Land Reform in Southern Africa: What has changed?

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Introduction

I shall briefly describe land reform assignments I undertook in the 1990s in Namibia and South Africa. Then spin fast forward to the present situation in the region and ask how the land reform record of these states compares today. I use the term land reform to include the redistribution and/or restitution of land for the benefit of the landless, poor tenants and farm labourers; the remodelling of land rights to strengthen tenure security on customarily held land.

Land reform in post-colonial Africa was generally slow to kick off. The majority of independent nation states had maintained colonial land policies, including associated powers of land allocation and revocation. In post-independence Kenya in the 1960s and in Zimbabwe in the 1980s, modest land redistribution programmes were implemented, but these remained so for a decade or more.

In the early 1990s, as part of programmes of structural adjustment, the World Bank was urging African governments to introduce legal measures to facilitate the individualisation of land tenure, the related development of cadastral services and to move towards markets in land. In southern Africa, these policies were at odds with plans for the repossession of land alienated by whites being advocated by SWAPO and the ANC.[1] Here as elsewhere, the debate about land reform was between those who believed that land reform should be about the redistribution of ownership and control over productive agricultural land and those opposed to extensive redistribution who wanted reform to focus on measures to raise agricultural productivity.

In Namibia in 1990 and South Africa in 1994, the drive for land reform came from newly elected governments. They took the initiative to engage in national consultative processes about land reforms which would reverse the injustices of colonial occupation. However, the scale and scope of promised reforms have been disappointing. 'Path dependence' has held sway; as McAuslan says – 'a polite term for the continuation of the colonial attitude of elites towards peasants'.[2]

Namibia

In the 1990s Namibia was one of the first African countries seriously to contemplate land reform. At least that is what seemed to be happening at the time; *seemed* because subsequently it was claimed

[1] Weideman M, Who Shaped South Africa's Land Reform Policy? Politikon (November 2004) 31(2), 219-238 https://wikileaks.org/gifiles/attach/169/169043_Land%20Reform%2011.pdf

[2] McAuslan P, *Land Law Reform in East Africa, Traditional or Transformative?* Routledge, 2013 (page 238)

that SWAPO was engaged in an exercise to defuse the immediate clamour for land reform and to buy time for the government to consolidate its position.[3]

Following a long war of independence, Namibia gained its freedom from South Africa. At this time, Namibia, about the size of France and the UK combined, had a population of only 1.4 million. Some 10% of GNP was generated by agriculture, which employed 60% of the workforce. More than half of the usable land, in south and central Namibia, mostly rangeland formerly used by migratory pastoralists, was occupied by some 4,000 freehold white-owned ranches, many of them in excess of 10,000 ha. Another 40% of the country's agricultural land was set aside for some 120,000 black rural households engaged in mixed farming. Most of this land was unsurveyed and unfenced, lying mainly in the north of the country, abutting the frontier with Angola – the scene of the battle between SWAPO and South Africa's Koevoet units in Kaokaoland, Kavango, and Ovambo prior to independence.

As in South Africa, the black population had been forced into so-called Bantustans. These were former pastoralists (Damara, Herero and Nama), many of whom were reduced to destitution and as a consequence were forced to work for the very people who had deprived them of their land. Others were stock-keeping cultivators (mainly Ovambo) in the far north of the country. They constituted the majority of SWAPO members.

In 1990, at the first meeting of the National Assembly, a motion was put forward requesting the Prime Minister to call a national conference on the land question. I had the good fortune to spend the first six months of 1991 assigned to the Namibian Economic Policy Research Unit (NEPRU) to help prepare for the conference, travelling throughout Namibia, studying farming systems, meeting local people and officials, collecting material for a series of briefing of papers for the conference, including the PM's keynote address.[4]

The 'National Conference on Land Reform and the Land Question' was held over seven days in June/July 1991, opened by the State President and chaired by the Prime Minister. It brought together all the major political organisations and interest groups and included more than 500 participants. In the run up to the conference, pastoral groups, representing different ethnic interests, were pressing for the restitution of their ancestral lands. These had been lost over one hundred years previously to the German colonizers. The passion with which these competing claims were prosecuted threatened to wreck the conference and the fragile process of reconciliation. But, after three days of debate the Prime Minister obtained broad agreement that the restitution of particular pieces of land to specific pastoral groups was not feasible. This was because ancestral land rights had been superimposed on one another for centuries and could not be identified with accuracy.

