

*LAND RESTITUTION IN THE NORTH-WEST
PROVINCE, SOUTH AFRICA, AN EVALUATION
OF SELECTED CASE STUDIES*

Hans Nkuwe Kekana

Mafikeng 1999

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By: Hans Nkuwe Kekana

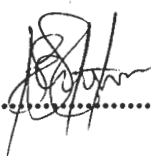
Submitted in fulfillment of the requirements for the degree of Master of Arts in the Department of Geography, in the Faculty of Human Science, at the University of North-west.

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I declare that this dissertation for the degree of Master of Arts at the University of North-West hereby submitted, has not previously been submitted by me for the degree at this or any other University, that is my own work in design and execution and that all material contained herein has been duly acknowledged.



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Hans Nkuwe Kekana

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ABSTRACT

The central aim of this dissertation is to evaluate the Land Restitution process in South Africa with particular reference to selected case studies in the North-West province of South Africa (Putfontein, Mosita “Native” Reserve, Baphalane Ba Sesobe - Madikwe). With the dawn of a new ANC led government of national unity in 1994, South Africa went through a series of transformative processes to redress past imbalances created by the apartheid government. Of particular importance was the question of land reform which remains central to most African countries. This reform comes as a result of the racially-based land policies which were a major cause of landlessness and poverty amongst black people in South Africa.

This land reform programme is divided into three components, that is, Land Restitution, Land Redistribution, and Land Tenure. The dissertation focussed specifically on land restitution, and seeks to advance the argument that the restoration of land rights through the restitution process will support the vital goal of reconciliation, reconstruction and development. The restitution process follows the introduction of the Restitution of Land Rights Act No. 22 of 1994, which was enacted to protect the restoration of land rights to those who were dispossessed as a result of racially based legislation.

The research highlights some debates surrounding the restitution process and the impact that restitution have to those who occupy areas subject to land claims. The debate also covered the impacts of restitution on development and vice-versa. In order to gather facts in a more comprehensive manner, a review of the historical material was essential to lay the ground of understanding the roots of the land question in South Africa.

PREFACE

The struggle for land in South Africa has come a long way and has attracted serious attention from the post apartheid state. A land reform programme has been initiated in South Africa and one of its central facets is to redress the imbalances created by apartheid policies and racial laws which led to forced removals and landlessness. This programme is subdivided into three pillars, Land Restitution, Land Redistribution, and Land Tenure.

Land Restitution is one important aspect of this land reform programme and it aims at the restoration of land rights, or compensation to the victims of forced removals and racial dispossession of land rights. This process is implemented through the provisions of the Restitution of Land Rights Act No. 22 of 1994. The implementation of this Act led to communities' ambitions to go back to their ancestral land being raised. The central objective of this dissertation was to evaluate the Land Restitution process in South Africa using the following selected case studies in the North-West Province: Putfontein, Baphalane ba Sesobe (Madikwe), and Mosita Native Reserve. This study, with particular reference to the said case studies, aimed at identifying the intentions of the restitution process and its problems in redressing the past colonial and

apartheid land legislations in South Africa. These case studies illustrate the conflicts and complexities of land restitution in detail. A central research question was to evaluate to what extent the stated policy, goals and actual implementation of restitution cases have been realised. The constraints facing successful land restitution were identified and examined, and where identified, strategies to overcome the lack of successful delivery are suggested.

The research methodology involves the use of interviews with key informants, oral testimonies, research reports, minutes and correspondence, unpublished and published articles as well as feasibility surveys to capture primary and contemporary data. More attention was paid to interviews in the three case studies with reference to the process of lodging claims, investigations, referrals and court orders.

The relevant historical material for Ramatlabama - Putfontein and Madikwe involved a search of the State Archives, Transvaal depot at Pretoria, as well as the Vryburg Deeds Archive depot in the case of Mosita. This material was obtained through the auspices of the Department of Land Affairs (DLA), as a result of my employment as a restitution researcher for the Land Claims Commission. Therefore, reference to the archival sources relates to the

secondary sources compiled by the DLA. Such sources included relevant policy documents and case reports from the Department of Land Affairs and the Commission on the Restitution of Land Rights, as well as published and unpublished articles. Historical and contemporary maps have been used to understand the land holding changes in the areas selected.

My interest in researching land restitution issues in South Africa was inspired by an informal discussion with James Drummond (Senior Lecturer at the University of the North-West), and for that I would like to thank him for inspiring a continuous debate whose major focus has been captured in this dissertation. I extend my gratitude to Labius Mosadi, Deputy Director, State Land Management in the Department of Land Affairs North-West Provincial office, for his brilliant ideas during the proposal stages of the research. To my colleagues and friends who encouraged my endeavour, here's a piece of your encouragement, fill those thinking tanks.

To members of the communities from the selected case studies, I wish to pass my thanks to you with hope that your land claims will be resolved, and you will be restored to your ancestral lands. To the participants who took their time to answer questions during the interviews, your patience was highly

appreciated. I thank and appreciate the valuable cartographic skills of Sam Tagane, University of North West. To Siphon Ndlovu from the Academic Development Centre of the University, scanning the photographs into this dissertation was going to be difficult without your professional computer skills. Some important aspects have been included in this thesis because of an important role played by Dr Chris Pycroft, and for that I am grateful. I thank Mrs Helen Drummond for her grammatical skills in editing the thesis. To the Human Science Research Council (Centre for Science Development, CSD), your role has always been crucial in funding post graduate research, and I thank you for having funded this research.

I dedicate this dissertation to my father, Stephens Kekana and to my mother Magdeline Malema for her motherly love and encouragement for my academic excellence. To my Aunt Rachel Morake, you remain a star that will shine forever, and a model in our family. May all of you have respected land rights.

Hans Kekana

The University of North-West 1999

ABBREVIATIONS

ACLA	Advisory Commission on Land Allocation
ANC	African National Congress
ANCRA	Association for Northern Cape Rural Advancement
CLA	Commission on Land Allocation
CLCC	Chief Land Claims Commission
CPA	Communal Property Association
CRLR	Commission on the Restitution of Land Rights
DLA	Department of Land Affairs
DMEA	Department of Minerals and Energy Affairs
IMF	International Monetary Fund
LAPC	Land and Agricultural Policy Centre
LCC	Land Claims Court
LRC	Legal Resources Centre
NLC	National Land Committee
PW	Public Works
RLCC	Regional Land Claims Commission
SANDF	South African National Defence Force

SPP	Surplus People Project
TLC	Transitional Local Council
TRAC	Transvaal Rural Action Committee
TRC	Truth and Reconciliation Commission
WB	World Bank

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CHAPTER ONE

INTRODUCTION AND AIMS

1.1 THE IMPORTANCE OF LAND

Land is an important and sensitive political issue to all South Africans. It is a precious resource for our population, it sustains plant and animal life, provides water, contains mineral wealth and is a means of creating investment in the economy of the country. Harris, Birch and Palmer (1996) said that we needed land for constructing our homes, industry, and infrastructure, to provide soil for our plants to grow in, to provide open space and wild places for our recreation, and to allow the natural terrestrial ecosystem to thrive and secure genetic resources for the future.

Land not only forms the basis of wealth, but it also provides security, fosters pride, and contributes to peoples' cultural identity and history. In order to ensure the development of self esteem and pride, the relationship between the dispossessed communities and their land must be normalised, and this will in turn assist in the overall aim of the reconstruction and development of South

African society (NLC, 1994). The Reconstruction and Development Programme (RDP), has laid the basis for a developed South Africa, and has been a useful guide to current government policies.

With its development-based approach, the programme outlined a fundamental guide towards the upliftment of the rural poor in the highly marginalised sectors of the country, and gave hope to those who were suppressed by apartheid policies. Access to land has always been a crucial concern to most South Africans, and with the RDPs' aim to implement a fundamental land reform programme, the voice of the rural poor has been raised. In complementing the aims and objectives of a developed South Africa, the government introduced the Growth, Employment and Redistribution strategy (GEAR), with an aim to rebuild and restructure the economy of the country, and to keep the goals outlined in the RDP.

Just like the RDP, the GEAR strategy is aimed at confronting the challenges of meeting the basic needs, developing human resources, and increasing participation in the democratic institutions of civil society. However, the creation of job opportunities is still a central problem, with more jobs being lost than created, owing to the continuous restructuring of the public service.

As a result, the programme has been met with conflicting political visions, and suffered rejection by most. It is hoped that Land Reform will play an important role in creating self-employment opportunities in rural areas.

There is a debate in the literature on the South African rural areas over the demand for land (Drummond, 1992). The demand for the redistribution of land in a post apartheid South Africa has clearly become an important issue. Cobbett (1988) stated that land redistribution in a post apartheid South Africa will partly depend on where the actual demand for land is likely to occur. It is therefore imperative that the South African Land Reform programme addresses the actual needs of the people. South Africa is now undergoing a transformation process after the establishment of a democratic state. The country is experiencing social, economic, and political freedoms, and of crucial importance to this is the question of redressing past imbalances and injustices.

In reconciling past injustices, the government introduced the RDP as a guideline towards the initiatives of development in South Africa. The concept of development is very complex, and has been widely interpreted, and has led to several debates amongst academics.

It is necessary to be careful about moving from the general level of abstract ideas, and words which do not always have very clearly defined meanings such as 'development', to the level of measurement, where it is important to define terms carefully so that they can be used as measures (Todaro, 1985).

Todaro's main concern was based on the indicators of the concept of development; to what level development can be measured, and what the indicators for measurement are. Every nation strives for development, and it is an objective that was initially taken for granted by many people, but gained momentum over time (Todaro, 1985). To some people, development might mean a high level of the GDP, as a concept which adds together all economic activities taking place within a country. Every country's economic progress is an essential component of development, although not the only one.

Todaro (1985) further said that development is synonymous to rapid economic growth. Some argue that development is a sense of service provision and participation from below (Levin & Weiner, 1997). As a result the concept can be defined in many ways, depending on which characteristics of individual people's lives you consider. Julius Nyerere argued that "development involves the participation of the people and the more equal distribution of wealth"(Nyerere, 1973).

Todaro (1981) said that development must be conceived of as a multidimensional process involving major changes in social structures, popular attitudes, and national institutions, as well as the acceleration of economic growth, the reduction of inequality and the eradication of absolute poverty. In essence, development must represent the whole gamut of change for the better. The World Bank and the IMF have been following the concept of development for quite some time, and they maintain that "what people in the third world desperately need, is development" (World Bank, 1991). The World Bank and the IMF further argued that development should, among other things, mean using science and technology to insulate ourselves from the vicissitudes of nature - such as floods and droughts (World Bank, 1991).

The World Bank stresses four related elements essential to moving to higher rates of economic growth: investment in education, internal productivity change, greater integration with the world economy, and macroeconomic reform. Development should mean expanding our options in life through labour saving devices, travel and communication, and raising our living standards. These institutions (World Bank & the IMF), offer signs of progress and hope of strong leadership in tackling the ever greater problems of development and inequality in the 1990.

However, some development thinkers are concerned about the sustainability of development, and this leads the debate to the phrase, 'Sustainable Development'.

The phrase 'Sustainable Development' has become widely used in debates about poverty and development in the last 10 years (Adams & Thomas, 1993). It is a phrase that everyone, from radical third worldists and Oxfam to the World Bank and Margaret Thatcher, adopted. Sharachchandra (1991), said that Sustainable Development had become the watchword for international aid agencies, the jargon of development planners, the theme of conferences and learned papers, and the slogan of developmental and environmental activists. Sustainable development as defined by Sharachchandra (1991), is understood as "a form of societal change that, in addition to traditional developmental objectives, has the objective or constraint of ecological sustainability".

However, the meaning of sustainable development has been contested as its popularity as an element in development discourse has grown (Adams & Thomas, 1993).

O'Riordan (1988), said that sustainable development had been a mediating term designed to bridge the gulf between "developers" and "environmentalists".

Those who want to ensure development through the land reform programme should take the responsibility for environmental and ecological sustainability of the environment. But the question as to who has to decide about peoples' needs remains. Is it the Commission on Restitution of Land Rights, some government official or the UN? In addition the fact that some people satisfy their present needs by denying other people the ability to meet theirs must be considered. Sharachandra (1991), said that in 1994, the Minister of Environmental Affairs in Norway (Thorbjorn Berntsen) argued that sustainable development is a process rather than a state of affairs, we must strive continuously for radical change.

But what does it really mean to live within our ecological means and up to our humanitarian obligations? To what extent should we strive for a sustainable society, and in fact, is there a single vision of sustainability, or will it just continue to mean different things to different people in different places at different times? What about the capitalists who sack people when profits are low, or international bankers who draw more money out of Africa in debt payments than is going in as aid? These are just some of the relevant concerns which should be raised, especially when addressing aspects such as development and its sustainability, because clearly there are ambiguities and

different interpretations of what sustainable development means. There should be some means to manage change, and some people view sustainable development as a positive enterprise to assist us in this regard. As a result it is important to note the reality of the concept when addressing land related problems in South Africa, because the whole question of development is the main ideal for communities in need of land for whatever purpose.

In this thesis, the concept 'development' will include access to land, peoples' participation towards the advancement of their socio-economic status, the creation of employment opportunities, the provision of services especially in rural areas, and in support of Todaro (1981), the eradication of poverty to manage sustainable change for the future.

The question of popular participation has always been a problem under apartheid rule. As a result of lack of participation towards the betterment of peoples' lives, most people remained poor under apartheid. Racial segregation caused a major division between South Africans, and those who gave their allegiance to the apartheid government, lived better. Atkinson (1996) maintained that with the changing political circumstances in South Africa after 1994, the provision of services by the government should be a priority.

The transition from apartheid rule to the Government of National Unity as outlined by Levin and Weiner (1997), is viewed as a contradictory process whereby concrete solutions for improving the quality of peoples' lives are slow to emerge, and participatory efforts remain peripheral. On the other hand, rapid transformation of society has the potential to alienate people who are at the bottom part of the political hierarchy. Practices of popular participation are actually being marginalised in the transition from apartheid to development (Levin & Weiner, 1997). However, the United Nations has given particular emphasis to the concept of popular participation in development projects in general, which has been reflected in various studies provided to its subsidiary bodies, and in resolutions adopted by those bodies (Pickett, 1988).

The UN further recognised that social progress and development require the full utilisation of human resources including the active participation of all elements of society in defining and achieving the common goals of development as well as the assurance to disadvantaged population groups of equal opportunities for social and economic advancement in order to achieve an effective integrated society (Pickett, 1988). While peoples' needs have been identified in the reconstruction and development programme, the question remains over their participation in the whole process of delivery.

Amongst the issues that need immediate attention is the question of land.

Unless land disputes can be resolved with some urgency, political instability over land will continue (Land Update No.53, Nov. 1996). In South Africa, peoples' freedom to locate where they choose is limited by lack of sustainable land, market forces, and by the fact that land was forcefully taken away in the past. A land reform programme has been initiated in South Africa, although its results are still awaited.

Levin and Weiner (1997) further maintained that popular forms of social change are now being replaced by a top-down and overly technicist conception of economic growth and development. In some government departments the architects of apartheid are still at the forefront of policy formulation, and are influential in the design and conceptualisation of post-apartheid social transformation. With this top-down approach to development, outlined by Levin and Weiner, it is unclear how ordinary peoples' ambitions of development will be achieved without their participation in the process which directly affects them. However, with the introduction of programmes such as the Masakhane campaign, the government is trying to draw people closer towards the development of their own societies. This approach is supported by the changing land reform process in which communities play a crucial role,

especially in the restitution process, by providing information about their history of land occupation.

This research project uses case studies to indicate the level at which people, institutions, and governments have responded to the process. Investigations have been undertaken to ascertain not only the intentions of the restitution process, but also to identify the problems that have been and are being encountered within the land reform and restitution process.

As part of the investigation, the research includes issues that have apparently been omitted in the process of restoring peoples' rights to land, and asks whether restitution as a land reform process can in reality restore peoples' rights to the ground. The case studies which were used for research are Putfontein (Lichtenburg district) claimed by the Batlounge Community presently residing in Ramatlabama, Baphalane ba Sesobe community in Sesobe (Madikwe), and Barolong Ba-Ga Molefe, Mosita Native reserve (Vryburg district), as indicated on the map (Figure 1.1). The Putfontein / Ramatlabama land claim, lodged in 1992, is one of the most interesting claims, and has many lessons to be learned from the technical issues involved in restitution and its complex nature.

NORTH WEST PROVINCE
MAGISTERIAL DISTRICTS



Figure 1.1 : Map indicating the selected case studies

The Baphalane land claim has recently joined the spotlight on publicity as the claim affects one of the major tourist attractions in the North-West, the Madikwe game reserve. With the British government's programme to donate R4 million to the North-West government towards the development of the game reserve, it is not clear how this will be carried forward while the land is

subject to a claim. The Mosita Native reserve involves a land claim that will be a test case to evaluate a move from defence force use to development.

1.2 SPECIFIC THEMES TO BE INVESTIGATED

The primary aim of the dissertation is to evaluate the Land Restitution process in the North-West Province of South Africa with particular reference to the proposed case studies. The following themes will be crucial for investigation.

1. What are the intentions of the restitution process?
2. Are there problems which have been encountered within the process?
3. What issues and aspects seem to have been left out by the
process?
4. Can restitution in the present process effectively restore peoples'
rights to the land?

