

The Richtersveld Community v. Alexkor Ltd. Mining Corporation

Abstract:

The Restitution of Land Rights Act allowed for indigenous people to begin bringing claims before the Land Claims Court for the land they had lost under white minority rule. The Richtersveld community brought a case forward against the Alexkor Limited Mining Corporation for a strip of land which yielded many alluvial diamonds, and had been taken from the community through unjust, racially biased laws. While the community initially lost their case in Land Claims Court, the case eventually came before the Constitutional Court of South Africa, where the Richtersveld community was held to have a right in land through 'customary law interest'. This set a precedent for indigenous title as a land claim and ignited many more claims for land restitution from many indigenous people while helping to shape the law of the new South African government.

The Richtersveld Community v. Alexkor Ltd. Mining Corporation

In 1998, the Richtersveld Community brought forth a case against the Alexkor Ltd. Mining Corporation, wishing to reclaim land that had previously been held by the community, through the 1994 Restitution of Land Rights Act. The case that the Richtersveld Community brought forth went first to the Land Claims Court of South Africa, then the Supreme Court of Appeal, and finally to the Constitutional Court of South Africa. It was a monumentally important case in relation to the Restitution of Land Rights Act because it was the first case to consider the customary law of indigenous peoples and set a precedent that allowed many more indigenous people to access land that they had been dispossessed of under white rule.

The [Restitution of Land Rights Act](#) was issued in 1994 with the purpose of reclaiming lands of indigenous people that was unjustly taken from them by racially discriminatory practices carried out during the colonization of South Africa and continuing into the apartheid era. In the document's own words, 'To provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law...'
(Restitution of Land Rights Act, 1994). South Africa has a history of exploitation of indigenous people and their land through colonization and the apartheid government. When European settlers first arrived in South Africa, they were unfamiliar with the way in which the indigenous people viewed the land. Africans largely held the land communally rather than individuals owning land as private property, which caused the settlers to treat the land as if it was unoccupied because there was no sole owner. According to Vorster, some Europeans abused notions of the Old Testament and saw themselves as people

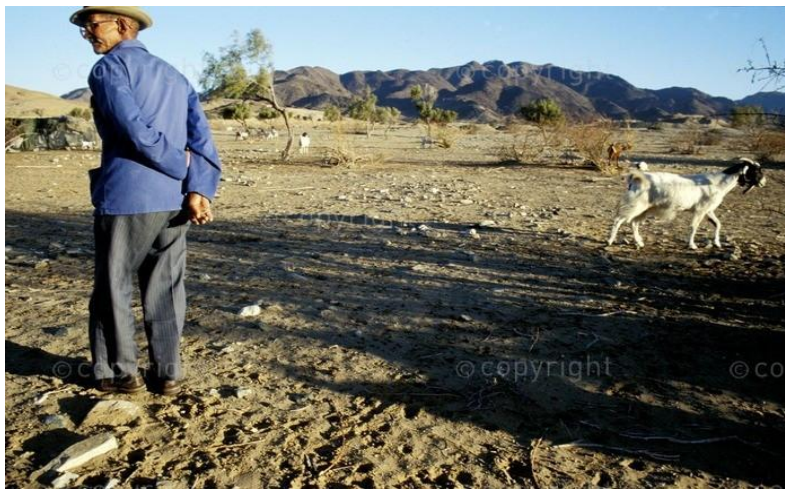
chosen by God to occupy the 'Promised Land' and establish a Christian state amongst pagans. (Vorster, 2006) While all early colonizers of South Africa did not share this sentiment, the overarching theme of mass colonization undertaken by European nations at this time led to relocation and exploitation of indigenous people. This exploitation and dispossession was only exacerbated during the apartheid era. In the Restitution of Land Rights Act therefore places a particular emphasis on the stipulation of racially discriminatory law echoed throughout the document as this act is meant to be a vehicle for the government to make steps toward reconciliation and restitution to indigenous people for the injustices many suffered under the rule of the apartheid government.

