and recuperating wealth seized from black people. It is possible to reimagine the relationship between these two seemingly polarising sections with the assistance of Chapter 9 institutions.
- To mitigate climate change, investments in renewable energy such as wind farms and solar farms must be undertaken, however caution must be taken to avoid a repetition of the history of land expropriation. Global trends suggest that the government is compelling rural inhabitants to relocate to urban areas to pave the way for the development of the renewable energy sector.

4. UNPACKING THE WORK OF RELEVANT INSTITUTIONS THAT DEAL WITH THE ISSUE OF LAND

Speakers:

Mr Terries Ndove - Deputy Director-General, Land Redistribution and Tenure Reform: Department of Agriculture, Land Reform and Rural Development (DALRRD)

Ms Zuki Mqolomba - Deputy Chairperson, Public, Service Commission of South Africa

Ms Nomfundo Ntloko-Gobodo - Chief Land Claims Commissioner, Commission on Restitution of Land Rights

Moderator:

Ms Fatima Chohan – Deputy Chairperson, South African Human Rights Commission

Session overview and objectives:

The panel discussion focused on articulating the government's progress in terms of land redistribution, restitution, and tenure security, including accomplishments attained through implementing recommendations and findings on land issued to and against the government and highlighting the challenges it faced.

Mr Terries Ndove provided an in-depth review of the DALRRD's efforts to address land redistribution and tenure reforms, with emphasis on progress in implementing the recommendations and findings on land issued to and against the department. He defined land reform as comprising three separate pillars: restitution of land rights, land redistribution, and tenure security. The country has a dual land administration system, which incorporates a secured tenure system supported by a cadastral system in which land is surveyed and registered, and an insecure tenure system in which land is either registered in the name of the government or remains unregistered. Section 25 of the Constitution mandates that the government enact enabling legislation that will enable land reform and promote equitable access.

Mr Ndove highlighted that since the inception of land reform in 1994, the department had purchased an estimated 5,2 million hectares of land benefiting approximately 315 000 individuals including labour tenants, agricultural dwellers, and ESTA occupiers. This consists of 73 000 women, 37 000 youths, and 800 people with impairments.

In terms of progress accomplished thus far, the 2017 Phase 2 Land Audit Report on land ownership by ethnicity and gender reveals the reality and breadth of the country's continued land ownership imbalance. This data was sourced from land registered by individuals at the Deeds Registry and excluded those registered as trusts and companies, a larger portion of the land was thus unaccounted for, thus highlighting the imbalance in land ownership. It reveals that 72% of the entire land owned by individuals in the country is owned by Whites, 15% by Coloureds, 5% by Indians, 4% by Africans, 1% by co-owners, and 3% by unspecified owners. Furthermore, women were identified as possessing only 13% of the land. The President commissioned the Presidential Advisory Panel on Land Reform to conduct a study in 2019, and the panel submitted a report with recommendations that the Cabinet endorsed.²³

The recommendations implemented by the government are as follows:

1. The establishment of land beneficiary guidelines in both rural and urban areas required identifying beneficiaries, prioritising beneficiaries, and determining how public resources should be rationed.

The Beneficiary Selection and Land Allocation Policy was adopted by the cabinet in 2020. The policy specifies the way beneficiaries should be selected, with a preference towards women, youth, individuals with disabilities, and those living in community areas. The programme has been implemented, and women are expected to receive half of the land allotted to them.

2. Proactively audit and redistribute well-located vacant or under-utilised urban land and buildings. As a result, the Department identified 700,000 acres of underutilised or unoccupied land for redistribution. The identified land was distributed to individuals and communities through the former South African Development Trust (SADT) primarily for agricultural purposes.
3. Establishment of the Land Donations policy: The land donation policy was established and approved by the Cabinet; it provides the framework and incentives for individuals, companies, churches, and other individuals or businesses seeking to contribute to land reform in South Africa. The approach provides several tax incentives to encourage donations while avoiding penalising donors.
4. Land policy to define traditional governance and communal land rights; informed by international best practices and (Replace CLaRA, which was declared unconstitutional in 2010). A delegation from the Inter-Ministerial Committee (IMC) on land reform and

²³ *Final Report of The Presidential Advisory Panel on Land Reform and Agriculture* (2019).

agriculture was deployed to various African nations to acquire knowledge on different communal land administrations and communal land policies. Following that, the government position paper was published and the cabinet approved it for further consultation with various stakeholders. ²⁴The consultations culminated in the Communal Tenure and Land Administration Summit in May 2022 and the cabinet evaluated the summit's outcome, which will inform the formulation of the community land policy and legislation.

The Farmer Dweller Program was established to implement ESTA thus enhancing the security of tenure and aims to attain the following:

- Promote and protect the rights of farm dwellers;
- Provide permanent and secure land tenure / Legally secure tenure (land acquired and transferred with full title to the beneficiaries).

In the case of *Nkuzi Development Association v Government of the Republic of South Africa and Others*²⁵, the court ruled that an individual who has a right to security of tenure under the ESTA, Land Reform (Labour Tenants) Act 1996 and has a right to legal representation at the expense of the government should the individual be unable to afford legal representation.

Land Right Management Facility (LRFM) provides legal representation which has now been transferred to Legal Aid South Africa (LASA) from the 2022/23 financial year as follows:

- Legal representative for parties in terms of Section 29(4) of Restitution of Land Rights Act of 1994,
- Mediation to land reform beneficiaries,
- Bookkeeping and judicial administration to CPA.

The case of *Mwelase and Others v Director-General for The Department of Rural Development and Land Reform*, the court ordered the finalisation of the remaining labour tenants' claims under the Land Reform (Labour Tenants) Act 3 of 1996.²⁶ As a result, the office of the Special Master for Labour Tenants was established as the court's agent to monitor, supervise, and oversee the Department's resolution of outstanding labour tenants. In 2020, the Special Master on Labour Tenants was appointed and the department has complied with this decision.

²⁴ *Position Paper on Land Administration and Tenure Reform in Communal Areas* (2021).

²⁵ *Nkuzi Development Association v Government of the Republic of South Africa* (2001) ZALCC 31.

²⁶ *Mwelase v Director-General for the Department of Rural Development and Land Reform* 2019 (6) SA 597 (CC).

Land redistribution commenced in 1998 through the Reconstruction and Development Programme, which provided grants equivalent to housing subsidies, and subsequently transitioned to blended funding through Land Redistribution for Agricultural Development (LRAD), a freehold system.