CHAPTER TWO:

LITERATURE REVIEW

The nature of this study is such that its investigation falls within the broader field of land reform in Africa and South Africa in particular. A literature review is essential in order to locate the background information to the proposed study. It will serve to identify the relevance of the study and to illustrate the fact that land reform and restitution are not unique processes to South Africa. In terms of weaving a path through the relevant literature, attention will be given to a number of aspects including the land question, land reform at an international, national, and local level, forced removals and land restitution in South Africa, and lastly, the restitution process in the North-West Province of South Africa based on the proposed case studies.

2.1 THE LAND QUESTION

Makhanya (1994), cited in Levin et al (1994), argued that land is a basic resource in a rural economy. For some, land is history, it contains ancestral graves and memories of better and more prosperous times and hopes for the

future. Almost every activity of people uses land, and as human numbers and activities have multiplied, land has become a scarce resource (McRae & Burnham, 1981). Land ownership has played an important role in shaping the political, economic and social processes of many countries around the world. In most instances, the organisation of rural societies had been structured by the system of land rights and ownership. In a follow-up statement on land ownership, Currie (1981) said that land may be under individual private ownership, under some form of collective ownership, or under social ownership.

Land therefore remains a principal source of authority and inequality (Offer, 1981). In a speech delivered at the joint NLC / SACC Church Land conference in November 1997, Chief Patekile Holomisa said that "Land is the source of a livelihood - it is aptly called mother earth" (Land Update No. 63, Dec, 1997, p 7). It provides the basis of subsistence opportunities and survival through agriculture (Fabiya, 1984). It can be regarded as fixed in supply (Harvey, 1996). One of the research findings of Levin and Weiner (1997) was that people need land for different needs, and this is illustrated in the following figure 2.1, which indicates the demand for agricultural land countrywide among different age groups.

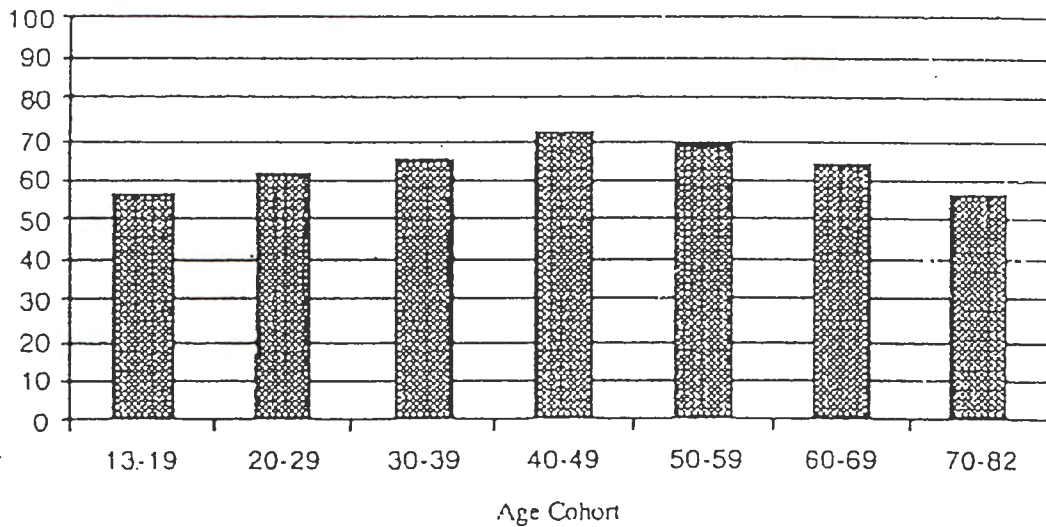


Figure 2.1: Age of respondents who need land for farming.

Source : LAPC Land Reform Research National Data Tables (July 1995)

Land, therefore, becomes the medium through which the relations of exploitation and domination on the one side, and power and powerlessness on the other, are expressed. Ghose (1983) argued that in poor agrarian economies, the pattern of landholding is a major correlate of political power structure, social hierarchy and economic relations. Possession of land confers on the possessor the mutually reinforcing attributes of political privilege and social prestige (Ghose, 1983). This has been the case in most traditional societies and Werbner (1982) maintained that as a result, the question of land tenure has not been static but led to varied evolution of rights and interests in land. Van Der Wall (1989) believed that, because of its centrality to social relations,

any reform which left out the land issue became peripheral, and thus failed to resolve the conflict it purported to address. Resentment over land runs deep in many societies, and threatens to cause social, political and economic upheavals.

The history of land dispossession in South Africa is well known from the colonial era, and it is this history that gives us a clear picture as to how the African majority were dispossessed of their land rights by colonial settlers and apartheid laws. Colonialism ensured that an alien concept of land property rights achieved dominance over an indigenous system based on the notion of communal responsibility, ownership and use. Turner (1971) said that the end of colonial rule found the majority of Africans still rural people, dependant upon direct access to land for the bulk of their daily needs.

However, their ties to the earth had been profoundly altered as the legal system of colonial governance did not recognise their land rights. This resulted in a high level of landlessness and poverty among the disadvantaged communities. Given the importance of land as a subsistence base and a dwelling place, and the interrelationship of political and social institutions with land holding, radical change was to be expected in a time of rapid social and

political change, even if the colonial powers had been neutral to the development of new concepts of land ownership (Turner, 1971).

As a result of colonial oppression, both communities and individuals acquired new rights in land. The speed at which the apparently unoccupied land became subject to highly specific rights, is one of the striking features of the period (Turner, 1971). This was due in part to the rapid growth of population and the intervention of colonial officials in land affairs. It was during this colonial period that the majority of African communities began to come to grips with the concept of limited land. It was a time of drastic and rapid change with respect to the use and view of land.

In South Africa, colonialism and apartheid legislation sought to further entrench this dominance by dispossessing black South Africans of all rights to land outside the designated reserves and homelands. Racial restrictions on access to land and housing was the cornerstone of apartheid, and it was bitterly resented by the vast majority of black South Africans, but seen by the conservative whites as a non negotiable guarantee of survival (Festenstein & Cambridge, 1987).

Colonial settlement was initially viewed as a temporary measure by the Khoi and San whose land was invaded by European travellers. To the mortification of the hosts (Khoi and San), the uninvited guests (Europeans), overstayed their welcome, and subsequently waged war against the inhabitants and robbed them off their land (Land Update, No. 63, December 1997). This was the start of an unpredicted circumstance which left an indelible imprint and a legacy to Africa and South Africa in particular. Africans lost their land and thus their power relations were torn apart in the hands of the European settlers.

In the course of their forages into the interior of the country, the invaders were joined by fellow Europeans who presented themselves as men of God on a mission to spread the “good news” about civilisation (Land Update, No, 63, December 1997). With very few exceptions, these messengers of peace actively took the side of the colonial forces in the wars of dispossessing blacks of their land. The Missionaries needed land to put up mission stations and churches, and as a result they persuaded the traditional leaders to allocate sites to them. In the case of resistance from the chiefs, the missionaries enlisted the help of colonial forces who were always ready to give them part of the land stolen from the hosts. In most instances churches colluded with colonial authorities to evict blacks from their land. With time and without the knowledge of the traditional

leaders, the missionaries acquired title deeds from the colonial authorities which proclaimed them to be the legal owners of the land (Land Update, No. 63, December 1997).

It was through this type of successful illegal exercise that today we have serious debates of land ownership between the churches and communities, and a specific example relates to cases such as Uitkyk, Bethel - (Holgat 63), and Baphalane - Ba - Sesobe (Madikwe) in the North-West Province. One of the elderly people of Uitkyk had this to say about church and land “it is surprising how the church can own the land because we were members of the same church which found us here in Uitkyk, and now they claim the land is theirs”¹.

At the joint NLC / SACC Church Land Conference which was held in November 1997, Parliament’s land affairs portfolio committee chairman Chief Patekile Holomisa said that, “the church should set examples by restoring land to its rightful owners”(Land Update No. 63, December 1997, p 4 - 8).

Churches are viewed as the houses of “goodwill”, but it is ironic that they never played a role in giving land back to its original owners, and yet have not testified in front of the Truth and Reconciliation Commission (TRC) about

¹ Interview with Mr Nakedi, 14 May 1998

their role during the apartheid years (Land Update No. 63. December 1997, p 4 - 8). About 7% of South Africa's unverified land has been owned by the church. However, this does not overrule attempts by churches towards the piloting of land reform in South Africa. The Methodist church, for instance, have accepted a land claim by the community of Uitkyk, and have cooperated with the commission towards the investigation of the claim.

Cross and Haines (1988) argued that land is almost the only physical asset of the black rural economy. In a human rights context, however, property is something to which all should aspire equally and which deserves equal respect, independently of quantity or value (Chaskalson, 1993). It has been argued by Claassens (1991) that the right to property is the only classical human right which deals with the material world, while others are personal and political freedoms. Thus the right to property is the only right which impinges directly on the material rights of other people. Basic human needs can often be met by access to land as their own property, because land affects the political and social status of the majority of South Africans as much as their economic positions.

The question of the right to property has been explored by many writers. Smith (1984) argued that property has served as a common focus in many discussions of family form. According to Payne (1997), property rights can similarly be defined as a recognized interest in land or property vested in an individual or group and can apply separately for land or development on it. Property rights to land are perceived as the key to sustainable management of natural resources in rural Africa (Balkema, 1994).

Cleaver and Schreiber (1994) said that it is essential to ensure the security of tenure to property in order to halt the erosion of security which has traditionally been provided by customary tenure systems. Secured rights to land are necessary to encourage management practices and investments that ensure sustainable use of a fragile natural resource base. The holding of a title to a piece of land is necessary for secured tenure rights. However the transition to full land titling will require more than a decade to achieve in most countries and should be undertaken only in response to demand from below, and not imposed from above (Cleaver & Schreiber, 1994). Van Zyl et al (1994) also argued that security of tenure and exchange of land usage is important to ensure optimal development and investment in land. They further maintained that the purchasing of land should not be the only form of access to land (use)

rights. The opening up of land tenure rights should be supplemented by legal measures that ensure the leasing of land on a just basis and provide for alternative land use agreements (Van Zyl et al, 1994). Winston Churchill, quoted by Claassens (1991, p. 149) had this to say about the nature of land and property:

“Land which is a necessity of human existence, which is the original source of all wealth, which is strictly limited in extent, which is fixed in geographical position, land, I say, differs from all other forms of property, and the immemorial customs of nearly every modern state have placed the tenure, transfer and obligations of land, in a wholly different category from other classes of property. Nothing is more amusing than to watch the effects of (the land) monopolists to prove that other forms of property and increment are similar in all respects to land and, the unearned increment of land”.

The central question posed by Claassens (1991) is whether land can be dealt with in the same way as other forms of property. In most instances, people believe that the protection of property is necessary so that we have a stable world in which all can expect to enjoy the fruits of their labour and initiatives. However, land is not the result of anybody’s labour. It is, and will remain, the

finite natural resource which predates the theory of property (Claassens, 1991).

Darin-Drapkin (1977), as cited in Claassens (1991), argued that land is the basis of structures which once erected, have a long life, and fix the realities of urban and rural life for a very long time. Claassens (1991) maintained that Churchill's view of land is also expressed by other theorists such as Plato, Shakespeare, Spinoza, John Locke, Adam Smith, Thomas Jefferson, John Stuart, Abraham Lincoln, and Herbert Spencer, to name but a few. These theorists upheld the right of individuals or groups to land. They also maintained that security of tenure, which provides the owner of land with confidence to develop and improve the land, is vital to both economic and political stability. However, the whole question of land restitution has serious negative implications for white farmers in South Africa, as most of the land that is subject to claims by individuals or communities belongs to them.

In cases where communities claim restoration of their land rights, farmers will remain landless, irrespective of the compensation they will receive from government. It is arguable whether it is just to take land away from white farmers, and whether there is protection of land holding on the side of the

farmers. Most of them have invested in the land through farming, and have also made several improvements in terms of houses, boreholes, machinery and shelters. They did most of the improvements as owners with the right to do so. Lefcoe (1979) maintained that the right to develop land is far less clearly defined, and in terms of the restitution of land rights in South Africa, these developments might be lost over time. The experience of the international world on land reform is quite interesting to consider, and will clearly indicate that land is and has been an international issue as well.

2.2 LAND REFORM, THE INTERNATIONAL EXPERIENCE

Barke and O' Hare (1990) defined land reform as an intervention into the previous pattern of land ownership, control and usage, in order to change the structure of holdings, improve productivity and broaden the distribution of social and economic benefits. The necessity for land reform in underdeveloped countries dominates the writing about agricultural and rural development, (Letsoalo, 1987). Mexico's land reform, the first in Latin America, had its origin in the Mexican Revolution of 1910 - 1917.

During the period preceding the revolution, land and wealth had become so concentrated that Mexico had the most inequitable system of land ownership in all Latin America. By 1910, as indicated by Barke and O' Hare (1990), about 1% of the population owned 97% of the land and 96% had only 1% of the land. Central to Mexico's agrarian reform has been a policy of land redistribution from large estates to peasant communities or village units (the ejidos). Barke and O' Hare (1990) said that very few modern estate lands were actually expropriated before the 1930's. During the administration of President Cardenas (1934 - 40), land redistribution was accelerated.

By 1940, 22% of all farm land (29 million hectares) was redistributed to more than one half of the country's agricultural population. Between 1940 and 1960, the pace of land redistribution slackened and more attention was paid to the private sector. With time, land concentration increased again, and the number of land reform beneficiaries, as a percentage of the (growing) rural population, actually decreased to 42% by 1960. By 1970, as a result of the new efforts, 43% of all land in farms was redistributed land (Barke and O'Hare, 1990).

Mexican land reform succeeded in improving the social, economic and political status of the rural peasantry. It markedly reduced the degree of land hunger in the country. However, there were criticisms of the reform process. The first and greatest criticism was noted by Nattrass and Nattrass (1983), who believed that considerable land concentration continued to exist as the level of population also increased. However, the Mexican case study with all its short falls is an example of a successful reform process which managed to redistribute land to many people within a short period of time, and improved the socio-economic status of the country.

In most European countries, especially amongst Socialist countries, land reform has proceeded along the dual track of restitution to former owners and distribution to users (Csaki, 1991). In Eastern and Central Europe, the validity of private ownership of land was never in doubt, and the focus was on restitution and distribution procedures. There was a political change from socialist regimes to democratically elected governments, whose intention was to embrace capitalism and encourage private ownership of property.

Csaki (1991) further maintained that in the former Soviet Union, on the other hand, the debate primarily focused on whether or not to allow private ownership of land. This fundamental issue is still unresolved in some of the

former Soviet Republics. Csaki (1991) stated that those issues of former ownership and restitution are relevant mainly for the "western" countries in the region, where private land ownership existed until after World War Two, and the original owners or their descendants were identifiable. In the former Soviet Union Republics, land was normally distributed without payment to current users, i.e. members in collective and state farms and some other rural residents (Csaki, 1991).

The issue of restitution is of public concern also in Moldova, Western Ukraine, and Belarus. Although the collectivisation of agriculture in Moldova was completed in the 1950, roughly at the same time as in the Baltics, the Moldovan land code explicitly ruled out restitution of land or compensation to former land owners. Land legislation outside former Soviet Union generally recognised the rights of current land users and also the rights of landowners immediately prior to collectivisation. The two exceptional cases which appeared to be extreme were Albania, where only the current land users participated in the distribution of land, and Bulgaria, where collectivised land was returned to former owners, while workers in collectives were allotted land for farming without any ownership rights (Csaki, 1991).

In some countries in Eastern and Central Europe, notably in Hungary and the former East Germany, monetary compensation of former owners was adopted in cases when physical restitution of old plots was not feasible. In Albania, nationalised land held in collective farms was distributed to individuals in 1991, although the legal framework of land ownership was still not fully in place. In Romania, the collective land was quickly distributed within six months in 1991 to 1992, in part to former land owners and in part to cooperative members, based on their labour contribution, without any intention of creating farms of optimal size or determining how farmers would produce, after land was distributed (Csaki, 1991).

In Czechoslovakia, the law mandated the return of agricultural land to prior owners who were willing to cultivate it. Although more than 70% of the country's agricultural land was scheduled to be privatised under the law, only a modest interest in claiming land had been reported. Csaki (1991) argued that in Hungary, the guiding principle was restitution of land to pre-collectivisation owners. However, nearly 40% of land managed by cooperatives was earmarked for distribution to members who were not former land owners. In 1991, land owners and dispossessed owners of other properties received vouchers

redeemable for agricultural land and other assets, which essentially gave monetary compensation to prior owners.

Land owners who continued to hold title to land managed by cooperative were granted unconditional restitution of their ownership rights. The distinction between former owners and the current users of land in Eastern and Central European countries, and in the Baltic states, led to obvious issues of inequality. However, even in the former Soviet Union, the land reform process was not free from equity problems. Individuals from Russia or Ukraine could receive a parcel of up to 50 or even 100 hectares of land without any payment, simply by applying to the local authorities. Some evidence of agricultural background or education was required as a criterion for eligibility, while the per capita land available to workers in collective and state farms was far less (4 to 10 hectares per person depending on local conditions). This distribution policy created potential inequity problems between new farmers and members of large scale farms who were entitled to their share of socialised farm land (Csaki, 1991).

Umali-Deiniger and Maguire (1995) concluded that although reform programmes were taken up in the former socialist countries in Europe, land

reforms were not well designed processes with careful definitions and thorough elaboration. In most instances, the approved framework by parliaments simply did not match the administrative capability of the country. As a result the reform process got administratively out of control. Experience in Colombia, as indicated by Binswanger and Deininger (1993), has shown that incomplete land reform measures are unlikely to create social stability.

