

MCA91-79-4-3

African National Congress

51 Plein Street
Johannesburg 2001
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Marshalltown 2107

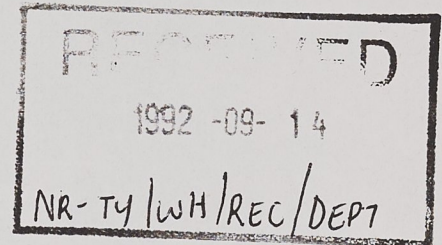


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OFFICE OF THE SECRETARY GENERAL

Inter Office Memorandum

DATE : 11 September 1992
TO : All HOD's
All REC's
FROM : Secretary General



Please be informed that as per decision of the NEC on 31 August - 2 September:

1. Comrade Terror Lekota has been re assigned to the Elections Commission.
2. The new Head of ANC Intelligence is Comrade Alfred Nzo.



M.C RAMAPHOSA
SECRETARY GENERAL

The People Shall Govern!

REC - details of meeting:



Date: 92/06/07

REC members present: B.A. Jants & V. DIBA & Annal - Gdes Nonatjala, Mak

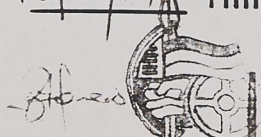
Name of organisation	Telephone	Fax		
Khayelitsha self protection committee				
Name of persons met	Position	Tel work	Fax	Tel home
ANC Women's League Trevor Vilakazi Branch Exec				

SUMMARY OF MAIN POINTS RAISED

Follow up

There was bitterness from the Comrades who attended the meeting about a suspected deliberate absence of some other Executive members of the Trevor Vilakazi Women's League Executive.	
The REC and Zonal delegates of the Women's League after an intense discussion about the lack of zeal of some members asked the meeting to adjourn for a few minutes for them to consult.	
After a short adjournment, the REC and Zonal delegates of the Women's League came up with a position that all Women's League activities in Trevor Vilakazi have been suspended pending the outcome of the investigation process.	
We however, have advised the Women's League that as we have assessed the situation we would strongly recommend that the Branch be dissolved and be built anew with strict code of conduct and discipline and an oath to be taken by joining applicants.	

Next meeting: Date: 92/06/14 Time: 14 hrs. 00 Venue: Joe Slovo High Khayelitsha.



REC - details of meeting:



Date: 9/06/06

REC members present: BA Joants

Name of organisation	Telephone	Fax		
Khayelitsha Self Protection Committee				
Name of persons met	Position	Tel work	Fax	Tel home
Delegates from Khayelitsha Self Protection Committee and Trevor Vilakazi				
Civic Branch Executive				

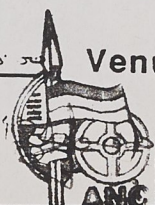
SUMMARY OF MAIN POINTS RAISED

Follow up

Concern was raised about the absence without apologies of a greater number of the K, L, M, N, D, M unit Executive members recently, as the problem	
mainly originates from the area. A concern was also raised about the lack of physical presence of Civic REC and Zonal Structures. It was therefore finally agreed that I should contact Cole-Roseberry Sotho and invite the Civic REC to attend the next Sunday's meeting at 14 hrs 30 the 14th of June at Joe Slovo, and also to ask Cole Rose to facilitate that the faction that was absent be present in this coming meeting.	
We hope that this next meeting will be a decisive and final one after which then the Protection Committee will debate the Civic affairs and then submit a report and recommendations to the various organisations.	

Next meeting: Date: 9/06/14 Time: 14 hrs 30 Venue: Joe Slovo Hgh. Khayelitsha.

1992-06-11



1992-06-11

MINUTES OF THE RWC MEETING -HELD 2 JUNE 1992

PRESENT: CDES W. JACOBS, V. DIBA, W. HOFMEYR, T. YENGENI

2(a) POLICY CONFERENCE

Regarding Policy Conference - leave follow up until meeting on 3 June. Regarding POA - we proposed broad meeting of branches and MDM for Saturday 6 June at 2.00pm at FAWU. Also focus on build up in zones.

2(d) RGC

Propose that it be postponed to 4 & 5 July. Cdes Calvin, Diba and Hofmeyr. We need to draw in staff. Take to REC for further discussion.

2(e) Branch AGM's should take place before end of July 1992.