The conference moved on to debate the inequity of land ownership. Among other things, it recommended to government that:

- foreigners should not be allowed to own farmland,
- that absentee landlords should be expropriated,
- that very large farms/or ownership of several farms should not be allowed and
- that the condition of farm workers should be improved.

Other recommendations related to the need to resolve land-related problems in the overcrowded communal areas, including 'illegal fencing'. The majority of participants recommended that 'the

[3] Tapscott C, 'Land Reform in Namibia: Why not? *SAR, 9, 3 January* 1994

[4] Adams M and P Devitt, 'Grappling with land reform in pastoral Namibia' *Pastoral Development Network*, ODI, 1992.

communal areas should be extended where necessary' a proposal that was anathema to the elite – white and black.

For the SWAPO government, the conference met its immediate objectives, mainly to reach a consensus on the land question. As someone engaged in the preparatory research and aware of the issues that had not been discussed or were glossed over, I left the conference uneasy of the future. Several of the conference resolutions raised fundamental issues which neighbouring countries had failed to resolve. A view that received prominent attention at the conference was that freehold farms should be made available to individual black farmers. This was supported by the union of white farmers keen to recruit politically influential black farmers into their ranks, by black businessmen and government officials who aspired to own farms themselves; and small farmers in the customary farming areas who resented the pressure on communal grazing exerted by the large herd owners.

Land redistribution in Namibia

The first measure to be announced following the conference was the Affirmative Action Loan Scheme (AALS) administered by the Land and Agricultural Bank. The stated justification for the scheme was that it would relieve grazing pressure on the customary range to the benefit of the pastures and the remaining small farmers. Botswana had advanced similar environmental and equity arguments for moving the larger livestock farmers to fenced farms as a major justification for the Tribal Grazing Land Policy in Botswana in 1975 – a policy which had a negative impact on both counts and led to the emergence of iniquitous dual grazing rights under which ranch owners kept their cattle on the communal lands, only to withdraw them in the dry season when grazing was exhausted.[5]

Shortly before Namibia's first general election in 1994, the Agricultural (Commercial) Land Reform Act 1995 was hurried through. It provided for the purchase by the state of commercial livestock farms at market prices for redistribution to the poor, even though pastoral settlement schemes in Namibia in the 1960s and elsewhere in Africa had not proved viable. The costs of settling families with small herds and flocks on individual farms with reasonable standards were known to be very high and the economic return almost certainly negative. So too were the environmental consequences. In the narrow confines of a fenced family ranch, grazing pressure can be intense and continuous. Further, evidence collected 15 years later in field investigations of 'Livelihoods after Land Reform' showed that the AALS enterprises were economically and financially viable only where livestock farmers had access to sufficient finance to service their loans and survive droughts and the predations of wildlife and livestock diseases.[6]

Tenure reform in communal areas of Namibia

Eleven years elapsed before the Communal Land Reform Act (CLRA) 2002 was gazetted, during which time fencing of communal rangeland had been proceeding apace. The Act provided for the recognition of land rights that existed before its enactment and for the allocation of new rights, the establishment of the role of Communal Land Boards, and the roles of chiefs and traditional authorities with regard to the administration of communal land. Because ranch owners with large herds and flocks continued to benefit from grazing rights on the adjacent commons, they were understandably reluctant to purchase land in the commercial farming area.

[5] Adams, M. 'Reforming communal rangeland policy in southern Africa: challenges, dilemmas and opportunities', African Journal of Range & Forage Science 2013, 30(1&2): 91–97

[6] Werner, W and W. Odendaal, 'Livelihoods after Land Reform', *Namibia Country Report*, Legal Assistance Centre, Windhoek, 2010

In drafting an opinion on behalf of the Legal Assistance Centre, Werner[7] concluded that the dominant question to be addressed in assessing the legality of the fencing, which had taken place in the 1990s prior to the CLRA, was whether traditional leaders had the legal powers in terms of customary law to allocate large tracts of land for fencing. The question was found to be complicated by the fact that unwritten customary law changes over time. While it was conceivable that customary law did not permit enclosure of the commons several decades ago, it was equally conceivable that traditional authorities gradually permitted fencing, following the passage of the CLRA. In which case, the only fencing that could be characterised as illegal was fencing erected without the authorisation of traditional leaders.