2.3 LAND REFORM, THE AFRICAN EXPERIENCE

Most African governments, after gaining independence, had land as a common problem to address. In most instances this resulted in peasant revolts for agricultural and farming land, owing to improper reform programmes. Mosley (1983) and Raner (1985), cited by Binswanger and Deininger (1993), argued that in both Kenya and Zimbabwe, large - scale eviction of tenants after the Second World War led to violent eruptions of peasant protests.

Zimbabwe, like most African countries, addressed the land problem after independence. After years of colonial rule, the Zimbabwean government embarked on a land reform programme which aimed at redressing past imbalances. Success in bringing the liberation movements represented by

ZANU and ZAPU, to negotiate with the Rhodesian regime of Ian Smith and Abel Muzorewa, was achieved in 1979 at Lancaster House in the United Kingdom. The talks confronted major differences over the manner in which the restitution of land rights of Zimbabweans could be resolved. A redistribution process was one strategy the government could use to deliver land to the people.

Moyo (1995) said that, during the 1980's, the redistribution process in Zimbabwe was officially based on the resettlement of people who had been displaced by the war, the landless, the poor, the unemployed and the destitute. It was estimated by the Zimbabwean government in 1981 that no more than 18 000 households needed resettlement on 1,5 million hectares over a five year period. This was scaled up in 1982 to 35 000 households, and in 1983, to 165 000 people on 5 million hectares (Moyo, 1995). However, Bratton (1991) maintained that more than a decade of political independence in Zimbabwe did not satisfy the hunger for land among communal farmers and the landless.

The redistribution of land remained central to Zimbabwe's national political discourse before and after independence. At independence, Zimbabwe was confronted with a problem of inequitable distribution between racial groups of

productive resources, particularly land. A high degree of inequality existed whereby a numerically small white commercial farming sector (approximately 6000 farmers) controlled over 15,4 million hectares of mostly the best land. In addition these capitalised commercial farmers benefitted from extension, credit, marketing and infrastructural facilities. In contrast the smallholder peasants' sectors which supported approximately 800 000 families, representing at least 4 million people, or 55% of the total national population, were given mostly inferior land, and suffered from poor access to natural resources, environmental degradation, low and very variable rainfall, a poor social and physical infrastructure and limited off-farm employment opportunities (Masilela and Weiner, 1996).

After independence, the Zimbabwean rural landscape changed, but the legacy of the colonial space economy remained a major political and macro economic concern. Between 1980 and 1992, about 54 000 households were resettled, but four to five million people still live in the communal areas and most remain in marginal agro-ecological zones. At the same time the large scale commercial farmland has been reduced by 15%. However, about 4500 farmers still control almost one-third of the nations' total land area and much of the nation's prime farming and grazing land (Masilela and Weiner, 1996).

To correct historical land imbalances and respond to contemporary communal area problems, the Zimbabwean government in 1980 instituted a populist programme of agricultural resettlement designed to appeal to the needs of the least resourced segments of society, the land hungry and the landless. This programme also responded to the extensive and unplanned land invasions that occurred immediately after independence. This resettlement programme was therefore a mechanism for developing a stable peasant class.

Masilela and Weiner (1996) said that the specific aim of the resettlement programme was to relieve population pressure on overcrowded communal lands by bringing abandoned and under utilised commercial land into full production. It also aimed at improving the agricultural base by supporting the peasant farming sector through individual household and cooperative production. The programme intended to improve the standard of living of the largest and poorest sector of the population. It was also the most visible manifestation of the pledge made by the nationalist government to restructure the economic and social framework of Zimbabwean society in general and the agricultural sector in particular.

Many people have been settled in the Zimbabwean Programme in a relatively short period. Thus Zimbabwe can rightly claim it has made progress towards one of the primary objectives of the programme, being to reduce the imbalances that existed in land distribution at independence. Masilela and Weiner (1996) maintained that besides the assumed success of Zimbabwe's resettlement programme, there were also some assumed failures of the programme. With respect to agricultural performance, Biswanger and Deininger (1993) said that Zimbabwean resettlement projects were usually established on abandoned or underutilised lands that might be of low fertility, but settlements certainly were not very successful.

Moyo (1994) in one of his submissions on land reform in Zimbabwe, maintained that Zimbabwe had failed to articulate a comprehensive rural land reform programme in which the main agricultural sub-sectors are linked and local communities genuinely participate in the restructuring process.

Underlying the critique of Zimbabwe's resettlement programme is a political project to structurally adjust rural South Africa in an attempt to maintain the core historical power relations in the countryside. However, analysing Zimbabwe's resettlement programme is very useful for policy makers in South Africa.

A top down approach to development has also been identified in the Zimbabwean experience on land resettlement, and this approach has been highly criticised by Levin and Weiner (1997) as one way of overthrowing development from below. The Zimbabwean experience, with all its shortfalls, is one example of the direction taken by a multi party state after a negotiated settlement. Bush and Cliffe (1984) argued that the negotiated settlement of the 1979 Lancaster House Agreement, placed severe constraints on the degree to which radical change could be implemented.

Though some abandoned commercial farms were resettled, the core of the commercial farming sector was left untouched. The rights of white farmers were protected to a large extent by the agreement, and Bush and Cliffe (1984) argued that by 1984, only 10% of the land formerly reserved for white occupation had been taken over by the government and redistributed. The economy had remained stable, however, and agricultural production had been maintained and expanded, with the 1985 maize harvest reaching a record of two million tons. Land redistribution and economic transformation have been tackled cautiously in Zimbabwe in the interest of economic stability (Daphne, 1989).

Masilela and Weiner (1996) argued that Zimbabwe's experiences of land resettlement planning have become an important element in the debate about South African land reform. Zimbabwe, just like South Africa, had a history characterised by the dominance of white settler farming and the existence of (mainly) semi-arid African Labour "reserves". In such systems access to natural resources is severely constrained with issues such as lack of jobs and access to land ownership remaining central to people's everyday lives.

Masilela and Weiner (1996) raised an important question of political difference between South Africa and Zimbabwe which needs to be recognised. They maintained that the liberation struggle in Zimbabwe was based in rural areas, while the pre-independence opposition political organisations in South Africa were very strong in urban areas, and relatively weak in the countryside. On the other hand, a high profiled industrialisation in South Africa, and a very sophisticated infrastructural base puts the country in a better position of economic development, although the land and rural development questions remain to be resolved (Masilela & Weiner, 1996).

The political factor in land reform is generally played down, yet in the last analysis it is often the most decisive. In countries like Zimbabwe, Namibia, and

South Africa, the restitution of land rights is a burning issue. In 1997, the Zimbabwean government of President Robert Mugabe took a harsh stand in its political ambition to redistribute land to the landless, by announcing that about 15003 hectares of land would be confiscated and designated. This covered areas which belonged to some commercial farmers who were highly opposed to the move by Mugabe. It also brought about resistance from those who viewed it as an example of the oppressive nature of Mugabe's rule, and as a drawback to the country's agricultural economy.

Mugabe's determination to carry out land redistribution has created a furore in Zimbabwe. His decision was viewed as a populist move by a corrupt and increasingly unpopular government, oblivious to the fact that it would cost thousands of farm workers their jobs and ruin the economy (Mail and Guardian, 09 / December / 1997). It was of major concern to those who were directly affected, (the farmers and land owners). On the other hand, to those who shared the sentiments of the decision, it was just a move to give back the land from the white settlers to the African people of Zimbabwe.

James Sinclair, one of the Zimbabwean farmers affected by the government's decision, had this to say in a submission to the Mail and Guardian News (09/10/97).

“We have 60 years of farming experience. What do we gain by destroying a system that is granted, a bit paternalistic, but that works economically? We commercial farmers are Mugabe’s best friends. We feed the people, earn forex, pay taxes and make no trouble. We provided a link of stability before and after the war. If we had all left, the country would be a basket case like Zambia. It is difficult to believe this (land designation) is happening. I’m still shell - shocked. When I headed the Commercial Farmers Union (CFU) in the early 1980’s, I heard Mugabe saying in so many meetings that, we were doing a very good job, and we must keep it up. How is it that we are now the enemy? I’m bewildered by the rhetoric. If my farm is taken away, my family have little left since our profits were ploughed back from the farm. .

Is there a place for whites in Africa? I should think so. We don't want to pack and leave. We made a commitment in 1980 to stay and work for this country, and the commitment is still there. We are going ahead with farming decisions. You can't stop a farm. The pigs and cows are breeding, we are ploughing for the next season ²".

According to one of the articles of the Mail and Guardian News (10/12/97), Mugabe addressed a weekend party meeting, urging his supporters to “ *go back to your homes and tell your people that we are taking the land back* ”. He warned white farmers that it would hurt them if they tried to get the courts to intervene. He also stated that “ *we know that some white commercial farmers will like to take the matter to court when their farms are designated, but this is not a matter for the courts to decide. It was not a matter for the courts to decide when our ancestors lost their land to white settlers, but where were the courts at that time, why didn't they intervene?* ” (Mail & Guardian, 09/12/97). Mugabe also urged political leaders that since land acquisition was a political matter to redress the imbalances in Zimbabwe, they must unite and support the move taken by his government.

² Mail and Guardian News ,09/12/97

Ephraim Nyakujara, a victim of land dispossession in Zimbabwe, had this to say: *“ I have been through another land grab half a century ago. I remember the Rhodesian government driving my family away from our land at Muchenangumbo village in 1946. The area is now called Eagle’s Nest, 1 km east of Harare. We were given one year notice with no compensation. Initially, what hurt most was to leave the ancestors graves, but with time, we got used to it. White farmers who bought the land at market value should be compensated, but not those who got it for free from the Rhodesian government. I don’t think that whites should leave Zimbabwe, but we must share the land. Some of the white people’s dogs live better than black Zimbabweans, and we are all human beings³.*

These debates have clear implications to the South African land reform question. It is more than a process of giving back what was taken away in terms of land, because it will also have negative implications for those who will ultimately lose their ownership rights to their properties. South Africa, just like Zimbabwe, is still in need of white farming experience for the advancement of commercial agricultural production.

³ Mail and Guardian news 02/03/97

Nevertheless, many land reforms have proved unsuccessful because of lack of political will. Much of the political power necessary to implement the reforms has been in the hands of the group at which the land reform is most often directed, i.e. the landed aristocracy itself. Barke and O'Hare (1989) maintained that, where sustained political commitment is lacking, as in the case of the Philippines, Pakistan, India, Colombia, and Brazil, reforms have been unsuccessful and only partially carried through. In contrast, Mexico, Taiwan, Kenya, China, Egypt, Iran, Bolivia, and Cuba, offer instances of countries where political effort in land reform has been fairly strong and where reforms have been relatively successful.

In Namibia, as elsewhere in Southern Africa, the land reform question has also been part of the country's political agenda. Their approach has been to redistribute the formerly white owned freehold ranches to the blacks. This approach can be referred to as an emphasis of race and class. However, it is worth noting that the majority of the winners during the independence of Namibia were the black elite (Adams, 1993). At independence in 1990, the SWAPO government announced its intention of transferring land to the landless majority. At the same time the government had taken a constitutional stand that it would not take the property of the citizens without "just

compensation". In trying to pave a way to resolve its land dispute, the Namibian government conducted a consultative forum which culminated in a seven-day conference attended by more than 750 people.

In the run-up to the conference, political groups representing different ethnic interests, were pressing for the restitution of ancestral lands. This issue raised emotional debates which threatened to wreck the conference, and the fragile process of national reconciliation. After three days of serious debates, the prime minister obtained a broad agreement that the restitution of particular areas of land to specific tribal groups was not feasible. This was because of the fact that those ancestral land rights of the various groups had been superimposed on one another for centuries, if not for millennia, and could not be identified with accuracy. The conference further debated the question of inequity of land ownership. Amongst the recommendations to government, the conference maintained that foreigners should not be allowed to own farmland, and that the land of absentee landlords should be expropriated. The conference also discouraged the ownership of several farms by one individual. Other issues included the improvement of farm workers' conditions, and the resettlement programme.

The resettlement “failure” literature identifies the need for greater local flexibility in developing and operating schemes. People in communities have knowledge that is fundamental to the rural land use planning process.

Zimbabwean planners’ attempts to separate peasants from workers was viewed as a big mistake which contradicted relations of production on the ground, and misunderstood the important relation which is found throughout the Southern African region, between wage remittances and access to agricultural capital and inputs.

The poorest of the poor do have agricultural skills, although the extent is locally and regionally contingent. What they lack are steady income flows, access to natural resources and democratic agricultural support services. Skills in agricultural production including rural production which has an important gender component can be found in all strata in the countryside (Masilela and Weiner, 1996).

With the changing face of South African politics, a large number of the rural poor were brought to the polls in 1994. These people did not however, vote for a rural structural adjustment programme that made shop owners, chiefs, and their patrons and urban-based businessmen and women the major

beneficiaries. Their thoughts were based on a better South Africa which would address their needs and aspirations and redress the apartheid imbalances, including the land question (Masilela and Weiner, 1996).

2.4 THE SOUTH AFRICAN LAND QUESTION

Perhaps in no other country does land occupy as unique a position as is the case in South Africa (Zulu, 1985). Ownership rights to land have been a central theme in South Africa's history ever since the arrival of the white colonists. This ownership became linked to economic and social power. It was clearly concentrated in the hands of a small ruling class who used the law to perpetuate and strengthen its property and power relations.

There were various laws which were used to entrench white power and secure their control over land. These include, amongst others, the Masters and Servants Law, Vagrancy Laws, the 1913 Land Act, the 1923 Urban Areas Act, Native Land Act, the Group Areas Act 1950, the Bantu Authorities Act, the Prevention of Illegal Squatters Act, and the 1954 Resettlement Act.

In essence, unequal access to land by the law buttressed the domination of the majority of South Africans by a small minority (Land info, Vol. 4, No. 1 December 1996). Since the 1913 Land Act, rights to own, rent or even share cropland in South Africa depended on a person's race classification. It was this particular classification that left many people landless and homeless. By the 19th century, the African population had been systematically deprived of much of their land, and the discovery of minerals, and the industrial revolution which followed in its wake, marked the final catalyst for major changes which occurred in the countryside (Land Info, Vol. 4, No. December 1996).

It was the gold-mining industry which rapidly and profoundly changed the social and political structures of colonial South Africa. The social and economic order which was centred on the goldfields of the Witwatersrand, wielded unlimited power over the agrarian communities of South Africa. The emergence of an industrial South Africa led to a cash economy and the onset of white capitalist farming. This was a supreme effort made once and for all to destroy black rural enterprise and to force black farmers into wage labour, and bring all remaining arable land under white control.

It was Cecil John Rhodes, the then Cape Governor who introduced the first legislation which attempted to limit African access to land and force them into wage labour. The Glen Grey Act, which became law in 1894, was passed to realise the needs of both white farmers and mining magnates. Its main intention was to create a land shortage. (Land Info, Vol. 4. No. 1, December 1996).

On the other hand, forced removals in support of racial segregation have caused enormous suffering and hardship in South Africa, and no settlement of land issues can be reached without addressing such historical occurrences (Green Paper on S.A. Land Policy, 1996). It is not possible to consider land reform in South Africa without highlighting the forced removal question, which has been a main aspect of land dispossession in South Africa.

2.5 FORCED REMOVALS IN SOUTH AFRICA

Of all the processes which have brought about the inequitable distribution of power and wealth that characterise present day South Africa, perhaps none has been more decisive and of more immediate importance to most black communities than the issue relating to the dispossession of land (De Klerk,

1991). Colonial and apartheid policies pushed millions of black South Africans into crowded and impoverished reserves, homelands and townships (RDP, 1994).

The history of forced removals and a one-sided distribution of land resources has left a complex and difficult legacy. Removals, like the entire apartheid system, were designed to satisfy the ideological, economic and political objectives of a white minority regime. The implementations were often violent and generated resistance and struggle, which were instrumental in bringing about the demise of apartheid. Forced removals induced "deliberate underdevelopment," which resulted in overcrowding, and contributed to the creation of massive landlessness within the Bantustan homelands. It has been estimated that between 1960 and 1983, around 3,5 million South Africans were forcibly removed from their places of residence, and dumped in the homelands.

As a result of government policy, roughly 60,000 commercial farmers in South Africa came to own virtually 12 times as much land as the 14 million rural poor (Land Info, Vol. 4, No 1, December 1996). Forced removals occurred throughout South Africa and affected different communities at different times

and locations. Most of the well-known black townships like Sophiatown, Lady Selborne and Marabastad were demolished in the 1950's owing to "black spot" removals. The following press cutting (Figure 2.2) indicates a picture with a message from the Sophiatown people against their removal which ultimately took place⁴.



Figure 2.2: Press cutting, Sophiatown (Drum, February 1955)

⁴Drum news letter, February 1955.

In the North-West province, the area of research and investigation, several examples exist. The Bafurutshe ba Braklaagte lived on their farm in the Western Transvaal since 1909. The farm was purchased by the tribe and registered in the name of the chief to hold in trust for his people. In 1988, the Bafurutshe were forcibly incorporated into the former Bophuthatswana. On the other hand, the Bakwena ba Mogopa bought two farms, Swartrand and Hartebeeslagte, in 1912 and 1931 and the farms were registered in the name of the tribe. The community lived on the farms for seventy years until threats to remove them disrupted their lives. In 1984, the community was forcibly removed at gunpoint. Their removals include the demolition of houses, schools, churches and clinics, the removal of water pumps, the termination of the bus service and the refusal to grant official assistance with pensions (TRAC, 1991).

