

Literature Review: Advancing Food Sovereignty through Sustainable Land-use

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Introduction

“The land, our purpose is the land, that is what we must achieve. The land is our whole lives, we plough it for food, we build our houses from the soil, we live on it and we are buried in it. When the whites took our land away from us we lost the dignity of our lives, we could no longer feed our children. We were forced to become servants, we were treated like animals. Our people have many problems, we are beaten and killed by the farmers, the wages we earn are too little to buy even a bag of mielie-meal. We must unite together to help each other and face the Boers. But in everything we do we must remember that there is only one aim and one solution and that is the land, the soil, our world.” - Petros Nkosi, Community Meeting in Eastern Transvaal, 1991 (quoted in Rugege, 2004).

The land debate centers on the historical injustices enacted upon black South Africans, which dates back to beginning of colonialism, where Africans were dispossessed of their land and consequently, their means of independent livelihoods and economic power. Returning the land is arguably the most vital method of addressing these injustices and the issue of racial inequality. In December 2017, the ANC held its 54th elective conference where the ruling party committed to supporting an amendment of the constitution to allow for the expropriation of land without compensation which is also supported by many other parties in the country. In light of the ANC’s decision as well as the incumbency of President Cyril Ramaphosa, the land debate has come under scrutiny with a range of critiques and solutions put forward by academics, activists, media and civil society.

The purpose of this literature review is to add to this conversation by presenting key arguments and debates around land reform in South Africa which will inform the campaign to advance food sovereignty through sustainable land use. This review is separated into the three parts - history, land reform and alternatives. The first part offers a historical account of how land was used before colonialism, how land was both threatened and defended for black South Africans including the black land dispossession that began during colonialism as well as the laws developed by the Apartheid government and their consequences. The second part reviews a wide range of literature concerning how land reform has operated in South Africa in both rural and urban areas and where it faces its major challenges. The final section attempts to provide alternatives to the way land reform currently operates, focusing on literature which advocates

for land commons, agroecology, food sovereignty and participatory land audits to address the land issue.

History

Before Colonialism

It is important to note that African history does not begin with colonialism; in fact, it has a rich history spanning back centuries before that. Wright (2017) sees it as important to first recognise both the complexity and sensitivity that comes with studying history and origin, especially in a country like South Africa which is riddled with colonial violence and erasure. The history of Southern Africa prior to colonialism is complex and entangled with different narratives, due to various sources such as settler interpretations and African nationalist interpretations. In addition to this, Wright, (2017) argues that commonly accepted understandings of history were recorded by those with colonial power and should be questioned and critiqued. Feder and Noronha (1987) agree with this and highlight that it is also difficult to know everything about the way that tenure operated before colonialism due to historical distortion and erasure.

Events were not only distorted for the sake of recorded history, but these distortions were also used as a justification for appropriation of land. As South African History Online (n.d) seeks to outline, there was an empty land theory proposed by the Europeans in order to justify land claims which states that Black South Africans or *bantu* arrived around the same time as Europeans settled. These narratives often present the idea that the Xhosa were violent and took land from the Khoi by force, therefore justifying the European conquest of land and violence toward the Xhosa. Wright (2017) also points out that what he calls a “European, settlerist view” perpetuates the idea that these groups were in constant conflict with each other. It must be noted that although there were incidents of conflict, these were isolated and by no means the norm, the interactions between the Xhosa and the Khoi were for the most part that of mingling, with loose borders and integration (South African History Online). South African History Online explain the origin of the ‘empty land theory’ by stating that the *bantu* and Khoi used the land in rotation and while they moved around with their herds for greener pastures they ended up leaving large areas of land seemingly empty for some time. This theory then also became an argument by the Apartheid government, who used it to establish the homelands and claim most of the land in South Africa.

In opposition to this theory, many liberal historians and archaeologists have begun to present evidence that *bantu* were in the Eastern half of South Africa as early as 300AD, and that migrations toward the interior of South Africa were in fact around the 12th century and not the 17th as stated by Europeans (South African History Online). As highlighted by Wright (2017) it was in the 17th century that these interactions were complicated with the European settlers venture into the rest of southern Africa from the original south west cape colony. It was during this time that these settlers attempted to completely wipe out the local hunter-gathers, destroying pastoralist groups. With the onset of the 19th century, the settlers attempted to dispossess local African farmers of their land, and seize their labour (Wright, 2017).

According to evidence presented by a number of authors, early farming communities were settled in Southern Africa before the onset of colonialism. It was around 1300 AD that there were clearly established and settled farming groups in the interior and uplands of KwaZulu-Natal and around 1450 in the Highveld. These groups settled around water sources and areas of good soil, and settled very much in relation to climatic patterns. These farmers were primarily focused on the production of grain and livestock due to the region's unreliable rainfall (Wright, 2017). Wright (2017) mentions that it was in fact around 200BCE that various hunter-gatherer groups in the west of Southern Africa started to change their economies and social structures in order to make provision for the domestication of sheep. It was a couple of centuries later that groups were known to be cultivating indigenous crops such as sorghum and millet and raising cattle and sheep. Huffman (2010) adds that the farmers who cultivated sorghum and millet, also herded cattle and took part in the making and trading of copper ornaments. It was also from 200BCE, that there were various groups of hunter gatherers, pastoralists and farmers around in Southern Africa and historical data tells us that these groups interacted in a range of different ways and intermingled with each other (Wright, 2017). There is also evidence of the ancestors of Sotho-Tswana speaking people moving toward the South of Africa around 1300 AD, and eventually into Gauteng and the North West (Huffman, 2010).

There is a lot of debate around the origin of pastoralism in the southern parts of Africa. By most in these fields, up until the 1960s it was believed that this was something which those migrating from farther North brought with them. However, in the 1970s it began to be discussed that people who were practicing pastoralism were in fact descendants of those already in the Southern parts of Africa who had acquired cattle and sheep from other groups and were beginning to take on a stock-raising lifestyle. These groups spoke languages similar to those spoken in modern South Africa (*Bantu* languages) and spread throughout the South-Western

areas of Southern Africa and along the southern coast. Although hunter gatherers were already keeping sheep, some archaeologists do not see this as pastoralism. These scholars argue that true pastoralism only developed once these communities acquired cattle from those siNtu farmers who were established in the area. Although there are debates around the practices, and whether early ‘pastoralists’ were in fact pastoralist or just hunter gatherers, it is agreed upon that both hunter-gatherers and pastoralists did in fact exist and co-exist in Southern Africa and that the first farmers were in fact settled in the Southern areas from the 2nd or 3rd century CE onwards, well before colonial invasions.

In opposition to the colonial narrative which states that farming groups and hunter-gatherers were in conflict, there is evidence to support the idea that there was trade between these groups as well as in some cases, marriage. It was also common, according to Feder and Noronha (1987) for the use of land, usually granted on the basis of belonging to a specific group, to be granted to so-called outsiders, and thus parameters of land use and ethnicity was much less defined before colonial times. Local trade included things like livestock, pottery, animal hides and medicinal plants; there is evidence to support the idea that as far south as modern day KwaZulu-Natal the trade of ivory bangles was happening from the 7th century (Wright, 2017).

Colonial History

Bejaminsen and Lund (2002) highlight how colonial powers established legislation in the colonies at an early state so as to limit and control the use of land and water in Africa. This involved expropriation and dispossession of local communities through the use of various laws creating systems of permits and introduction of taxes. In addition to legislative control, they also delegated control to local chiefs who were custodians. One of these laws was the 1913 Land Act, but Beinart and Delius (2014) argue that it was not simply the 1913 Land Act which is responsible for black land dispossession. They argue that land dispossession was occurring long before 1913 with the virtual extermination of the Khoi and the San, wars of conquest by the Dutch and the British during their move into the interior of the country and encounter of black agrarian societies. Fairweather (2006) engages deeply with this history in her book. She looks at the project of colonialism and how the colonisers acquired land from indigenous people. Often, this was done through the ‘negotiation’ of ‘legal’ treaties. It does not only simply look at the treaties but it highlights that even the very concept of land, and the attitude toward it was different. Under the rule of the Dutch East India Company, land was a “reward” for conquering a specific people and thus their land (p.50). Although there were occasionally

treaties used to seize land, in South Africa, the land was taken through pure military force. According to Fairweather (2006) much of the conflict was a result of different approaches to and understandings of land itself. To the colonisers, land was something to be owned, and if they had control of a farm it belonged to them in its absolute form. However, the African view, and Fairweather (2006) refers to the Xhosa in this section where she points out that the idea of a fixed title or private ownership of land was foreign to them and did not appear in their traditions, in their view, land was to be used communally. Claassens (2014) adds to this point by saying that these different understandings were also used to inform dichotomies which reinforced white wealth and black poverty in the Bantustans such as “civilised/savage”, “modern/traditional” and “advanced/backward”. Bejaminsen and Lund (2002) also explore the issue with dichotomies. Customs of colonised peoples were seen as unwritten and were followed before colonization and as secondary to laws which were seen as written rules associated with ‘civilized’ societies. Bejaminsen and Lund (2002) argue that customary law is something which came out of the colonial process which took local customs and interpreted them as rules or laws to be imposed on native communities, in an attempt by the colonial powers to impose a version of rationality which fit neatly into the model of state law. They argue that the dichotomy of formal vs. informal laws is a false dichotomy, and these two categories were actually used and developed mutually constitutively. It is also important to note that there were challenges to the land being taken and owned by the colonisers; most notable by Zulu and Xhosa chiefs who were seeking to secure their land. Lahiff (2000) also touches on the land disputes, and points out that these can be traced back, as early as 1855 in colonial policy where there was a distinction made on who can own land. However, Fairweather (2006) points out that even before this, some 40 years prior the first removal recorded in South Africa was by a combined British and Boer force against Xhosa forces under Chief Ndlambe in 1811, where the Xhosa were removed from areas around the Fish River and resulted in the creation of settler towns, namely Grahamstown and Cradock. Throughout colonial history there were various policies which prevented black people from owning land as well as varied terms of ownership. After 1881, policy allowed black people to acquire land but the land would be in the name of the Native Commission. Lahiff (2000) points out that there was a brief period between 1905 and 1913 which allowed black people to own land in their own names in the area of the Transvaal. After that, more stringent policies were introduced, which changed the terms of ownership.

The Native Land Act of 1913 was one such policy which prohibited the buying or hiring of 92% of land in South Africa, by any male or female of indigenous origin, this meant that Africans were confined to just 8% of the land (Rugege, 2004). Gibson (2010) also talks about how the Native Land Act restricted where Africans could live, and adds that this law converted land ownership to labour tenancy. Wicomb (2013), referring to this act as the Black Land Act which it was later called, points out that this act referred to tribal land as communal land which was also not permitted to be owned by Africans and points out that this land was held in trust by ministers. The South African Development Trust was the mechanism used for this land to be controlled by the state. It was, according to Rugege (2004) and Claassens (2014) used to acquire the land around the 'reserves'. Many people were violently removed and placed in areas under chiefs who were willing to accommodate more people for the tribal tax they would receive. It is noted by both Rugege (2004) and Claassens (2014) that many traditional leaders became puppets of an oppressive regime. The Native Trust and Land Act of 1936 was an act which involved "releasing" land, moving the allocated land to Africans up to 13% from 8%, this however did not come to fruition until the 1980s (Rugege, 2004). Gibson (2010) adds that this act also allowed for, and encouraged the eradicating of "black spots" by relocating black people to areas which would later be the Bantustans. These laws were put into place in order to prevent black and white people from entering into contracts about land such as leasing, sharecropping or labour tenancy. These acts laid the pathway for the laws which came about during Apartheid, such as the Bantustans after 1948 (Claassens, 2014).

