
ACTSA Position Paper
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Southern Africa and Land: Justice Denied?



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Introduction

ACTSA has developed this position paper on a key development issue in southern Africa to guide our work on that issue. This paper looks at the land issue across the region, not at each country and each country has its own context. We recognise there are areas in the paper which we just touch on such as urban land and mineral rights and land rights. We will keep this paper under review and welcome comment on this paper. Please send these to campaigns@actsa.org.

“Working on land rights is always hard and very often unrewarding. There are no easy wins. The odds, globally, nationally and locally, are usually stacked heavily against you. So you will need passion and commitment, built on a sense of outrage at injustice and a desire to change the way things are.” Robin Palmer

Executive Summary

- Land ownership, tenure and use are key issues in southern Africa.
- Colonialism, imperialism and apartheid led to much of the best agricultural land being taken by European settlers, resulting in major inequalities of land ownership.
- The struggle for independence, for liberation had at its heart the struggle for justice and equity of land.
- Urbanisation is relatively rapid in the region however a majority of the population either depend on the land for their livelihood or have continuing and strong ties to land and rural areas.
- The land question is not only about land title and rectifying past injustices but about sustainable livelihoods and poverty reduction. Land reform involves considering all these issues. **Land reform is a key issue** that the southern Africa region needs to deal with effectively. It involves coordinated action by national governments, by communities and households, by the private sector, by civil society organisations, by investors and by donor governments.
- Western donor governments should support action to right the historic injustices on land ownership and control. They should not impose models of tenure and agricultural practice on governments and communities in southern Africa.
- Environmental sustainability, gender inequalities and the impact of HIV/AIDS need addressing as part of any land reform policy.
- ACTSA urges governments to ensure women have equal rights to own, manage, inherit and control land.
- Land reform programmes in Southern Africa should address the impact of the HIV/AIDS epidemic.
- The lessons of the region are clear: without effective land reform, the constraints will impede people’s ability to develop sustainable livelihoods, there will be a failure to deal with long term injustices; poverty and inequality will continue and vulnerability to further deprivation will persist.

History

The focus on land reform in southern Africa has been based primarily on repossessing the land that was taken by European settlers during colonial rule. In each of the countries and to varying degrees the land taken represented a major facet of colonial injustice. The complete control of the political process in South Africa, Namibia and Zimbabwe by white minorities ensured that access to resources, including natural resources such as land and water, was deeply skewed in favour of the colonial settlers. The indigenous African population was thereby immensely disadvantaged. The political settlements to achieve liberation and democracy often meant that issues of land inequality and injustice were not resolved. Land remains at the heart of political struggle today as it was during colonial times.

“Willing buyer, willing seller in effect legalised a century and more of white land grabbing in Zimbabwe, Namibia and South Africa, in the course of which millions of people were uprooted from their ancestral lands, without compensation. This colonial status quo was legalised, a line was drawn under a past history of oppression, and to change it required in virtually all cases the ‘willing consent’ of those who were the beneficiaries of past expropriation.” Robin Palmer

Land Reform

Land reform is about the right to land (land title and ownership) and the use of land. The vision of land reform has been to achieve a more efficient and equitable distribution of land with the associated political and economic power emanating from that. The processes of land reform have often been slow and complicated with contradictory results. In the recent past, redistribution of land rights has rarely matched agrarian restructuring needed to enable productive and sustainable rural development. It is important that infrastructure in water, power and roads, credit, extension support, and marketing needs match the access and new political rights over land. Otherwise, resettled people remain vulnerable to further economic exploitation via the globalised economy, while others might become landless through emerging competition for land, thereby leaving a significant section of rural and increasingly urban society in chronic poverty.

Increased priority to land reform

Land reforms, in the form of redistribution, tenure rearrangements, and changing agrarian opportunities, have re-emerged as a major part of development in southern Africa. There is the experience of Zimbabwe where land reform was never effectively addressed by or since the Lancaster House agreement of 1979. The African National Congress (ANC) in the run up to the South African election in April 2009 and the South African government since has indicated a strong renewed focus on rural development, food security and land reform. It is one of their top five priorities. The revived focus on land comes at a time when new complications have emerged at the global level including land grabbing for commercial agriculture, bio-fuels and a worsening of economic injustices based on the unequal structures of current international trade regimes. Over the last three decades, however, a combination of different forces made land reform a relatively low policy issue. **Structural adjustment and associated neo-liberal economic policies** resulted in the predominance of market forces, and therefore state involvement in redistributing land to redress historical injustices declined significantly. In some countries the **‘willing-buyer, willing-seller’ policy** approaches further exacerbated the existing land injustices by stalling progress and by sustaining the capitalist system of property-based control and ownership over land. Other land related issues including a focus on sustainable development and conservation since the 1990s have over-emphasised **the arguments that environmental degradation is a direct result of human settlement expansion** and population pressures on land. Undermining the state and local indigenous knowledge, this environmental discourse has tended to overstate the role of the non-governmental organisations (NGOs), external experts and donor funding in land use and conservation management. The relative control by local communities over land and associated