2(f) Zonal launches by end August 1992.

Departmental reports should be submitted to the Secretary by end of each month. We need to set up a committee to prepare a proposal for representation: cdes Esau, Rasool, de Lange & Allan Taylor.

3. NEC

- * Need to put together regional report.
- * Political conjuncture - refer to REC.
- * Policy Conference follow up - leave until Wednesday.
- date for AAM meeting, special National Conference.
- * Elections commissions.
- * Future of Patriotic Front.
- * Date for stay-away.
- * Resources for campaign.
- * Make up at Negotiations Commission - need to prepare standard notes.

5. Resource Centre - Erip has proposed opening a resource centre in our building.

6. MAATLA TRUST - 30 People from Western Cape should go on a course for election training early in July. 4 Of these can then be employed by the Region. We need to consult with Relcom and come up with a proposal on how we fill these positions.

7. CIVICS - We are meeting with them at 6.00pm on 3 June.
WOMEN'S LEAGUE - Meeting with NEC delegation at 4.00pm.

4 (a) REPATRIATION - Extend Jonas employment until 31 July 1992 and try until 30 June to find sponsor.

8. OFFICE - Youth League has approached us for extra space, but we need to consider charging them for eg. rent as they received R 1500.00 pm for rent.

2 (g). LUTHULI - Approach cultural desk to investigate a statue.

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**AFRICAN
NATIONAL CONGRESS**

9th June, 1992.

Dear Comrades,

Herewith please find the following:

1. Summary of Malaysian Housing projects dated 8/6/92.
2. Letter from Cde. Mandela to Malaysian Prime Minister dated 9/3/92.
3. Urgent memorandum re. Malaysian-supported housing projects dated 9/6/92.
4. Fax from Cde. Basil Davidson re. District Six details.

Thank you.

The People Shall Govern!

TWB

TO: COMRADE TG
FROM: ZAMA MVUSI
DATE: 8 June 1992
RE: MALAYSIAN HOUSING PROJECT

1. ORIGINAL PROJECT PROPOSAL:

- a) Construction of housing project in District 6.
- b) Purchase / upgrading of apartment block complex in Port Elizabeth.
- c) Assistance in Richmond Farm informal settlement upgrading.

2. THE CAPE TOWN PROJECT:

Consultation with community on implementation of District 6 has been very slow and highly politicised and presently there is limited opportunity to apply development funds in the short term. Alternative project in Bath House has provoked a negative reaction from the community. It has been decided to re-allocate Malaysian funding to Pretoria project.

3. PORT ELIZABETH

Feasibility study indicates high level of subsidisation by SPOORNET to complex residents and hence low rental. ANC will be unable to recover operations and maintenance costs from the low rental levels expected by that community. Rental increases would most likely provoke hostility from the community. It has been decided to re-allocate Malaysian funding to Pretoria project.

4. RICHMOND FARM PROJECT

Extensive consultation is ongoing with residents to form Community Development Trust. All indications are that the project is ready to start. Zama is going to Durban on Wednesday to confirm state of affairs.

5. REVISED PROJECT FRAMEWORK

As expressed in Comrade Madiba's letter to the Malaysian Prime Minister and in meetings between Comrades Coovadia and Rajie, ANC has requested re-allocation of Cape Town / Port Elizabeth budgets to purchase of residential accommodation in Pretoria area, available for use by staff/workers of a new government. In our understanding this has been agreed in principle. We are now identifying concrete sites/buildings for purchase in Pretoria.

6. YTL VISIT:

Mr. Francis Dato' arrives with team on 14 June. Itinerary will include meetings in Johannesburg to discuss all details of the above with a view to immediate implementation and site visits to Pretoria and Durban. YTL very interested in a project for Cape Town, but all indications are that this will not be feasible. As such, no visit to Cape Town is planned during their visit.

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OFFICE OF THE PRESIDENT

The Honourable Prime Minister of Malaysia
Yang Amat Berhormat Dato' Seri Dr. Mahathir Mohamad
Jalan Dato' Onn
50502 Kuala Lumpur
Malaysia

Monday, 9 March, 1992.

Dear Dr Mahathir Bin Mohamad,

Your Excellency,

The President's Office of the African National Congress presents its compliments to the Office of the Honourable Prime Minister and wishes to express its pleasure on receipt of your letter of 28 January 1992. We further wish to extend our warmest salutations to Your Excellency, The Government and the people of Malaysia.