The Proactive Land Acquisition Strategy (PLAS) was adopted in 2007 and laid the foundation for a substantial policy shift from freehold to leasehold. This strategy proactively identifies strategic land for acquisition, storage, development, and disposition to beneficiaries. The PLAP was enacted in 2009, signalling a significant shift in policy towards leaseholds.

In the absence of redistribution legislation, provisions of the Land and Assistance Act were amended to provide for the acquisition of land, planning, development, improvement, and disposal of property, in addition to financial assistance for land reform purposes, property maintenance for land reform purposes, and associated issues.

The Department introduced and Parliament adopted ESTA in 2018. The Land Rights Management Act establishes the Land Rights Management Board and Land Rights Management Committees. Individuals who represent communities and interests affected by the Act, such as farmers, landowners, and the government, serve on the Boards and Committees. Their major role is to advise the Minister and Director-General on tenure security.

ESTA provides for land tenure rights for farm dwellers, in addition to present rights, to further strengthen the security of tenure for farm dwellers and labour tenants and include the following rights:

- (a) The right to alternative subsidised accommodation on farms;
- (b) Farm dwellers' right to maintain their farm dwellings;
- (c) Families' right to visit graves and erect tombstones on, mark, place symbols or perform rites on family graves;
- (d) Right not to be evicted without legal representation and a court order.

The Department recognises and rigorously enforces the IPILRA Act, which stipulates that mining companies are prohibited from performing mining activities on communal land without the informed permission of the communities, thus preventing any denial of rights by traditional authority.

The Department also addressed the willing seller, willing buyer principle through the Land Acquisition and Redistribution Bill, which currently awaits certification from the Office of Chief State Law Adviser (OCSLA). The Bill empowers the government to acquire land through

expropriation, like the Expropriation Bill introduced in Parliament by the Department of Public Works.

The Land Redistribution Bill mandates the government to enforce land redistribution plans, focusing on identifying women and other vulnerable individuals as a particular focus on identifying women and other vulnerable individuals as potential beneficiaries of land redistribution programs.

HECTARES ACQUIRED PER PROVINCE – 1994 TILL 2023

Province	Farms	Hectares		Beneficiaries			
		PLAS	Total	Individual	Women	Youth	PwD
Eastern Cape	901	275,231	572,775	31,356	3,945	2,547	29
Free State	914	233,805	437,841	8,834	2,438	1065	1
Gauteng	431	49,677	63,873	8,040	1191	545	5
Kwazulu-Natal	1005	209,682	632,941	86,694	22,633	14,925	139
Limpopo	431	119,488	198,997	11,723	1,498	882	37
Mpumalanga	668	271,402	501,900	43,506	5,895	2953	23
North West	594	399,299	609,947	84,825	22,969	3,603	386
Northern Cape	404	738,463	1,647,167	9,991	1182	791	35
Western Cape	345	92,733	580,029	30,433	10,989	9,416	149
TOTALS	5,693	2,389,780	5,245,470	315,402	72,740	36,727	804



HECTARES ALLOCATED SINCE 2019 TILL 2023

Financial Year Hectares Allocated	Number of Farms Allocated	Hectares Allocated to individuals per Categories				Number of Individuals according to Categories		
		Hectares Allocated	Hectares allocated to Women	Hectares Allocated to Youth	Hectares allocated to People With Disability	Number of Women	Number of Youth	Number of PWD
2019/20	41	85,125	28,074	27,519	489	29	22	1
2020/21	41	56,869	34,156	19,044	0	34	32	0
2021/22	34	39,037	14,305	6,053	0	17	9	0
2022/23	28	63,765	30,704	32,496	0	27	17	0
Total	144	244,796	107,239	85,112	489	107	80	1



Land reform has been impeded by the following factors:

- Resistance or reluctance to avail land for land reform purpose.

- Exorbitant land prices.
- Landowners refusing the status of labour tenancy resulting in litigation.
- Land Invasions.
- Post Settlement Support.
- Infrastructure Development.

Ms Zuki Mqolomba, of the Public Service Commission focused on the weaknesses in the government's approach to land reform, which were preventing the successful implementation of numerous recommendations received by the government and the implementation of Section 25 of the Constitution overall. The Public Service Commission which is entrusted with strengthening the effectiveness of the public service and public administration in performing their responsibilities, conducted investigations to identify impediments to the land reform plan. The investigation of the performance of the CRLR revealed that when it was formed, the government underestimated the capacity it would need to adequately and efficiently execute the land reform programme based on the scale of the programme.²⁷ The Commission received 79 000 claims that it failed to manage during its initial year of operation. It currently has 89 000 outstanding claims, which will require approximately 35 years to resolve at the current rate, thus demonstrating an urgency to ensure the Commission has the capability and capacity to accomplish its responsibilities.

In addition, the government has not taken advantage of the provisions of Section 25 of the Constitution which permit it to acquire land for the benefit of the public or in the public interest, in lieu of selecting an excessively circumspect approach that prioritises reasonable and equitable compensation and the willing buyer willing seller notion at the expense of the larger public interest.

Collaboration between the government -owned entities responsible for the administration of land reform, such as the Department of Human Settlements, the Department of Agriculture, Land Reform, and Rural Development, the CRLR, and other ministries, such as the Ministry of Women, Children, and People with Disabilities, has remained weak, thus impeding progress.

Ms Nomfundo Ntloko-Gobodo provided a summary of the CRLR's progress in investigating and resolving disputes. Since its inception until December 31, 2022, the CRL has settled 82 761 claims which amount to 90% of old order claims and is currently left with 6,000 outstanding old order claims to satisfy. The Commission has purchased approximately 3,8 million hectares

²⁷ National School of Government Department Republic of South Africa *a National Framework Towards the Professionalisation of the Public Sector* (2022).

of land, and the government has spent an estimated 53 billion Rands on the restitution scheme. The funds were utilised for the acquisition of land for communities that were evicted and lodged their claims, in addition to financial compensation for those that chose financial compensation.