The Dithakwaneng community, in the district of Vryburg, was dispossessed of their land when their farm was expropriated in 1969, and was registered in the name of the Republic of South Africa in 1970. The land was regarded as a so called "Black Spot" area. The Bakwena - ba - Modimosana - ba Maaka tribe in Ratsegai location in the district of Rustenburg were removed from their area, which was also regarded as a "Black Spot", in 1962.

The land which belonged to Magokgoane Community (Bafokeng-ba - ga - Morake), in the farm Kafferskraal in the district of Koster, was expropriated in 1978 in terms of Section 13 (2) of the Development Land and Trust Act. This process started in 1937, when the white farming community began lobbying for the removal of the tribe, since their presence was perceived to be undesirable. The land rightfully belonged to the community, but pressure on the government from the white sector led to their removal in 1978, and the area was declared a black spot.

The community of Goedgevonden lived on two South African Development Trust (SADT) farms in the Ventersdorp district, from 1947 to 1979 (TRAC, 1991). They were forcibly removed from these farms and incorporated into Bophuthatswana. Other related incidents of forced removals include, Riemvasmaak, Groot Marico, Putfontein, Baphalane, Mosita, Doornkop, Mogopa, Tsitsikama, Longlands and Roosboom, to name only a few. The Putfontein (Ramatlabama), Baphalane ba Sesobe (Madikwe), and Mosita Native reserve, have been selected as case studies for this research.

The ironic side of the apartheid coin was felt by the Meyer family (White farmers) when their farm was expropriated by the former government of

Bophuthatswana, and turned into an exclusive game reserve, Madikwe River Lodge. This is just one of the incidents of forced removals which affected the dominant class of apartheid South Africa. The Meyer family also resisted removal on the basis of the time and efforts spend building their homes and developing a farming sector which, they argued, was prosperous.

The situation was highly unfortunate for them because at the end they, just like most black communities, had to flee from the bulldozers which demolished their homes. Figure 2.3 shows Louis Meyer and his brother Maurice at the site of their demolished family home in Groot Marico.



Figure 2.3: Louis Meyer and Brother

Source : Winberg & Winberg, 1996.

With the introduction of the Commission on the Restitution of Land Rights, the Meyer family lodged a land claim which was the first and only “white” restitution case by early 1996, and it was unfortunately dismissed on the grounds of just and equitable compensation (Winberg & Winberg, 1996). In the cities, where informal settlements continued to mushroom due to unemployment and the fact that many families could not afford housing in the official townships, many squatters in the cities were moved under the amended Prevention of Illegal Squatting Act. The largest removal of this nature occurred in June 1986 when Crossroads squatter camp in Cape Town was destroyed violently (Land Info, Vol. 3 No. 8, October & November 1996).

By the 1980's the state shifted from forced removals into forced incorporation into the homelands. The most infamous case of force incorporation was the community of Braklaagte and Leeufontein near Zeerust into Bophuthatswana in 1988. Their experience unleashed new struggles of protests and resistance in the rural areas. Resistance against removals spread all over the country, but was defeated by apartheid legislation.

Blacks used several tactics, including the formation of civic organisations to send a message of resistance against the oppressive rule of the apartheid

government. Most of the resistance movements were led by political structures like the ANC, PAC, and AZAPO. It was unfortunate that these structures did not have free political will, and as a result they could not operate freely.

Mogopa village became a pivotal land struggle of the 1980's (Winberg & Winberg, 1996). Figure 2.4 is a picture of Mogopa women in the then western Transvaal on their way to a meeting to plan their resistance to removal.



Figure 2.4: Mogopa Women on their way to resist against their removal

Source (Winberg & Winberg, 1996)

The community was unsuccessful in their attempt to resist removal and they eventually held their last church service which was led by Bishop Desmond Tutu on the day of their forced removal in February 1984 (Winberg & Winberg, 1996), Figure 2.5.



Figure 2.5: A prayer meeting led by Bishop Desmond Tutu before the removal of Mogopa community.

Source (Winberg & Winberg, 1996)

As legislations were enacted on racial grounds, more and more people became landless. This question of landlessness affected a wide range of people, including farm dwellers, labour tenants, the unemployed, the rural and urban

poor, people displaced by drought, and families which had outgrown their available accommodation. Palmer (1977) outlined in his research that loss of land meant losing the graves of one's fathers and the home of one's childhood, and that the sense of community, of the ordered pattern of nature, and of the continuity of the meaning of life are destroyed. The graves of one's ancestors are very important in a traditional African society, and after the removals people still visited their ancestral graves (Figure 2.6 and 2.7).



Figure 2.6: Ma Maria visits the graves of her ancestors, December 1994

(Source, Winberg & Winberg: 1996)



Figure 2.7: Paying a visit to the ancestral graves

When people lost their land, there could also be deep and bitter resentment. There can be no doubt of the significance of land (Rhind and Hudson, 1980). Levin, Solomon, and Weiner (1994) have identified that the history of forced resettlements, relocation and removal of many millions of Africans illustrates the massive social upheavals and oppression experienced by blacks in South Africa. The process went through a variety of phases, each serving to further dispossess, dis-empower and impoverish the black majority, both urban and rural.

The process of forced removals became a central facet of the political strategy of apartheid. Levin and Weiner (1997) maintained that forced removals were never a single event, but part of a complex ongoing history of oppression, and were responsible for the shaping of the geography of apartheid South Africa. As Bundy (1990) notes, "certain forms of land ownership, private property rights in land, confer and concentrate economic and social power in the hands of one group of people or class, giving them the ability to subordinate and exploit another group or class". For the perpetrators of apartheid, private property rights in land meant power and profits.

Given the history of apartheid property dispossession, land and agrarian reform are central to the process of reconstruction and development. The current policy debates about land and agrarian reform, as illustrated by Levin and Weiner (1994), are being shaped by international and local experts.

At present these experts do not appear to articulate the interests of the majority of rural people who were exploited, oppressed, and deprived of resources (Levin & Weiner, 1997). It is only through a thorough examination of and participation by the affected majority that land disputes can be redressed.

CHAPTER THREE

LAND REFORM IN SOUTH AFRICA

3.1 THE LAND REFORM PROCESS IN SOUTH AFRICA

The history of South Africa has shown that colonial land policies and those of apartheid were a major cause of insecurity, landlessness and poverty (RDP, 1994). This has resulted in a fragmented system of land administration. In the South African context, Van Der Wall (1989) argued that the fundamental social and economic relations, whether class or race based, have land as a common denominator.

It is therefore essential for the post apartheid government of South Africa, which is faced with the task of rectifying past injustices and of restoring access to the land, and to other resources necessary for its utilisation, to learn from the experience of other African countries and thus avoid revolts of any kind. A land reform programme which addresses the majority of South African people's needs is of crucial importance to the post apartheid era in South Africa.

However, redressing past wrongs is not easy, as the Minister of Agriculture and Land Affairs, Derek Hanekom, noted in his keynote address about the Green

Paper on South African Land Policy. Hanekom argued that “in South Africa, as in many countries in the world, land has always been a sensitive issue surrounding questions of ownership, distribution, and use” (Land Update Vol 53, 1996). These result in stray emotions and heated debates.

Levin and Weiner (1994) have suggested that redressing apartheid geography is about transforming power relationships in rural South Africa. The process by which these power relations are transformed is therefore of crucial interest to the government, political parties, development agencies, commercial farmers, African communities at large, and perhaps most important, to the marginalised segments of the rural population (Levin & Weiner, 1994).

The success of land reform depends on more than just providing access to land. Land reform must be measured by the extent to which participants improve their livelihood. This requires a working relationship between national, provincial, and local governments. One of the priorities for an improved livelihood is the provision of services, particularly in rural areas (Atkinson, 1996).

In South Africa, the programme of land reform is crucially important to the RDP. Without giving people access to land, and security of tenure, many other government programmes become meaningless. Land reform has the potential for overcoming many impediments in rural and agricultural developments. Land reform in South Africa is still at a modest beginning, but already people are returning to their land under the restitution process. The first objective of land reform should be the quest for justice to the victims of forced removals and those whose property was effectively stolen. In many societies, reorganisation of land ownership and land rights have been a basic element in implementing state policy. However, land reform continues to be a difficult and complex process (Land Update, Vol. 53, November 1996). Political stability and economic growth in South Africa depend on the success of this process. It will be tested automatically by its ability to address the needs and aspirations of the marginalised.

A recurring problem in land reform in other countries has been the inadequacy of survey and tenure records. Where these do not exist or have been destroyed, the progress of land reform can be frustrated. Another related issue is lack of adequate public information on land reform programmes and their performance. The importance of land as a source of life, social status and

political power, has made land tenure an important topic of development planning. Indeed the emphasis on land tenure and land reform as keys to development is not new.

The programmes have taken the form of tenure, redistribution, and restitution. The aim of tenure reform is to ensure equal status in law and adequate administrative support for different forms of tenure. It intends to secure tenure rights to all rural and urban South Africans, to improve tenancy laws so as to ensure fair terms and conditions of tenancy, to ensure gender equity regarding all aspects of land holding systems, to provide for interim administrative and legislative measures to reduce tenure insecurity and administrative problems where they currently exist, and to develop tenure reform policies in consultation with affected parties and the public (DLA -Development information services, 1996).

Land Redistribution provides for the designation of land for rural settlement and for financial support to communities to acquire land for residential and productive purposes. The principal beneficiaries of the programme will be the historically disadvantaged people of South Africa who have been denied access to land and decent living conditions. These include landless people who wish to

gain access to settlement opportunities in rural areas, women who wish to access land, farm workers and their families who wish to improve their settlement and tenure conditions, labour tenants and their families in accordance with the proposed land reform (Labour Tenants) Act, residents who wish to secure and upgrade the conditions of tenure under which they live, those who wish to acquire rural property for production purposes, beneficiaries of the land restitution programmes in terms of the Restitution of Land Rights Act No. 22 of 1994, and dispossession cases which fall outside the ambit of the Restitution Act 22 of 1994 (DLA, 1996). Cobbett (1988) said that if land redistribution is necessary, it is necessary to make some predictions about the form it will take.

In addition to issues of development and land reform, there is the question of competency and responsibility. In South Africa land reform is a national competence. It is the responsibility of the national government to ensure a more equitable distribution of land ownership, to support the work of the commission on restitution of land rights, and to ensure that a programme of land tenure and land administrative reform is implemented. On the other hand, provincial governments have the responsibility to provide

complementary support to the beneficiaries of land reform (Land Info. Vol. 4, no: 1, December 1996).

In March 1991, the White Paper on Land Reform was tabled in parliament. Accompanying that document was the Abolition of Racially-based Land Measures Bill which sought to repeal the Land Acts of 1913 and 1936. The legal framework of land ownership and acquisition was changed and communities were provided with a legal right to claim land from which they had been removed. Nevertheless, the White Paper did not specify a mechanism for land restitution, and this led to individuals and political parties being dissatisfied with the process.

Levin and Weiner (1994) indicated that a more practical way was the land claims court, whose duty was to investigate all claims, consider all other representations, provide opportunities for the presentation of claims, award compensation, and order the standing commission on land claims to enquire into and report on any claim. Land claims are lodged with the Commission on the Restitution of Land Rights in the respective provinces.

3.2 THE LAND RESTITUTION PROCESS IN SOUTH AFRICA

The purpose and goal of the restitution process as outlined in the Green Paper on South African Land Policy is to restore land and provide other remedies to people dispossessed by racially discriminatory legislation and practice, in such a way as to provide support for the vital process of reconciliation, reconstruction and development (Green Paper on South African Land Policy, 1997).

Restitution is an integral part of the broader land reform programme and is closely linked to the distribution of land and tenure reform. Restitution is making a critical contribution towards restoring justice and reconciliation. It is also facilitating the process of enabling previously disadvantaged citizens to access land (Seremane, 1996). Seremane further maintained that the absence of an effective land reform programme in general, or regarding restitution as a Cinderella programme, could militate against the country's stability, peace and prosperity (Seremane, 1996).

At present land restitution in South Africa covers cases of forced removals which originated since 1913. Such claims are being dealt with by the Land Claims Court. Restitution could take the form of restoration of land from which the claimants were dispossessed, provision of alternative land,

alternative relief comprising of a combination of the above, or priority access to government housing and land development programmes (Green Paper on Land Reform, 1996).

The establishment of a Land Claims Court and the commission on restitution of land rights was announced by Minister Hanekom on 22 May 1994. This deals only with specific cases of dispossession. The Restitution of Land Rights Act No, 22 of 1994 was implemented on 2 December 1994. The Act facilitates the restitution of land rights for people who were dispossessed in terms of racially based colonial and apartheid laws. The Act provides for the establishment of a Land Claims Commission and a Land Claims Court. The establishment of the commission on Restitution of Land Rights followed in March 1995, and the Land Claims Court in February 1996.

The Land Claims Court is empowered to determine cases of restitution as well as payment of compensation. However, restitution, and land reform more broadly, will be severely constrained by the provision of compensation at market value. Also, court proceedings might take some time, owing to the different nature and extent of claims. Nevertheless, this should not be cited as an excuse to people who have demanded the immediate return of their land.

The issue as to how quickly and effectively the "Commission on Restitution of Land Rights" is able to deal with specific cases has been a crucial question and a concern indicated by Levin and Weiner (1997). After the launching of the commission in March 1995, Hanekom announced that 7095 claims for restitution had already been lodged with the Commission for the Restitution of Land Rights by June 1996.

The current restitution process is limited in scope owing to its vagueness with regard to certain categories of claimants. Some claimants who seem to fall outside the ambit of the Restitution Act also have strong claims for restitution. This view was supported by a crucial debate during a workshop with the Traditional Leaders in the North-West Province held on the 23 - 24 March 1998 at the House of Traditional Leaders in Mmabatho. It was during this workshop when traditional leaders contested the 1913 cut off date because most of their fathers' land was dispossessed long before 1913. Their view is that the government should go as far back as the 19th century and look into the major events when land was removed from their ancestors. They opposed the political compromise which led to an agreement for 1913 as a cut off date.

The National Land Committee, (NLC), in its proposal on land reform policy, maintained that the restitution process should not be limited to claims arising from direct actions, such as betterment planning and farm evictions.

Corruption and maladministration should also not give rise to legitimate claims to be addressed through the restitution process (NLC, 1996). To ensure the development of self esteem and pride, people's relation to land must be normalised, and this will in turn assist in the overall aim of reconstructing society.

3.3 THE LAND RESTITUTION PROCESS IN THE NORTH WEST PROVINCE

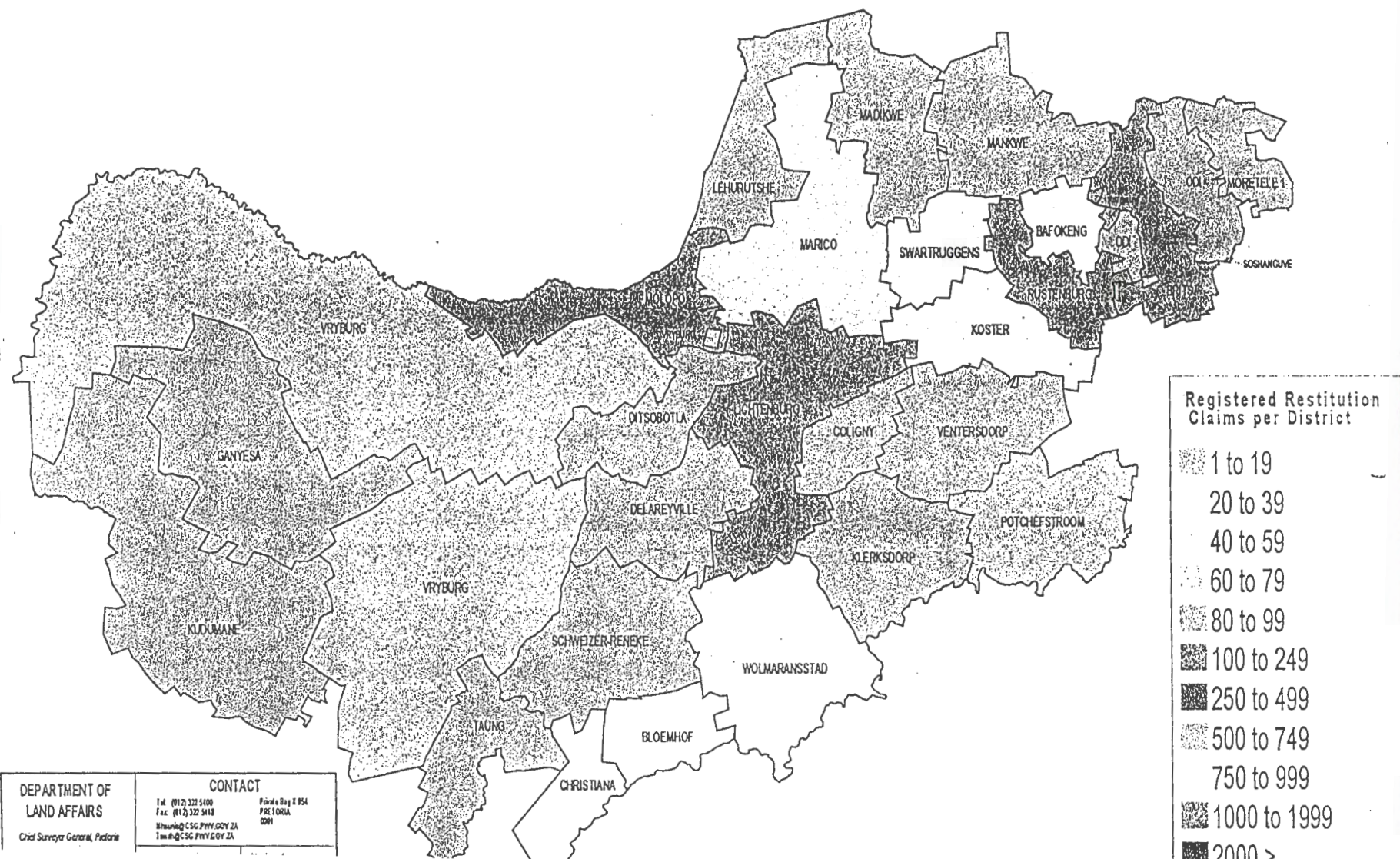
The North-West Province, just like other provinces, is an area where the geography of rural settlement changed as a result of forced removals. The changing of provincial boundaries also meant an increase in areal responsibilities which resulted in many land claims being lodged within the province. By the end of July 1998, about 780 urban and 599 rural claims in the North-West Province (Figure 3.1) were lodged with the Regional Land Claims Commission. With the extension of the cut off date from April 1998 to 31 December 1998, more claims were envisaged.