Apartheid History

Policy which hindered the land ownership by black people continued into Apartheid, with most of the land in the homelands being under communal tenure (Lahiff, 2000). The policies around land since 1948 which contributed to the Apartheid agenda can be summarized as 3 main pillars: communal form of tenure, the system of tribal administration and other forms of rural planning and development (also referred to as betterment). These policies created the basis of apartheid's separated development and other racialised land issues (Lahiff, 2000). One of these programs was the Tomlinson Commission, coming out of the Tomlinson report which took place in the 1950s and it called for the upgrading of the 'reserves', for economic purposes which would benefit the apartheid government, by creating a successful commercial farming class of black farmers. The land was held in trust by the government and essentially dispossessed the small-scale farmers. This so-called development plan was a way for the

apartheid government to further control black people, and their relationship with the land (James, 2000).

An important policy to look at is The Group Areas Act of 1950. It was used by the apartheid state to carry out forced removals of black people from white areas as well as racial segregation by removing Coloured and Indian people from white areas. It was used to augment the Land Acts and clean up “black spots” of land by forcibly removing black farmers who had escaped the 1913 Land Act by having title deeds to their land (Rugege, 2004). Lahiff (2000) places emphasis on this act and sees the forced removals of large groups of people to homelands as an integral factor in the land issue. Rugege (2004) also outlines the Prevention of Illegal Squatting Act of 1951 which was meant to augment the Group Areas Act by removing black tenants who had previously had permission to live as tenants on white farms. When this permission was withdrawn, this act allowed for the demolishing of homes and violent removal of black families without a court order since they were declared squatters. Lahiff (2000) also points out that there were also policies which collaborated and added to the existing land policies which were put in place to help control the Trust land. these were: The Control of Irrigation Schemes in Bantu Areas of 1963 which allowed for the government to regulation and control the irrigation systems in areas where black people had been moved to; The Trust Forest Regulations of 1967 which regulated the use of forest land in black areas and the Bantu Areas Land Regulations in 1969 which allowed the government to control tenure in all areas which were under the South African Development Trust (Lahiff, 2000). There were also social aspects which Rugege (2004) and Claassens (2014) point out. These authors look at the fact that black people were forced into the homelands and were not permitted to take part in forms of farming that allowed them some self-sufficiency, people were forced to seek cheap labour in large white farms, mines or in the city. In addition, the citizenship and political rights of black people were removed and they were denied permanent residence in urban areas thus deepening their “landlessness” and resulting in the break-up of families and the dislocation of social life (Rugege, 2004; Claassens, 2014).

In the time leading up to the dismantling of the homelands administration in the 1990s, black people were registering their land with the tribal Authority and Magistrates office and were given permission to occupy documents, but this didn’t happen everywhere so its current basis isn’t clear, and difficult to consolidate (Lahiff, 2000). The 1990s saw the first policy which aimed to end the restrictions on land. Gibson, (2010) looks at the Abolition of Racially Based

Land Measures Act of 1991 which was the start of land reform. There was then the Restitution of Land Rights Act of 1994, this dealt with land restitution, land redistribution and land tenure reform (Gibson, 2010).

Key Moments of Resistance

Cato Manor and the Industrial and Commercial Workers Union.

Cato Manor located in the Durban area is the site at which the first shack settlements were erected in the 1870s, which was a result of the destruction of the Zulu Kingdom. This was a creation of an urban community from below which kept networks with those in the surrounding rural areas as well international struggles. The Industrial and Commercial Workers Union (ICU) were a formidable force, able to call meetings which were 5000 strong who resisted a number of colonial urban land policies through the use of occupation, protest, night schools as well as the courts. It was then in 1906 that those who had settled in Cato Manor began to return to their homesteads as part of the Bhambatha rebellion. It was a site of black life and black struggle and is integral to the ANC's rise as a party. In 1926, the ICU held a march, while displaying socialist symbols. In the same year, as tensions became more evident a meeting of the ICU was attacked by an armed group of white people, around 2000 strong, which resulted in eight deaths on the night, there were further attacks by a white mob the next day. The space of Cato Manor continued to be a space of innovation and cultural exchange as well as a strong site for the empowerment and political involvement of women. The space is also integral to, and acts as a lesson for post-apartheid land occupations such as Marikana and eNkanini (Pithouse, 2018). This case is important as it highlight historical land struggles that took place in the urban.

Mpondoland Revolt

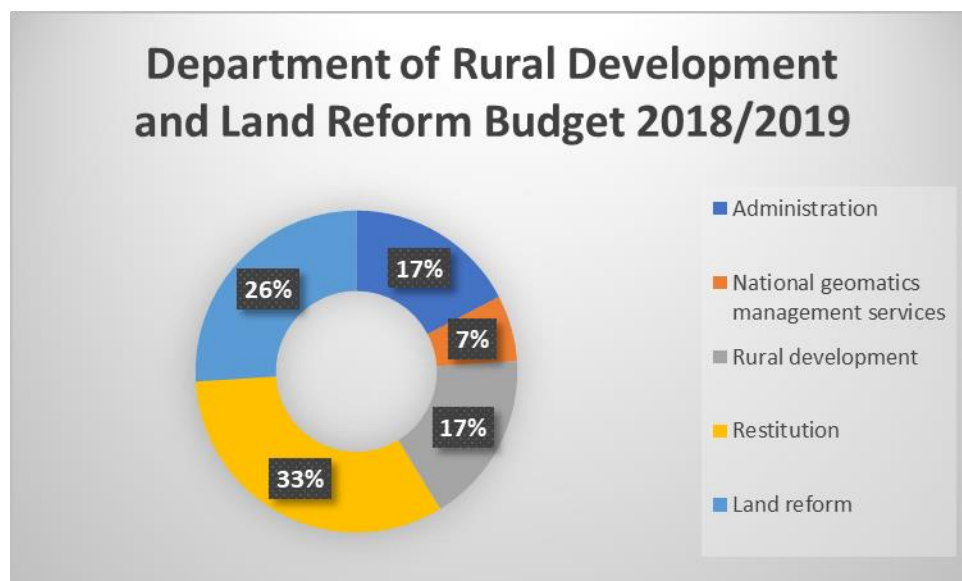
The Mpondo people of the Eastern Cape are an example of a people who resisted colonial expansion and appropriation of their land. They were specifically in opposition to the use of their chiefs by the apartheid regimes as puppets in their communities who were accepting bribes in exchange for the use of land. The Mpondoland revolt happened around the late 1950s and early 1960s, and this revolt is in response to the Bantu Authorities Act of 1951 which was an act which would allow for administrative power for some black elites but left any decisive power with the apartheid regime. The Mpondo people also opposed the Betterment Scheme which was to be implemented in 1947. This scheme entailed resettlements, control of grazing land, culling and the promotion of government-sponsored sale of cattle. In 1960, there was a

coming together of Mpondo people around Mpondoland to establish the Hill Committee, who would work on plans for a peasant revolt against an oppressive regime as well as the tribal authorities. Through the years there were various incidents of violence where Mpondo people attacked chiefs, and also violent incidents where police dispersed Mpondo meetings with force, such as an attack by the police on a mass meeting at Ngqindile near Flagstaff in November 1960 where one protestor was murdered, as well as the killing of the chief and his indunas along with the burning down of ten huts. The Mpondo people also had various protest tactics such as a short consumer boycott. Mpondo protest eventually resulted in a state of emergency in Flagstaff, Bizana, Takankulu, Lusikisiki and Mount Ayliff. Although their revolts were ultimately violently suppressed, their efforts are key to South Africa's history of resistance to land appropriation as well as the complexity of tribal authority (South African History, 2014).

Land Reform

Liberation for black people in South Africa was won through a negotiated settlement between the new government (the African National Congress) and its allies, and the Apartheid government (the National Party) and its allies (Rugege, 2004). The resulting constitution was to be a tool with which previous inequalities were to be addressed (Wicomb, 2013). Land was an extremely important factor in the new era of democracy because it is the thousands of landless citizens who are caught in a cycle of poverty (Fairweather, 2006). Black people of South Africa are attempting to reclaim the land that was taken from them so as to have dignity but also a share of wealth-producing resources (Hall, 2004). However, the resulting Interim Constitution of 1993 had no comprehensive plan on how land reform would be carried out and had a constitutional guarantee on property rights for those who already owned land (Rugege, 2004).

Hall (2004) argues that the challenges being faced by South African society today in terms of the difficulty of land redress is due to the compromises which were made in the constitution. The negotiations leading up to democracy were in favour of white farmers and well-located white urban residents who successfully secured protection of property rights in the new South Africa's constitution. Gibson (2010) also picks up on the issues associated with private property. He points out that private property is linked to market values, which means that the government would have to buy the land in order to redistribute it. With this in mind, it is more likely that community rights to land would be emphasised over individual rights by black South Africans.



South Africa currently spends as much on land reform as it does on VIP protection and security.

Source: AfricaCheck, 2018

Hall (2004) states that in the first 10 years after the first democratic election in South Africa, attempts at land reform have not been as successful as most would have hoped because the project and its policies are constantly changing and being reviewed. 12 years after Hall's statement, and 22 years after the first democratic election, the Land & Accountability Research Centre (2016) has the same conclusion and states that in many rural areas, and particularly the former homelands, the government's plans for land reform have not been seen at all and these areas are still the site of inequality and insecurity of land tenure. Gibson (2010) argues that the current models of land reform are more likely to allow for symbolic justice than for direct profits to be made from these policies. He points out that there are various actors in this issue who have power in the country, and all are concerned with how the land issue is resolved e.g. AgriSA. For Gibson (2010), land is something which is able to alter the structures of power in South Africa, especially in the age of the ANC's crisis of leadership.

This section will review literature on how land reform has operated in South Africa. Six themes emerge repeatedly throughout the literature: the three strategies of land reform developed by the ANC i.e. restitution, redistribution and security of tenure and their implementation challenges; the tensions regarding by traditional/communal land; the issue of patriarchy and the vulnerability of women; the shrinking state and neoliberalism; the question of urban land; how land reform "from below" has operated.

1. The Constitution

1.1. Restitution

The restoring of the land rights to the people and communities who had these rights removed after the 1913 Land Act (Rugege, 2004). This applies to those who can prove they were unfairly deprived of their land (Lahiff, 2000).

1.1.1. Section 25(7) of the Constitution:

“A person or community dispossessed of property after 19 June 1913 as a result of past 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.”