natural resources has become uneven and more unequal in some contexts. Taken as a whole, the region has witnessed more than three decades of continuing and sometimes worsening rural poverty, increasing inequalities in land ownership and a significant decline in agricultural production. The revived interest in the 'land issue' in southern Africa has come about following the failure of market-based and conservation and sustainable development focused approaches to achieve rural development instead of state-led land reform policies.

ACTSA supports the principles of land reform that addresses inequality of land ownership and control brought about by colonial settlement, allows for effective land redistribution, promotes sustainable livelihoods and makes poverty reduction the main priority. **ACTSA endorses** projects and programmes that focus on improving productivity within recent sustainable agricultural guidelines. These include improving the relationship between agriculture and the environment such as reversing land degradation, achieving environmental improvements, integrated farming, eco-agriculture and agro-ecology, and promoting environmental goods and services. Land reform is a process that goes beyond land redistribution and new secure tenure arrangements to also include infrastructural and technical agricultural support to farmers. This should provide opportunities for sustainable livelihoods and where possible offer sufficient support to engage more competitively in the market, locally, regionally and internationally.

Land reform brings together several distinct though not unconnected features. First is securing stable and sustainable livelihoods in different and changing agrarian contexts across the region. Secondly enabling farmers and rural householders the possibilities to be productive and competitive in a complex, dynamic and fast-changing global economy. **ACTSA believes** there is a need to apply local and indigenous knowledge and support local initiatives to enable livelihoods to climb out from situations of chronic and persistent poverty, while also giving sufficient external and innovative technical support for improved farming opportunities. The aim in this revived land reform is to prevent southern Africa being persistently vulnerable to the vagaries of the world economy, to take into account the challenges of climate change and trading competition from other parts of the world.

In recent years there has been momentum to facilitate a decentralisation of power structures including of legal settlements within the land sector. This does not necessarily detract from state or central government involvement in broader land reform but such an approach recognises the complex array of very different settings in terms of tenure rights, land use opportunities and prospects for sustainable development. **ACTSA believes** that for land reform to work better than the state, markets and civil society need to operate with political economy structures using local participation and active democracy. The process of decentralisation may give increasing power to local authorities, traditional leaders, civil society groups and local communities. There are risks in greater local decision making; it could for example maintain gender inequalities. However, it offers the potential of more informed policy-making based on local knowledge.

ACTSA believes western countries and multi-lateral donors such as the IMF and World Bank must recognise their historic responsibilities in the grossly unequal land holding in southern Africa. In ACTSA's view they have not done enough to support policies which recognise and tackle past injustices and support and promote sustainable livelihoods. The World Bank and IMF require reform to make them more democratic, transparent and accountable. Western donors and multilateral donors continue to promote the primacy of market forces and the role of the private sector yet such approaches have not reduced vulnerability, have not led to needs being met or historic injustices being tackled. Their approach has often reduced the key role of the state and ignored civil society. They have effectively imposed "solutions" on countries and communities in the region in an effort to bring about a form of development from above. These donors do not suffer the consequences of their policies. Countries and communities in southern Africa should be free to determine their goals, priorities and how to achieve them.

Land Reform has been viewed as both necessary but also difficult and complex with slow progress and no easy solutions. This led to a downgrading of the emphasis on land reform yet the issue has never gone away. Land Reform is a regional issue. The region comprises different nation states that have come together in regional cooperation for historical, political and increasingly economic reasons. Each country has a set of circumstances that are specific to it yet equally it is recognised that land rights and land reform is an issue they have in common. In the global economy there are very good reasons for the region to cooperate including on the issue of land and increasingly and necessarily water rights.

Key issues

1. Overall development

Land reform is often seen as a relatively separate branch of rural development but in reality it is central to the land issue. A range of issues must be seen as interdependent. The Millennium Development Goals are about poverty reduction and they provide opportunities for achieving sustainable livelihoods which can deliver food security and sustainable agrarian development through different changes in land use and land rights. Sustainable rural development and poverty alleviation depends on effective management and use of natural resources including the land. A mixture of governance structures must adapt to local agro-ecological as well as structural-historical conditions. The roles of government, donors, NGOs and communities need to be integrated more responsibly to achieve successful land reform.

