

OXFAM BRIEFING PAPER: LAND REFORM IN SOUTH AFRICA IN 1997

1. Introduction: sharpening the focus

"It's like milk", said Mabutho Shabala, about the rich land his community has just returned to for the first time since their removal at gunpoint from Crimen, KwaZulu-Natal, in 1977. "Thanks God, we have it back".

"Land reform, like most other areas of development in our democratic South Africa, is proving to be a very complex and difficult process", Brendan Pearce, director of the National Land Committee — an umbrella body for ten land service NGOs.

"Land reform has...been built most significantly on the strong history of a land rights movement in which communities, faced with forced dispossession or the erosion of land rights under apartheid years, organised themselves to resist removals and to lobby for the reinstatement of rights and security of tenure. Land reform has also benefitted from a network of non-governmental organisations which were established with international aid during the repressive 1980s and whose close contact with both community organisations and world-wide discourse on land issues has informed that land reform path in a substantive way", Susan Lund, Department of Land Affairs.

1996 and early 1997 has seen the South African government, non-governmental groupings and communities alike coming to grips with the complexities of land reform and related institutional procedures. And, for the first time, information about the implementation processes — and comprehensive statistics about the problems — are available.

It is widely recognised that expectations of quick and uncomplicated settlements were off the mark: putting policies in place and setting up infrastructure have taken time; piloting limited programmes with a view to learning lessons has been favoured; and a lack of capacity has been revealed in government, communities and NGOs. The absence of strong local government in the rural areas, in particular, has left a gap and district land offices have been established to fill vacuum. As a result both government and NGOs are seeking more complex responses. And some critics are predicting confrontation between the two parties in the coming year, and increased involvement of communities themselves pushing for land reform.

Despite the fact that land reform has been on track for two years, statistics reveal still alarming rates of poverty, especially in the rural areas. For Oxfam UK and Ireland, the situation of dire poverty makes our continued work in the area of land reform and rural development all the more crucial, while also prompting us to look at how we can make our support to stakeholders in this area more effective. Statistics show that:

- 75% of the poor live in rural areas although only about 53% of the population live there;
- 74% of the rural population is poor, compared to about 41% of the urban and 20% of the metropolitan population;
- 20% of rural households have no assets;
- 5% of the rural population are classified as destitute;
- 15% are highly vulnerable and likely to fall into destitution; and
- 26% of rural households have access to land for crop cultivation.

Oxfam's focus on land issues in South Africa has been strengthened by a new and deepened understanding of how landlessness relates to poverty, of the nature and concentration of poverty in the rural areas and the role played by NGOs in implementation. Oxfam has decided to sharpen its focus on rural and land issues and to hone in on particularly geographical areas: the Northern Province, KwaZulu-Natal and the Eastern Cape. These are the regions with the highest poverty and (not coincidentally) the highest rural population. Much of their problems are the result of the legacy of the former "independent" homelands which were over-crowded, over-grazed and under-resourced. Further, like other players in the land reform arena we recognise that land access in itself will not alleviate poverty and we are increasing our support to rural livelihood projects.

Another feature of Oxfam's more tightly focused programme, is that the majority of funds will be channelled to small and medium-sized NGOs — those focused on provincial implementation rather than advocacy at a national level.

An exciting development is increasing coordination between the various Oxfam's working in South Africa. In principle, it has been agreed that Oxfam UK & I will manage the focus on rural livelihoods on behalf of the other Oxfams and one of the benefits of this will be a greater concentration of resources.

The more focussed approach will serve to:

- ensure the most effective use of Oxfam's resources - without trying to spread them too thinly;
- help us to support NGOs and geographical districts which fall outside the remit of most other donors; and
- help us to develop expertise in a thematic and geographical areas which we can use to monitor and guide our counterpart organisations effectively.

It is important to note though, that this is a phased approach, and 1997 will be the year of exploration and research to check out assumptions. We are committed to giving fair warning and assistance to find new sources of funding, as well as ongoing "non-funding" support, to those partners which fall outside of our new strategic vision.

2. New "integrated approach" and new partnerships

Coupled with a growing sense of the complexities of land reform, is an increasingly integrated approach. NGOs and others have begun to draw the links between land reform, developmental programmes and economic processes going on in the country as a whole. NGOs are pushing the idea that land reform is necessary for socio-economic development and vice versa.

It is now widely held that land reform should have the following broad-ranging aims:

- to address the injustices of apartheid;
- to foster national reconciliation and stability;
- to underpin economic growth; and
- to improve household welfare and alleviate poverty.

For the NLC: *"the state has a major responsibility to intervene to promote egalitarian principles, provide resources, and encourage and promote rural organisation and empowerment...land reform should be an integrated and holistic planning framework to achieve broad-based social and economic objectives"* (Land Update, November 1996, p18). This is a long-term objective. Integrated economic arguments and targets are needed as well as comprehensive and integrated rural settlement and environmental approaches, says the NLC's director, Brendan Pearce.