1.1.2. Legislation:

- *The Restitution of Land Rights Act of 1994:*
 - “To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith. [Long title substituted by s. 31 of Act 63/97] WHEREAS the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides for restitution of property or equitable redress to a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices; AND WHEREAS legislative measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken to promote the achievement of equality”
- *The Restitution of Land Rights Amendment Act of 2014*
 - This Act was repealed by the president through the Restitution of Land Rights Amendment Bill of 2017.
 - The Restitution of Land Rights Amendment Bill of 2017 –
 - “To amend the Restitution of Land Rights Act, 1994, so as to develop and keep a National Land Restitution Register; to amend the cut-off date

for lodging a claim for restitution; to regulate the prioritisation of claims; to further regulate the appointment, tenure of office, remuneration and terms and conditions of service of judges of the Land Claims Court; to make further provision for the advertisement of claims; to create certain offences; to extend the Minister's powers of delegation; to repeal the Restitution of Land Rights Amendment Act, 2014; and to provide for matters connected therewith."

1.1.3. Implementation Challenges

- The terms of land restitution following the constitution were as follows:
 - Claimants would have to submit their claims by 31 December 1998 – this excluded some potential claimants who did not know they had the right to claim or were labour tenants or farmworkers of land owners and were too afraid to claim. People most affected by this were urban land claims such as district six, Uitenhage and Kirkwood.
 - Only claimants whose land was dispossessed after the 1913 Land Act were allowed to claim – the reason for this was that it would be too complicated and prolonging to see to claimants whose land had been dispossessed before then. This poses an issue because the largest amount of land was dispossessed from African people before the Act.
 - Progress in implementation: the government had set itself targets for restitution as follows: "a three-year period for the lodgement of claims, from 1 May 1995; a five-year period for the Commission and the Court to finalize all claims; and a ten-year period for the implementation of all court orders". This means that the process should have been completed by 2005, yet it has not moved. (Rugege, 2004)
- Rugege (2004) argues that even if the state manages to complete the restitution process and settle all land claims, the majority of South African land will still belong to a few thousand white farmers. This is due the fact that majority of the claims are being compensated financially instead of an actual changing of hands. This will not be sufficient in addressing issues of equity and overcrowding in rural areas and urban townships.

- Rugege (2004) also points out a number of restitution issues which involve a lack resources and support:
 - Lack of capacity by government in its various offices to handle all the stages of processing especially concerning compensation (Rugege, 2004).
 - Problems finding evidence and documentation to support land claims i.e. marriage/death certificates, identity documents etc. that can serve as proof (Rugege, 2004).
 - Reluctance or outright hostility by current landowners toward restitution (Rugege, 2004) – Transvaal Agricultural Union dedicated to raising money to pay off claimants to withdraw their claims.
 - If the state offers the claimant financial compensation and the claimant refuses, they are forced to go through the Land Claims Court which requires lawyers and is expensive. In addition, due to mass migration to urban areas as a result of the past system, claimants would rather have financial compensation and improve their situation where they are (Rugege, 2004).
- Aliber and Cousins (2013) argue that the trajectories of restitution project are varied, but with similar obstacles. Group conflict, multiple claimants and disagreements on what the land should be used for.
- James (2000) argues that there are complications with land restitution because those who owned the land previously, and are attempting to reclaim it, did not necessarily own the land in the same manner that it is owned now. In many cases this was on a freehold basis and was owned by chiefs on behalf of his tribe.

1.2. Redistribution

The state acquires land for purposes of distribution to those who have no land or who have inadequate access to land (Rugege, 2004).

1.2.1. Section 25(5) of the Constitution:

- “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”.

- Although this allows for access to land to become a socioeconomic right, the state's obligation to foster this right is not absolute and is only obliged to act within its available resources and take reasonable legislative measures.

1.2.2. Legislation:

- *Provision of Land and Assistance Act of 1993*
 - “To provide for the designation of certain land; to regulate the subdivision of such land and the settlement of persons thereon; to provide for the rendering of financial assistance for the acquisition of land and to secure tenure rights; and to provide for matters connected therewith.”
- *Provision of Land and Assistance Amendment Act of 2008*
 - “To amend the Provision of Land and Assistance Act, 1993, so as to state the objects of the Act; to clarify and extend the application of the provisions on the acquisition, planning, development, improvement and disposal of property and the provision of financial assistance for land reform purposes; to provide for the maintenance of property for land reform purposes; and to provide for matters connected therewith.”
 - Claassens (2017) argues that the outcomes of land redistribution should be measured both against the mandate by the constitution to provide equitable access to land as well as the power given to the Minister by the above Act to acquire land.
- There were also a number of programmes put in place by the state:
 - *Reconstruction and Development Programme (RDP)*: the document that informed the White Paper on South African Land Policy. According the White Paper the purpose of land redistribution is “to provide the poor with access to land for residential and productive uses, in order to improve their income and quality of life. The programme aims to assist the poor, labour tenants, farm workers, women, as well as emergent farmers.” However, the state has had a largely market oriented approach to this and has not used its power to expropriate land for redistributive purposes (Rugege, 2004). Lahiff (2002) adds that The White Paper on South African land policy speaks to communal systems being able to provide the poor with land at a very cheap cost.

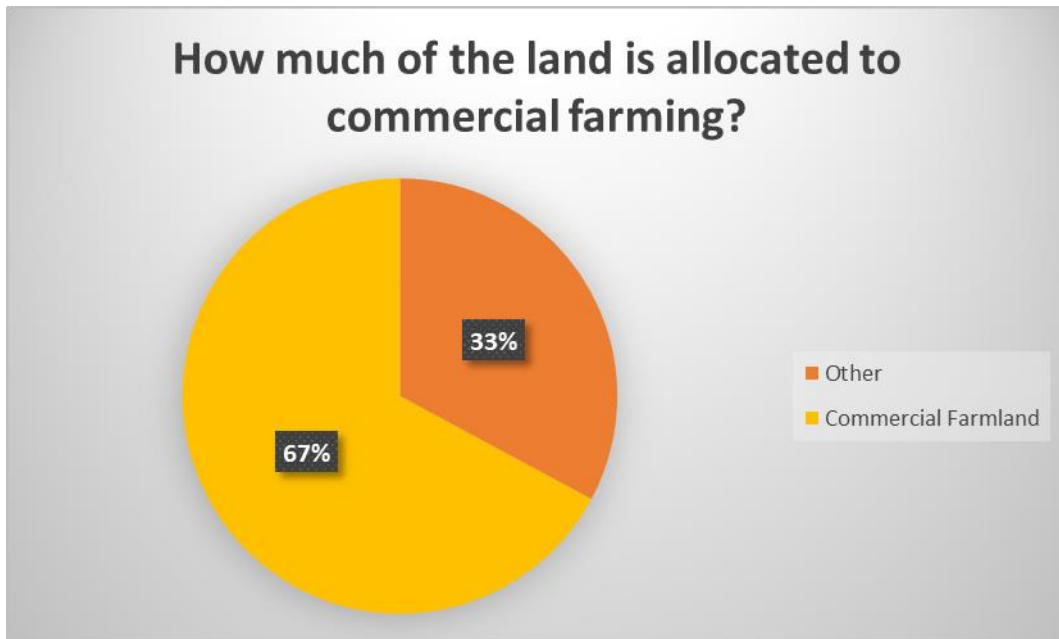
- *Settlement and Land Acquisition Grant (SLAG)*: Under the RDP, low income households were given a modest grant from the government to buy land and settle on it. The general trajectory of SLAG (settlement and land acquisition grant) projects are usually that a group made up of farm worker and other community members buy up a farm. There is a then a drop in active members, and therefore production. After this there are 3 possible outcomes, a small group within the community rescues the project, an outsider invests some capital and rescues the project or the project fails completely (Aliber and Cousins, 2013).
- *Land Redistribution for Agricultural Development Programme* – Launched in 2001, this was the new programme following dissatisfaction with the SLAG wherein the state provides a subsidy grant for black commercial farmers to promote structural change through land redistribution. This shift in policy is also outlined by Hall (2004) who also outlines the critique of it by pointing out that even though provisions were made for the initial capital investment to be overlooked, there was still not enough support given to these black commercial farmers to succeed.
 - The LRAD required investment and discouraged group buying of land with the aim of developing a sector of black commercial farmers. The evolution of this policy eventually meant that less people were getting land, and those getting land were getting larger pieces (Aliber and Cousins, 2013).
 - The most common outcome of LRAD projects is collapse, according to this study, although there are success stories (Aliber and Cousins, 2013).
- *Proactive Land Acquisition Strategy (PLAS)*: This programme was initiated to compliment and then later replace (after 2011) LRAD. It involved state purchase of land and the leasing of this land to individuals with the intention of handing it over for private ownership by these individuals. According to Claassens (2017), the latter phase of this process has largely been abandoned by the state. PLAS is currently the only means through which the state is redistributing land (Claassens, 2017).

1.2.3. Implementation Challenges

- The initial model of land redistribution which relied on a willing buyer, willing seller program. This often required the buyer to make networks with other buyers in order to

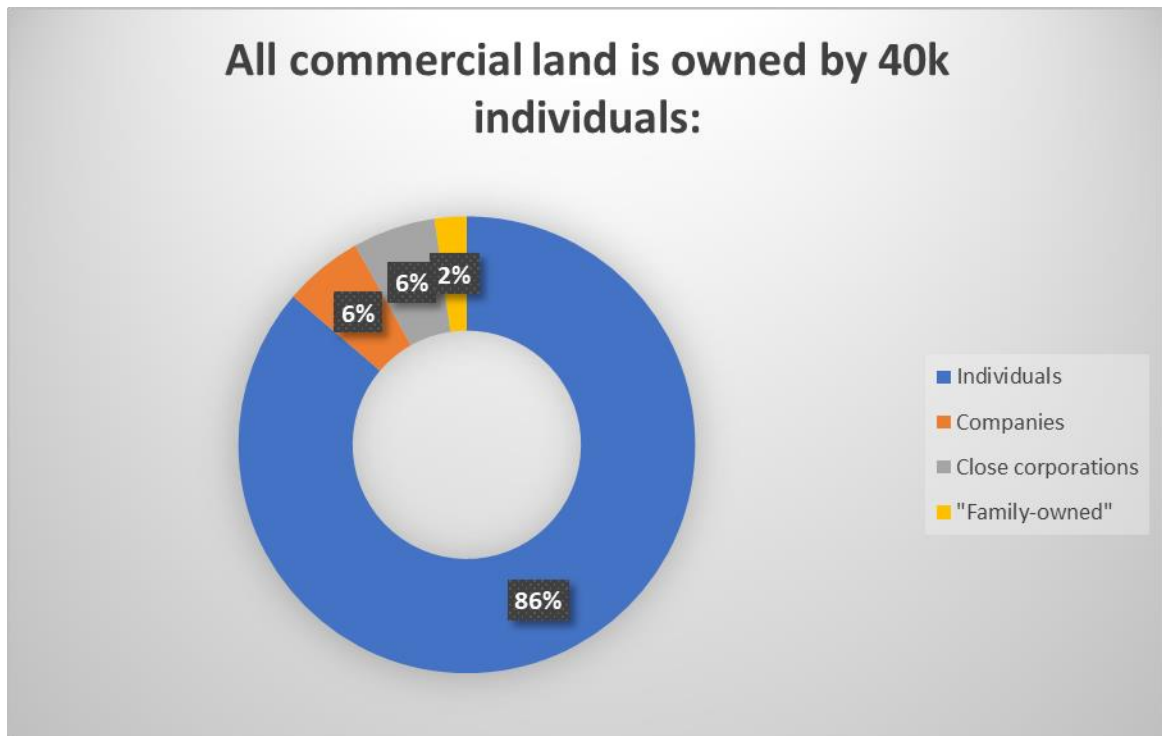
afford a plot of land (Hall 2004). Hall (2004) claims that this model was unsuccessful as it resulted in the overcrowding of these areas, as well as a failure to use the land appropriately due to a lack of support.