Land reform refers to the redistribution of land to benefit the landless, tenants and farm labourers. This also includes the upgrading and improving of land tenure arrangements to benefit the poor. The major challenges are to avoid further exploitation of labour and the environment, to enable possibilities for sustainable livelihoods but also to recognise the enormous challenges of needing to compete in difficult global markets.

2. Development versus redistribution

A key objective in land reform is to achieve a more efficient and equitable distribution of land. However, redistribution on its own does not guarantee success; redistribution even with accompanying secure tenure rights and reasonable infrastructure does not promise economic development in the face of global competition. Agriculture is now firmly part of the World Trade Organisation (WTO) and its regulatory powers and this makes it even more difficult for small enterprises to succeed. Small scale and poor farmers are often excluded from export crop production. This along with market forces in land mean that corporations geared to crops for export are pushing the weak off their land.

“Even the most pro-poor land reform, laws, and policies will be of limited value while international trade rules and subsidies remain strongly rigged in favour of the rich.” Oxfam

Fair trade and organic farming can be more enabling and equitable for small, traditional African farmers. Providing more secure access to land, especially productive land is a priority for those whose land was taken and for farmers working marginal and very small land holdings. It is clearly re-emerging as priority for at least some governments in the region, e.g. South Africa. Governments and international donors will have to make commitments to resource provision, protection from land grabbing and support in marketing opportunities.

3. An economic-oriented land reform

Experience of land reform suggests there is a need for the state to play a much more active role in order to balance the needs of equity and economic stability.

Any thorough engagement with sustainable rural development should include an appreciation of wider and deeper political struggles including land reform and poverty alleviation. Environmental concerns with biodiversity decline, sustainability and conservation need to have poverty as the fulcrum for action. In 2008 Kofi Annan called for a ‘uniquely African Green Revolution’ founded on

'bold pro-poor policies' to address the food crisis facing Africa. Later that year, the UNEP-UNCTAD Capacity-building Task Force on Trade, Environment and Development published *Organic Agriculture and Food Security in Africa*. The authors demonstrate that organic agriculture helps with livelihood opportunities and food security more than the conventional chemical-based farming systems. They point to the sustainability potentials in the longer term, as organic farming builds up on existing levels of natural, human, social, financial and physical capital among farming communities.

4. Support following land redistribution

For a sound, sustainable land reform policy and application for the future, a practical engagement with the evidence from the ground should be the starting point. This will involve engaging with field research aimed at understanding the unfolding dynamics of land, agriculture and livelihoods – and the perspective of farmers and land users themselves.

Provision of infrastructure, services and inputs to make the land productive (such as credit, seeds and fertilisers, as well as to agricultural extension services, providing advice on crop husbandry and farming techniques) must be a priority.

“Future strategies must work to enhance economic stability – boosting local production and spending power. At the moment the overall net benefits of restructuring following land reform are unclear, but, with the right support, wider economic growth can be realised. What will be essential is to ensure that such support does not undermine the diversified entrepreneurialism that has emerged in recent years. The complex new value chains are perhaps a bit haphazard, unregulated and chaotic at times but their benefits are more widely distributed and economic linkages more embedded in the local economy. In the longer term such new economic arrangements can enhance broad-based and resilient growth and livelihood generation in ways that the old agrarian structure could never do.” Professor Ian Scoones

5. Gender

Most land reform programmes throughout the world have failed to mainstream the interests of women and land reform processes in southern Africa have been no exception.

There can be serious tension between governments' commitment to gender equality, on the one hand and its reluctance to alienate these neo-traditionalist structures of rural local government on the other.

Most Southern African countries are signatory of treaties that prohibit discrimination against women in any sector. Of significance is the much popularised 1979 Convention on the Elimination of all Forms of Discrimination.

Most governments also signed in 1997 the SADC Gender Declaration with the aim of ensuring that women are part of the development process of their country.

Enshrined in the 1948 Universal Declaration of Human Rights is the principle of non-discrimination that cuts across all provisions within the declaration.

However, the commitment to gender equality grows out of the recognition that rural women have been systematically marginalised from access to and control over land.

High-level constitutional commitments to gender equality across the region are not matched by practice on the ground.

ACTSA urges governments in the region to adopt and effectively enforce legislation that guarantees women equal rights to own, manage, inherit and control land.

This means ensuring that land reform programmes specifically address the interests and meet the needs of women; that women receive full equality of opportunities and rights to land and natural resources, and that past discrimination against rural women and the social disadvantages they have faced be addressed.

Consideration must also be given to how land reform policies will be affected by other laws and practices. In particular, land laws would need to be harmonised with marriage and inheritance laws so that women do not become more vulnerable when marriages break up or husbands die. Land reform programme should also ensure that there is an enabling environment that improves women's access to capital (especially credit), agricultural inputs (seeds and fertilisers), training and extension services so that they are able to turn land into a productive asset.

