

RESTITUTIONARY ROAD: REFLECTING ON GOOD GOVERNANCE AND THE ROLE OF THE LAND CLAIMS COURT

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SUMMARY

Although 95% of all claims that had been submitted by 1998 have indeed been processed, a mere 49% of the land that was restored since 1994 housed successful enterprises by the end of 2010. Accordingly, sixteen years into the restitution process the statistics are rather disappointing. Restitution of land as a land reform mechanism is a unique temporal process that involves various role players. This contribution focuses on the role that the Land Claims Court has to play within the context of “good governance”. In this regard the legislative and policy frameworks within which restitution and the Land Claims Court operate, are first set out after which the unique characteristics of the restitution programme are highlighted. Although the main function of the Land Claims Court is to grapple with and adjudicate on legal issues, it also has a role to play in effecting good governance. This may be done by its involvement in the legal process leading up to the finalization of claims by issuing directives, acting as a review forum and by removing land from the restitution process under section 34 of the Restitution Act. However, a more pro-active role may be played by the Court by its involvement in deciding the *exact form* of restitution or restoration in a particular case. In this regard the Court can find that restitution has to be conditional and that certain requirements have to be met in order for the process to be effective and successful. With reference to *Baphiring Community v Uys and Others* (Case number LCC 64/1998) it is clear that a pro-active approach would require the Court to engage in difficult, often conflicting, issues and to embark on in-depth investigations and analyses where necessary.

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KEYWORDS

Land reform; restitution; land claims; good governance; Land Claims Court; directives; restitution options