- Aliber and Cousins (2013) point out that the fixation with large scale commercial farming by the government has resulted in job loss for the people of north Limpopo and they add that the people in those areas appreciate the importance of smallholdings and communal area farming particularly in the areas which were formerly Bantustans.

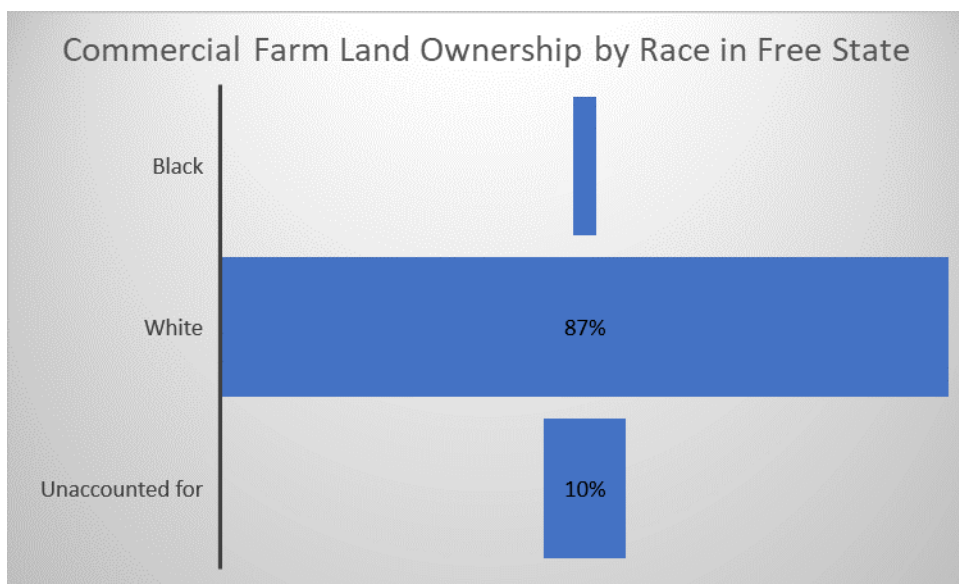


82.3% of South Africa is farmland – 81.9% of this farmland is commercial – this land is owned by 40,000 farming units – there is no census on the racial composition of these units.

Source: AfricaCheck, 2014



Source: AfricaCheck, 2014



Source: AfricaCheck, 2014

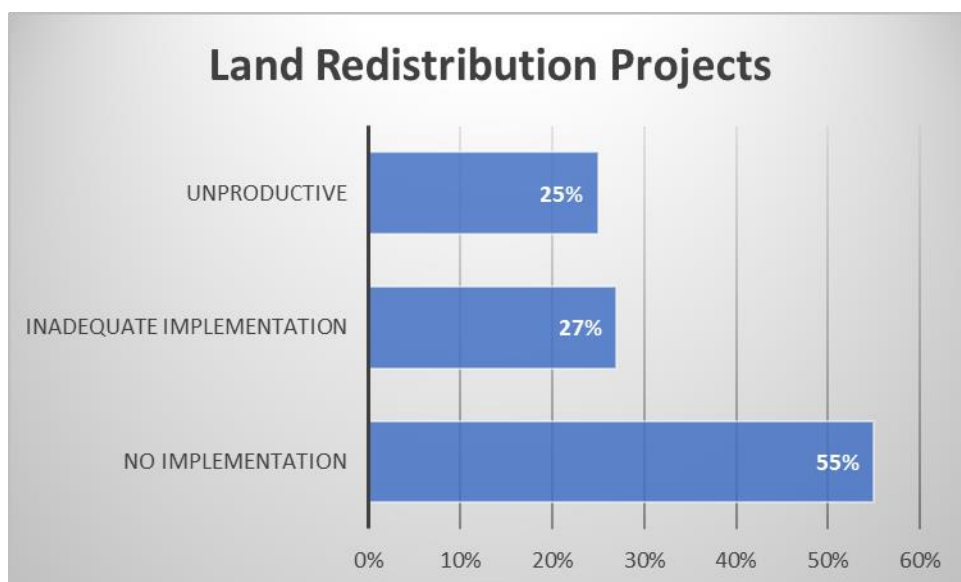
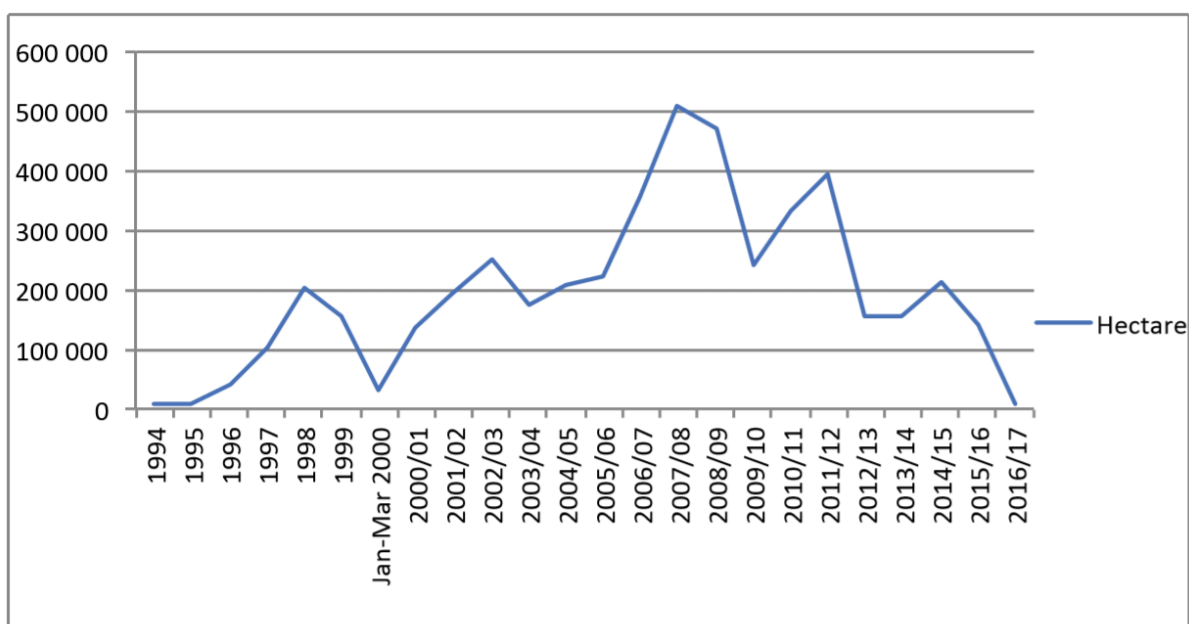
Table 3.2: Summary data on land redistribution in relation to South Africa's land area

Land area of South Africa	Land area of former home-lands	Land area of former 'white RSA'	Commercial agric land	30% of commercial agric land	Total land redis-tributed to date	Land redis-tribution as % of commercial agricultural land
122 320 100 ha	17 112 800 ha	105 267 300 ha	86 186 026 ha	25 855 808 ha	4 701 542 ha	5.46%

Source: Kepe and Hall, 2016

- Claassens (2017) argues that the Provision of Land and Assistance Act is inadequate in addressing the redistribution issue. It does not define 'equitable access' in a meaningful manner, and provides no guidance as to how beneficiaries are to be selected, how land suitable for redistribution is to be acquired, how post-settlement support is to be provided, how the land tenure security of beneficiaries is to be secured, and says nothing about the role of local authorities in land reform planning and implementation.
- Claassens (2017) also points out several failures in the implementation of legislature:
 - The neglect of urban land reform which is important for human settlement programs to be effective.
 - Redistribution has been highly uneven in spatial terms as well as regarding gender.
 - The livelihoods of beneficiaries' post-settlement have not improved and this is due to the lack of support post-transfer and the lack of coordination amongst government departments.

Figure 3.1: Amount of land transferred through land redistribution, in hectares per year



Source: High Level Panel Report on the Assessment of Key Legislation, 2017

1.3. Security of Tenure

Land tenure is the “planned change in the terms and conditions on which land is held” (Adams *et al.*, 1999, p.9). Tenure reform involves providing secure tenure for those living for a long time on land owned by another without secure rights (Rugege, 2004). The aim of tenure reform is to increase land rights and ensure tenure security. It will give families assurance that they will not be evicted without compensation, ability to improve their houses assurance that inheritance will be given to their children (Adams *et al.*, 1999). Hall (2004) defines tenure

reform as providing those living on farms as workers or tenants in the countryside with land ownership. Hall (2004) also adds that tenure reform was a program which was met with hostility by farm owners, and led to mass job loss and further casualization of work. Lahiff (2000) says that tenure reform has been paid the least attention.

Adams *et al.* (1999) outline what the government needs to do for tenure reform:

- A national system that is uniform
- A mechanism for infrastructure and local taxation
- A mechanism which allows for the government to give land rights to individuals, groups and all classes.
- A system which gives title deeds in a user-friendly way
- Land titles which can be upgraded to freehold
- A mechanism which also addresses social justice in relation to land reform.

Adams *et al.* (1999) also touch on what needs to be done with relation to land tenure, while still allowing for economic development:

- The existing occupiers of the land must have their rights recognised
- The process which allows for tenure reform needs to firstly look at the state of administration of land issues.
- People need to be given access to information about their rights so that they can be protected from corruption and coercion.
- Women's rights need to be addressed as they are primary economic producers in the rural areas
- The system must be flexible to new economic opportunities, and must allow for rules to change if the need arises
- The reform must resolve the overlapping and overcrowding issues brought on by colonization and apartheid.

1.3.1. Section 25 (6) of the Constitution:

- "A person or community whose tenure of land is legally insecure because 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."

1.3.2. Legislation:

- Parliament passed a number of laws to provide for the security of tenure addressing the needs of different categories of landholders.
- *The Land Reform (Labour Tenants) Act of 1996:*
 - “To provide for security of tenure of labour tenants and those persons occupying or using land as a result of their association with labour tenants; to provide for the acquisition of land and rights in land by labour tenants; and to provide for matters connected therewith.”
 - This act was provided for labour tenants on farms that had contributed or had predecessors which contributed to a farm but did not have tenure security on that farm.
- *The Interim Protection of Informal Land Rights Act of 1996:*
 - “To provide for the temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law; and to provide for matters connected therewith.”
 - This Act gives legal recognition to long term residents of communal land to allow for interim security (Lahiff, 2000).
 - It is currently the only legislature that supports communal land tenure. It was meant to be a temporary “safety net” for those in the former Bantustans but has been renewed every year since its passing in 1996 (Claassens, 2017).
- *The Communal Property Associations Act of 1996:*
 - “To enable communities to form juristic persons, to be known as communal property associations in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution; and to provide for matters connected therewith.”
 - This Act allows for people to legally acquire property collectively (Lahiff, 2000).
- *Extension of Security of Tenure Act of 1997:*
 - “To provide for measures with State assistance to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and to regulate the conditions and circumstances

under which persons, whose right of residence has been terminated, may be evicted from land; and to provide for matters connected therewith”.