We note with keen interest, the progress being made by our respective technical representations to effect the implementation of the joint Malaysian Government - ANC housing project, we note that the Syarikat Pembinaan Yeoh Tiong Lay Sdn. Bhd. have been appointed under contract to your Government.

We are aware that this joint project, within its original framework, provided for the following:

- the construction of a housing complex in District Six, Cape Town, aimed at breaking with apartheid planning parameters and providing affordable working-class housing in Cape Town
- the purchase and upgrading of a complex of apartment blocks in Port Elizabeth, identified as an urgent priority, given the large number of exiles expected to return to the region
- assistance in the upgrading of the Richmond Farm informal settlement in Durban, consisting of a revolving-fund scheme to finance the erection of home starter-units in the area.

The People Shall Govern!

Several meetings and workshops have been organised by our Projects and Building & Technical Services units of the Office of the Treasurer-General with the community representatives of the target areas. Various mechanisms for the implementation of the individual projects have been discussed in detail and proposals forwarded to your Government on our behalf through the YTL Group.

Our Chief Representative in Malaysia, Comrade Ismael Coovadia, has participated in some of these planning meetings and has been kept updated on developments, with a view to coordinating further consultation with the relevant authorities in Malaysia. We understand that, should broad consensus be reached on how best to structure our collaboration with the YTL Group in the physical implementation of the projects, this could commence at very short notice.

We, however, wish to place for your consideration certain aspects pertaining to the fast-developing political situation prevailing in South Africa and which should bear on the original concept for the joint Malaysia - ANC project.

With the advances being made in the sphere of negotiations and, specifically, at CODESA, the ANC is preparing its structures at national, regional and branch levels for the possibility of an election campaign being run at extremely short notice. This situation would require our organisation to speedily place itself in a position to contest the forthcoming elections. In such an event, the ANC will not be able to tap the considerable resource-base availed to us by organisations and governments of the progressive international community over the long years of our historic struggle, at a time when these resources would be most needed.

The senior leadership of the ANC views this situation with the greatest concern. Indeed, we have instructed our staff and membership to explore all avenues of fund-raising and income generation for the movement. No effort is being spared to strengthen and increase the capacity of our financial investment structure.

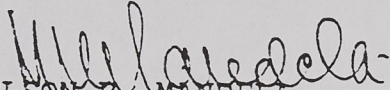
With specific regard to the Malaysia ANC project, we wish to retain the original frame of providing housing for our people. We wish to include within this concept, however, that funds must be generated for the ANC from the individual projects. The ANC has at its disposal an already-existing property investment facility which is owner and manager of various commercial properties, including the headquarters building at 51 Plein Street.

We propose that the budget allocations for the Cape Town/Port Elizabeth projects be transferred to this venture, to be jointly managed and controlled by the YTL Group and our technical representation at the local level. Given that the Richmond Farm project is revolutionary in its concept to provide affordable housing loans to the low-income residents of this deprived area, we will continue to place a high emphasis on its implementation.

The finer details of this scheme will be worked out in close consultation with the delegation of Mr. Francis Dato' and the senior members of his staff when they visit South Africa shortly.

The National Executive Committee of the ANC and I look forward to our further co-operation and continued fraternal relations between our two countries and extend our best wishes to your Excellency and the people of Malaysia.

Please accept, Your Excellency, the fraternal assurances of our highest esteem.



NELSON R. MANDELA
PRESIDENT



**AFRICAN
NATIONAL CONGRESS**

URGENT MEMORANDUM

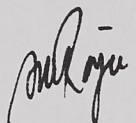
9TH JUNE, 1992.

RE. Malaysian-supported housing projects.

Herewith notes on the process for implementation of housing projects in W. Cape.