Registered Restitution Claims	Total	Claims linked to Magisterial District	No. of Claims not linked	Urban Claims	Rural Claims
National	27 572	25 707	1 865	20 210	5 513
North West	1 395	1 388	7	780	599



Scale 1: 2 600 000

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Figure 3.1: Map of North-West Magisterial district showing number of registered restitution claims per district as from January 1995 until July 1998.

Such cases need to be fairly addressed, so that the restitution process is not marred by conflict and possible land invasions. If the process is to retain credibility as part of the government's ambitious land reform programme, it is essential that concrete progress is made with the view to speedy delivery in high profile cases such as the Putfontein (Batloug) and Baphalane Ba Sesobe (Madikwe) community restitution cases in the North-West. Effective use can be made of recently enacted legislation dealing with land reform to achieve this.

Of crucial importance to the restitution process is whether communities understand the advantages and disadvantages of the process, and whether restitution can adequately address the needs and aspirations of the individuals and communities in need of land. Several claims have been lodged in both urban and rural areas in most of the magisterial districts of the North-West Province, as indicated in the previous map (Figure 3.1). This research will only concentrate on the three selected cases, Putfontein, Mosita, and Baphalane Ba Sesobe.

CHAPTER FOUR

INVESTIGATIVE METHODS

The investigative methods used in the research were interviews, questionnaires, participatory rural appraisal, publications and maps.

4.1 INTERVIEWS

This method was relevant for this research because it helped to obtain information in face to face situations. Although time consuming, this method is important in addressing complex topics such as those in the proposed study. Both structured and unstructured methods of interviews were used to enable flexibility in finding out information. Interviews were conducted with all the participants involved in the restitution process, e.g, Commission on Restitution of Land Rights, Trac, Legal Resource Centre (LRC), Officials from the Department of Land Affairs, (provincial), and the village populations from the proposed case studies, i.e. the Chief, Tribal Authorities, farmers, Non Governmental Organisations (NGO'S) and the Municipality responsible for land and planning.

Oral testimonies were gathered to get the feeling of those whose voices have not been heard or recorded before. Life histories and oral testimonies have come to play an increasingly important role in the reconstruction of past and present geographies (Eyles and Smith, 1988; Schoenberger, 1991, 1992; McDowell, 1992; Eyles and Perri, 1993; Hewitt, 1994) cited in Mather (1996).

In research, much can be learned about communities and individuals' life in verbal history. This view is supported by Mather (1996), and he believed that integrating life histories into academic texts, has provided an opportunity for the oppressed and marginalised to speak for themselves and to have a voice where they were previously silent (Mather, 1996). Oral testimonies must be read and interpreted in the context of when, where and how they were produced (England, 1994).

However, conducting oral testimonies in research has both advantages and disadvantages. Mather (1996) argued that the question of cultural identity is one of the constraints that researchers come across. This view is supported by Nast (1994), who agrees that researchers who differ culturally and socially from their informants are sometimes described as 'outsiders', while those who come from a similar class, community, ethnicity or gender as the researcher, are

'insiders'. Mather (1996) supported this view and maintained that by virtue of their common social background, 'insiders' arguably have access to a far greater range of experience and emotions than would be the case with 'outsiders'. On the other hand, outsiders' can sometimes get more information than 'insiders', depending on the relations between the parties involved. Personal narratives collected by an outsider are not less valid than the interviews recorded by an insider (Gilbert, 1994; Staeheli and Lawson, 1994), cited by Mather (1996).

4.2 QUESTIONNAIRES:

This method is suitable for obtaining a wide range of information about individuals, factual information, attitudes, information about values and expectations, reasons, or explanations, and even information about social relations. The research used both open ended and closed ended questions.

Open-ended questions enabled the respondents to state their cases freely, and to give reasons as well. Closed ended questions in this research facilitated answering and made it easier to code and classify the responses. Questionnaires focused on the following aspects:

- a. Intentions of the restitution process.
- b. Problems encountered.

c. Issues left out.

Questionnaires to participants differed, depending on the type of information required. Questionnaires given to the village population included questions about the social, economic, and political implications of land restitution in their area, while those given to Officials in the Department of Land Affairs focused on their views about the process based on the proposed aims.

4.3. PARTICIPATORY RURAL APPRAISAL (PRA)

This method was used as a way of getting direct information from the people. PRA is a method which developed from Rapid Rural Appraisal, (RRA), whereby researchers spend a few days in a rural setting, often a village, conducting a range of information gathering activities. These activities might include semi structured interviews, drawing maps of the area, transect lines and seasonal calendars. In RRA, information is more elicited and extracted by outsiders, while in PRA, information is more shared and owned by local people. By using PRA, communities are able to analyse their lives and provide information about their priorities for the future, especially on issues that affects their lives such as land (Chambers, 1994).

4.4. PUBLICATIONS

These were also used as a research instrument, and include information from the Commissioner on Restitution (in the North-West), to find out how far the process of restoration has gone in terms of the proposed case studies.

Information was also gathered from land reform publications, i.e. LAND UPDATE, LAND INFO, DLA JOURNALS, TRAC etc.

4.5 MAPS

Maps were used to identify the geographical location of the case studies.

4.6 RESEARCH CONTACTS IN THE STUDY AREAS

Target communities for research were visited several times and key informants were identified. Archival research was conducted in Pretoria, Vryburg, and Mmabatho. Relevant files were identified from the Department of Land Affairs Research Directorate and the Regional Land Claims Commission.

I also have access to relevant survey data and archival materials for case studies, and my contacts with communities as a researcher in the LCC served as a plus for this research.

CHAPTER FIVE

PUTFONTEIN (RAMATLABAMA) LAND CLAIM

Ramatlabama is a village about 25km north of Mafikeng. The village started in 1977 when the Batlounge were forcefully removed from Putfontein in the Lichtenburg district which was declared a black spot.

5.1 BACKGROUND INFORMATION TO THE REMOVAL

The Batlounge and some 70 former individual plot owners are claiming back their land in the North-West Province. The 70 households of "Batlounge ba ga Shole" community bought the farm Putfontein on 12 December 1886 (Gilfillan, 1996). The land covers between 4000 and 5000 hectares, and comprises the farms Putfontein, Vogelstruiknop, Sterkfontein, and Omega near Coligny in the Lichtenburg district. Those who were in Putfontein lived there until 1977 when they were removed and settled in Ramatlabama where most of them now live (Figure 5.1).



Figure 5.1: Road sign to Ramatlabama (photographed, 25/06/1998)

Prior to the removal in 1974, some members of the community were invited by government to go and inspect Ramatlabama. They were only shown one portion of land, not the three promised pieces of land. Upon their return, a meeting was organised by the tribe, and their chief informed them that he was not satisfied with the promised land and would therefore not agree to move his

people. On 12 September 1977 the Bantu Commissioner informed the members of the tribe that they were no longer allowed to plough their land. One of the community members, Mr Mogorosi resisted and continued to plough the land. Two officials from the commissioner were sent to stop him, which they did by breaking the key for his tractor.

By 28 October 1977, at least 84 families had been removed by force from portions of the land occupied by the tribe. From then, the removal pace increased and by 9 November 1977 the whole population of Omega which consisted of 57 families had been removed. During the same period, 21 families from Sterkfontein and 91 families from Putfontein were also removed. The removals were carried out by government officials, using trucks to load people and their luggage. When people were removed, their houses were bulldozed, and those who resisted were threatened that their houses would also be bulldozed, and that no compensation would be paid to them.

On 11 November 1977, attorneys representing people who were still in Putfontein, contacted the department of Bantu Administration and Development in Pretoria to inquire about the removal. They were told that people were removed in terms of Order of Parliament as laid down in the

Bantu Administration Act. However, the tribe had not been served with an Order by the State President in terms of Section 5 of the Act, as a result the initial removals were carried out unlawfully (Budlender, 1992). The government simply refused to accept any challenge to its decision and removed, against their will, the remaining members of the tribe.

When they were removed, they were promised farms double the size of the ones they owned because they were losing mineral rights. Instead, they were given about 45 hectares less than they originally had. Only a few worked their land, while some entered into share cropping arrangements with neighbouring land hungry micro and surplus producers (Eales & Schut, 1996). The land at Putfontein is highly arable, falling in the heart of the Western Transvaal maize area. There were springs which were running through the farms and an ample supply of water. The community at Putfontein lived an agrarian life farming extensively in maize and wheat. The land also contains diamond diggings which are still being worked today.

Their removal led to their land holdings being reduced from arable plots of 7 to 15 morgen⁵, plus access to communal grazing land, to 8 morgen for both

⁵ 1 morgen equals 8 hectares

cultivation and stock. Those who did not go to Ramatlabama were widely dispersed and a significant number today live in Gauteng Province.

In 1992 the Batlounge lodged their claim with the Advisory Commission on Land Allocation, and it became a subject of a Supreme Court Application, as already noted. The application arose from talks between the then Department of Regional and Land Affairs and the present owners, and was dismissed with costs (Land Info, Vol 4. No. 1, 8-11). Talks were held in an attempt to resolve compensation issues before the advent of the Restitution of Land Rights Act 22 of 1994. These long delays led to the frustration of the Batlounge community (Land Update, No. 53 Nov. 1996). Eales and Schut (1996) in Land Info Vol 5 & 6, June & July (1996) said that 19 farmers at Putfontein had bought land privately from white farmers and registered it in their own names. They had mineral rights to the land and they worked the 50 to 100 morgen farms in the same way as the rest of the Putfontein households.

5.2 COMPENSATION FOR THE REMOVAL

The question of compensation for the victims of forced removals in South Africa has been contested and remains unsatisfactory. The compensatory land

for Batlounge ba ga Shole community was offered at Ramatlabama, an area which was far from the same quality as the land at Putfontein. The compensatory land is very arid without streams of running water. From a rich land, there is figuratively a semi desert. Because of the arid conditions of the place, people can no longer cultivate or rear cattle as they used to do. Thus the compensatory land can simply not support them as their land at Putfontein did. One of the plot owners Mr Mosenogi had this to say about the area, *this land is dry and our animals can no longer survive due to poor soil conditions and lack of enough grazing*⁶. The compensatory land was just a bare field with trees all over it, and people had to start digging out the trees to create fields for cultivation and residential areas.

It is also not clear what financial compensation was paid to the people at the time of their removal. It has been alleged that cash compensation was paid for improvements such as dwellings and fruit trees. Some members of the tribe said that they were given only R400 for houses which were worth far more than that amount. It has also been indicated in the expropriation notices that thousands of rands were paid as compensation for the property, but from some oral testimonies from individual people, the money never reached them as it

⁶ Interview with Mr Mosenogi 20 March 1998

was intended. Some were told that the money was used to purchase the compensatory land at Ramatlabama.

In a submission to the former Advisory Commission on Land Allocation (ACLA), Budlender (1992) stated that in any event, cash compensation would be of very limited practical assistance to an agrarian African community. No matter how much cash they received, the Black Land Act would effectively have made it impossible for them to acquire equivalent land in the Western Transvaal (Budlender, 1992). The results of the removal were therefore inevitable, and destructive to the community's means of subsistence.

In spite of the arid conditions at Ramatlabama, the area has been developed in terms of infrastructure, and this might be one reason why some people do not wish to return to Putfontein. There are schools and preschools, a Tribal hall to coordinate tribal matters, a clinic for health services and transport to take people to and from town, and their work places. Some of those who farmed at Putfontein continued to do so at Ramatlabama irrespective of the soil conditions. Mr Mokolobate, a farmer and a plot owner whose farm was expropriated at Putfontein, maintained that with or without the conditions of

the soil at Ramatlabama, farming had been part of their survival and should continue⁷.

5.3 PUTFONTEIN TODAY:

The land was sold to white farmers and some of them sold it to other white farmers, while others were apparently leasing the land from the “owners” (Budlender, 1992). Only a small portion of the entire area which belonged to the tribe is presently used by the occupants. The rest of the land is lying empty waiting for the ploughing season by the commercial farmers. Some mineral prospectors are still digging the land, but it is not clear whether they have acquired any agreement to do so. Nevertheless, the land is still fertile, with green fields, lakes, dams and trees, and remains in the maize triangle of South Africa.

5.4 CLAIMING BACK THE LAND

The Batlounge never gave up their dream of regaining their land rights, and their contacts with LRC paved a way in that direction. On 17 November 1992,

⁷ Interview with Mr Mokolobate, 15/06/98

Geoff Budlender of LRC made a submission for a land claim to the Advisory Commission on Land Allocation (ACLA), in a document entitled 'the Putfontein Community Land Claim.' Another claim was lodged by Maboka, J., Shole, J., Shole, L., and Mophulane Peter Ntshoe. Since there were two claims lodged by different people of the same community, a committee had to be formed to facilitate the process of the claim. As a result of the complex nature of the claim, ACLA could not deal with it and the claim was referred back to the then Department of Regional and Land Affairs, and was later inherited by the Land Claims Commission on 1 March 1995.

5.5 IN THE LAND CLAIMS COMMISSION

Owing to the geographical location of the claim, it was referred to the Regional Land Claims Commission for North-West and Gauteng, led by Mrs Emma Mashinini. The claim was technically complex because it involved both communal and individual land rights, common law as well as customary 'rights', mineral rights, mining permits, and servitudes held over the land by ESCOM and Transnet (Land Info, Vol. 4, No.1, 1996).

Two of the farms, Putfontein and Sterkfontein, were held both communally and individually as plots. Omega and Wildfontein were communally held with no plots, and Vogelstruisknop was held in individual plots. (Land Info, Vol. 4 No. 1, 1996). Irrespective of the individual ownership which existed in the plots, the owners saw themselves as part of a 'unified' community. For purposes of restitution, the claimants and present owners see the land as a single parcel since individual plot owners formed part of the larger community. At the time when Putfontein was purchased and occupied, both communal properties, and plots were bought in common law (Budlender, 1992).

The Chief became the trustee for the community, as the land was registered in his name on behalf of the community. This was in keeping with the policy of the then Department of Native Affairs. When the commission inherited the claim from the former ACLA commission, the question of individual ownership of some portions of the land became a major problem. Although the claimants viewed the claim as a single piece of cake, the commission had a rather different approach, which sounded frustrating to the claimant community.

As the land was held communally and in individual shares, the commission's approach was that individual owners, or their descendants, should lodge

individual claims for their portions of the land. This led to some problems within the families of the owners and direct descendants, as to who should claim. These problems emerged from common law, whereby after the death of the original owner, the plot was registered in the name of the eldest son, with the intention that he would administer the land for the benefit of the whole family. Some of these elders in whose names the land was registered, became possessive of the Title Deed, and did not inform others about the lodgement of the claim.

Attempts to resolve all the claims to the land meant that restitution would only be effected once all the plot owners and their descendants had sorted out their problems. This is one of the reasons which led to the delay of the claim and further frustrated the claiming community. On 1 November 1996, the Commission published a Gazette Notice in terms of Section (11)1 of the Act. The intention of the notice was to inform all the interested parties to submit their comments or objections to the Commission before the claim went to Court. The community thought that 30 days after the publication of the notice action would be taken, if there were no objections.

It is unfortunate that when restitution was introduced, people were not educated about the complex process they were going to follow in order to get their land back. Most people thought that when they lodged a claim, they would automatically get a response, as there is an exclusive body dealing with claims. However, when they started to lodge their claims they learned about this frustrating process.

The process of searching for individual plot owners and their descendants was started by the commission. However this was viewed as a delaying tactic by other members of the claiming community. Prior to the commission's taking over the case, in 1994 the community threatened to invade Putfontein, as their claim had not been resolved, and had been lying with ACLA and the Department of Regional and Land Affairs for a long time ever since 1991. This threat was highly criticised by the Minister of Land Affairs, Minister Hanekom, who maintained that invasions would delay the process of returning to the land, and said that the communities ran the risk of forfeiting any benefit from the government.

Another aspect which has been identified as a cause of delay in the claim was the question of valuation of the land for purposes of acquisition by the DLA.