- The purpose of this Act is to provide tenure security for occupiers of land whether farmworkers, former farm workers or labour tenants which are not protected under the Labour Tenants Act. The act lists a number of mutual rights between owners and occupiers.
- *Security of Tenure on Communal Land:*
 - *Traditional Leadership and Governance Framework Amendment Act 23 of 2009* –
 - “To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide a statutory framework for leadership positions within the institution of traditional leadership, the recognition of traditional leaders and the removal from office of traditional leaders; to provide for houses of traditional leaders; to provide for the functions and roles of traditional leaders; to provide for dispute resolution and the establishment of the Commission on Traditional Leadership Disputes and Claims; to provide for a code of conduct; to provide for amendments to the Remuneration of Public Office Bearers Act, 1998; and to provide for matters connected therewith”.
 - *Communal Land Rights Act of 2004* –
 - “To provide for legal security of tenure by transferring communal land, including KwaZulu-Natal Ingonyama land, to communities, or by awarding comparable redress; to provide for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights; to provide for the democratic administration of communal land by communities; to provide for Land Rights Boards; to provide for the co-operative performance of municipal functions on communal land; to amend or repeal certain laws; and to provide for matters incidental thereto”.
 - *Traditional Courts Bill 2017* –
 - “To provide a uniform legislative framework for the structure and functioning of traditional courts, in line with constitutional imperatives and values; and to provide for matters connected therewith.”

1.3.3. Implementation Challenges

- The Land Reform (Labour Tenants) Act of 1996: This act has been met with resistance from landowners claiming that long-term tenure security of tenants has devalued their property. Other issues are that the need to provide proof of lineage proves to be unfair for deserving tenants and a cut-off date which left some tenants not being able to apply in time (Rugege, 2004).
- Extension of Security of Tenure Act of 1997: Many commercial farmers have outright opposed the passing of this act and continue to evict occupiers illegally through violence. They claim that the act violates their property rights in the Constitution. Other issues include that many magistrates have not embraced transformation and issue eviction without concern for statutory protection while both the state and land owners are under no obligation to provide alternative residence for evicted persons (Rugege, 2004).
- Barry and Whittal (2016) look at the role and effectiveness of land registration for landholders' attempts to secure land tenure in a housing project in Mbekweni, WC. In South Africa, tenure reform has operated through a system of an ownership-registration combination. This is not considered the ideal form of tenure for state-subsidised housing but is here to stay. Land registration/tenure administration systems do not work due to several reasons i.e. off-register transactions of land which deem records useless; policies focus solely on economic factors; despite the delivery of 1.2m state-subsidised housing, corruption and poor management has led to further housing insecurity and cloudy title systems where ownership cannot be formally recognised in most cases. Mbekweni is an example of an urban community where land registration systems work. This is due to beneficiaries' awareness of land administration practices through education programmes, an easily accessible local housing office, building inspection and low levels of off-register transactions. More suggestions on the improvement of these systems include assistance in making wills, assistance in estate management and conveyance of property rights and the general help from NGOs, community members etc. (Barry and Whittal, 2016).
- Fenske (2011) investigates the issue regarding studies which claim that secure tenure/land rights results in an increase in investment in the land by holders, but fail to find empirical backing for this claim. Studies claim that land rights promote investment

for the following reasons: land rights strengthen claims to the fruits of investment; land rights increase access to capital; land rights allow for gains from trade; land rights provide the freedom to innovate. Fenske (2011) claims that empirical evidence for these claims are weak for the following reasons: indigenous systems may offer adequate security to encourage investment; investment can be attractive despite insecurity; credit markets in Africa are thin; investment can strengthen land rights; land titling doesn't work in practice; misplaced focus on land tenure; both land tenure and investment are difficult to measure; economic tests are difficult to implement. Fenske (2011) provides empirical evidence to show that certain land investments can make land tenure less secure while other short-lived investments can make land tenure irrelevant all together (e.g. labour, fertilizer etc.).

- Bejaminsen and Lund (2002) argue that there is a centrality of natural resources as well as land and water in Africa, which means that these aspects of daily life get attention from governments, both colonial and democratic, and are often part of political tools to further control the African populations. They also argue that in African communities the land has layers of meaning and spiritual value, which complicates the way that governments and authorities choose to deal with land. Many communities in Africa are still fighting for land rights, even though, according Bejaminsen and Lund (2002), there is currently a scholarly focus on globalisation and hegemonic powers, and there is a neglect for everyday practices of exclusion enacted by the government. They also argue that societies are made of various institutional forces which are constantly competing with each other, and this is an obstacle to formalisation. Although many states make an attempt at formalisation, these efforts are often undone by corruption and networks which undermine the integrity of institutions. This then leads to people creating their own institutions and practices to take care of what the state is failing to deliver, something that Bejaminsen and Lund (2002) term 'informal formalisation'. Bejaminsen and Lund (2002) argue that states tend to use one size fits all forms of formalisation, which is particularly prevalent in land tenure issues and how the state often attempts to do this in a standardized manner.

2. Communal Land Tenure

2.1. Precarity of Communal Tenure

Tribes, or as many scholars now refer to them as, chiefdoms are something that has been neglected in scholarship. Many authors now understand that chiefdoms were made up of various people from various backgrounds who were loyal to one chief. These groupings were complex and should not just be used as ethnic groupings; according to evidence of recorded oral history and linguistics these so called political units were much less strict than previously thought. Although there were hierarchically structures within these chiefdoms, they were largely for the purpose of creating alliances and their ancestral histories and connectedness to it was constantly being restructured and reworked in public discourses (Wright, 2017). Capps and Mnwana (2015) speak about the areas around Rustenburg which are under traditional authority. These areas consist of farming land which were kept in trust by the government intended for use by a particular chief. It is no secret that the role of chiefs over time has been a contested history. This complex authority has changed over time, and currently almost all chiefs around Rustenburg have invested their ‘tribal assets’ in big business such as telecommunications and banking, but also a large number in mining. Due to this, the chiefs have now become part of the black elite of South Africa. In Rustenburg, the chiefs now act as land brokers for many of the platinum corporations, making unilateral decisions about the land, under the impression that they are the representatives of ‘community interest’. Capps and Mnwana (2015) profile two communities, the first is the community of Bakgatla, an area that has always been of interest for mining, but it was only in 1968 when mining began here. It was kick started by the Chief in the area who signed a lease with Rustenburg Platinum Mines, from which he received mining royalties. In 2006, the agreement was that the future royalties would be converted into a 15% equity stake in the mine. After a number of transactions, investments and deals, the Bakgatla business empire is worth around R15 billion. The second is Lesetlheng, which is one of the oldest villages in the area. This Lesetlheng village was initially a breakaway group that settled on their own, and bought a farm called Kruidfontein. However, during colonialism, they were repressed and pushed to reintegrate into the Bakgatla chiefdom, and their leaders became headman under the Bakgatla chief. Subsequently, the farm was registered to the Bakgatla tribe. This example is an illustration of how there are even struggles for ownership within chiefdoms, among various groups (Capps and Mnwana, 2015).

The system of communal tenure is one that has been modified over different governments which denied black people ownership and contributed to the migrant labour system where there was a maximum number of Africans living in the homelands while still not allowing for the emergence of wealthy individuals in those rural areas. This also allowed for a highly controlled system which was endorsed and sometimes enforced by tribal leaders (Lahiff, 2000). Adams *et al.* (1999) also point this out by referring to the homelands as a very intentional creation of “reservoirs for cheap migratory labour” (p.7).

What makes it ‘communal’ is that one’s entitlement to the land is based on belonging to a social group such as a village or tribe. Even on communal land, there is not necessarily collective agriculture. Land is usually requested from the chief or village headman who will allocate land to men/heads of households who are permanent residents in the area (sometimes given to women but mostly men). Once the land is obtained it is usually accepted that it is to be used in a private capacity by those who asked for it. They cannot sell this land though. Any unallocated land is used by everybody for grazing and other common uses (Lahiff, 2000). Communal land is technically owned by the state and is in trust with chiefs who allocate land to their people. This gives the illusion that the land is communal, but it is in fact, legally, owned by the state (Lahiff, 2000).

Wicomb (2013) points out that even the term communal land and what it is defined as needs to be questioned. It is important to note that years and colonialism and apartheid have often used customary law and distorted it to fit their own agendas. Because the colonisers saw communal land as weak and private property as a sign of modernity, this was their justification for taking land from the colonised; this led to a heightened chiefly power and a misinterpretation of African land rights.

2.2. Tensions between Policy and Practice

Kingwill (2014) argues that in the system of recognising land rights in South Africa, there is a mismatch between the current policies and the reality on the ground. European paper systems of registration are imposed on African practices of land access and control. Land title is determined by mathematical formulae that trace a unilineal descent group determined by family name. This goes against inheritance customary law amongst these people as well as the notion of land title in common law. Registering then becomes merely a formality and families work out their own arrangements.

Claassens (2014) argues that recent land ownership policies further entrench rather than address the legacy of the 1913 and 1936 Land Acts by adhering to similar *modus operandi* of past laws and entrenching the geographical division between the former Bantustans and the other 87% of white owned land. These policies exist in tension with the transformative provisions of the South African Constitution of 1996. Constitutional Court views customary law as embodying broadly held societal values and subject to change and flexibility. The Land & Accountability Research Centre (2016) state that customary law, according to the constitutional court must be looked at as derived from real life practices and practices which people use in their daily lives. This is particularly important to understand, as many see customary law as “codified” (p.7) rather than as living. The laws enacted by Parliament that Claassens refers to are the Traditional Leadership and Governance Framework Amendment Act, the Communal Land Rights Act and the Traditional Courts Bill. These laws possess the rigidity of past laws and bolster apartheid notions of unilateral chiefly power. The Land Acts of 1913 and 1936 played a pivotal role in the creation and consolidation of the Bantustans after 1948. Post-1994 experienced backlash from traditional leadership in response to the threat to their power in the former Bantustans and this resulted in the traditional leadership laws enacted from 2003. The Restitution of Land Rights Amendment Bill of 2013 coincides with the 1913 Land Act in that it reiterates that landownership is neither appropriate nor allowed for the majority of people living in former Bantustans. Ownership in this case is reserved for a small elite and most people are condemned to similar system of ‘trust tenure’ which was imposed by the 1936 Land Act. The material consequences of this is that families who have inherited mineral rich land are living in abject poverty while traditional leaders profit from deals with platinum mining companies.

Wicomb (2013) argues that there is a contradiction in the constitution because it recognises customary law, but when dealing with land and property rights it is followed “to the extent by an act of parliament”. This shows how difficult it is to really recognise customary law while still following a system which prioritises the Western understanding of ownership and property. In customary law, your rights are dependent on your membership to the group. Here, she alludes to the patriarchal nature of communal land rights.