There are many reasons and motivations for one to take up a claim for land restitution. While describing one particular instance of land restitution, District 6, and its relationship with the Land Restitution Act, Christiaan Beyers writes, 'Claimants' reasons for engaging in the restitution process range from a wish to recapture the 'feeling of togetherness' of a bygone time when life was more carefree and people supported one another, the desire to escape the alienation and crime of the Cape Flats, to a desire to contribute to the historico-political struggle for District Six and against the legacy of apartheid or, in a few cases, simply to obtain social and material dividends from the restitution process.'(Beyers, 2007) While Beyers is specifically speaking about claimants from District Six, the basic ideas can be extrapolated to suggest other claimants' motivations for taking part in the restitution process. The only necessary alterations to Beyers' description to make it applicable to all indigenous people would be replacing 'Cape Flats' with wherever the local people were forced to relocate to and changing 'District Six' to South Africa. In the case of District Six, many people were forcibly relocated from

desirable land in the middle of Cape Town in the cities' District Six because it was designated a 'black spot,' a predominately Coloured community surrounded by predominately white neighborhoods. Following the Restitution of Land Rights Act, about 2,500 former occupants of District Six filed claims against the state for restitution. A unique feature of the District Six case was that most of those who filed claims were not former landowners; rather the majority of them were former tenants. Under the Act, tenants who had lived in a particular community for a period of not less than 10 years were also eligible to make a claim in the Land Claims Court. This case demonstrated the large amount of rights that the Restitution of Land Rights Act gave former tenants, as it was not necessary to provide any evidence of long-term residency besides a document with an address on it and the testimony of a few neighbors. Those who moved around a lot were also covered as long as they remained within District Six for the period of 10 years. Even this was a flexible criterion though, as one could still file a claim if they had not lived in District Six for the required 10 years as long as they could prove themselves an integral part of the community. (Beyers, 2007)

The Richtersveld Community v. Alexkor Ltd. case changed the implementation of the Restitution of Land Rights Act, allowing for more flexibility in the requirements to found a case for a land claim. This led to more indigenous people filing claims for land from which they were unjustly and forcibly removed. The Richtersveld Community v. Alexkor Ltd. Mining Corporation was a case of land restitution argued between the Richtersveld Community and Alexkor Ltd. over a narrow strip of 120 kilometers of land along the western coast of the Richtersveld that contained seven farms (Supreme Court of Appeals of South Africa, 2003). Alexkor set up an alluvial diamond mining operation along this strip of

land. Alexkor Ltd. was entirely owned by the South African government and was established in terms of the Alexkor Limited Act, No. 116 of 1992. The Richtersveld Community encompasses a section of land that is 500,000 hectares (roughly 10,000 square meters) and contains four villages: Kuboes, Sanddrift, Lekkersing, and Eksteenfontein, as well as about 3,500 people. The Richtersveld Community felt that that land was rightfully theirs and that all mineral rights, including the diamonds Alexkor mined for, belonged to the community. Richtersveld began to attract mining interests as early as the mid 1920s when alluvial diamonds were found to be abundant in the community. The mining industry became increasingly important to South Africa's economy, and therefore the government, who controlled the mining interests in the Richtersveld and issued mining licenses to third party contractors, slowly pushing out the indigenous people. Between 1989 and 1994, the government transferred the mining rights to Alexkor Ltd. (Supreme Court of Appeals of South Africa, 2003). In the early 1990's, Alexkor's primary mining interest was diamonds and they set up diamond mines along the Richtersveld pulling up millions of carats of diamonds from the earth.



*South Africa, Richtersveld – Goat Farmer, 1999. Photograph by Paul Weinburg.
Permission: [Africa Media Online](#)*

In 1998, the Richtersveld Community filed a claim against the Alexkor Limited mining corporation for recompense under the aegis of the Restitution of Land Rights Act. The Richtersveld Community cited two main reasons that they believed they had a right to the subject land. First, they claimed that the community possessed rights to the land under its own indigenous law. After the annexation of the Richtersveld in 1847 by the British, the common law of Cape Colony was extended to the Richtersveld. They claimed that whether they were under the common law of the Cape Colony or under international law, the existing land rights of members of the Richtersveld Community were recognized and protected. The second reason they argued that they had right to the land was because the rights that the Richtersveld Community had in the land in question under their own indigenous law constituted 'customary law interests' as defined by the Restitution of Land Rights Act, giving the community rights to the land regardless of whether or not the common law of the Cape Colony recognized or protected them. The case first went to Land Claims Court which found that the Richtersveld Community's ancestors did hold a right on the land in question. However, the Land Claims Court found that any rights that the Richtersveld Community had on the land were forfeit when the British Crown annexed the Richtersveld to become part of the Cape Colony on 23 December 1847. The Court held that the dispossession of the community's rights in the land in question was not a result of 'past racially discriminatory laws or practices' (Restitution of Land Right Act, 1994) as required by the Act and therefore could not make a claim for restitution. The Richtersveld Community was very disappointed, but did not cease fighting to get their land rights back. Richtersveld municipal councilor Willem Clote said, 'We are shocked about this finding.'