Numerous recommendations about the Commission's business operations, settlement model, human resource capacity, and research competency have been received over the years, and the Commission has endeavoured to address these recommendations through its Project Kuyasa. The Commission has a backlog reduction strategy that it forecasts will settle all past-due claims in five years, but it would require 67 billion Rand to handle the claims. Considering budget constraints and the complexity of the cases, the Commission will take nearly 30 years to address pending claims. The expropriation legislative framework's restrictions impede the Commission's ability to expropriate land rapidly. Section 42 (e) of the Restitution of Land Rights Act 22 of 1994 authorises the Commission to expropriate land with compensation on legitimate claims under the 1975 Expropriation Act. Expropriation history demonstrates that landowners are hesitant to embrace the ideals and goals of restitution and cede their land. The owners frequently contend the compensation offered by the government falls short of market value based on their own valuations conducted by formal bodies, which leads them to file lawsuits against the Commission and demand a solatium from the government, which results in a lengthy process. The Moloto case and the new Expropriation Bill attempts to address a few of these issues by necessitating that during expropriation, apart from market value, Section 25(3) and the five principles which deal exclusively with equitable compensation in terms of expropriation, be considered.²⁸

In conclusion, Ms Ntloko-Gobodo stated that the responsibilities and activities of the CRLR frequently intersected with the duties of the DALRRD. She explained that the Commission's function is to receive, investigate, and resolve claims through negotiation, mediation, or referral to the land claims court for adjudication and that the Department of Agriculture is responsible for ensuring that land is acquired after the Commission has determined that the claim lodged was legitimate, and to provide oversight for broader land reform implementation. Restitution has become the face of land reform in South Africa, and as a result, all the anger, opposition, and frustration are directed towards Commission officials, to the extent that project officers are frequently escorted by police to communities.

²⁸ *Moloto Community v Minister of Rural Development and Land Reform* [2022] ZALCC 4.

As a critical component of implementing the Bill of Rights, collaboration between civil society, Chapter 9 institutions, and all government institutions should be held collectively accountable for land reform challenges.

Discussion Summary:

As a result of a lack of monitoring and adequate training, CPAs were found to have mismanagement, conflicts, a lack of support, poor land use, and other unethical behaviour. According to the CRLC, these challenges are related to post-settlement support, which necessitates mediation assistance.

According to the Commission, the Property Valuation Act 17 of 2014 and recent judgements, appear to be starting to influence how market value is recognised and appraised in the purchase and sale of land.

Concerns were raised that the DALRRD was not providing satisfactory service in disseminating advertisements for land restitution beneficiaries to farm labour tenants who may have claims, potentially leading to disputes when the new beneficiaries attempted to acquire the land; solutions to address issues surrounding the advertisements for land restitution are being investigated to ensure that the advertisements do not exclude any individual in the process. According to the statistics provided, the DALRRD was challenged to elaborate on the percentage of land allocated to land reform which was rural versus the proportion which was urban. The DALRRD stated that most of the land allocated to land reform is agricultural land, but it has redistributed land in peri-urban regions, and agricultural land, residential land, and land for other purposes are all included in land reform. The DALRRD was questioned to indicate whether it planned to perform an audit of the 59% of unaudited land, the majority of which is held in Trusts, because Trusts are commonly utilised to conceal land and enable individuals who are not entitled to land to acquire land.

5. KEYNOTE ADDRESS

Speakers:

Ms Geraldine Fraser Moleketi - former Minister of Public Service and Administration and member of the United Nations Committee of Experts on Public Administration

Moderator:

Advocate Bongani Majola – Chairperson of the South African Human Rights Commission

Dr Geraldine Fraser-Moleketi, Chancellor of Nelson Mandela University and former Minister of Public Service and Administration, explained the history of the land reform programme in South Africa in a keynote address that captured the essence of the conference, providing insightful reflections on the multifaceted course that South Africa has pursued as a nation to redress the issue since the advent of its democracy and constitutional arrangement in 1994.

She addressed three issues: the impact of the Natives Land Act on current South African affairs; the successes and failures of the three-pronged land rights reform approach post-1994; and, finally, the debate on amendment of Section 25 of the Constitution to allow expropriation of land without compensation as a suitable remedy to the sluggish progress of post-apartheid land reform.

Dr Fraser-Moleketi characterised current land disputes as confrontations of historical injustices such as racial discrimination, oppression, and dispossession. A succession of legislation aimed at perpetuating racial inequality was enacted from the Natives Land Act of 1913, the formal reign of apartheid; and as a result, post-1994 policy is considered responsive to the Natives Land Act. In reaction to these legislatively entrenched economic imbalances, including unequal land allocation, the drafters of the Constitution used the law to provide mechanisms for redress and redistribution of land, notably recognised as Section 25. The provision in the Constitution for equitable redress and restitution has paved the foundation for numerous legislative interventions aimed at alleviating the land crisis. She further elaborated on the intricacies of a land reform process that has thus far been anchored on the rights to restitution, redistribution, and security of tenure.

The initial cornerstone of land reform consisted of the RLA, which established a Land Claims Commission and Land Claims Court to investigate and adjudicate restitution claims and compensation over a 5-year period, in addition to security of tenure issues under the ESTA. Thereafter, an amendment to the RLA empowered the Minister of Rural Development to expropriate land for restitution, which led to land restitution successes across a disparate urban and rural divide. The CRLR's function remains constrained by impediments that include the expensive nature associated with this endeavour and the backlog of unresolved claims, which continues to increase with each subsequent submission deadline.

The second pillar of land reform is redistribution, which seeks to redistribute land to alleviate unequal access to and ownership of land. The Land Reform Act of 1996 was intended

to streamline issues by enabling labour tenants to apply for the acquisition of their leased land prior to eviction and preventing illegal eviction of labour tenants. The government provided subsidies for South Africans to reclaim their land with the intent to ensure land tenure. The R16 000 subsidy level limited claimants' purchasing power, resulting in subsidy amalgamation and overpopulation, which was counterproductive to the programme objective. The LRAD project, which provided larger grants to a wider group of claimants, outperformed this scheme.

The third pillar of land reform is land tenure security, which was facilitated through legislative reforms aimed at safeguarding the security of tenure for individuals living on privately owned or communal property, such as the Land Reform (Labour Tenants) Act and the ESTA. These attempts faced various challenges, notably collusion in land appraisals, the willing seller-willing buyer criterion, and South Africa's pattern of urban-rural migration.

She added that the SAHRC perceived the property rights regime and its mechanisms as inadequate to address the legacy of the Natives Land Act, through the 'Report of the *High Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change*' as an example. According to this report, the sluggish progress of land reform necessitates a more robust application of the existing expropriation regime, which should include the use of suitable state-owned and privately owned land to address the urban settlement crisis and improve the living conditions of low-income individuals and communities.