1. When we first went with the Malaysians to Cape Town on the 26/5/91 we were met at the airport by a delegation from the W.Cape office led by Cde. Trevor Manual.
2. At 10.00 am. on 27/5/91 the Malaysians were officially welcomed at the W.Cape Regional office. Amongst senior members present at this ceremony were Cdes. Christmas Tinto, Reg September, Johnny Issel, Hilda Ndube and Trevor Manual. We explained our mission to the W. Cape leadership.
3. At a previous meeting held in December, 1990 at the house of Cde. Trevor Manual, I was explained that the following 4 comrades had been assigned to deal with development: Trevor Manual, Basil Davidson, Johnny Issel and Bulelane Ngcuka. They were to facilitate the setting of a W. Cape Regional Development Forum (RDF). This never materialized.
4. For the Malaysian Projects Basil Davidson, member of the W. Cape REC, was identified by HQ due to his expertise in this field. He still co-ordinates the project. (Attached please find letter dated 4/6/91 from him. It is wrongly dated since we received it only 5/6/92 after asking him at the

Policy Conference to give us an up-date on the state of affairs for project implementation). It is assumed, rightly or wrongly, that Cde. Basil Davidson would report to the REC W. Cape on this project.



.....
Shaheed Rajie.
Projects Department.

DATE: 4 June 1991
TO: ANC PROJECTS DEPT
ATTENTION: SHAHEED RAJIE
FROM: BASIL DAVIDSON
MESSAGE: District 6 details

NUMBER OF PAGES SENT, INCLUDING COVER PAGE:

SHOULD YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE
CONTACT US IMMEDIATELY AT THE ABOVE NUMBERS.

MEMO:

To: Shaheed Rajie
From: Basil Davidson
Date: 3 June 1991

re: POSSIBLE APPLICATION OF MALAYSIAN FUNDS FOR DEVELOPMENT IN
DISTRICT 6

In response to your enquiries as to the possibilities for applying Malaysian funds in District 6 in the short term, I am attaching an extract from a recent report from the District 6 negotiations which indicates the current stage of negotiations.

In summary there is broad agreement (yet to be officially ratified by any of the parties) that three vehicles be established to facilitate development of the area.

- * a land holding vehicle
- * a development vehicle
- * a body to undertake residential development

Currently organisations are discussing possible options for representation on the above three structures.

As can be seen, the process is slow and highly politicised. Given the sensitivity of both the area and the process of negotiations there are no "short cuts" to develop this land. There would thus seem to be very limited opportunity to apply development funds in the short term. In the longer term there would be a possibility of making funds available to the proposed 'development vehicle' for development.

Should any further information be required please contact me.



REPORT TO THE ADMINISTRATOR OF THE CAPE PROVINCE AND THE
DISTRICT SIX STEERING COMMITTEE BY THE WORKING GROUP ON A
DEVELOPMENT VEHICLE FOR THE REDEVELOPMENT OF DISTRICT SIX

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INTRODUCTION

Since 1990 the Administrator held several discussions with a number of people and other bodies such as the Cape Town City Council, the ANC and private developers on various aspects pertaining to District Six. From these discussions it emerged that there was a real need for a redevelopment initiative pertaining to District Six, having regard also to the history attached to this area of land in the Cape Town metropolitan area.

Following the discussions referred to above, the Administrator was appointed as co-ordinator of the redevelopment action envisaged for District Six. On 6 June 1991 he gave feedback to a committee consisting of the relevant Ministers and senior officials on the progress of the redevelopment action envisaged for District Six. The meeting agreed that the Cabinet's approval should first be obtained on certain matters of principle before anything further is done. Consequently the Cabinet on 31 July 1991 *inter alia* expressed itself in favour of the establishment of a utility company to deal with the development of the area. In a letter dated 12 September 1991 the relevant Minister informed the Administrator that the Cape Provincial Administration would be responsible for the submission to the Cabinet of the draft articles of association in respect of the proposed utility company.

CHAPTER I: ESTABLISHMENT OF THE WORKING GROUP, ITS CONSTITUTION AND TERMS OF REFERENCE

In order to give effect to the Cabinet's decision referred to in the introduction to this report, the Administrator decided to appoint a Working Group under the Chairmanship of Mr C O du Preez, Deputy Director General: Community Services to investigate the matter and to report thereon to him and to the District Six Steering Committee.