2.3. Ingonyama Trust

The Ingonyama Trust was established as per the Ingonyama Trust Act which allowed for the KwaZulu King to become the sole custodian/trustee of KwaZulu Land (Ingonyama Trust Board, n.d.). The Act provides for the establishment of the Ingonyama Trust Board to administer the affairs of the Trust land and the Trust itself. Although the mandate of the trust is to hold land for “the benefit, material welfare and social wellbeing of the members of the tribes and communities”, the trust and its implementation actually infringes on the rights of the beneficiaries.

Recent discussions in the High-Level Panel and government’s intention to amend or do away with the Act have created a political stir. The recent proposals have been made in support of land rights for black rural residents in KwaZulu-Natal, who have been discriminated against. This is due to the fact that the trust’s claim to nominal ownership of land through Zulu customary law is flawed. It goes against historical/precolonial notions of land in that land was not “owned” by kings or traditional leaders in the way it is now. The recent proposals are seen as a threat because the members and staff of the trust’s board benefit financially from the trust (De Haas, 2018). The trust and its Act have resulted in an increase in insecure tenure for rural residents and a number of other rights infringements over the years, such as:

- In 1991, the trust had granted a lease to a chief to operate a private game reserve in partnership with outside business. The area was fenced off and many residents were removed from their ancestral homes. The area had not been part of the Zulu kingdom historically (De Haas, 2018).
- In 2008, the provincial government and a traditional leader had dealings with a Dubai investor in the eMacambini area. The deal fell through but the area was leased to Tongaat Hulett despite it being given to residents who were dispossessed of their land in the 1970s. This leader was known for terrorising rural residents and orchestrating illegal land invasions and was subsequently appointed to the Trust board (De Haas, 2018).
- Recently, commonage and peri-urban areas under the trust are being allocated to outside business interests. Since residents are protected by the Interim Protection of Informal Land Rights Act, they are being persuaded by board members to sign leases so that they can later be evicted if they do not pay rent (de Haas, 2018).

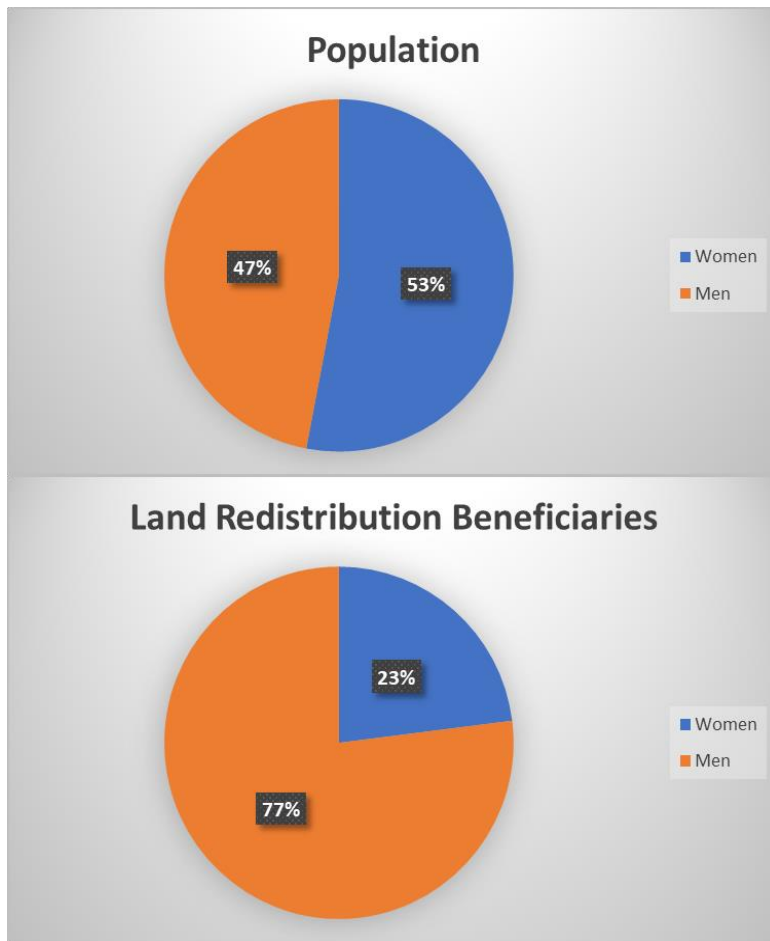
- The trust has also been claiming royalties from mining which is exacerbating the social and environmental problems experienced by communities from mining (pollution, cracked houses, health issues etc.).

3. Women's Land Rights

Women's land rights remain more insecure than that of men. In the *Report of the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change*, two key submissions made by women from rural communities are quoted:

“We thought that when women are engaged in an endeavour that would empower them, they would be supported. We posed this question to the Land Claims Commission, as to whether they give women-lodged claims a priority as they are the ones who were marginalised the most, and they said they don't care who lodged the claims, and they have too much backlog to be considering the gender of claimants.” - Maehengwa CPA Representative, Limpopo.

“Women should own land because when a husband dies, the widow invariably gets expelled, a phenomenon that has been prevalent since the onset of HIV-AIDS, where a husband's death was automatically blamed on the woman. Single women are particularly hard-hit; their rights are trampled on daily in a cycle that sometimes involves collusion between traditional leaders and the woman's male relatives.” - Mrs S. Ngubane, KwaZulu-Natal.



Source: High Level Panel Report on the Assessment of Key Legislation, 2017

Shabodien (2018) argues that while apartheid is well-established as a system of racial oppression, we must remember that this system was also profoundly gendered. It was a system pushed black womxn to the margins of society. If land reform is to be successful, then womxn, specifically black urban womxn, need to be at the centre of land reform. As much as we align land reform with the subsistence farmer in the former homelands, we need to do the same with the womxn living in an informal settlement. A gender-blind land reform process means we are tying women's destinies to those of men. It is not only problematic and unconstitutional but is likely to reproduce the same kind of patriarchy the land reform programme has yielded thus far.

In her article, *Securing Women's Customary Rights in Land: The Fallacy of Institutional Recognition*, Wicomb (2013) speaks to the patriarchal nature of communal land rights. Using South Africa as a case study, the premise of this article is, firstly, the strengthening of customary law institutions which in turn, strengthen women's customary tenure and, secondly,

to investigate whether customary law is properly recognized by domestic systems. Wicomb (2013) argues that the problem is not that customary laws not being recognised, but rather the way in which it is recognised needs to be evaluated. It was first thought that by privatizing property and allowing for registering of individual titles on communal land would help to secure and protect the rights of women to own land, but this was not the case. Recently, there has been a renewed interest in the importance of customary law as a solution to land issues. The Framework and Guidelines on Land Policy in Africa, the AU, ADB and the UNEC for Africa all advocate for the importance of indigenous land rights. Many women's movements have criticized this because this interpretation of the customary law gives advantage to men who already hold the most power. It is also enforced and distorted by colonial influences on customary law through patriarchy and chiefly despotism. The Communal Land Rights Act of 2004 in South Africa was opposed by women's movements because it represented a bias interpretation of the customary law. It is not enough to just recognise customary systems without being critical of it.

- Wicomb (2013) lists problems facing rural women:
 - There is a lack of implementation of legislation, even if the legislation to protect women exists.
 - Poor access to legal processes which would help enforce these laws.
 - The women in rural areas don't necessarily know of the laws which exist.
 - This will not be changed or helped in the presence of patriarchal systems and top down approaches.

Case Study of Doornkop

The farm of Doornkop was seen as a 'black spot' and its residents were forcibly removed. The area was later used as a police target practice and entertainment area. People living in Doornkop were in some ways privileged where many of them had converted to Christianity and created a Christian network in this area. Many of them also attempted to create a middle-class lifestyle for themselves by going to Johannesburg to pursue various ventures, those who left did so before the forced removals happened. Those who had moved to Johannesburg were the ones who spearheaded the reclamation project when it came to be (James, 2000). Other conflicts such as who was allowed to participate in the reclamation were also present. It was only those who could prove they are descendants of the original owners of the farm were allowed to. In this case, there were people who worked on neighbouring farms who subsequently ended up

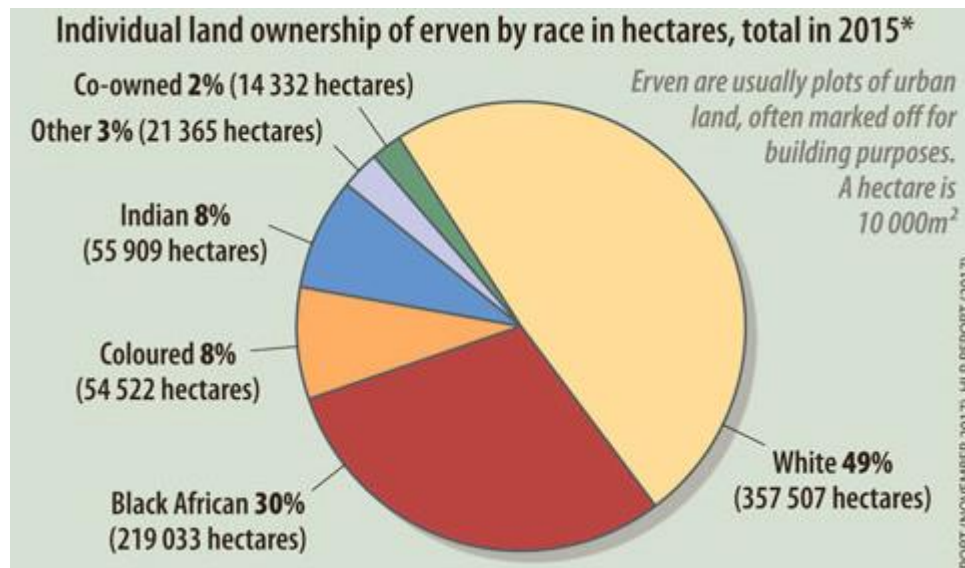
renting land on the Doornkop farm while the ‘owners’ were in Johannesburg looking for education and jobs. There is an unequal power dynamic between the sons and daughters of those who lived in Doornkop as well as patriarchal issues. Those who had settled (Ndebeles) had to marry a ‘Doornkop daughter’ in order to own land and live in Doornkop (James, 2000).

4. Urban Land Reform

Richard Pithouse (2018) writes about the importance of the urban land question by citing Frantz Fanon’s conceptualisation of the colonial city who describes it as “a world cut in two”. Fanon argued that in the colonial city, race and space must be examined to “reveal the lines of the force it implies” so that we can “mark out the lines on which a decolonised society will be reorganised”. In an overwhelmingly urbanised country that is rapidly becoming more urbanised, the new willingness to confront the racial dimensions of the rural land question has not been equalled by a willingness to confront the urban land question. “We seldom seriously consider how people whose names have not gone down in history, often women, established and sustained homes against the order of the colonial city, homes from which many of our writers, intellectuals, musicians and political leaders emerged”. While it is fragmented, one thing elite politics shares is the complete disregard for the struggles and lives of those contesting the colonial city from below.