In conclusion, Dr Fraser Moleketi emphasised that the land reform strategy which has been unravelling since the inception of democracy is an attempt to reverse the legacy of the Natives Land Act, which was enacted over a century ago. Noting the sensitivity of the issue of land dispossession and the sluggish rate of reform, she cautioned against premature legislative shifts such as the revision of Section 25(7), which are motivated by political rhetoric. Instead, she urged the conference to consider and engage the subject of land with integrity, show appreciation for the advancements that have been accomplished toward accelerating the pace of reform and demand a rigorous and impartial review of the primary causes of the sluggish progress of reform.

6. PRESENTING THE WORK OF THE CHAPTER 9 INSTITUTIONS ON LAND

Speakers:

Mr Jonas Sibanyoni – Commissioner, South African Human Rights Commission

Dr Thembinkosi Twalo - Head of Research and Policy, Commission for Gender Equality

Prof David Luka Mosoma – Chairperson, CRL Commission

Advocate Kholeka Gcaleka - Acting Public Protector South Africa

Ms Kgabo Komape - Business Executive, Auditor General of South Africa

Moderator:

Advocate Andre Gaum – Commissioner, South African Human Rights Commission

Session overview and objectives:

The objective of the session was to establish the role of Chapter 9 institutions on land issues; evaluate the progress as it pertains to land reform; the extent to which the recommendations made have been implemented; and provide solutions on how Chapter 9 institutions may assist to ensure that the government complies with its obligations under Section 25 of the Constitution.

Commissioner Jonas Sibanyoni accentuated the SAHRC's important findings, recommendations, and directives pertaining to land reform issues. In its *2019 Report on the High-Level Public Inquiry on the Impact of Rural Land Use and Ownership Patterns on Human Rights*, the SAHRC identified significant weaknesses regarding the conceptualisation and implementation of the land reform programme. There is an alarming lack of awareness and comprehension of the various laws governing land use and land tenure among stakeholders responsible for implementing these laws. Land redistribution has been prolonged in comparison to both its own objectives and societal expectations, and has benefited men substantially less than women.

Due to a lack of coordination between government departments, post-transfer support is frequently inadequate in instances of successful land claims or redistribution of land reform. Some of the recommendations emanating from this report included the following:

- The Department of Justice and Constitutional Development (DoJ&CD) was required to establish and administer a training program for police, prosecutors, and magistrates on the interpretation and application of ESTA.
- Parliament was urged to prioritise providing substantial legal protection to vulnerable communities confronted with external mining or other investment projects with the potential to result in a negative impact on the communities' land rights.

In its report on the *National Hearing on the Human Rights Situation of the Khoi-San in South Africa in 2016*, the SAHRC recommended that:

- DRDLR, in collaboration with the Presidency, must implement measures to expedite restitution for indigenous communities, considering the importance of access to land, traditional territories, and natural resources in the fulfilment of Khoisan rights.

The Commission recommended improved interaction and exchange of data around artisanal miners (AM) initiatives, plans, and projects in the 2015 Report of the SAHRC *Investigative Hearing Issues and Challenges in Relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa*. It emphasised the importance of expanding the evidence base around South Africa's unregulated AM sector, and further creating trust and networks in this sector.

However, the SAHRC's reports are occasionally ignored and not implemented, resulting in noncompliance, and compromising the SAHRC's ability to interact effectively and effectively defend rights.

South African Human Rights Commission v Agro Data CC and other court decisions declared that the SAHRC lacked constitutional and legislative authority to issue binding directives, jeopardising the SAHRC's ability to seek appropriate remedies through the issuance of recommendations and directives, and undermining the SAHRC's power as an organisation established to preserve constitutional democracy. Litigation, whenever recommendations in a report are denied, is impractical due to the SAHRC's limited human and financial resources.

He urged participants for solutions pertaining to how government departments, civic society, and academics could potentially collaborate to assist the Commission in ensuring that the recommendations it provides are implemented.

Dr Thembinkosi Twalo described the Commission for Gender Equality's current measures to improve women's land rights, access to communal land, and women's experiences on commercial farms. Women on communal and traditional land continue to be deprived of their constitutional right to land, harassed because of customary practices and endure the greatest burden of the repercussions of landlessness.

Adv Kholeka Gcaleka contended that the government's efforts have been insufficient, and that South Africa remains one of the world's most unequal societies. The disparities are rooted in the country's history and legacy of land dispossession, which is characterised by significant racial imbalances and continues to be perpetuated. She stated that the government lacked the ability to effectively utilise the current legal and policy framework, in conjunction with the court's jurisprudence, to achieve land reform and restitution for historically disadvantaged

communities. In *First National Bank of SA Limited t/a Wesbank v Commissioner for the South African Revenue Services*, the Constitutional Court ruled that expropriation without compensation may be permitted in certain instances.²⁹ The administration has failed to comply with this case law.

Between 2011 and 2017, the Special Investigations Unit (SIU) investigated 148 land reform programmes and revealed corruption 'on a tremendous scale.'³⁰ It discovered "major systemic weaknesses and an alarming absence of controls and mechanisms to prevent fraud and maladministration," which "unlocked opportunities to fraudulent activities on an enormous scale, resulting in fruitless and wasteful expenditure by the government." The SIU discovered that government officials distributed farms and millions of Rands in payment to individuals who were not eligible for the Land Redistribution for Agricultural Development Programme. Government personnel frequently solicit, and numerous individuals offer to pay bribes to participate in the programme despite the fact that those individuals are not eligible. In terms of the programme, most individuals who received farms and grants under the Land Redistribution for Agricultural Development Programme did not even reside on or were employed on these farms. Due to failing weaknesses and controls, the acquisition price of land was exaggerated by both government officials and sellers. Corruption Watch and other organisations that have conducted similar investigations into corruption in the land reform programme discovered widespread bribery, misappropriation, embezzlement, and theft. Land accounted for 24,3% of all corruption reports received by Corruption Watch from the Gauteng, KwaZulu Natal, and North West provinces.³¹

The Public Protector has received complaints of abuse of power by government officials who collude with private investors and tribal authorities to illegally sell communal land and enlist the assistance of SAPS to forcibly remove community members from this land.