He also instructed that one or more representatives of each of the following should be appointed to the Working Group:

- Private Sector
- Cape Town City Council
- Civics
- ANC
- Cape Provincial Administration

The Working Group was eventually constituted as follows:

- Mr C O du Preez - CPA (Chairman)
- Mr C Germishuys - Headstart
- Prof D Dewar - Headstart
- Mr J Bloomfield - Cape Town City Council
- Ms A Younge - Cape Town City Council
- Mr D Abrahams - Civics
- Mr B Davidson - ANC
- Mr H Smith - ANC
- Mr P D Badenhorst - CPA
- Mr D J Smit - CPA (Secretary)

The Administrator formulated the Working Group's terms of reference as follows:

"To do the groundwork for the establishment of an acceptable development vehicle for the redevelopment of District Six by determining the format, aims and articles of association of such a body".

The Working Group met on three occasions on the dates mentioned below and copies of the minutes of each of these meetings are attached as annexures to this report:

- 8 October 1991 - Annexure 1
- 21 October 1991 - Annexure 2
- 5 December 1991 - Annexure 3

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CHAPTER II: DELIBERATIONS OF THE WORKING GROUP

At the first meeting of the Working Group which was held on 8 October 1991, the Group reached consensus on its terms of reference as stated in Chapter I of this report.

In addition to highlighting verbally their expectations around the constitution, status and aims of a development vehicle for the redevelopment of District Six, memoranda in this regard were also tabled by the Chairman, Prof Dewar and Mr Bloomfield on behalf of their constituent bodies. These memoranda are attached as annexures to the minutes of the meeting of October 8 - see Annexure 1 of this report. Having regard to these verbal and written inputs, Messrs Bloomfield and Smith were tasked by the Group to formulate in writing their views on the aims and purpose of the proposed development vehicle for consideration by the Working Group at its next meeting. This was done and the document is attached to this report as Annexure 4.

The Working Group duly debated Annexure 4 at its meeting of 21 October 1991. The Group reached agreement that the proposed aim and purpose of the development vehicle be defined as follows:-

"Firstly, acquire by purchase, lease or otherwise land in the area known as District Six in Cape Town and/or related land relevant to the general purpose of inner city housing in order to, secondly, provide and procure the provision of appropriate urban activities particularly housing, community amenities and services for occupation and use by members of the general public and more specifically persons who are or have been socially, economically and/or politically disadvantaged, or to assist such persons to acquire or

procure housing, community amenities and services, now in future, on land known as District Six in Cape Town in a manner which is participatory, accountable, democratic non-racial."

After having thus reached consensus on its brief as well on the aim and purpose of the development vehicle, Working Group at the same meeting focussed on the framework for a development vehicle. Mr Bloomfield expressed the view that a literature study of existing models would have to be undertaken. This was duly done by the City Council as a discussion document was tabled through the office of City Council at the Group's meeting of 5 December 1991. A copy of the discussion document is attached to this report as Annexure 5.

As will be seen from the minutes of the Working Group's third meeting held on 5 December 1991 (Annexure 5) an agreement was reached that three vehicles should be established, namely a land holding vehicle, a development vehicle and a resident selection vehicle. In this regard it should be pointed out that the Chairman was of the opinion that the establishment of three vehicles have specific advantages over the establishment of one, two or even four different bodies. It allows a simple and quick establishment of a trust to hold the land and the finances. Assigning the highly political task of resident selection to a separate body by-passes many of the representational problems which would be confronted in setting up one all-encompassing body. If the resident selection process were in any way to falter, the credibility of the original trust would not be jeopardized. Implementation and policy making at a detailed level is removed from the political arena by establishing a community development trust or other similar body to undertake educational processes, overall planning and development.

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The future resident community would be able to be effectively represented on this body since it is usually desirable that at least 50% of the board of trustees should be members of the community which is the beneficiary of the body. Furthermore, there are few examples where development trusts receive no public sector support at all. In most cases at least some degree of local authority representation has been found to be a benefit to any body established.

The Working Group expressed the view that it should abandon its deliberations at this stage so that the approval (or otherwise) of the relevant authorities could first be obtained to proceed with the establishment of the suggested three vehicles.

