LAND RESTITUTION THROUGH THE LENS OF ENVIRONMENTAL LAW: SOME COMMENTS ON THE SOUTH AFRICAN VISTA

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Abstract

Land reform in South Africa and the realisation of the section 25 property clause of the *Constitution of South Africa*, 1996 (hereafter the Constitution) is seen as an integral step in the democratisation process as well as in the social and economic empowerment of previously marginalised groups. For many, the true test for political transformation will be whether land needs (including protection of and care for the environment) are addressed effectively and in a sustainable manner. In recent years, however, government's addressing of land needs has become a highly controversial issue, especially where land that vests in private owners is claimed back because of its status as ancestral land.

Land reform may strongly impact on the environment and sustainable development as protected in section 24 of the Constitution since it involves vast hectares of land, other environmental media and people. Restitution of land processes in terms of section 25(7), as one of the components of land reform, often does not take key provisions contained in environmental and planning law into account. In many instances, for example, government's restitution projects do not make sufficient provision for harmonisation with environmental principles contained in environmental law and no or limited systems exist whereby to inform and assist land restitution beneficiaries on compliance with environmental and planning law obligations in post settlement development endeavours. These limitations could, *inter alia*, be linked with the fragmentation of the environmental governance regime and a lack of role clarification. It may furthermore result in significant conflict between sections 24 and 25(7) of the Constitution as overarching framework legislation, and between developmental objectives contained in sectoral-specific subordinate legislation.

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The restitution of land is, amongst other policies, regulated by section 25(7) of the Constitution and the *Restitution of Land Rights* Act 22 of 1994 whilst section 24 of the Constitution and the *National Environmental Management* Act 107 of 1998 aim at protection of the environment, the prevention of pollution, the promotion of conservation, and secured ecologically sustainable development. The conditions following land restitution settlement, including the current state of the environment on land that has been restituted, provide an interesting and factual source of reference for critical analysis of environmental policy implementation in land restitution processes and post-settlement endeavours. It further allows for a critical view on the effective or futile realisation of sustainable development in national and provincial governments' efforts to finalise claim-driven restitution of land. In order to limit the scope of this article, land restitution policy, progress with the national land restitution programme and some post-settlement accounts will be critically analysed and assessed in the light of obligations and initiatives for environmental governance derived from the legal framework concerned. A land restitution case is briefly discussed with subsequent comments and suggestions for the way forward.