There have been accusations of government officials defrauding individuals and communities entitled to compensation, and there have been allegations of government officials irregularly allocating private actors' land belonging to land reform beneficiaries without their knowledge or consent. She further stated that she was not opposed to the amendment of Section 25 of the Constitution, but emphasised the need to review the country's current legislation and policies to identify the limitations that required to be amended and determine whether the amendment of Section 25 of the Constitution could remedy the limitations found. Furthermore,

²⁹ *First National Bank of SA Limited t/a Wesbank v Commissioner for the South African Revenue Services* 2002 (4) SA 768.

³⁰ <https://legalbrief.co.za/diary/legalbrief-today/story/massive-land-reform-fraud-uncovered-by-siu/print/>

³¹ Corruption Watch *Unearthing Corruption in The Land Sector* 2019.

it is critical to consider whether these adjustments, once in effect, will ensure a fair distribution of this land.

Prof David Luka Mosoma highlighted the value of land, the repercussions of land dispossession, and the implications of failing to confront the past legacy on the realisation of cultural, religious, and linguistic community rights. Even though many individuals do not possess land, numerous communities, particularly indigenous people, are intrinsically bonded to land. In this context, the CRL has witnessed some violations, for instance, families whose relatives are buried on farms being denied access to these farms to perform rituals. Farm owners have blocked families' access to the graves in the past, fearing that they will use this as a reason to claim the land.

Due to a paucity of grave sites in Cape Town, by-laws requiring the recycling of existing cemeteries every ten years were enacted.³² This meant that the deceased corpse would be exhumed and buried in a mass grave to avail space for new corpses, interfering with the families' capacity to communicate with their ancestors. The CRL intervened and negotiated that once a body is exhumed, it must be replaced by the corpse of a descendant from that family to enable it to preserve its relationship with that family's ancestors. The CRL intervened when Eskom was building the Medupi power station to ensure that the remains of the individuals buried on the site were relocated and cleansing rituals were performed.³³

Traditional health practitioners who use indigenous herbs and plants for medicinal purposes that grow in forests in their healing practices encounter access issues. Indigenous and religious communities have resorted to worshipping in any accessible location, regardless of its suitability due to a lack of access to land for worship. Access to sacred caves and therapeutic sites is also restricted.

He concluded that part of the CRL's purpose is to foster social cohesiveness, peace, humanity, tolerance, and unity, however, these cannot thrive in the context of landlessness and indignity.

Ms Kgabo Komape emphasised the importance of ensuring that yearly performance plans and strategic plans developed by government departments express the collaboratively identified and mutually agreed-on land reform objectives, particularly recommendations adopted. Issues that have not been planned for or budgeted for will not be considered until these provisions

³² <https://www.news24.com/news24/southafrica/news/burial-space-shortage-in-cape-town-communities-20230103>

³³ <https://www.eskom.co.za/OurCompany/SustainableDevelopment/EnvironmentalImpactAssessments/MedupiGraves/Pages/default.aspx>;
<https://www.worldbank.org/en/news/feature/2016/07/08/south-african-families-gather-to-commemorate-deceased-with-memorial-at-medupi-power-plant>

are detailed in the strategic plans. Civil society and other stakeholders must actively participate in and oversee land reform activity planning and budgeting. The Office of the Auditor General's (AG) responsibility is to promote transparency and guarantee that funds are utilised as planned. The AG has begun to use the P10 and 12 standards to closely monitor government expenditures on issues that are significant to citizens, especially land, and will release its general report this year, which will include findings on government expenditures on land reform and restitution. A stronger ecology is required to enable a holistic approach to land reform efforts in the country. An ecosystem of this type would be able to connect and integrate data gathered. Now, there are cases where land has been returned to its beneficiaries, but the local government has not availed the services and infrastructure for making the land lucrative for the purpose it was intended for.

Discussion Summary:

Members of the audience expressed dissatisfaction that land had still not been returned to its original owners 30 years after the country gained democracy and chastised the government for failure to achieve and encourage meaningful reform. The overall impression was that for many years, there have been numerous reports, recommendations, and judgments published on the land reform programme but without making concrete progress. The government has failed to listen to its citizens. While acknowledging the educational value of conferences, Imbizo and seminars, experts emphasised that these gatherings ought to be accompanied by actual actions to be truly meaningful.

Representatives from the Congress of Traditional Leaders of South Africa recommended that the government undertake immediate action to transfer ownership of land in communal areas into title ownership and to transfer government owned land to traditional leaders. As the land belongs to the government, it was stated that transferring the land would not necessitate significant finances.

Divergent views emerged about re-imagining Section 25, with several participants noting that the provision had not been thoroughly tested to warrant changes, and that should amendments be implemented, all parties must agree on what these amendments would entail.

Queries were raised regarding which legal tools or routes could potentially be utilised to compel the government to follow its mandate and the recommendations it has received, along with holding it accountable for violations of human rights that occurred because of the government's failure to fulfil its mandate. Some members of the audience noted that the panellists represented several of the country's most influential government institutions and yet

were unable to clarify how they would in their various capacities, ensure individuals who were unlawfully dispossessed of their land were given back their land and thus kept asking as to when the government intends to return the land back.

Chapter 9 institutions confirmed that they have begun to convene to discuss ways of consolidating their mandate to have a more substantial impact on land transformation and ensure that the land is effectively redistributed. It was reiterated that it is imperative to strengthen collaborative relationships across government departments to ensure citizens receive consolidated, integrated, and comprehensive feedback on the government's progress towards land reform. The Public Protector serves as an oversight body, and its corrective actions are legally binding. It can serve to reinforce recommendations made by Chapter 9 institutions. Invoking the Constitution's preamble, emphasised the significance of all spheres of government in healing historical differences in the land. Adv Andre Gaum who moderated the session proposed that a unified strategy or matrix, like which Ms Kgabo Komape alluded to, should be created as a next step.

7. TRADITIONAL COUNCILS AND TRADITIONAL LEADERS ON CHALLENGES EXPERIENCED

Speakers:

Mr Prince Zolile Burns Ncamashe - Deputy Minister, Department of Cooperative Governance and Traditional Affairs

Honorable Zolani Mkiva - Member of Parliament, Congress of Traditional Leaders of South Africa

Ms Zamantungwa Mbeki - Gauteng Provincial Manager, South Africa Human Rights Commission

Prof Nomthandazo Ntlama - University of Fort Hare

Moderator:

Ms Angie Makwella – Commissioner South African Human Rights Commission

Session overview and objectives:

The session's objective was to ascertain the views of traditional leaders and councils on whether the government has complied with the obligation to redress the effects of the Natives Land Act and their views on the formulation of Section 25 of the Constitution.