Partly as a result of the need for more integration, new partnerships have emerged between civil society and government. *"The truth is that government's capacity to administer and deliver hefty a land reform programme is extremely limited...Emphasis is being placed in South Africa on downsizing the public service...In a land reform programme which places great emphasis on local-level dispute management, negotiation, capacity-building, planning...government's severe capacity problem makes for a virtually impossible undertaking -- if we were to try to go it alone,"* says Susan Land from the Department of Land Affairs. An added advantage is that many new public servants come from an NGO background and are believe in the value of a robust NGO sector which can contribute to policy formulation and support development.

The links are also being drawn regionally: three Oxfam partners, the Farmworkers Research and Resource Project (FRPP), the National Land Committee (NLC) and the Environmental Development Agency (EDA) are involved in organising an NGO workshop for Southern Africans on land issues, food security and farm worker rights, which is due to take place in Zimbabwe in late April.

3. New laws

After the spate of wide sweeping land-related legislative in 1995, last year saw the introduction of only a few pieces of legislation. Instead the emphasis was on delivery of objectives, facilitated by the passing of enabling legislation, including:

- the Further Regulation of Local Government Act - to provide for the establishment of rural local government - to bridge the gap between current and more permanent legislation;
- the Green Paper on Land Reform which has had differing responses and sets out the government's vision of land reform. This will be translated into legislation later in this year; and

the Labour Tenants Act which has protective tenancy as its main element, and the Interim Protection of Informal Land Rights Act were passed as stop-gap measures to prevent pre-emptive evictions.

4. Land claims: some setbacks

Restitution is a narrow process dealing with removals which took place from 1913 and which were in pursuance of racial legislation. Less than five cases out of 12 000 cases submitted have been finalised to date. Reasons for this delay include:

- lack of resources to ensure the speedy processing;
- the extent of the claims were under-estimated and so facilities and staff are not available to speed up the process; and
- there have been some blockages on claims pre-dating 1913 (stipulated in the laws governing the process as the cut-off date for claims).

NGOs are proposing that more finances are ploughed into the process to boost capacity. They also propose that officials are given more leeway to make decisions about cases and that the procedure is streamlined. Further, they are concerned at the small number of claims — as compared to the 3.5 million people who were forcibly removed — and are urging government to embark on a publicity campaign to inform communities about their rights.

NGOs' watchdog role in this process has also been crucial: *"this process has reinforced our belief that lobbying and advocacy is critical to ensure that government is kept under constant pressure to deliver and make resources available to implement"*, says Pearce, who has committed the NLC to help unravel some of the bureaucratic red tape related to this process.

Despite the set-backs there have been some victories, and a few communities have experienced the joy of returning to their ancestral land (see project partner developments).

5. Redistribution: church land, unused land targeted

This is the process which aims to allow land access to the vast numbers of landless South Africans. Once-off payment of R15 000/household (about £2 000) for land acquisition and infrastructure are on offer. However communities feel this is unfair: *"the subsidy is negligible in real monetary terms"*, especially when it is contrasted to the money paid out to white farmers whose land is bought for land reforms purposes. Many farmers have got rich overnight when their land has been bought by the state — on a willing buyer, willing seller basis — and paid out compensation for the market value (or more) of the land.

NLC are proposing other mechanisms are put in place:

- expropriation of unutilised land;
- state leasehold with the option to purchase; and
- foreclosure on bad debts by the Agricultural Credit Board and other parastatals.

Furthermore, the NLC is engaging with the churches, whose land was won largely through removals. Much of this land is vacant and can be put to use under a broad redistribution process, says the NLC.

6. Tenure reform: off to a good start

The year of tenure reform, 1996, was a period of significant progress around tenure rights for rural and landless people. Although, the process has been critiqued by NGOs as being too fragmented and needing more overall management, government has begun the process of unravelling overlapping rights and interests through a Rights Enquiry Process and a pilot study. The government aims to convert current interests in land and property into formal rights that can be registered under a single system. Government has also passed legislation to deal with urgent issues relating to tenure rights.

The issue of tenure rights has been an area around which farm workers have organised and made many public statements. The Farm Dwellers anti-eviction campaign, in which the NLC and its affiliates, together with farm worker unions are involved in, has done much to put the issue of tenure rights on the political agenda, and it has sparked much opposition from organisations representing white farmer constituencies.

The Extension of Tenure Rights Bill, which promises to strengthen the rights of farm workers further, is expected to cause much debate and haggling when it is brought to parliament in mid-year.

A major gap identified by NGOs is the issue of women's land rights. A lot has been said about the issue — but little has changed in practice, they say. The domination of African custom in traditional areas makes it almost impossible for women to access land in their own right and the (often) conservative roles played by traditional authorities make things worse.