Our community's evidence and our legal teams were so good. But we will test this result in the highest court.'(Geldenhys, 2001).

The major point of contention in the case was whether indigenous title was incorporated into South African law. The Richtersveld Community had based their claim to the land off of indigenous title because they had lived on the land prior to its colonization. The judge ultimately decided that the doctrine of indigenous title fell outside of the Land Claims Court's jurisdiction because it did not form part of the Restitution Act (Geldenhys, 2001). The Richtersveld Community's land claim inadvertently became the focus of another major contest by sparking the debate about the legitimacy of indigenous title. Henk Smit, from the Legal Resources Centre, commented, 'This case is about the implications of long-term permanent occupation of state land and the implications thereof for a community which qualifies for [indigenous] status.'(Smith, 2001) The Land Claims Court found that the Richtersveld Community had no claim to the land in question. Some criticism for the Restitution of Land Act stems from the fact that it only includes land dispossessed after 19 June, 1913, which does not account for much of the land that was taken during the colonizing of South Africa. This played a large role in the Land Claims Court's decision, which stated that because the British annexed the region in 1847, the land in question was not included in the Restitution of Land Act.

Fortunately, the Supreme Court of Appeal granted leave to appeal to the Richtersveld Community and the case was heard again. The evidence used in this case included the testimonies of three anthropologists and an archaeologist, which detailed the Richtersveld community's Khoesan ancestors. This was extremely important to the case because it established that the Richtersveld could not be considered *terra nullius* (i.e. 'land

belonging to no one'). In the past, many early colonizers mistook indigenous land for *terra nullius* because they did not understand the concept of land as a community's possession. The Supreme Court of Appeal examined the facts of the case and came to conclusions that have important effects for other land restitution cases. The Court found that the Richtersveld Community was in exclusive possession of all of Richtersveld prior to its annexation in 1847 by the British. They also found that the community's right to the land were similar to those of Common Law ownership, which constituted a 'customary law interest.' This meant that the community had a right to the land as the Restitution of Land Rights Act defines it. Importantly, the Court also decided that the Land Claims Court had made an error in deciding that the Richtersveld Community had lost their right to the land because of the annexation of the land. The Court said that the community's rights to the land had survived the annexation and had been violated by the apartheid government, which had dispossessed the Richtersveld Community based on the false premise that the land in question was Crown land. The government's actions upon the discovery of alluvial diamonds in the area were seen as racially biased practices and the violation of the Richtersveld Community's rights culminated in the grant given to Alexkor, giving the mining company full ownership of the land. The Supreme Court of Appeals found that the practices enacted by the apartheid government were racially discriminatory because they were based upon an assumption that the Richtersveld Community had lost rights to the land because of their race. While this assumption was unexpressed and false, it influenced chain of custody of the land in question. Restitution was granted to the Richtersveld Community on 14 October 2003. (Supreme Court of Appeals of South Africa, 2003)

Alexkor and the government both appealed to the Constitutional Court of South Africa in 2003 in an attempt to reverse the decision of the Supreme Court of Appeals. The Constitutional Court used evidence from both the Land Claims Court as well as the Supreme Court of Appeals. Ultimately, the Court upheld the decision of the Supreme Court of Appeals. (Constitutional Court of South Africa, 2003) The ruling of the Constitutional Court was a huge victory for the Richtersveld community, as they finally took communal ownership of their ancestral land forcibly taken from them.

Beyond this however, the decision of the Court was a monumental victory for all indigenous people as it set a precedent for the indigenous title of land ownership through customary law. This enabled indigenous people who were previously unable to file land claims the ability to prove a right to their disposed lands. This had large implications in South Africa and the building of the law under the new government. The success of the Richtersveld community inspired other indigenous people to take up their own land claims, further impacting the development of the South African law; restoring rights to indigenous people. The decision of the Constitutional Court was more than just a victory for the Richtersveld community; it had far-reaching implications that effected the new law under the government.

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