Mr Zolani Mkiva provided a historical context of traditional leaders' involvement in the fight against land dispossession, as being generally underestimated. Traditional leaders led the first struggles of resistance against land dispossession, in which hundreds of thousands of Africans were cruelly massacred to capture the land. During the dispossession several leaders were imprisoned, exiled, or slaughtered while seeking to protect their territory. The skulls of these leaders were exported to Europe as trophies to represent European victory over the uncivilised Africans. The African National Congress' (ANC) liberation struggle draws from previous resistance undertaken by traditional leaders. He argued that the government should have rejected the colonial and apartheid legal frameworks in effect during the period and established an Afrocentric legal framework untainted by European doctrine. The land reform legislation and procedures of the government should be founded on traditional African land laws and ideologies. Section 25 of the Constitution necessitates an Afrocentric reimagining, and land reform must be decolonised.

He noted that the new South Africa has continued to benefit individuals who were previously benefiting rather than individuals who were previously disadvantaged. The government has not merely recognised the property rights of individuals whose predecessors acquired land and other assets unconstitutionally but has additionally been enthusiastic to reach an agreement and compensate for the restitution of land stolen from its citizens. He argues that land reform cannot be accomplished under these circumstances which means a revolution becomes unavoidable. The government cannot transfer land it currently does not possess.

Once the land is in the possession of the government, it becomes feasible to institute redistribution, restitution, and tenure reforms, and make land available to citizens under an agreement-to-lease basis. Currently, the government appears to be relegated to the function of an agent who has no legal right to acquire land but negotiates on behalf of its citizens. He further argued that land ought to ultimately be transferred to the institution of traditional leaders. Traditional leaders represent the authority of individuals who represent the interests of their communities and are the genuine guardians of the land.

Ms Zamantungwa Mbeki emphasised the necessity of ensuring that land laws reflect and respond to the daily realities of individuals. These rules must allow account for shifting dynamics in society and societal necessities. For instance, while adults have traditionally benefited from land reform, the increasing number of child-headed households demands a shift in policy.

Prof Nomthandazo Ntlama reiterated the importance of defining the functions of traditional leaders and local government in communal land administration. The government has failed to clarify the role of traditional chiefs and leaders in ensuring the administration and compliance

of the prescripts of Section 25 of the Constitution, their responsibilities in land administration remain derived from the roles outlined in the 1913 Act. Traditional leaders and local spheres of government must be at the forefront of land transformation and administration. The function of the Institute of Traditional Leaders in the administration of communal land has been reduced post-independence. The Constitution failed to allow for the development of unique practices and principles alongside the wider framework of governance in the regulation of communal land. Although Section 212 of the Constitution recognises the Institute of Traditional Leaders functions and authority, the recognition must be accompanied by the development of legislation which informs the institution's administration of communal land and the relationship between the institution and local government. To address the identified deficiencies, it is recommended that land be acquired and transferred to the Institute of Traditional Leaders during the land redistribution process. Restitution programmes should seek to compensate citizens for not only land that was taken from them but other material losses such as livestock. An integrated approach should be applied in supporting socio-economic development in rural and urban areas. Finally, the implementation of tenure reforms should ensure sustainable opportunities and land rights for marginalised populations.

Traditional leaders, according to Prince Zolile Burns-Ncamashe, are the true guardians of communal land; nevertheless, they do not own communal land as is often assumed, but instead are custodians of land on behalf of communities. The land belongs to the nation and the community, and it is collectively shared. The land is an invaluable resource to the community since it not merely supports inhabitants but restores human dignity that was diminished during the colonial and apartheid eras. Traditional leaders should therefore be at the centre of decision-making and oversee land restitution and redistribution to ensure that their communities are effectively and equitably served in the reform process. If the legacy of the Natives Land Act remains unresolved, it will be difficult to establish a community structure that gives traditional leaders the authority to safeguard the land for their communities.

Discussion Summary:

It was noted that discussions tend to focus on restitution, which specifically targets claimants, rather than the broader issue of land reform. Restitution, it was argued, was intended for restorative justice for specific individuals who were deprived of their property rights in certain circumstances and was unable to serve as a framework or process to resolve communal land issues. Discussions on communal land therefore needed to shift from Section 25(7) of the Constitution, which deals with restitution to Section 25(5), which deals with rights that are directly related to communal land, such as tenure rights and administration.

Traditional leaders are typically perceived as a detriment to land reform. It was argued that the perception arises from the presumption that traditional leaders disperse land without adequate planning, which makes it increasingly difficult for the government to provide services in these areas. Furthermore, communities and human rights activists contend that certain traditional leaders promote the displacement of individuals, particularly women. Traditional leaders are renowned for their proclivity for the expulsion of individuals from communities without proper consideration for their fundamental rights, based on factors such as tribal affiliation. As a result, participants reached the conclusion that traditional leaders should not be given additional authority in the land reform process due to past instances of abuse of power. Traditional leaders' representatives were urged to strive to alter these misgivings and undertake measures to strengthen the community's confidence in them as important actors in the land reform process. Responding to these claims, panellists admitted that the institution was not faultless and that certain leaders, unfortunately, contributed to these perceptions; nonetheless, the institution did not endorse such conduct, and that these leaders were not a true reflection of the institution.

There was consensus on the necessity to take measures to address historical prejudices toward the institution of traditional leaders, deal with the security of tenure of individuals who reside in rural areas, and re-evaluate the way the institution of traditional leaders should be involved in the land reform process moving forward.

8. CIVIL SOCIETY ORGANISATIONS AND NON-GOVERNMENTAL ORGANISATIONS

Speakers:

Mr Siyabonga Mahlangu - Inner City Federation

Dr Gaynor Paradza - Public Affairs Research Institute, University of Witwatersrand

Mr Tshepo Fokane - Land Access Movement of South Africa

Moderator:

Mr Chris Nissen – Commissioner, South African Human Rights Commission

Session overview and objectives:

The session allowed civil society the opportunity to provide suggestions on the government's ability to address the injustices of the Natives Land Act and whether redesigning Section 25 constitutes a solution.