Part of the battle however is understanding how the different customary laws work and how they translate in practice and this is the subject of a book co-published by Oxfam, the NLC and David Philip Publishers: *"Women, Land and Rural Authority"*, which will be out at the end of March.

7. Predictions for 1997: the "crunch year" for land reform

It would be fairly safe to predict that the growing gap between expectations and delivery, will lead to more outspoken comment from the NGO community and communities themselves. For NGOs who have spent the last year building links with government and concentrating on input to government policy, the coming year will see a re-kindling of the relationships with communities and a more critical stance towards government. NGOs such as the NLC and its affiliates feel that the most constructive role for civil society would be to stay on the path of critiquing government, yet still lending its support in terms of implementation.

Government, will need to decide how — or whether — to continue trying to balance the interests of conservative farmer organisations and poor landless communities. In the past, government has seen its role as a facilitative role and one of allaying fears. Now, a major issue is how the Department of Land Affairs and Agriculture will transform itself as an institution capable of delivering land reform. (Some critics have blamed the "old guard" in the department for stalling the process of delivery.) For representatives of the African National Congress (ANC) in government, this process needs to be speeded up before the '99 elections.

1997 is the crunch year in terms of making land reform a reality and the ball is firmly in the courts of all the stakeholders to see that this happens. For Oxfam, ongoing and effective poverty alleviation needs to focus on supporting rural communities' access and rights to land, and the development of sustainable rural livelihoods. And effective support to organisations on the ground is the best way to do this.

8. Developments with project partners

National Land Committee and affiliates:

1996 saw the growth of a new affiliate in the Northern Cape — an area dominated by claims to military land. The NLC are also talking of starting a new affiliate in the Northern Province, which up until now has been served by affiliates based in Johannesburg and in the Mpumalanga province.

"Land use planning" has become a buzz phrase in the offices of NLC affiliates working with communities acquiring land. For the Border Rural Committee, based in the Eastern Cape, their work with the Isidenge and Zweledinga communities have taught them some lessons about the need to match land to people's needs. Says field worker, Sandra McIntyre: *"all land is not equal."* The planning approach taken by BRC is one which ensures community involvement. *"A common view of planners, based on bitter experience, is of God-like figures who sit in back rooms ruling lines on maps...In fact the role of the planner should be quite different... Planners are not decision-makers. The community must make its own decision about its future, and must then take responsibility for the implications of those decisions"*, says McIntyre.

Despite the backlogs and set-backs in the land reform process, there have been moments of joy for communities, such as Crimen in KwaZulu-Natal, which have returned to their land. The Association for Rural Advancement (AFRA), which has worked closely with the community for many years, feels that their successful land claim will spur on other communities to re-claim their land.

In Namaqualand, a donation from the Irish government will give a community a "fighting change to live off their land", says Sue Power of the Surplus People Project (SPP), based in the Western

Cape. The donation has gone to the purchase of a neighbouring farm and the donation of tractors and equipment, and a development team (comprising community members, government reps and NGOs) is working to ensure that the land will sustain the communities and make them self-sufficient.

Environmental and Development Agency:

EDA's work in Mpumalanga aims to build capacity for service provision. They work with the Sizanani village, for example, which aims to develop the resources of the area through farming training and creating work opportunities. An important part of Sizanani's work is the centre's care programme for mentally and physically handicapped children. "There is an urgent need for more to be done", says Father Charles who heads the institution, "if you bear in mind that ...there are 150 000 mentally disabled black kids in South Africa".

Centre for Applied Legal Studies (CALS):

The CALS Land Project has worked closely with the NLC and affiliates in developing legislation in protection of tenure rights. They have played a broad role as lobbyists and policy-makers, and also in providing direct legal assistance to communities facing problems such as evictions. For example, they worked with labour tenant communities in Mpumalanga, to convince forestry companies to grant them secure tenancy on the plantation land.

Centre for Rural Legal Studies (CRLS):

The CRLS has been involved in researching and inputting into legislative processes affecting farm workers and rural dwellers. In particular the Centre has identified the need to incorporate gender and women's issues into their proposals and will provide information to the Commission on Gender Equality, set up during the constitutional negotiation processes, on how national gender policies will impact on rural people and farm workers. They have also pushed ahead with their training of NGOs and paralegals on farm workers rights and have put together a course on "How to Take a Case to the Agricultural Labour Court" which has been used widely.

Advice offices:

A new area taken on by many paralegal advice offices supported by Oxfam (UK & I) is the issue of domestic abuse, and violence against women, which is increasing at alarming rates: 1 in 6 women are regularly abused by their partners. Apart from representing victims of violence in court and mediating disputes, paralegals also offer community outreach programmes to educate people about their rights.