Werner found that the downward accountability of traditional leaders had diminished over the years and noted that the CLRA did not require traditional leaders to be accountable for their decisions relating to land allocation, nor did the CLRA appear to go far enough in regulating the allocation of large tracts of land to foreign companies for agricultural and/or biofuel projects. He concluded that unless the rights of ordinary rights holders to commonages were protected and traditional authorities were encouraged to be more accountable, land grabbing in whatever form was likely to continue.

South Africa

An intrinsic component of colonial land policy was the categorisation of land for allocation to specific groups, according to state determination. How a colonial government categorised and allocated land has had direct impact, both on national land reform programmes and current land-holding patterns. Land alienated to non-Africans in South Africa by 1957 amounted to 89% of the total area of the territory.[8]

In the run up to majority rule in South Africa in 1993, I was fortunate to obtain assignments with the Land and Agricultural Policy Centre (an ANC think tank) in Johannesburg and to be invited to join the Land Policy Division of the new National Department of Land Affairs in early 1995.

My immediate colleagues in the DLA were a relatively small, well-informed group of young people, who, prior to the general election in April 1994, had filled leadership roles in provincial and national NGOs and universities campaigning for the repeal of apartheid land laws, working on the ANC's 1993 manifesto, the 'Reconstruction and Development Programme (RDP), and on drafts of new land laws, e.g. the land restitution bill, etc.

Initially, I had the dual task of monitoring the Land Reform Pilot Programme, which was being funded in part by the UK and assisting with the preparation of key policy documents, namely the 1996 Green Paper and the subsequent White Paper of the Ministry for Land Affairs, which set out the actions which the government intended to take with regard to the land reforms required by the Constitution, namely: land redistribution, land tenure reform and land restitution (see Box 1). I went on to help with the drafting of the implementation manual for land distribution for DLA field staff in the provinces.

[7] Werner, W. *What has happened has happened: the complexity of fencing in Namibia's communal areas*. Windhoek: Legal Assistance Centre, 2011

[8] Adams M and R Knight, 'Land Policy Development and Setbacks in the Southern African Development Community, *SADC Land Issues,* edited by Ben Chigara, London: Routledge, 2012

Box 1: RSA constitutional clauses relating to land reform

The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

A person or community dispossessed of property after 19 June 1913 as a result of racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

RSA Constitution, Chapter 2: Bill of Rights, Act 108 of 1996

In my final years with the DLA I acted as the secretary of a small group preparing for what was provisionally called the 'Land Rights Bill', which was to provide for tenure reform in the former 'homelands'. Sadly our work never saw the light of day for reasons which I shall explain, but first a note on and land redistribution.

Redistributive reform in South Africa

South Africa's land redistribution target in the ANC manifesto was extremely ambitious and the issue has continued to haunt successive governments. Thirty per cent of South Africa's agricultural land was to be transferred to land reform beneficiaries in five years, equivalent to some 25–30 million ha. The target was set before there was a clear strategy or action plan for the process.

In 1995, with the help of an alliance of NGOs engaged in land reform advocacy, a two-year government land reform pilot programme (LRPP) got under way, to test replicable means of helping poor farmers to purchase farms in the land market. Despite grave staffing and institutional problems and lack of post-settlement support, the pilot programme was expanded to a national one in 1997.

South Africa developed a household grant mechanism under the powers granted by the Provision of Land and Assistance Act 1993, which aimed to support a demand-led, self-help process. Because land was both relatively costly and unavailable in small grant-sized parcels, poor people wishing to acquire land with government grants had to form groups to acquire a farm. The process resulted in scattered projects, often without regard to farmers' needs for essential physical and social infrastructure. The modest household subsidy encouraged the formation of dysfunctional groups to meet the cost of farm purchase.