Mr Siyabonga Mahlangu, submitted that Section 25 has not benefitted the landless communities. Instead, the section has hampered their access to land by safeguarding the property rights of 1913 Act beneficiaries. The Prevention of Illegal Eviction Act (PIE) is designed to criminalise unauthorised land occupation, which seems paradoxical given the brutal way black citizens were evicted from their land. Mr Mahlangu, submitted that Section 25 has not benefitted the landless communities that Inner City Federations work with. Instead, the section has hindered their access to land by protecting the property rights of the beneficiaries of the 1913 Act. He reiterated that it is the voices of communities affected by landlessness and dispossession that should anchor any reimagining of Section 25.

Dr Gaynor Paradza shared examples of initiatives that land advocates have undertaken to support the government's efforts toward land reform. The project also mediates the relocation of graves which were buried on construction sites. The Association for Advanced Rural Studies (AFRA) established a project in 2018 to map labour tenants residing on commercial farms with the objective to determine where everyone resided alongside what support services individuals were entitled to. In turn, the Public Affairs Research Institute continues to strive to promote a consistent approach to land administration in the country. The current administration of the land system in South Africa is extremely dispersed, dualistic, and uneven. There is a need to establish non-hostile circumstances for government, civil society, and other actors to collaborate and share successful innovations and best practices.

Mr Tshepo Fokane proposed numerous recommendations for land reform on behalf of the Alliance for Rural Democracy which are described below:³⁴

- The democratisation of institutions such as Traditional Council Elections paves the foundation for traditional leaders to assume more authority in land reform, and COGTA should pass legislation to that effect. Traditional council finances must be audited to ensure transparency in investments or transactions conducted on community land.
- The Council must have at least 30% female representation.
- Each woman must be given 1 hectare of land. This is certainly feasible and ensures that women are the principal beneficiaries of land reform, rather than simply gaining

³⁴ www.ardt.org.za

access to land by working in groups or alongside male redistribution of those who benefit.

- Unregistered or informal land rights are owned by 60% of the population. These rights must be protected, which can be accomplished by establishing options enabling legal and administrative occupancy identification - albeit at the pilot level - through expanding infrastructure, providing basic services, occupation letters, occupancy registers, and block layouts.
- Providing basic services enhances farm residents' tenure and helps to reduce evictions.
- The CRLR must complete the old-order claims {there are approximately 300,000 preserved new-order claimants}.
- Section 25 does not need to be amended; instead, the land reform programme must be improved.
- The current restitution programme is incapable of achieving meaningful restorative justice. The restitution framework does not adequately assess the damage that has been inflicted on individuals who have been evicted from their homes. The individuals who lost their land rights additionally lost their autonomy and self-determination.
- The process of restorative justice must take into consideration individual legitimate losses including loss of livestock.

Discussion Summary:

Participants were outraged by the government's reluctance to address unequal access to land, labelling it treacherous and a betrayal of the citizenry. The ANC was challenged to apply its political authority to realise the people's dreams. There were cries for youth to rise similarly to 1976 and reclaim the land as older generations were failing. There has been some concern that many CPAs have formed political coalitions.

It was widely agreed that an excessive amount of time was consumed lamenting the past of land dispossession and arguing ways to rectify injustice instead of implementing actual action. There is an urgent need to determine and resolve the challenges related to land reform, and it is imperative to define clear deadlines and establish mechanisms to facilitate reform implementation. The Chapter 9 institutions, led by the SAHRC, were urged to create an actionable strategy to move the process forward.

It was highlighted that a great deal of the individuals who lost land under the Group Areas Act and were resettled in towns and townships opted for financial compensation over restoration. The compensation depleted, in two to three months, leaving individuals in the same

predicament that they were previously in, posing the question of whether the compensation they received was adequate to start with.

Priority should be focused on enacting legislation to address difficulties identified by Sections 25(6) and (9) of the Constitution. The government was advised to consider the World Bank's various resettlement models and civil society organisations were asked whether the government should prioritise law reform or enforcing existing laws.

It was noted that, although PIE protects individuals from eviction, it was problematic since, for them to claim protection under the Act, individuals were required to first admit that they had been illegally occupying land, land that had been taken from them and was rightfully theirs.

The Forum for Farm Workers, Occupiers, Tenants, and Dwellers shared their experience of getting land from farmers. The organisation's main strategy is negotiations with farmers to voluntarily cede part of their land for the relocation of communities who lost their land in 1913. In 2022 the Forum got 88 hectares for 8 households and expressed willingness to collaborate with the government on this initiative.

9. SUMMATION AND WAY FORWARD

The conference concluded with numerous recommendations and discussions about measures that the government and other institutions could implement to address the legacy of the Natives Land Act and fulfil its constitutional obligations under Section 25 of the Constitution. These recommendations included measures that the departments entrusted with the responsibility of land reform and restitution ought to consider addressing the identified issues including recommendations which require SAHRC involvement. These will be incorporated into the Commission's strategic planning process.

A closer working relationship between civil society, Chapter 9 institutions, and all government institutions is required, as is collective accountability for land reform by all organs.

Benefits of Amendments to Section 25 of the Constitution:

- South Africa has to take into account international law and its obligations under it as it relates to land; and follow recommendations, jurisprudence, and guidance emanating from the United Nations Human Rights Mechanism in interpreting, applying, and re-imagining article 25 of the Constitution.

- Amending Section 25 provisions provides an opportunity to decolonise land reform and integrate African philosophy, customs, and traditions into the manner in which land reform is interpreted and implemented.

Disadvantages of Amendments to Section 25 of the Constitution:

- The Section itself does not require any amendments; rather, the interpretation must begin by reinterpreting the link between the various components of Section 25 and interpreting the provisions in a manner that advances land reform. The government has not used Section 25 of the Constitution to its full potential, which allows it to expropriate property for the benefit of the public or for reasons related to the public interest. It has taken an overly cautious approach that prioritises equitable compensation and honouring the willing buyer willing seller concept at the expense of the wider public interest.
- The emphasis on amending the Constitution is misplaced serving as a pretext for government inaction. The land issue is over-theorised. What is needed is implementation.

10. CONCLUSION

The conference provoked robust discussions on the following key issues:

The extent to which the obligations in Section 25(7) of the Constitution have been successfully in reality and the extent to which far South Africa has progressed in addressing the legacy of the Natives Land Act;

The measures taken by the government to fulfil diligently and without delay its constitutional obligation in respect of land, especially the obligations in Section 25 (7) of the Constitution.

The measures the government has taken to implement the findings and recommendations in the various reports and research briefs issued by Chapter 9 Institutions, Non-Governmental Organisations and other research institutions.

Factors that have hampered the realisation of the objectives of Section 25 and the implementation of recommendations received.