CHAPTER III: RECOMMENDATIONS

It is recommended unanimously by the Working Group that -

- (i) a land holding vehicle in the form of a community trust be established to hold the land in District Six, to obtain commitments to financing, to draw up broad guidelines for the development of the land and to play a facilitating role in the establishment of a development body. This trust will have the capacity to replicate its functions in other areas considered suitable for similar purposes,
- (ii) a land development vehicle in the form of a company not for gain be established in terms of section 21 of the Companies Act, 1973; this vehicle to facilitate and manage the actual redevelopment of District Six;
- (iii) ~~a body to undertake resident selection~~ a body (the form of which is yet to be determined) be formed or appointed to function independently from any other vehicles. The sole task of such a vehicle will be to identify a future resident community according to agreed selection criteria;
- (iv) the services of a suitable person be obtained to compile a draft deed of trust and articles of association in respect of the land holding vehicle referred to in (i) above, and
- (v) proposals with regard to a person referred to in (iv) above and the emoluments to be paid to him be

submitted to the Administrator and the Steering
Committee for final approval.

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P. 05

4-JUN-92 THU 9:16

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AFRICAN NATIONAL CONGRESS

DEPARTMENT OF ECONOMIC PLANNING

FAX COVER SHEET

TO: Albie Sachs

ATTENTION: _____

FAX NO: 021 222 626

DATE: 10/3

NO. OF PAGES INCLUDING THIS ONE: 8

SENT BY: DEREK HANEKOM

MESSAGE:

There will be a meeting on Tues 15 March to discuss
this document drafted by Geoff Budtender in JHB,
10 a.m to 3pm, Shell House, 3rd floor. Will you be
able to attend?

Please phone (011) 330 7188 if you encounter any problems

First draft

LAND RIGHTS RESTITUTION ACT

Introduction

The Constitution requires that an Act of Parliament shall provide for restitution of land rights which were lost through dispossession which was effected under or for the purpose of furthering the object of a discriminatory law.

It is important that this process be as speedy as possible. Many of those dispossessed are in a desperate position, and need urgent relief. The sooner this is achieved, the sooner a basis will be laid for systematic land reform and a secure system of property rights for all South Africans. Those dispossessed by apartheid must now receive justice without further delay.

As a matter of priority, the new government will propose to Parliament the enactment of a Land Rights Restitution Act. This Act will provide as follows.

1 The right to restitution

Subject to the provisions of the Constitution and the Act, any person who was dispossessed of rights in land, where such dispossession was effected under or for the purpose of furthering the object of a discriminatory law, shall be entitled to restitution of such rights.

*Descendants
groups.*

2 Limitation of claims

The right to restitution shall not apply in the following circumstances;

- 2.1 Where the dispossession took place before 19 June 1913.
- 2.2 Where the rights in land were expropriated under the Expropriation Act or any other law incorporating by reference that Act, or the provisions of that Act with regard to compensation, if just and equitable compensation as contemplated in section 123(4) of the Constitution was paid in respect of that expropriation.
- 2.3 Where the claim to restitution is not lodged with the Commission on Restitution of Land Rights within three years of a date to be fixed by the President, which shall not be earlier than the date when the Commission gives public notice of the procedure to be followed in lodging claims.

122(1)dl

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First draft

3 Commission on Restitution of Land Rights

The Act will establish a Commission on Restitution of Land Rights.

The functions of the Commission will be to:

- receive claims to the restitution of land rights
- investigate the merits of any such claims
- mediate and settle disputes arising from such claims
- draw up reports on unsettled claims for submission as evidence to the Land Claims Court and to present any other relevant evidence to the court
- facilitate the submission of unsettled claims to the court.

The Commission will thus not have any decision-making powers.

The Commission will be headed by a Director appointed by the Minister of Justice. The staff will include a Deputy Director, and people with skills and knowledge in the area of law, land matters, planning, community development, and the history of forced removals under apartheid.

The Director will be able to delegate any of his or her powers (except the power of delegation) to the Deputy Director, either generally or with regard to a specific case.

The Director will, with the approval of the Minister of Justice, make regulations for the procedure to be followed in the submission of claims to the Commission. The framework of the procedure will be set out in the Act as follows.

Claims will be lodged with the Commission by filing them at the office of the Commission.

On receiving any claim, the Commission will give notice of the claim to all persons who the Director considers have an interest in the matter. In addition, the Commission will give public notice of the claim, inviting submissions.

offices, established throughout country - each Prov -

The Act will provide that any person who thereafter takes any steps to prejudice a claim lodged with the Commission, or to frustrate the process of the Commission or the court (for example by evicting or harassing potential claimants, or by attempting to sell it or burdening it with additional real rights) will be guilty of contempt of court. In addition, the court will be entitled to take any such conduct into account in making its decision on any claim.