Inadequate capacity on the part of the Department of Land Affairs was a major factor constraining implementation. There was an acute shortage of well-trained field staff to provide legal advice and facilitate the many complex tasks involved in land transfer. Between 1994 and early 2000, only about 0.8 million ha of land, a mere 0.8 per cent of the country's agricultural land, were transferred to about 56,000 black households.

The programme's institutional problems were exacerbated by the fact that, in terms of the South African constitution, land matters are a competence of National Government. Before redistributive reform could proceed at scale, the newly formed national Department of Land Affairs, had to establish itself at the provincial level, in places faced with indifference by unreconstructed provincial officials. Without technical support, farm inputs and markets, the poor were unable to enter the

white-dominated commercial agriculture sector, which had evolved with strong government support over some 70 years.

Following the general election in 1999, the incoming Minister for Agriculture and Land Affairs announced a number of policy changes relating to land redistribution, the aim of which was to develop a black commercial farming class in South Africa. Grants of up to 80 per cent were to be provided to prospective farmers to purchase small and medium-sized farms. By the end of 2005, land redistribution had increased to 3 per cent of the total area of agricultural land.

Land tenure reform in communal areas of South Africa

With the end of apartheid in 1994, the 'independent' and 'semi-independent' states, the so-called 'homelands', were integrated into the political structure of South Africa and the underlying title to the land was transferred from premiers to the State President who assigned it to the national Minister for Land Affairs. 'Permits to occupy' land were to be replaced with enforceable rights within a unitary non-racial system of land tenure – 'ownership', as set out in the White Paper.

Traditional leaders, on the other hand, had long contended that land rights should be vested in themselves, or alternatively 'the tribe', or even the tribal authorities created under apartheid. They argued that, under customary law, they were the custodians of land rights and must now be legally recognised as such.

Prior to the general election in April 1999, at the end of the first five-year term of President Mandela and his ANC government, a near complete communal land bill, prepared by the Department of Land Affairs, aimed to provide secure tenure rights to occupiers within a framework of democratic decision-making and dedicated support structures. However, the incoming land minister under President Thabo Mbeki set aside the proposed bill in accordance with a pre-election pact between the president elect and the Congress of Traditional Leaders of South Africa (Contralesa). This pact was to secure the vote of traditional leaders and their subjects for the ANC in the densely populated former homelands particularly in Kwazulu Natal, where ANC was competing with votes with the Inkatha Freedom Party. However, in 2010, a Constitutional Court Judgement declared the Communal Land Rights Act 2004 as unconstitutional in its entirety.[9]

These days, as the ANC is finding its majority under increasing threat from opposition parties, it has been closing its ranks with traditional leaders. President Zuma is reported to have told the House of Traditional Leaders that he is taking steps to ensure that they will be able to influence land allocation decisions. The President is also reported to have told the traditional leaders that the ANC intends to revive the Communal Land Rights Act, which conferred more power on chiefs. Further, contrary to previous thinking, ANC will entrench the boundaries of the old Bantustans.[10] The current government's dependence on the rural vote mirrors the way in which Zanu-PF and SWAPO having lost urban votes cling to rural support.

According to Pressor Ben Cousins of PLAAS, University of the Western Cape, the 'Land Question' is increasingly at the centre of South Africa's national politics. This is despite perceptions that the rural economy is only marginally relevant to efforts to create jobs and reduce poverty and inequality. This is, in part because the land reform programme is in crisis and in part because of rising anger from rural communities over slow or non-delivery of land. Continuing insecurity of land rights and

[9] Adams M and R Knight R, 'Land Policy Development and Setbacks in the Southern African Development Community', *SADC Land Issues* Ben Chigara (ed) London: Routledge, 2012

[10] Johnson R W, *How Long will South Africa Survive? The Looming Crisis,* Hurst and Co, London, 2015, p. 135-137

inadequate provision of support services is beginning to reach boiling point. At the same time, commercial farmers are increasingly uncertain of their future.[11]

[11] Cousins B, The Crisis in South Africa's Land Reform Programme: Diagnosis and Remedy? Announcement of a PLAAS seminar, 28 February 2017, University of the Western Cape