The present land owners at Putfontein have agreed that their land is subject to a valid claim, and that it is to be acquired from them and transferred to the original owners. They are, however, interested in the amount to be paid as compensation.

The notion of just and equitable compensation has played an important role as farmers bid for market value. Farmers also take into consideration the amount of fertilisers that they have used to enrich the soil. This has led to the concept of just and equitable compensation being highly contested, with widely divergent interpretations. The state promised to purchase the farms from the farmers and this raised their cash expectations. On 10 November 1995, the state informed the landowners that their properties would not be purchased, and that the restitution claim would be dealt with in terms of the Restitution of Land Rights Act No, 22 of 1994.

The farmers were not satisfied and took the matter to Court for review, on the grounds that reasonable expectations were raised that the state would purchase the farms, and that it should do so (Brown et al, 1997). Their attempt was unsuccessful. In relation to the farmers reaction, TRAC issued a press

statement that “*White farmers aim to get rich on land reform money*” (TRAC, 1996).

The question of selling the land at market value is viewed in this research as an attempt to further enrich the beneficiaries of apartheid. Nevertheless, this question will determine the price to be paid to the present occupiers of Putfontein, and will also help to re-establish their initial preparedness to give back the land based on the offer from the DLA.

The community have always wanted to return to Putfontein, not only because it is their ancestral land, but because the living conditions at Ramatlabama are very poor, and a return to Putfontein is the only way in which this devastated community can rebuild itself (Budlender, 1992). However it is not known how many members of the tribe are interested in returning to Putfontein. It seems likely that those who have already established themselves at Ramatlabama would want to remain there, particularly some of the business people, and those who invested in their infrastructure, especially houses. Some houses are still under construction, and from a feasibility study at Ramatlabama, a general conclusion can be drawn that not everyone will move back to Putfontein.

Figure 5.2 indicates a house that is still under construction, and it is doubtful if the owner will leave it and relocate to a farm as Putfontein, with only houses for the present owners, and fields for farming.



**Figure 5.2: A house under construction at Six Hundred-Ramatlabama
(Photographed - 25/06/98)**

Some houses were completed long ago, with signs of permanent residence, and a clear indication that owners will not move (Figure 5.3).

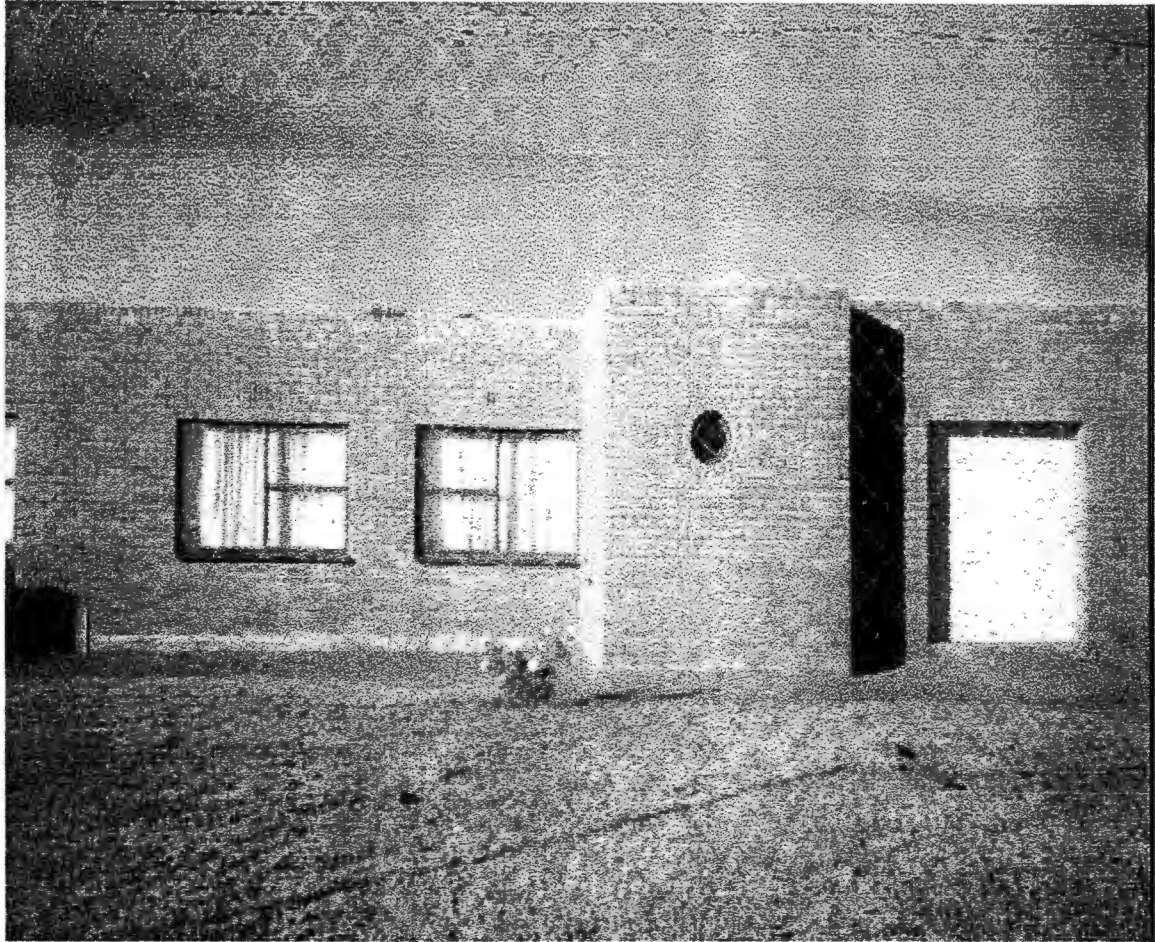


Figure 5.3: A complete house in Ramatlabama (photographed - 25/06/98)

On the other hand, many of the tribe members living at Ramatlabama are old and traditional, and some of them have already shown an interest in going back to their ancestral lands. In an interview Mr Lefakane, one of the elder members of the community, and a plot owner, maintained that he wants to go

back to Putfontein and start a better life in farming and agriculture⁸. The fact that Putfontein is a fertile area and is in the maize triangle of South Africa has been an influential aspect to the farming community.

Apart from the finalisation of the claim, interviews conducted in the community laid some grounds for an understanding of the socio-economic dynamics caused by the history of the removal, settlement at Ramatlabama, and the present developments of claiming and perhaps going back to Putfontein. On the question of returning to Putfontein, the chairperson of Batlounge Restitution Committee, Mr J Ramokala, who is also one of the businessmen in Ramatlabama, said that they have “long been waiting to go back to their ancestral land”⁹.

In contrast to other business people in the area, Mr Ramokala has been in close contact with the commission and has always wanted to know the progress that the commission has made to move them back to Putfontein.

⁸ Interview with Mr Lefakane, 11 April 1998

⁹ Interview with J.Ramokala - 19 April 1998

When asked about his house (Figure 5.4) and his shop (Figure 5.5), Mr Ramokala said that his children will look after them while he is farming at Putfontein ¹⁰.

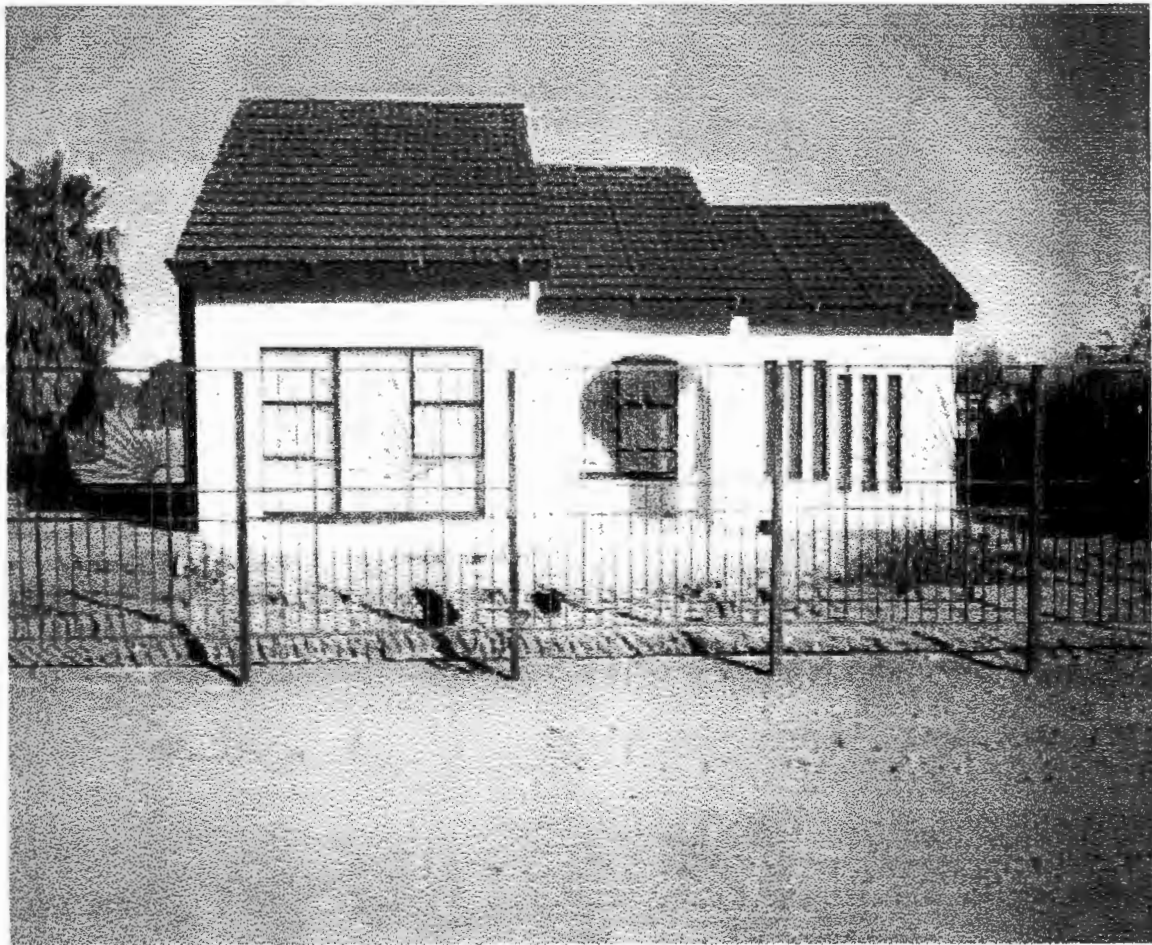


Figure 5.4: Mr Ramokala's house in Miga (photographed 25/06/98)

¹⁰ Interview with J.Ramokala, 15 June 1998



Figure 5.5: Mr Ramokala's shop (photograph 25/06/98)

Referring to a meeting of the plot owners at Ramatlabama (20/04/1998), one of the plot claimants, Mr Lefakane, shared his concerns about the process of their return to Putfontein. *“ We just want to go back to Putfontein, nothing more and nothing less, and those who do not want to go back must not delay us”*¹¹. Mr Lefakane was reacting to the Commission's concern that some plot owners had not lodged their claims, and as a result the process might be delayed as the commission had to give them time to send their claims through. In addition to Mr Lefakane's concerns, Mr Mosenogi who is also a plot owner, maintained

¹¹ Interview with Mr Lefakane, 20/04/98

that the process should go on, irrespective of the outstanding claims, as it was not clear whether people wanted to claim or not¹². The Chief also commented that they tried their best to get people into this process, and this process will continue irrespective of those who did not show up.¹³

Apart from the traditional and elderly views that this research has captured, there is also a view amongst a group of the younger generation, who were born and bred in Ramatlabama, that they are not keen to move back to Putfontein. However, even some of those who were born and bred in Ramatlabama would like to go and live at their parent's ancestral land (Putfontein). Most of the younger generation attend school in Ramatlabama and around Mmabatho - Mafikeng, and a move to Putfontein would mean a totally different environment for their education, and this would take them time to adjust to. These are some of the social dynamics and impacts of the restitution process for different individuals of the same community.

¹² Interview with J. Mosenogi, 20/04/98

¹³ Interview with Gustuv Shole (Chief of Batlounge Tribe) 20/4/1998

5.6 SETTLEMENT OF THE CLAIM

As part of settling the case, the DLA, as a respondent on behalf of the state, should make an offer to the landowners. This exercise has frustrated the process of bringing the case to an end, due to the whole question of payment at market value. An order of Court will only be handed down once the case has been referred to the Land Claims Court by the commission. This cannot happen for some time owing to the bottlenecks caused by the DLA in making offers to the land owners.

At the same time land owners cannot vacate their land without payment for their property and improvements. In a meeting held on the 10 July 1998 between the Commission, DLA, land owners, and the claimants represented by the Batloug Land Restitution Committee, the DLA promised to send offers to the land owners based on the valuation report that the DLA had conducted in Putfontein. The valuation report was aimed at determining the amount to be paid to the land owners. In that meeting the land owners clearly indicated to both the DLA and the commission that they were losing their willingness to sell the land back to the state, due to the delay by the DLA in giving them

offers. As one of them put it, “we just want to know how much is involved to purchase our land, and from there we can make informed decisions”¹⁴.

It was also clear in that meeting that the land owners would not accept anything below market value. In a letter to the RLCC, the chief director of Restitution Research said that “the offers will not be very strong, and it is not clear as to whether any of the land owners will accept them”¹⁵. If the land owners do not agree as already speculated above, the commission will have no choice but to send the case to court for adjudication¹⁶. However, if they agree to the offers made by the DLA, an out of court settlement agreement will be signed by all parties in the claim, and the case can either be dealt with through section 42(D), or will be sent to Court for an order. The lesson that can be drawn from this case study is the unpredictable circumstances of restitution, and the time spent in resolving a single claim. The community of Batlounge also learned that land reform, especially land restitution, is not an event accomplished over night, but rather a process which required their patience and active participation.

¹⁴ Interview with Mr Pretorius, land owner at Putfontein, 10/7/1998

¹⁵ Letter from J. du Plessis (DLA), to E. Mashinini (RLCC), 16/7/98

¹⁶ Interview with Peter Mhangwani, Legal officer to RLCC North-West

CHAPTER SIX

BAPHALANE BA SESOBE (MADIKWE) LAND CLAIM

6.1 HISTORICAL BACKGROUND TO THE CLAIM

The second case study for this research is the Baphalane - ba - Sesobe community, who claim the farms Boschrand 109 Kp, Mooifontein 97 Kp, Kalkfontein 111 Kp and Zuni Zuni 96 Kp in Marico district south of the Botswana border. According to the research from the Department of Land Affairs, the Baphalane originated from the Bakwena of Setshele at Molepolole in Botswana. In 1884 they became tenants on the farm Kalkfontein 111 KP (known as Sesobe) which was the property of the Roman Catholic Mission, situated on the farms Kalkfontein and Boschrand 109 KP. Their tenancy was based on an annually renewable contract with the mission.

Tribal life was closely connected with the Catholic Mission station on whose ground the tribe lived until 1950. The Jesuit Fathers established the mission station on Vleeschfontein in 1884 in order to have a halfway house for their station in Rhodesia (Breutz, 1953). In 1953 the mission changed its terms of

tenancy and increased the amount payable. Some members of the community refused to pay increased rent and the mission took the matter to Court. The Court ruled in favour of the Mission, and ordered the tenants to leave the properties after January 1950.

The removal led to the total division of the tribe. Some settled at Ongegund 20 JP, another portion went to Schilpadnest while the rest went to Molepolole to join the Bakwena ba Sechele. A letter was written by representatives of the tribe to Chief Sechele requesting him to accept the Baphalane as refugees. The letter had this to say:

“Greetings Mokwena, may good life be with you.

We have been residing at Sesobe or Vleischfontein, in the district of Zerust, Transvaal Union. We are here Chief, scattered around by the Union Government since the 28th of June 1950. Sesobe land has been ours from the time of the Dutch Government under Paul Kruger, since 1871. In the year 1892, the Roman Catholic Church was established during the reign of Chief Michael Moatshe, now chief. As the government is lead by Dr Mallan of the Nationalist Party, this land has been given to the Roman Catholic Church Mission.

We tried hard to state our case that the land is the Baphalane Reserve since the time of the Dutch Government, but all in vain. On the 20th June 1950 the Union Government send soldiers with rifles and canes to attack our Sesobe Village. The knocking of an axe and hammer began while women and children were dragged outside the huts by their legs, and were thrown anywhere in the field where there was no water nor houses. As we write this letter chief, the smoke from the ruins of the village can still be seen. Most of the villagers were still absent in the fields reaping their crops, when all this happened.

They just heard the sounds of gunshots and the crying of nashing teeth. When the government attacked, we were at Johannesburg to seek help from the lawyers. Messengers were send to us to report that the village was in flames and that the children have been captured by the government and were thrown away and left in the field. That is our position Chief Sechele, receive us, we are refugees.” (Stamlaus Mokoka, Wilibald Moatshe, Lucas M. Rosesia, Athanaus Moatshe, Johannes Molebatsi)¹⁷

¹⁷ DLA Report No. 70/1996, Mosita Native Reserve

The land became the property of the State during 1988/89, and was incorporated into the erstwhile Bophuthatswana. Today the area in question forms part of the Madikwe Game Reserve. From the contents of the letter, it can be seen that the Baphalane claim to have been the owners of the land, but from ethnological and documented information, it seems that the rights to land which the Baphalane had, were those of tenants, and were thus lost when they were removed.