If parties agree
 does Director certify
 can it be registered

First draft

The staff of the Commission will carry out such investigations as the Director considers necessary to facilitate the functions of the Commission or the court. In particular, where claimants are not themselves able to provide all the information necessary for the adequate submission of and decision on a claim, the Commission will take steps to have this information made available.

In order to facilitate the process and assist claimants, the Director will have the power to order the production of government files relating to the land, and to make them available to claimants and other parties.

If the Director considers that it may be more effective to do so, he or she may order that all claims to a particular area of land must be submitted within a stipulated time. This will enable the Commission (and, if necessary, the court) to deal with related claims at the same time.

The staff of the Commission will attempt to mediate and settle disputes arising from any claim. The Director may appoint facilitators to assist in this process.

The Constitution states that claims will not be justiciable by the court until they have been dealt with by the Commission. Claims will be remitted to the court for a decision under the following circumstances:

- If the parties to a dispute agree in writing that it is not possible to settle a dispute, the Director shall certify accordingly and the matter will then be remitted to the court.
- If the Director is of the opinion that it is not feasible to attempt to resolve a dispute by mediation and negotiation, he or she shall certify accordingly and the matter will then be remitted to the court.
- If the Director is for any other reason of the opinion that a claim is ripe for hearing by the court, he or she shall certify accordingly and the matter will then be remitted to the court.
- If the parties to a dispute or a claim reach an agreement as to how the claim should be finalised they may, with the concurrence of the Director, submit that agreement to the court and ask that it be made an order of court.

The Act will make provision for the procedure to be followed when a claim is remitted to the court for decision.

4 Land Claims Court

The Act will establish a Land Claims Court, which will be a specialised court of law.

The President will appoint the judge president of the Land Claims Court, and such other judges of that court as he/she may deem fit. No person shall be qualified to be appointed a judge of the Land Claims Court unless he or she -

- is a South African citizen
- is a fit and proper person to be a judge of the Land Claims Court
- is a judge of the Supreme Court or is qualified to be admitted as an attorney or an advocate and has, for a cumulative period of at least 10 years after having so qualified, practised as an advocate or an attorney or lectured in law at a university

A judge of the Supreme Court may be seconded to act as a judge of the Land Claims Court.

Judges of the Land Claims Court shall have security of tenure on the same basis as judges of the Supreme Court.

The Minister of Justice shall appoint a panel of assessors for the court. The assessors need not be lawyers. They will be people with skill and knowledge which, in the opinion of the Minister, may be of assistance to the court. The court may co-opt not more than two such assessors to participate in any case. The assessors will have an equal vote with the judge with regard to questions of fact, but no vote with regard to matters of law or judicial discretion.

The seat of the court shall be determined by the Minister of Justice. [Alternative: The seat of the court shall be the same as the seat of the Constitutional Court.] However, the court may conduct its hearings at any place determined by the Court. The intention is that as far as possible, the sittings of the court will be held at a venue accessible to the people affected.

Any party with an interest in a case before the court may appear before the court, either in person or represented by an advocate or an attorney.

The court will have the power to receive any evidence which it considers relevant and cogent, whether or not such evidence would be admissible in any other court of law. This is essential because detailed documentary evidence of historical claims is often lacking.

Probative value - weight not admissibility

Simple forum

The judge president may make rules governing the procedure of the court. It is intended that for the most part, claims to the court will be made in writing, on a basis similar to that followed in applications in the Supreme Court. Any party may apply to the court for leave to adduce oral evidence. The court may grant leave to adduce oral evidence if it considers that such evidence may materially assist the court in coming to a decision. In that event, any other party may cross-examine such witness.

Representation

5

First draft

The rules of court will provide for the court, at its own instance or at the request of a party, to convene a pre-trial conference of the parties with a view to clarifying the issues in dispute, identifying issues on which evidence will be necessary, and generally facilitating an early trial and decision. The court may, after such conference, issue orders and directions as to the procedure to be followed before and at the trial.

The court may:

- where the land in question is in the possession of the state, order the state to restore the relevant right to the claimant;
- where the land is in the possession of a private owner, order the state to purchase or expropriate the land (or any part of it or rights in it) and restore the relevant right to the claimant;
- order the state, in lieu of restoration of the right, to grant the claimant an appropriate right to alternative state-owned land designated by the state to the satisfaction of the court;
- order the state, in lieu of restoration of the right, to pay the claimant compensation; or
- grant the claimant any alternative relief.