60% of South Africans live in urban areas, but because urban land is more expensive and much scarcer, the principal focus of land reform remains rural/agrarian land (Cunningham *et al.*, 2016). On the urban side of the land debate, issues around land are centred on access to housing and basic services as well the largely untransformed spatial planning legacy of Apartheid. As the urban population continues to grow, contestations over space remain and the black working-class majority are still living on the outskirts of South Africa’s cities (Ndifuna Ukwazi, 2014). This has rendered these policies at the national level unresponsive to realities on the ground, particularly in urban contexts, resulting in no clear practices of how to address the issues around ‘urban land’ transformation (Cunningham *et al.*, 2016). In her PhD thesis, Mammon (2011) states that there is a serious gap in research regarding the political economy of urban land in post-Apartheid South Africa. She attempts to address this gap by providing an empirically grounded understanding of the government’s track record of urban land redistribution and reform, using Cape Town as a case study. She argues that while there are sufficient legal and by implication, institutional arrangements including funding mechanisms

which have been put in place to secure the rights of access to land by the poor and disadvantaged, the government has failed in terms of addressing these rights.



Source: Mail & Guardian, 2018

4.1. Urban Land Restitution

The principal driver of urban land dispossession in Apartheid was the Group Areas Act of 1950. Urban land restitution has operated under the Restitution of Land Rights Act which gives claimant communities, such as those from District Six, the right to return to their former place of residence. Since 1994, 65 642 urban restitution claims were settled out of 130 000 families who were dispossessed. 72% of these settlements were through financial compensation. This means that majority of urban land has not changed hands, missing a major opportunity for urban race and class integration. Mammon (2011) argues that there is a tension between the Act and urban land markets. Urban land markets operate on a competitive basis which excludes majority of non-white poor urban residents; this is in direct contradiction to the Act's principle of social justice through the restoration of land rights to those who have been dispossessed. Since most of the claims have been settled through financial compensation, these claimants are still forced into living in poorly located areas with few economic opportunities which they would otherwise have access to if they were given their original land back in the well-located District Six for instance.

4.2. Urban Land Redistribution

Mammon (2011) claims that government has been using public land in urban areas to encourage large-scale private development, ignoring the needs of the urban poor. In doing so

and specifically in the manner and spatial form that the land parcels take post privatisation; government has acted against the potential of land rights that if held publicly; could have been more beneficial to society. Where the state is legally mandated to redistribute land to those who are impoverished as a result of being subjected to historical injustices, it has not only been unsuccessful but has also become a partner in diminishing its own resources for capitalist gains that are not facilitating land redistribution and poverty reduction.

Achmat (2014) adds to this claim where he states that a line can be drawn from Simon's Town to Tableview in Cape Town, where predominantly White suburbs are located with approximately 50 people per hectare with access to parks, well-lit streets and range of private and public amenities. These are areas where large-scale removals took place from the 1960s. The same amount of land is shared by 100-500 black and coloured people, is located on the outskirts of the city and is characterised by brutal living conditions. The only way to address this spatial Apartheid, argues Achmat (2014) is by expropriating a proportion of private land, buildings and homes in Cape Town's CBD and densifying these areas to allow for better located housing.

4.3. Urban Land Tenure Reform

Regarding urban tenure reform, the State's sole focus has been to promote home ownership through state subsidisation of housing delivery processes, mortgage financing, settlement upgrading processes and the promotion of land invasions amongst other strategies and processes. This strategy does not consider the wide range of alternative tenure options that are currently operating such as informal financial arrangements, savings schemes such as Stokvel, customary schemes etc. These are forms of tenure which are relied upon by the majority of the urban poor in South Africa. It also does not address the reality that as the urban population continues to grow, more and more urban citizens will be "slum dwellers" looking for well-located living spaces close to economic opportunities and the strategy of creating home ownership for all of these people within a short period of time is unrealistic (Mammon, 2011).

Shandu (2014) further highlights the precarious reality of informal settlement dwellers by analysing the case of the Lwandle informal settlement in Nomzamo, Strand where approximately 800 people were forcibly removed. These removals are reminiscent of the millions of non-white people violently evicted from their homes in the height of Apartheid. The South African National Roads Agency Limited (SANRAL) unlawfully used a court interim interdict which was meant to prevent more people from moving into the settlement, to

evict the residents of Lwandle. These evictions reflect the reality within urban areas of South Africa, which is that land injustice, marginalisation of the poor and the inhumane housing conditions of black urban communities remains much the same as it did during Apartheid (Shandu, 2014).

4.4. Gentrification

Gentrification is “the economic, social and physical change to an area that results in class transformation and displacement for those living and operating businesses there” (Cunningham *et al.*, 2016, p. 8). While the purpose of gentrification is to achieve economic benefits for urban development, it is a process based on the exclusion of the urban poor. Thus, given South Africa’s deep-seated legacy of the exclusion and peripheralisation of the black working-class majority, gentrification deepens the racial and spatial inequalities in urban areas (Cunningham *et al.*, 2016). Cunningham *et al.* (2016) argue that the government’s strategy of urban land reform largely involves the development of housing settlements on the peripheries of cities due importance being placed on the exchange-value of land rather than use value. Because of this, well-located areas are allocated to business and tourism with most residents being upper-class and white. They argue that if the use-value of well-located urban land is considered in urban regeneration processes, then this can allow for a more just form of gentrification that aligns itself with the principles of land reform.

Beyond Gentrification

Cunningham *et al.* (2015) from the South African Cities Network, have put together a useful report on ways in which the negative effects of gentrification might be avoided. They have identified seven mechanisms which can apply to the South African context and can be implemented. These are:

- *Affordable Housing:*
 - Around 51% of urban households earn an income between R0 and R1600. The targeted income bracket for affordable housing is between R1 500 and R 7 500 which means that majority of poor households are being left out of affordable housing.
 - Legislation for affordable housing would need to allocate a proportion of development to be affordable for lower income groups. This would mean that these people would have income to spare for goods and services and would

also be well-located to increase accessibility to education, health, transport and other amenities. Affordable housing within a development will also bring mixed incomes and increased diversity. Public-private partnerships and government incentives are an important part of this project.

- *Mixed Development*

- Mixed development refers to mixed incomes, mixed tenure and mixed communities. Consideration must be given to the location, scale, population and land use of mixed developments.
- Mixed developments address the need for more density, compactness and more integrated urban living forms and lifestyles. They also enhance access to a range of opportunities which are close to where people reside. One example of a mixed development is Cosmo City in Johannesburg North.

- *Inclusionary Zoning*

- This refers to local land use policy which encourages developers to include a specified percentage of housing that is affordable to lower and moderate-income households. It is one tool that can be used to create affordable housing and mixed developments. It also allows for an alternative to government's current system of affordable housing which is to provide low-cost subsidised housing on the urban outskirts. Inclusionary zoning policies will allow for a wider approach which can include the growing rental market and rent to buy. Inclusionary zoning also renders entire regions accessible as opposed to precincts.

- *Community Land Trusts*

- These are local organisations set up and run by ordinary people to develop and manage homes as well as other assets important to the community. It is a way of securing tenure by removing land from the housing market without disconnecting residents from their interest in owning, maintaining and improving buildings.
- Land is acquired and leased through long-term leases and minimal fees are paid to the Community Land Trust. A cultural shift is needed in terms of changing the mind-set that land should be valued based on its economic potential. It is the emphasis on the exchange value of land that is preventing government from developing low-income housing. The CLT model rests on

principles of ensuring access to affordable housing by low-income households in areas where they would previously be excluded.

- *Community Wealth Building*
 - This is an approach to urban growth that focuses on the distribution of wealth amongst a city or urban community to address inequality. The focus is on assets, wealth and ownership, rather than income. While income can contribute to building wealth, it does not help with economic shocks and general hardships. Assets such as skills, social networks, a home, stock, savings etc. can help families prepare for the future and also help build community. It is essentially a systems approach to area-based development which looks at drivers such as local-ownership, inclusion, systems of support etc. Cooperatives and worker-owned businesses are essential in this regard.
- *Rent Regulation*
 - This refers to legislation and policies that aim to regulate various aspects of rental properties and particularly applies to private sector rentals as opposed to social housing. This includes stabilising the rental market to improve security of tenure, regulating lease duration, rent freezes where tenants rent will not increase etc.
- *Public Space*
 - Public spaces include parks, squares, public libraries, public sporting facilities, sidewalks, roads, pedestrianised spaces, open or linear markets, beaches, beachfronts. They have socioeconomic importance as a place for trade and communal activities, or as a channel for movement. It is a crucial resource for the urban poor as their private spaces are restricted and fragmented.

5. Shrinking State and Neoliberalism

The land issue must be looked at not only through a historical lens, but must also be contextualised in its current political and economic systems. Bakker (2007) is one author that draws attention to the shrinking role of the state, and the rising role of the private sector in this era of neoliberalism. She speaks about this in the context of managing water supply systems. She points out that governments who do not have the capacity to provide adequate water supply to their people often claim to not have enough money, are too corrupt and are generally unable to manage water systems. Because of this, there is often an increased involvement of private

companies who are intervening in water management. With the onset of globalisation and neoliberalism, there is an increased interest by the state in this private sector involvement, which often leads to market environmentalism. This is a concept which supposedly allows for the collaboration of economic growth, environmental conservation and efficiency interests. However, this is often done through privatisation and the valuing of environmental goods as economic goods. The issue, according to Bakker (2007) and other authors, with this sort of approach is that the privatisation is often done through the dispossession of indigenous people, a feature of many top-down approaches.

In the South African context, there are also a number of authors who have picked up on this and have written about the influence that the international community has had on South African land policy. An example is the need to maintain some form of national unity and the desire to portray South Africa as an investor friendly country that protects private property. According to Rugege (2004) this is why the government has largely protected private property rights and has been reluctant to resort to expropriation. Hall (2011) agrees with this and talks about the foreign investment that South Africa is receiving, which is creating pressure to commodify land. The commodification of land is often for food production (farms), tourism and other agricultural uses, due to the food crisis the world is facing coupled with the financial crisis of 2009. Hall (2011) refers to this as the new wave of land grabbing. This article sees these investments as neo-colonial, and a stealing of resources because a lot of the land is used for production that is for foreign markets trying to survive the food crisis. A lot of the land that is being leased to foreign companies is communal land, already being used by local people, and have a huge impact on small scale local farmers.

The second characteristic of the neoliberal era, is that of a shrinking state. Hall (2004) talks about a decrease in state capacity both in resources and institutions, and an increase in policy imperatives. For example, in South Africa there is a small amount of budget given to land redistribution which is a limit to the state's ability to deliver. This cannot be increased, because the neoliberal agenda calls for constraints in public spending. A big influence on the neoliberal approach to growth is the World Bank. James (2000) speaks about the commitment of the ANC to the World Bank's standards and ideas of development, which is evident with the existence of a petty- bourgeois. This commitment is reflected in its approach to land restitution in the post-Apartheid era, an approach which is rather conservative compared to other radical

approaches to change the patterns of ownership in South Africa. James (2000) also points out that there was already a call for redistribution of land from civil society within South Africa, but there was also a call from the World Bank. However, the model from the World Bank was for capitalist development through land redistribution which involved a practice of agriculture similar to what is outlined in the Tomlinson report, a highly commercial and large-scale form of farming (James, 2000).