The Mission and the Government used legislation to remove them since the farms would have been declared a "Black Spot" in anycase. It is also important to consider the number of years that the Baphalane were on the farms Kalkfontein and Boschrand. From ethnological information it has been indicated that the Baphalane were on the farms Kalkfontein and Boschrand from the second half of the nineteenth century, and thus have a case for a historical claim. The land is subject to a claim lodged with the Regional Land Claims Commission in the North-West Province. The nature of the claim is that the claimants indicated that they want the restoration of their land, and this has been part of the research to find out the feasibility of their option.

At present it seems that the settlement of the Baphalane would be problematic since the land is now part of a game reserve. Information from the North-West Parks Board indicates that the Madikwe Game Reserve is approximately 58 000 hectares in extent, and that a further 12 000 hectares will be fenced as soon as the Department of Land Affairs approves the boundaries of the reserve. An amount of R 50 million has been spent to develop and manage the park. There are plans for the further development of the game reserve, and this includes the question of donors from outside agencies who are interested in investing in the park.

The Parks Board indicated that the impact of changing the land use would be enormous. Most of the expenditure cannot be retrieved and the possible general and specific damages which may be claimed from the private sectors for breach of agreements could run into hundreds of millions of rands.

6.2 IN THE LAND CLAIMS COMMISSION

The commission investigated the claim, but some issues were identified as problematic in reaching a conclusion as to whether the community had ownership rights in land or not. From the oral testimonies by the community,

their case is for ownership, and should be treated as such. After several consultations with the community, the commission was not satisfied that the claim was ready for acceptance, and therefore advised the claimants to utilise *section 42(D)* of the Restitution of Land Rights Act No. 22 of 1994, for the powers of the Minister in case of waiver of rights to relief. This section maintains that “ *If the Minister is satisfied that the claimant is entitled to restitution of a right in land, and that person has entered into an agreement in terms of which he or she has waived any or all of his rights to relief under this Act, the Minister may, after consultation with the commission and on such conditions as he or she may determine, award to the claimant land, a portion of land or any other right in land and, where necessary, acquire such land, portion of the land or other right in land; or pay compensation; or make both an award and pay compensation to such person* ”.¹⁸

The claimant may therefore waive the rights to relief by the Minister.

The claimants, after consultation with the commission, agreed to waive their rights and to have their claim dealt in terms of Section 42(D). The commission, in consultation with the claimants drafted a motivation for the claim and sent it to the Minister. The results are not known and remain awaited by both the claimants and the commission.

¹⁸ Restitution of Land Rights Act No. 22 of 1994

In an interview one of the restitution committee members argued that although the community wanted restoration as an option for their claim, it seems that it will be difficult, since the land is already part of the game reserve, or else it will take time to get the matter resolved by the commission¹⁹.

Their option for direct access to the Minister was informed by the nature of the claim, and the difficulties that the commission went through in order to accept the claim. The question of the time frame before the matter could be resolved has also been a concern to the claimants. Mr Moatshe, a member of the claiming committee and one of the people who started the process of lodging the claim with the commission, said that he does not understand why the case should take such a long time, whereas people were just dispossessed of their land without any negotiations²⁰.

On the other hand, there has been immense pressure from the provincial government of the North-West, and specifically the MEC for Environmental Affairs, to have the matter resolved as soon as possible. In an interview Paul Daphne, said that the Department of Environmental Affairs had asked the provincial government to intervene in trying to negotiate with the commission

¹⁹ Interview with Mr Mokoka 23/06/98

²⁰ Interview with Mr Moatshe 09/06/98

and the claimants to come to an agreement on how to take the matter forward²¹. Plans to develop the park will have to be delayed because in terms of section 11(7) of the Restitution of Land Rights Act No: 22 of 1994, after lodgement of a land claim, *“no person may sell, exchange, donate, lease, rezone or develop the land in question without having given the regional land claims commissioner one month’s notice of his or her intentions to do so”*.²² This section aimed to avoid the change of land holding to properties subject to a claim.

In an interview the legal officer to the North-West and Gauteng Commission, said that people should not view section 42(D) as an easy way to get their claims through, as there might be problems in meeting the requirements of that section. However, the process is now in the hands of the DLA for the attention of the Minister, and a resolution is awaited. The Commission is also involved as facilitator to ensure that the process continues. A lesson has been drawn from this case study whereby, land restitution was viewed as a blockage to development in Madikwe, and might be the result in other areas. The study also raised the question of priority between development by government, and the need for land by communities.

²¹ Interview with P. Daphne from the North-West Provincial government 12/03/98.

²² Restitution of Land Rights Act No. 22 of 1994.

CHAPTER SEVEN

MOSITA NATIVE RESERVE (VRYBURG) LAND CLAIM

7.1 LOCALITY AND PROPERTY DESCRIPTION

The black-owned farm known as Mosita Native Reserve, in the district of Vryburg, belonged to the Barolong Ba - ga - Molefe ba - ka Mosita tribe, and consisted of the following land: Mosita Native Reserve No 251, situated in the district of Mafikeng, Province of the Cape of Good Hope, (now North-West Province), in extent 4720 morgen and 353 square roods (4043, 3349 hectares), registered in the name of Machaoe in his capacity as headman for the time being of the Natives resident at Mosita and other Trustees²³

The land was regarded as a so-called Black Spot, and people were removed from 17 - 20 September 1968, to compensatory land in the following farms, Slopes No 181 JN, portion of Logageng No 199 JN, Annex Harrietsberg No 198 JN, and Dunboy No: 182, in the Mafikeng district.

²³ DLA Research Report No. 70/1996, by De Lange.

7.2 PARTICULARS OF ORIGINAL OWNERS

The land was registered in the name of Machaoe in his capacity as headmen of the "Natives" for the time being resident at Mosita, the Surveyor General for the time being of British Bechuanaland, and the Civil Commissioner for the time being of the Division of Mafikeng, British Bechuanaland, as trustees in terms of proclamation No 62 I.P 1889, for and on behalf of the heads of families registered as resident thereon (De Lange, 1996).

7.3 LEGISLATION IN TERMS OF WHICH THE STATE ACQUIRED THE LAND

At the time of the removal, Mosita Native Reserve No 252 was regarded as a small Bantu area in a white area, remote from other Bantu areas. The land formed part of the schedule to the Black Land Act of 1913 (Act No 27 of 1913) but was excised in terms of section 3 of the Bantu Trust and Land Act, 1936 (Act No: 18 of 1936), as substituted by Act 2 of Act No 17 of 1939 after approval by both houses of Parliament.

The land was expropriated on 27 September 1968 by the Minister for Agriculture, acting in terms of section 13(2) of the Bantu Trust and Land Act, 1936 (Act No 18 of 1936), as amended, read with the Expropriation Act, 1965 (Act No 55 of 1965). This land was transferred to the state by Deed of Transfer No 272/1969, and was registered on 9 April 1969. The land was used by the South African Defence Force (SADF) for military training (Figure 7.1).



Figure 7.1: Mosita declared property of the SANDF (photographed, 03/06/98)

7.4 ETHNOLOGICAL INFORMATION.

The population of Mosita Native Reserve consisted of members of various Barolong sections, mainly the ba Rolong boo Ratlou. Their Chief during the time of their removal was Jeremia Thakatswane Mollify who had judicial powers conferred to him. The area was named after the Mosita River, a tributary of the Setlagole River. The tribe had a mixed population of “Barolong boo Ratlou, Barolong boo Seleka, Bathlaping, Bahurutshe, and Barolong boo Ratshidi”. These were mainly Tswana speaking tribal groupings, and with time the settlement increased as other groups joined them. It was during that period when wars of dispossession were fought amongst Africans, and very weak and unprotected communities would seek refuge with the stronger ones.

7.5 MOSITA TODAY

Two feasibility studies were carried out on the farm on the 14 May 1998, and 3 June 1998. The area is fertile, with an estimated grazing capacity of up to 1 large live stock unit per 8 hectares and therefore has a carrying capacity of 504 large live stock units (Harding, 1996). There is potential for agricultural practice, but expert agricultural advice should additionally be obtained to

determine the best agricultural use of the land. During the years of occupation by the SANDF, the land was not used agriculturally and this gave a chance for the quality of grazing to improve (Harding, 1996). The Mosita dam did not run dry during all these years (Figure 7.2), and will be a source of water for both people and live stock. In my opinion, the acquisition of the land for settlement of the community is feasible, and therefore proper planning is required.



Figure 7.2: MOSITA DAM (Photographed on 03/06/98)

Unlike on other farms, the graves that were left when the community was removed are still accessible with little destruction, except that they are covered by grass (Figure 7.3).



Figure 7.3: Mosita grave yard (photographed 03 June 1998)

In related restitution cases, there have been incidents where graves were cultivated by white farmers, but in this case no destruction occurred. These graves survived the presence of the SANDF. During a feasibility study, with the chairperson of the claiming community, Mr Gaboutlweloe pointed out

the chairperson of the claiming community, Mr Gaboutlweloe pointed out some of his ancestral graves that were still visible, as in the following Figure7.4.



Figure 7.4: Mr Gaboutloeloe and Mr Leboya, members of Mosita Land Claim Committee (photographed - 03/06/98)

The graveyards were separated according to the way the settlement of the community was at that time. Some families had their own graveyards within their households, mainly in the backyards behind the cultivated fields.

Apart from the graves that are still visible, there are some remains of equipment that the defence force used, such as the diesel tanks that can be seen in Figure 7.5.

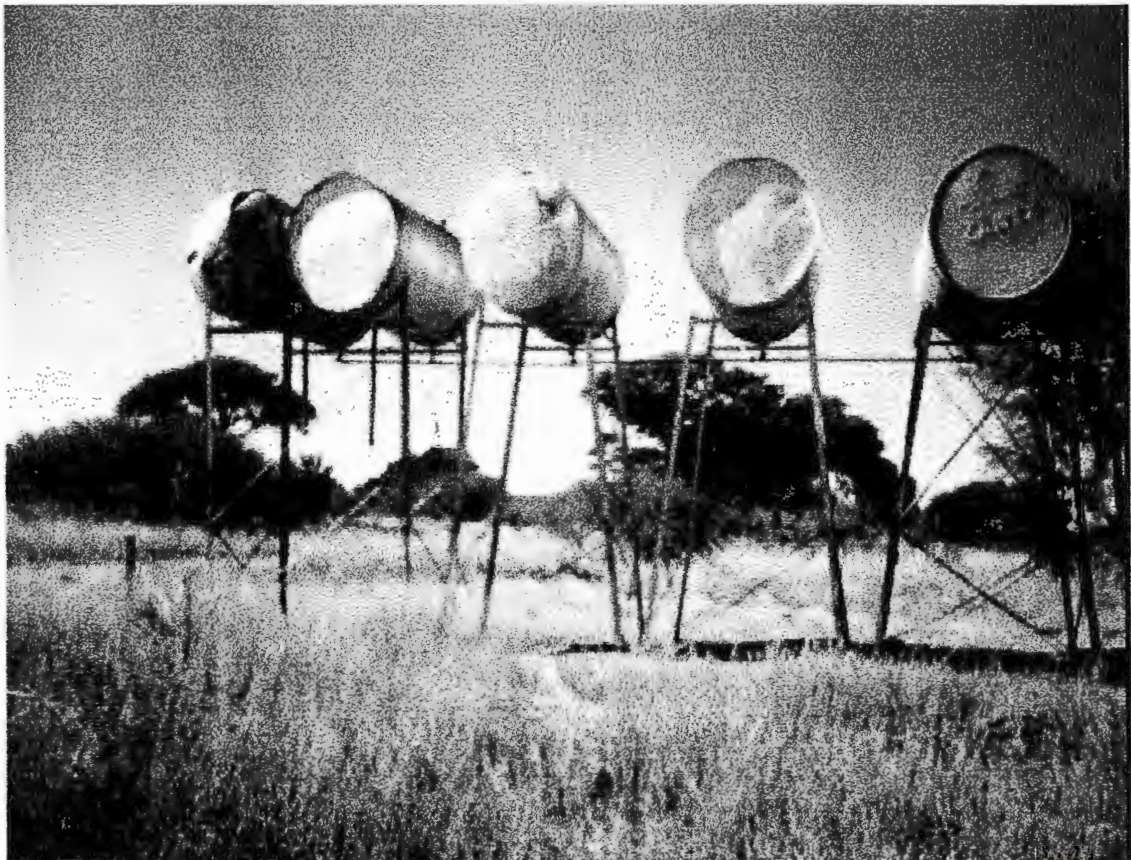


Figure 7.5 : SANDF Diesel Tanks remaining at Mosita (photographed - 03/06/98)

7.6 METHODS OF REMOVAL AND COMPENSATION.

On 3 May 1962, meetings were held with the headman and about 80 members of the tribe. They were taken to the so called "railway blocks" farms and the following four farms were discussed and shown to the people: King Slopes No 181 JN, Dunboy No 182 JO, Erinn No 183 JN and Athlone No 184 JN. On 4 May, people had their own meeting to discuss the question of the "compensatory land", and they were dissatisfied about the promised land for the following reason.

*"That there was too much yellow wood on the site, the soil was not good for building purposes, the land was far and it is a desert, not enough water, and whether everyone has to move"*²⁴.

On 18 September 1962 the Bantu Commissioner for Mafikeng said that people refused to move because there was no river and no place where they could build a dam. Further discussions continued with regard to the acceptable compensatory land until the tribe agreed to move to the farms Logageng No 199 JN, Harrietsberg No 198 JN, and King Slopes No 181 JP.

²⁴ DLA Research Report No. 70/1996 (De Lange)

These farms totalled 6125 morgen 110 square roods (5246,4155 hectares) but as the tribe was promised 9490 morgen (8128,4887 hectares) it was approved that a further farm namely, Dunboy No 182 JO, 2260 morgen 477 square roods (1936, 4432 hectares) in extent, be offered as compensatory land.

The distance between Mosita and the compensatory land is 32 kilometres, and it is some 128 km west of Mafikeng. People were transported with their belongings, and compensation for the improvements at Mosita was also paid out. Temporary accommodation was provided in the form of tents in the settlement area of Logageng No 199 JN, and two reservoirs were erected.

7.7 THE PRESENT STATUS OF THE COMPENSATORY LAND

The main infrastructural activity for settlement was done at the present place Logageng (Figure 7.6). With time this settlement was extended as more people settled, including those who came from the farms.



Figure 7.6: Road sign to Logageng (Photographed 03/06/98)

The size of the compensatory land seemed to be excessive in relation to that of Mosita, but this was motivated by the fact that the compensatory land was of a poorer condition and additional land was necessary to allow for the future increase in the numbers of the tribe. However, the actual transfer of the land never took place, as the compensatory farms are still registered in the name of the State, although the tribe have full use of it. Most of the people at Logageng

are very old and traditional, and depend mainly on the pension received from government as their only source of income. Apart from this income from government, there are those who still believe that Mosita had a future for their survival, mainly basing their argument on the mineral rights which they had at Mosita. The following picture (Figure 7.7), was taken on the 03/06/98 in a community meeting which was blessed by payment for pensioners.

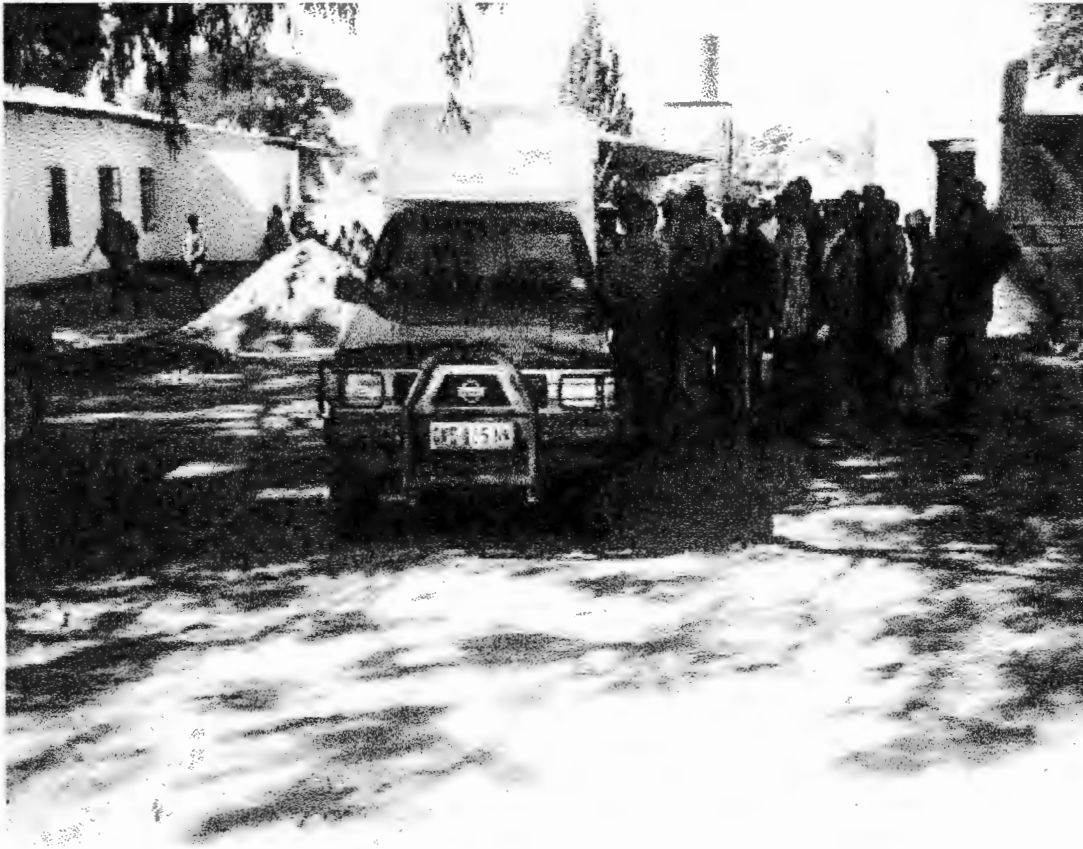


Figure 7.7: Elders of Mosita in a queue for their pension fund

(Photographed, 03/06/98)

Logageng, like most of the compensatory areas, has been highly developed in terms of infrastructure. There are schools, a clinic, and a Tribal hall for tribal administration. The provincial government has also engaged itself with RDP projects for the provision and construction of roads and water supply.