In making its order, the court shall take into account any compensation that was paid to the claimant upon the dispossession, and may make an order with regard to any such payment.

The court will have the power, under its authority to grant any alternative relief, to recommend to the state that a claimant be given priority access to state resources in the allocation of land and in appropriate development processes.

Any land which is owned by the State and held under a lease or similar arrangement shall be deemed to be in the possession of the state; provided that if the court orders restoration of the relevant rights in such land, the lawful occupier of the land shall be entitled to compensation determined either by agreement or by the court according to the principles laid down in the Act. [Legal question - is this necessary?]

Where the court makes an order in favour of a group, community or tribe, it may make such order subject to such conditions as it considers necessary to ensure that all members of the group, community or tribe have fair access to the land or other asset, on a basis which is non-discriminatory and which ensures the accountability of those who hold the land or other asset on behalf of the group, community or tribe.

*Appeals -
Delays.*

6

First draft

The court will not be empowered to order restoration of land, acquisition of land by the state, or designation of alternative land unless the state certifies that restoration of the right in question is feasible.

The court shall not order the purchase or expropriation of land unless it is just and equitable to do so, taking into account all relevant factors, including the history of the dispossession, the hardship caused, the use to which the property is being put, the history of its acquisition by the owner, the interests of the owner and others affected by any expropriation, and the interests of the dispossessed.

The court shall have the power to determine the amount of compensation -

- to be paid by the state to any claimant. In this event, the compensation will be just and equitable, taking into account the circumstances which prevailed at the time of the dispossession, any compensation which was paid upon the dispossession (and who received such compensation), and any other factors which the court may consider relevant. [Do we want to specify other criteria?]

- to be paid to any private owner if the court orders the state to purchase or expropriate the land. In this event, the amount of compensation shall be calculated in the manner provided by section 28(3) of the Constitution.

Any party aggrieved by any decision made by the Director, by the state under the certification process, or by any other functionary acting in terms of (or purportedly in terms of) this Act may seek to have the decision reviewed by the Land Claims Court. The court will exercise all of the Supreme Court's powers to review of any such decision, to the exclusion of the jurisdiction of the provincial and local divisions.

Appeals from decisions of the Land Claims Court shall lie to the Appellate Division of the Supreme Court and/or the Constitutional Court, in the same manner mutatis mutandis as if the decision were a decision of a Provincial or Local Division of the Supreme Court.

5 Certificate of feasibility

When a claim is remitted to the court for decision, the Commission shall require the state [who?] to certify whether or not restoration of the right in question is feasible. The parties to the claim shall be entitled at the same time to make submissions as to whether or not restoration is feasible.

In considering whether restoration or acquisition by the state is feasible, the state shall take into account

whether the zoning of the land in question has been substantially altered, or the land has been substantially transformed, since the dispossession

any matter which may make it not practicable to restore or acquire the land in question

In considering whether designation of alternative state-owned land is feasible, the state shall take into account

- what land is owned by the state, in particular land which is in the same area as the land where the dispossession took place
- the suitability of such land for the needs of the claimant.

The Act will make it clear that the state is not required to consider whether restoration is just or desirable. Those are matters for the Court to decide. The only aspect to be considered by the state is whether restoration of the rights in question is feasible, is practically achievable.

The state will be required to issue its certificate, or to refuse to do so, within 30 days of receipt of the request from the Commission. It will be required to give reasons for any such decision.

The hearing of any review of the state's certification or non-certification of feasibility may, at the discretion of the court, be conducted at the same time as the hearing of the claim.

6 Transitional provisions

The Commission on Land Allocation shall cease to function from a date determined by the Minister of Justice. This will be the date when the Commission on Restitution of Land Rights is ready to commence its work.

All claims duly lodged with the CLA on that date, and not yet disposed of by the CLA, will be deemed to have been duly lodged with the Commission on Restitution of Land Rights. The latter Commission will then deal with them in accordance with the provisions of the Act; provided that if the Director is of the opinion that this is desirable, he may waive compliance with any or all of the Commission's procedures in a particular case.