Recommendations on the measures that Chapter 9 institutions and civil society organisations may assist to ensure that the government fulfils its constitutional obligations related to land access.

Recommendations on how Chapter 9 institutions and civil society organisations can help the government fulfil its constitutional obligations related to land access.

The conference concluded that whilst a significant amount has already been undertaken to reverse the legacy of the Natives Land Act, the pace of land reform has been sluggish.

Finally, an urgent appeal was made for the development of an action plan to guide the implementation and resolve challenges, and inequities, particularly the government's sluggish progress toward land reform.

Recommendations extracted from discussions:

Annexure A

RECOMMENDATIONS	
Recommendations for the DALRRD and CRLR	
1.	In instances where expropriation is deemed suitable, it should be geared at satisfying the public interest and be for a public purpose and should benefit the most vulnerable in our society, including but not limited to, people living with disabilities, women, especially black women, impoverished and vulnerable communities, people living in informal settlements, those who are homeless and people living in far flung villages.
2.	Rigorous accountability mechanisms must be established to ensure that corruption is eradicated and prevented at all levels of land distribution and restitution processes.
3.	DALRRD and CRLR should provide adequate assistance and preparatory training to beneficiaries of land redistribution and restitution programmes to ensure individuals productively use the land and improve their livelihoods, allowing the value obtained from land restitution and land support to be realised.
4.	In, <i>First National Bank of SA Limited t/a Wesbank v Commissioner for the South African Revenue Services and Others</i> , the Constitutional Court ruled that in certain instances, expropriation without compensation may be permissible. The CRLR must apply this case law to begin identifying the circumstances under which it can expropriate without compensation.
5.	Attention must be paid to persons at risk of being left behind in South Africa's land reform efforts which includes but not limited to, people living with disabilities, women, especially black women, impoverished and vulnerable communities, people living in informal settlements, those who are homeless and people living in far flung villages, and indigenous peoples.

6.	Women must have equal access to and possession of land.
7.	Land reform must include urban land reform and redistribution.
8.	The government is obligated to initiate immediate action to transfer ownership of land in communal areas in title ownership, in addition to transferring land to dispossessed individuals.
9.	Individuals with unregistered and informal land rights must have their rights preserved by offering alternatives for legal and administrative recognition of occupancy, and municipalities must provide services.
10.	The CRLR must finalise the old-order claims.
11.	Restitution must be conducted in a manner which promotes restorative justice.
12.	A national wide campaign should be embarked on to educate farm owners, miner owners and operators and police officers operating in these communities regarding legal and illegal evictions. This training should also include Magistrates and other Court officials.
13.	Revisit the Multi-Stakeholder Platform (MSP), which has been stalled since the Covid-19 pandemic.
Recommendations for the SAHRC	
1.	The SAHRC should make consistent follow-ups on the recommendations flowing from all its previous reports.
2.	Take the lead in influencing parliament to enact broad legislation that will trigger urban land transfer and address the legislative lacuna.

3.	Review and improve the performance of the SAHRC in monitoring, promoting and protecting against alleged human rights abuses related to land.
4.	Endeavour to develop a joint programme with other relevant Chapter 9 institutions to create a stronger ecosystem to support a holistic approach to land reform efforts in the country and to protect and defend the people's right to land. Within the Forum for Institutions Supporting Democracy there should be a committee made up of relevant functionaries working on the issue of land within all the Chapter 9 institutions who should lead on this.
5.	Increase advocacy for land restitution to individuals who were evicted from their land as a result of the Land Act.
6.	Investigate municipal rules that, despite their purported neutrality, have the effect of dispossessing and displacing the urban poor.
7.	Protect the rights of civil society organisations and individuals working on extractive and development projects, along with environmental rights defenders, who are particularly vulnerable to government repression.
Recommendations for Civil Society Organisations	
1.	The SAHRC and other Chapter 9 Institutions should make a concerted effort to protect civil society organisations and activists to ensure that they are able to fulfill their objectives without harassment, victimisation and abuse.
2.	Serve as a crucial check on government authority and should ensure that political leaders' and governments' land-related functions are regulated and controlled.
3.	Contribute significantly to the consolidation and strengthening of the country's democracy and land issues.
4.	Raise public awareness of the government's abuse of power in land administration.

5.	Expose corruption and corrupt conduct of public officials in the redistribution of land and lobby for good governance and reforms. Civil society must continue to advocate to lobby for access to information, freedom of expression, the rule of law and strong anti-corruption institutions.
6.	Actively participating and monitoring the planning and budgeting of land reform activities.
7.	Use recommendations provided by the United Nations Human Rights Mechanism to advocate for change, and to lobby for South Africa to ratify the Optional Protocol to the ICESCR.
Recommendations for the Parliament	
1.	A number of pieces of legislation intended to fulfil Section 25 of the Constitution contain weaknesses which restrict their capacity to serve effectively the objectives of Section 25 of the Constitution. Legislation such as the Extension of Security of Tenure Act 62 of 1997, Land Reform (Labour Tenants) Act 3 of 1996, and Government Immovable Asset Management Act 19 of 2007, must be amended.
2.	Interim Protection of Informal Land Rights Act 31 of 1996, must be declared permanent law and associated regulations must be established to provide the law a broader scope.
3.	Develop legislation that recognises and defines the roles and status of the institution of traditional leaders in the administration of land.
4.	Enact a land-redistribution law that prioritises women and black women in rural areas, to achieve equitable land redistribution.
5.	Ratify the Optional Protocol to the ICESCR.
Recommendations for the Chapter 9 Institutions	

1.	Engage with treaty monitoring bodies such as the ICESCR to ensure that the government interprets, applies, and reimagines its land reform and restitution programme in accordance with international law and its commitments under international jurisprudence.
2.	Ensure that the voices of rural poor, urban poor individuals who have been evicted from their land, and farm workers are represented in land reform discussions.
3.	<p>Help communities heal past the painful history by creating channels which allow individuals to express and affirm their agony pertaining to their disposition's history. Telling their tales, having those stories recorded, and having their grief acknowledged is a critical step toward repairing the nation's psyche about the land issue.</p> <p>Create extra measures in addition to legal interventions, as legislation has limitations as an instrument and tool for social reform.</p>
4.	Support the implementation of recommendations made by the Presidential Advisory Panel on land reform and agriculture and high-level panel on land reform and rural development.



Mr J. B Sibanyoni
Commissioner

South African Human Rights Commission