Oldbuildings such as the primary school named after Mosita have been renewed as part of the government's initiatives to provide services in the area (Figure 7.8).



Figure 7.8: Mosita primary school (photographed, 03/06/98)

7.8 IN THE LAND CLAIMS COMMISSION

A land claim which was submitted by Wilson Gaboutlweloe was accepted by the commission on the basis that it met the requirements as outlined in the Act. The claim was investigated, gazetted and is presently in the Land Claims Court. The process of investigating the Mosita claim was also assisted by the handing over of the land by the SANDF. Unlike other cases, where the Commission and the DLA had to battle with land owners to release the land, Mosita remained the property of the state, and acquisition for restoration will therefore be feasible.

In spite of the developments at Logageng, most of the traditionalists indicated their willingness to move back to their ancestral land, Mosita. In an interview Simon Mathukwi one of the elders who was born and bred at Mosita, said that if it was their will, they could have relocated back to their father's land long ago²⁵. This view was supported by Gilbert Tsikwe who argued that Mosita has always been their land and that their return is overdue²⁶.

²⁵ Interview with Simon Mathukwi, 03/06/98

²⁶ Interview with Gilbert Tsikwe, 03/06/98

The socio-economic status of Logageng also gave rise to different views of relocation to Mosita. Just like in the case of Ramatlabama, there are competing views amongst the traditionalists and the younger generation. The question of people being born and bred in the compensatory areas is not unique to Ramatlabama, and it might also be noted in this research that this issue will be there in most if not all restitution cases where restoration is an option. The divisions will be there for as long as different age groups exist. Mosita's population, just like Ramatlabama's, consists mainly of traditional elderly people. The following picture (Figure 7.9) was taken in a community meeting at Mosita (03/06/98).



Figure 7.9: In a community meeting at Logageng (photographed, 03/06/98)

One of the teachers of Mosita primary school at Logageng, was concerned about the general question of people being relocated to land as empty as Mosita ²⁷. This has become a general concern to those who do not understand the dynamics of land restitution in South Africa, and the fact that restitution does not mean enforced relocation, but rather getting back what was forcefully or unlawfully taken with regard to land. This and other related issues, like the provision of services such as shelter, and other related development issues, led to scepticism about restitution by most affected institutions and communities. However, this case study indicated the role played by the SANDF towards the restoration of Mosita, and it is a lesson to other state bodies which occupy areas subject to land claims, to co-operate with the Commission on Restitution of Land Rights. The Mosita land claim is viewed in the research as a move from defence to development.

²⁷ Interview with Aby Mooke, a teacher at Mosita Primary school, 3/6/1998.

CHAPTER 8

THE INTENTIONS OF LAND RESTITUTION

The Restitution of Land Rights Act 22 of 1994 clearly outlines its intentions to provide restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past discriminatory laws or practices. The above case studies have also captured these intentions whereby individuals and communities have lodged their land claims with the commission. In opening a workshop on the restitution process for the commission staff, the CLCC said that land restitution is aimed at healing the wounds of those whose rights were violated (Seremane, 1997). The intentions might be viewed as a sign of redressing past injustices especially in a country that was ransacked by forced removals like South Africa. Jabu Dada (NLC) stated that the Restitution Act, the first piece of legislation to go through the 'new' parliament of South Africa, was aimed at visibly breaking down the apartheid state (Brown et al, 1997). To some of those whose land is affected, however restitution is thought to deprive them of their land rights, irrespective of the conditions under which such land was acquired.

8.1 INSTITUTIONAL VIEWS.

The interpretation of restitution and its legislation has been highly diverse among different government institutions and academics. Several respondents were highly concerned about the legislation governing the process. In an interview Daniel Weiner, director in the office of International Programs at the University of West Virginia, said that the policy was designed to fail, owing to the time spent to complete a land claim, and the number of claims settled compared to the number of claims submitted to the commission²⁸. It is true that the process takes too long before a case is completed. For example, the Putfontein land claim was lodged with the then ACLA Commission, and was taken over by the LCC for further investigations, and remained unresolved in 1999.

The restitution process is a legalistic one and has many flaws which may lead to its failure²⁹. The process has been so diverse, with so many stakeholders involved, that unnecessary bottlenecks towards the intentions of restitution itself have been created. Bailey Mahlakoleng, a researcher in the commission

²⁸ Interview with Daniel Weiner, Director in the office of international programmes at the University of West Virginia, June 1998.

²⁹ Interview with Labius Mosadi, Deputy Director State Land in the North-West PDLA.

for North-West and Gauteng, maintained that the involvement of many stakeholders retarded the progress of delivery of restitution³⁰. His view is based on the fact that the commission does not have the sole responsibility of finalising claims. The above case studies, particularly Putfontein, could have been settled long ago if the commission had the sole responsibility of settling claims.

The commission could have been given the powers to settle claims, as it is a body which understands the complexities of land claims and their pros and cons³¹. To involve different stakeholders in the development and change process in South Africa is a good approach, but it is quite different in the case of land restitution. On the other hand, the establishment of the Land Claims Court has been acknowledged with concern.

After the commission's role in accepting a land claim and referring it to court is finished, the court still has a role to play in finalising the case, through an order. In most instances, claims are sent back from court for additional information, which is sometimes viewed as unnecessary to a layman, but is

³⁰ Interview with Bailey Mahlakoleng, researcher in the RLCC - North-West Province

³¹ Interview with Bailey Mahlakoleng

crucial to the court. This sending back of cases leads to frustration for those who spend their time getting the information together, only to be told that the information is not sufficient. This was true in the case of Mosita, when the commission was sent back to get resolutions from the community and the committee acting on behalf of the entire community, besides the information which was available in the documents sent to court. Such acts from the court led to serious frustrations among the communities who felt they were being asked to meet for the same information which they had already provided, however that information was not legally phrased to meet the court requirements.

Besides the institutional framework in restitution, mainly the involvement of stakeholders such as, DLA, DMEA, PW, LCC, the process of land restitution has been accepted by others as a tool to redress past injustices. Gabs Gaborone, an official from the PDLA in the North-West, said that restitution is aimed at bringing reconciliation, as those who lost their land might get it back or be compensated for it, and those who presently occupy the affected pieces of land will also get compensation, even at market value³².

³² Interview with Gabs Gaborone, 20/06/1998

8.2 PROBLEM AREAS

The restitution process has some problem areas which have been identified in this research. One of the flaws has been its legalistic approach, which has taken time for communities and even commission staff to understand. The involvement of many parties has already been noted as one aspect which delays delivery, and the Putfontein land claim has much to tell about this. The lifespan of investigations to complete a claim, the institutional framework needed to administer claims, and the number of claims completed up to date, clearly put restitution in danger. Brown et al (1997), noted the criticism of the DLA's role as land owner (or landowners' representative) in the case of state land, and as paymaster of the purchase price or expropriation compensation in the case of private land, and its role as facilitator and as respondent in restitution claims.

The question of the DLA's involvement in valuations also raised concerns, especially for the respondents in the commission. Some land owners whose land is subject to a claim also disapprove the DLA's role in conducting valuations. Irrespective of the notion of just and equitable compensation, the question of 'fair' valuation figures determining the amount to be paid to the

present occupier of the land subject to a claim, has been high on the agenda in most of the stakeholders' meetings. The Putfontein land claim has been delayed as a result of the valuation process, which took too long to be completed. After its completion, the land owners were still not satisfied that it met their expectations. On the other side, the DLA could not provide the farmers with offers to purchase the farms for restoration to the community of Batlounge. This leads to accelerated pressure on the commission by the community, and some of them have threatened to invade the land.

Some critics asked if it was fair that the DLA, as an interested party, should be responsible for obtaining the valuation on which compensation will be paid (Brown et al, 1997). The whole question of valuations has been very complicated, and has been responsible for considerable delays in cases such as Putfontein, Bakolobeng and Sefanyeskral in the North-West Province.

8.3 ISSUES AND ASPECTS LEFT OUT BY THE ACT

The Restitution of Land Rights Act has been under severe criticism for its slow delivery. The question of 1913 as a cut off date raised serious concerns especially for those who lost their land prior to 1913. Cherryl Walker, the

commissioner for KwaZulu-Natal, felt that the Act was conservative, in the sense that in principle it allowed a return of a particular status quo which was already flawed racially³³. Richard Levin argued that the Act was aimed particularly at black spot removals, where individuals or tribes had held the title deed, and were dispossessed by officials overnight³⁴. This question of title deeds as proof of land ownership has also been criticised since many people did not have them.

Richard Levin criticised the premise of the Act that land issues could be solved through legislation: “ The problem is not judicial, it’s political” (Brown et al, 1997). His view was supported by Labius Mosadi who argued that government had been very lenient by introducing such a legalistic policy, whereas the land question in SA remains political³⁵. In his opinion, the starting point of the government could have been the expropriation of land from those who acquired it unlawfully or through past legislations, and that the Act could be used for ‘simple’ cases involving state land. Where the land is in the hands of

³³ Cheryl Walker, Commissioner for Kwazulu Natal

³⁴ Richard Levin, Chief Director DLA

³⁵ Interview with Labius Mosadi, Deputy Director State Land in the North-West PDLA.

the state (i.e Mosita), other land reform programmes such as redistribution and land tenure should apply.

Some of the respondents commented that land restitution as a policy is a move in the right direction, irrespective of its bureaucratic approach, and its painful, frustrating, and slow delivery process. However, the aftermath of restitution, especially the provision of services and the settlement planning for those who might get their land back, has not been addressed in the Act. It is one of those issues that the DLA is supposed to take care of after an order of court.

8.4 CAN RESTITUTION EFFECTIVELY RESTORE PEOPLE'S RIGHT TO THE LAND?

Several people responded in a positive way towards this question, however they raised concerns about development, as already noted. For Durkje Gilfillan, Commissioner for Northern Province and Mpumalanga, and Geoff Budlender (DLA), it was clear that restitution is a prime, constitutional right, and therefore it must take precedence over development (Brown et al, 1997). "The government did a good thing by introducing restitution so that we can go back

to our ancestral land”³⁶. Such statements are acknowledged, but when one investigates the reality and the expectations of people from this process, it becomes clear that the process is in danger of severe criticism.

One of the issues that is of crucial concern, and has already been noted in the above case studies, is the whole question of development. During the forced removal periods, people also lost property and other essential services, and from the respondents in this research especially the claimants, the concern was raised as to whether those losses would form part of the restitution package. In handing down an order for the Dithakwaneng restitution case, Judge Moloto of the Land Claims Court ordered the DLA to provide the community with the necessary services towards the development of the restored land. In responding to the judgement, the Minister of Land Affairs, Derek Hanekom, said that his department would abide by the order, and further argued that the question of development is also part of the community’s responsibility through the Masakhane campaign³⁷.

³⁶ Interview with Wilson Gaboutloeloe, Chairperson of Mosita Restitution committee.

³⁷ Derek Hanekom, speaking during a court order of the Dithakwaneng land claim.

A broad understanding and analysis of the above-mentioned problem areas is highly crucial towards the assessment of the land restitution process in South Africa, and has been a central part of this research. Although not everyone will agree with the dynamics of land restitution as outlined in this research, the fact remains that restitution is there, and people should use the opportunity of this complex legislation to lodge their land claims.

CHAPTER NINE

CONCLUSION

The restitution of Land Rights Act No 22 of 1994 brought in a new dawn to the land reform history of South Africa, and its political geography. To some, the legislation has been long overdue. However, having being going five years since 1994, and having only completed 9 cases, the process is in serious danger. Criticism from all spheres of political influence is simmering.

Frustration and impatience rule the minds of those whose expectations were raised. On the other hand, the process has been viewed as an instrument to block development in cases such as Baphalane ba Sesobe in Madikwe, where the provincial department of Environmental Affairs in the North-West wants to develop the game park, only to find out that the targeted land is subject to a land claim.

In cases such as Mosita, people are waiting to see a move from defence to development, but the blockages within the process never gave them faith to rely on. With the restoration of Mosita, the community is now faced with the task of agricultural reconstruction, and development of the area for settlement

purposes. The Batloug (Putfontein), also waited for some time, but gained hope when I took over their case after being employed by the commission. The question of valuation has stalled progress, but the commission has increased pressure on the DLA to resolve this matter. There has been severe pressure on institutions that facilitate the process, and particularly on individuals working directly with the claimants. This pressure is increased by overlapping responsibilities between the DLA, Commission, and the NGO's. The geographical location of these institutions also influenced their daily interaction with communities they work with.

9.1 PROPOSED OPTIONS

A "fast tracking" mechanism has already been devised in the Act with the inclusion of Section 42(D). This mechanism, as already noted in this research, has both pros and cons. It is therefore advisable that such a process should run parallel to the commission's investigation, so that if a case cannot be settled using the amended section, it can be referred back to the commission to be investigated in terms of the rules as outlined in the Act.

It is also important to note that not all communities have the resources and the legal expertise to compile a motivation to the Minister. The question of legal advice and payment has been a concern to most of the respondents, and I also realised that not all legal advisors understood the restitution process, and as a result many claims submitted by such people were badly completed, with clear signs of non conceptualisation of the process.

However, the mechanism will assist to complete the “straight forward” and uncomplicated cases, although the research complexities will remain. This mechanism should be supported by a quick decentralisation of the DLA to avoid duplication of duties and to give powers to the PDLA’s to negotiate and settle cases before they are sent to court, thus clearing the lines of responsibilities within the DLA. All state and other institutions involved in the restoration of land rights should come together to address issues of common interest and have a common way forward in their diverse responsibilities. This is mainly directed to departments such as local government and housing for the provision of services for development after the restoration of the land. It became clear in the process of this research that there were no clear links between the different departments which have a role to play.

This research recommends the involvement of all interested parties from the initial stage when a claim is lodged. This approach does not mean getting everyone to work on the process, but to inform parties that there is a land claim on a particular piece of either state or privately owned land, and that such a claim has been accepted by the commission on the basis that it met the requirements of the rules of the commission and the provisions of the Restitution of Land Rights Act No. 22 of 1994.

There is a perception that land restitution blocks development and vice-versa (Madikwe case study). This results from lack of communication between government departments in charge of development, and the Department of Land affairs and the Land Claims Commission. Some areas earmarked for housing development projects in both urban and rural areas have been subject to land claims. To those whom the project was intended to assist in terms of housing, restitution becomes a stumbling block. As a result of these counter problems, the Department of Land Affairs and the Commission on Restitution of Land Rights, in conjunction with the Department of Housing and Local Government in the North-West Province, held a two-day workshop on 28 and 29 October 1998, to discuss issues concerning restitution and development. It was agreed from that workshop that lines of communication should be opened

between the departments to avoid conflict of interests, and towards that end, this research recommends that the commission make an update of all land claims lodged in the province available to all the departments in charge of development for their notification. This will avoid incidents such as the Botha and Kaka case in Lichtenburg where the TLC wanted to develop a taxi rank on a piece of land subject to a disputed and competed land claim. Brown et al (1997), argued that the DLA cannot support long-term implementation costs and as a result the involvement of other state agencies is critical.

Other respondents have proposed that, in order to speed up the restitution process, the commission should be capacitated to deal with many cases at once. This is a gap that the commission still has to fill, and is an important input, owing to the load of claims that the commissions will have after the deadline for lodging claims. However, problems will still exist if only the commission is capacitated, but not the DLA.

Experience has shown that in most instances, the Commission even with its limited capacity, is able to advance more claims, and from the cases studied in this research, most of the blockages in resolving such claims, came from the side of the DLA (e.g. Putfontein). Therefore, I also believe that the DLA needs

to be capacitated to speed up the ongoing and frustrating process of land restitution.

Apart from the problems that the research indicated, it is important to note that remembering one's ancestral place in terms of geographical location, does not automatically clarify understanding of the restitution process. The research is therefore important for the South African geographer to understand the envisaged change in land use owing to the restoration of mostly present agricultural land, and the changing landscape as a result of the resettlement programmes in land reform. Much has been said by geographers about the prospects of land reform in a post-apartheid South Africa (Letsoalo, 1987; Levin and Weiner, 1997). What remains ahead of the geographer is to document the outcomes of this process and to advance development geography in the South African rural periphery. There are prospects for more systematic rural development research agendas as a result of the changing land reform process in South Africa. Further than that, the political geography of South Africa as outlined by Reintges and McCarthy, in Rogerson and McCarthy (1992), is not simply made up of laws, but of political processes. It is therefore important for the geographer to understand this political processes which at the end might culminate to laws such as the Restitution of Land

Rights Act No 22 of 1994. Land remains an important resource, and as such peoples' land rights should be respected and protected by law.

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