ACTSA successfully campaigned for the establishment of an autonomous women's agency at the United Nations, established at a senior level and reasonably resourced to ensure more effective promotion of the needs and rights of women. This agency once established could play a key role in ensuring rural development programmes promote the rights and needs of women.

6. Securing land tenure

Given a history of corruption in the allocation of land and profits from land development, it is important to provide new settlers with protection against such abuse: tenure reform programmes need to close the gap between the *de facto* realities and *de jure* status. This will create greater certainty for rights holders.

Indeed, access to secure property rights is intractably linked to poverty reduction: any farmer will be more inclined to invest if s/he is confident that there is no risk for her/him to be forced out. There is a need to provide security of tenure to producers to encourage investment and hence, productivity and production increase.

7. Poverty and Marginalisation

ACTSA believes that dealing with the land question should not contribute to further discrimination of those made poor and marginalised. Specific attention needs to be given to the serious situation facing farm workers in the land reform process. Some continue to stay on the farms or live around the edges, others have moved away entirely, but all are facing impoverishment, a lack of shelter, and the total disruption of their lives.

Farm labourers could be the losers in redistributive land reform. However, many farm workers have amassed considerable skills and experience in crop production techniques, including in labour intensive commercial farming and technical skills like maintenance of farm and irrigation equipment, machinery operating and driving of tractors so that their eviction constitutes a real loss. In other words, neglecting these workers exacerbates the problems that land reform sets out to address. Trade unions, farmer and community organisations have a key role to play to ensure the integration of farm workers into the land reform debate.

Instead of making farm workers more vulnerable, land reform programmes should ensure they continue to have access to land, where desired they should secure land rights of their own and/or alternative employment opportunities and social safety nets be provided. They should be protected from unfair or arbitrary eviction.

There are also increasing numbers of **urban dwellers** who may have lived on land for many years or moved on to land recently but lack formal title and are viewed as not having legal rights. They too have needs and rights which need to be understood and upheld. They should not suffer loss of home and often livelihood arbitrarily and even where proper process is followed to evict then suitable alternatives should be offered.

8. HIV/AIDS

Southern Africa is the most affected region in the world by the HIV/AIDS pandemic. Out of 36.1 million people living with the HIV/AIDS epidemic worldwide, 25.3 million are in Southern Africa. There is an urgent need to address HIV/AIDS at all levels. The potentially devastating impact of the HIV/AIDS pandemic should be factored into land reform processes. The effects of the

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HIV/AIDS pandemic are unevenly distributed and fall most severely on the poorest and most marginal members of society, who are most vulnerable to losing their land rights as a result of sickness or death within their families and households. The ability of families to work land when many of them maybe ill due to HIV/AIDS needs to be considered. There is an urgent need to assess the impact of the HIV/AIDS epidemic on land reform, land use and land productivity in southern Africa.

9. Mineral Rights and Land rights

Southern Africa is rich in minerals. Some deposits are now exhausted, some newly discovered. This resource used effectively could provide governments and communities with the means to reduce poverty. However there can be a tension between mineral rights, which large international companies may have or seek and land rights, the use and control of the land by the local community for their benefit. It seems it is often the former that “trumps” the latter. There is no easy or one size fits all policy here. The critical test is that mineral rights should be viewed as land rights and questions of justice and equity need to be satisfactorily dealt with.

Conclusion

Land reform including land rights is about addressing past injustices and the inequalities created. Ownership of, access to land is an asset, a resource. Land reform is also about addressing present and future needs. To deal with the current, persistent and potentially increasing food crisis it is necessary that land reform, land rights is given priority and is at the forefront of coherent and coordinated policy and action.

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Further Reading/Links

Oxfam: www.oxfam.org.uk/resources/learning/landrights/south.html

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- Claassens, Aninka & Cousins, Ben (eds), *Land, Power and Custom – Controversies Generated by South Africa's Communal Land Rights Act* (UCT Press, 2008), xxv þ378 pp., R295 paperback, ISBN 978-1-91989-550-5.
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- James, Deborah *Gaining Ground? 'Rights' and 'Property' in South African Land Reform* (Routledge, Cavendish, 2007), xvi þ258 pp., £31.99 paperback, ISBN 1-904385-62-1.
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- Walker, Cheryl, *Landmarked – Land Claims and Land Restitution in South Africa* (Ohio University Press/Jacana Media (Pty) Ltd, 2008), xi þ274 pp., £26.95 paperback, ISBN 10: 0-8214-1870-X or ISBN 978-1-77009-632-5.