1.4. Opposing Party Policies

1.4.1. The Economic Freedom Fighters

The EFF's policy on land reform is clear and simple: "Expropriation of land without compensation for equitable redistribution". Their main approach to this is that all land should be transferred to the ownership and custodianship of the state, in a similar way that all mineral and petroleum resources were transferred as per the Minerals and Petroleum Resources Development Act of 2002. This transfer should happen without compensation and should apply to all South Africans, regardless of race. EFF commander-in-chief Julius Malema offered the ANC its 6% representation to secure the two-thirds majority required to amend the constitution and this motion was passed.

While the ANC waits for parliament, the EFF already has a plan on how this would work. "State custodianship of land will mean those who currently occupy land should apply for licensing to continue using the land and should clearly state what they want to use the land for over a period of time. Under this legislation, no one should be allowed to own land forever". The party's policy states that the state should prioritise small-scale farmers for land ownership and that food consumed by people in hospitals, schools and prisons must be bought from small-scale farmers by the state in order to develop small-scale agriculture (Whittles, 2018).

1.4.2. The Democratic Alliance

On 12 March 2018, the DA held a briefing to discuss its land reform policy which is comprised of 7 pillars:

1. Land reform can be achieved within the current confines of the constitution and it therefore does not need to be amended.
2. Recipients of state-subsidised housing would receive title deeds as with RDP homes.

3. The party has promised to make purchases cheaper for first-time buyers by lowering transfer fees.
4. Transferring ownership of land to emerging farmers which the state currently leases to black farmers.
5. The DA would give residents of tribal land security of tenure that is recorded and legally enforceable.
6. Allocating adequate budgets to settle all remaining land-restitution claims and for land reform purposes using technology to manage claims and provided readily available information to those involved.
7. Those who want to farm would receive any support they might want or need, through the transference of skills and by providing access to the resources and markets they need to sell their goods.

The DA was one of the parties who voted against the motion to amend the constitution for land expropriation without compensation.

(Masuabi, 2018)

Challenges and obstacles that have been experienced up to this point with regard to land reform, can be attributed to the fact that land reform has been done through a top-down approach. A feature of this approach is that there is not a real effort for meaningful transformation of social relations, rather a market oriented transfer of property (Brandt, 2018).

6. Land Reform from Below

6.1. Land Occupation

Published in the early 2000s, *'Reclaiming the Land'*, edited by Sam Moyo and Paris Yeros (2005) speaks to socio-economic change in the countryside of the Global South which is characterised by a deterioration of the livelihoods of the rural poor in the context of post-structural adjustment plans. The contributors to this book create comparisons of rural socio-economic change and the resulting movements emerging across Africa, Asia and Latin America. They argue that in these regions, neoliberalism and globalisation are a driving force behind the vulnerability of the livelihoods of those in the country-sides and shantytowns of the

periphery and are also behind the weakness and disarray of the social forces in opposition. Thus, the strategies and tactics of those most brutally affected by these issues are an important point of analysis. Most of these movements are seeking land redistribution by means of land occupations, but also opting for armed struggle either for constitutional reform and regional autonomy (e.g. the Zapatistas), or for larger-scale national democratic transformation at the level of the state. Moyo and Yeros (2005) argue that despite ongoing problems of mobilisation and political articulation, and under the most oppressive of circumstances, rural movements today constitute the core nucleus of opposition to neoliberalism and the most important sources of democratic transformation in national and international politics. What follows are three cases of land occupation offered in this book which are important to understand the role of rural movements in land reform.

Land Occupations in Latin America:

Veltmeyer (2005): There have been three pathways to land reform in Latin America: state-led reform (the state was the main instrument in driving market oriented land reform which dispossessed workers and peasants), market-assisted reform (promoting land markets to improve access by the poor to productive resources) and grassroots land reform (through occupation). Land occupations in the Latin American context can be understood as the ongoing class struggle in the countryside. They are part of a broader land reform strategy that requires direct action and forms part of the global struggle against capitalism and neoliberalism. “The peasantry” remains a significant factor of social and political change in rural society.

Land Occupations in Asia:

Filomeno (2005) states that Asia has seen some of the most dramatic episodes of land redistribution in the twentieth century. However, they argue, struggles over rural land continue to wage in many places.

Pimple and Sethi (2005) argue that land occupations in India have been less organised and smaller in scale. The legal and institutional mechanisms regarding land are designed to deprive the majority of land. The notion of land redistribution challenges the existing structures. Therefore, any programme of redistribution requires the support and organization of social movements. The current rule of law privileges elite control of land rather than the right to land. In India, an agrarian society, land does not merely have economic and political significance but is the basis for a person’s sense of belonging in a community. The emerging alliance

between landless movement in India and the MST in Brazil as well as La Via Campesina shows that there is hope for a global solidarity.

Land Occupations in South Africa:

Sihlohongyane (2005) argues that land occupations in South Africa are intertwined with racial politics. They are associated with political strife, disorder and administrative failure of blacks. They are referred to as “land invasions” “seizures” or “squatting”, a racist concept that sought to delegitimise efforts to acquire land. Sihlohongyane (2005) describes a number of post-Apartheid grassroots movements that demand land. He claims that the major issues in the land struggle are three-fold. Firstly, he argues that the nature of the struggle for land is defensive and reactive, having lost the support of civic organisations, labour and students it had in the 1980s. Secondly, the struggle for land has moved away from traditional unions and electoral politics and is driven by communities who are directly affected by land issues. The problem is that these communities have relations with the anti-globalisation movement from which it draws financial and technical support but not ideological and this results in an ideological vacuum since a large number of these people are illiterate. Lastly, he argues that the struggle for land is highly fragmented. He argues that while movements do have points of convergence, especially against the destructive forces of neoliberalism, their differences in approach, strength and attitude towards one another suggests that they have a considerable way to go before they find the unity needed to fight their common enemy.

A current contra-example to Sihlohongyane’s argument is the Abahlali baseMjondolo (Shack Dwellers) movement. With a membership of 44 294 people in 47 branches, Abahlali is a shack dwellers’ movement well-known for its campaigning against evictions and public housing. The movement describes itself as “a homemade politics that everyone can understand and find a home in” and stresses that it moves from the lived experience of the poor to create a politics that is both intellectual and actional. Its philosophy has been sketched out in a number of articles and interviews. The key ideas are those of a politics of the poor, a living politics and a people's politics. A politics of the poor is understood to mean a politics that is conducted by the poor and for the poor in a manner that enables the poor to be active participants in the struggles conducted in their name (Abahlali baseMjondolo, 2010).

The movement started in Durban but now operates in Pietermaritzburg and Cape Town. They are argued by some, to be one of the most effective groupings in civil society along with the TAC. The movement has suffered continued violent repression, including armed and violent

evictions from the ANC in eThekweni municipality. On the 22nd of May 2018, one of its leaders, S’fiso Ngcobo was shot and killed by an unknown group of men in an apparent assassination. Incidents like this are not new to members of the movement (Abahlali baseMjondolo, 2018).

They believe that “the social value of land must come before its commercial value. Occupation, which is expropriation from below, is the organised decommodification of land. Corruption that results in the selling of land and housing, whether from above or below, is the informal recommodification of land” (Abahlali baseMjondolo, 2018).

Other types of land struggles in South Africa include:

Extractivism (Mining)	<p>The Xolobeni community in the Eastern Cape has been fighting against the proposed open cast mining of titanium on their land since the early 2000s. The community has formed the Amadiba Crisis Committee who is taking the matter forward. The community members reasonably fear that mining will result in displacement from their land and homes and the loss of communal resources on which they depend to survive. Their demands include that the right to mine not be granted until the landowners have consented and that if rights are granted, that the community be fairly compensated by the mining company. The Department of Mineral Resources has stated that as per the Mineral and Petroleum Resources Act, the state is a custodian of all minerals in the country and may grant anyone with a license, rights to mine the area. (African News Agency, 2018).</p>
Commercialisation	<p>SA has about 350 large public dams out of around 4000 dams in total, the rest of which are privately owned dams. In addition, 67% of South African land is allocated to commercial farming.</p> <p>As previously mentioned, processes of privatisation and commercialisation (land-grabbing) of land and water resources in South Africa are contributing to the increasingly precarious livelihoods of black South Africans, particularly women. What is interesting is that although the conceptualisation of “land-grabbing” across global</p>

	<p>discourse refers to commercialisation and privatisation of land and natural resources, South African mainstream media refers to land-grabbing as “groups of landless or homeless people who erect shacks on empty pieces of land – land that is unused, and seemingly available, but actually belongs to someone else, or the state” (Evans, 2018, <i>Huffington Post</i>).</p> <p>Cape Town Water Crisis Coalition – comprising over 70 organisations, the Water Crisis coalition arranged a protest against the way the water/drought crisis has been handled by the state. One of the key calls from protestors was that water privatisation needs to end and the springs be open for all. (Petersen, 2018)</p>
Pollution	<p>Wentworth, Merebank, Lamontville, Glebelands communities, South Durban – research conducted in the city correlates high levels of cancer from pollution from an Engen refinery. Communities protested for a more just treatment from Engen and a youth training centre as well as a 24-hour clinic. (Newman, 2018)</p>
Livelihoods	<p>Rural Western Cape – there has been an upsurge of violent protests and land grabs in this region (Hermanus, Riebeek Kasteel, Botrivier). These protests are a response to the vulnerable livelihoods of those in these areas who suffer from extremely poor access to services. There is a rise in protests near election time because people feel that their demands will be taken seriously. This will continue as elections draw near (Felix, 2018).</p> <p>The situation has been exacerbated by the most recent trends in agriculture that focus on deregulation and global competition through mechanisation (Loate, 2015). This has caused an increase in rural unemployment and evictions and as a result, the rise of new informal settlements and increased pressure on the state to provide basic services (Loate, 2015).</p>

6.2. Role of NGOs

The land issue is one that has many interest groups, one of them being NGOs and various movements who have made an impact. James (2000) highlights the role of NGOs in land claims in South Africa by saying that they often place emphasis on the communal nature of land and its importance in African culture, and by outlining this they assist communities to acquire land. One example of this is the Transvaal Rural Action Committee which was established as a land NGO whose aim was to defend African land ownership. This then led to a bigger organisation being formed, the National Land Committee which supported reclamation of land (James, 2000). The NLC was responsible for the establishment of the Southern African Network on Land which was created to ensure coordination and cooperation within the land and rural development sector (Sihlohongyane, 2005). This network was seen as a hub to share experiences and expertise on a national as well as a regional level. It led to international collaboration which saw the development of the Landless People's Charter at a United Nations conference in Durban, 2001 and many other collaborations with international NGOs.

Sihlohongyane (2005) states that these networks can best be described as “loose constellations of left-leaning community-based social movements” (p.157) who vary in focus and size but have a common goal to help the poor and stand up against hierarchies, bureaucracies and corporate power. Within the struggle for land in South Africa, uncertainty in the relations between social movements and NGOs remains an issue. Complex issues of objectives, political imperatives and ideology exacerbate this issue where the question remains whether to operate outside of or within the government framework and where white-led NGOs seek to champion the needs of the black majority. Sihlohongyane (2005) argues that the Landless People's Movement has promise because it provides a good basis for solidarity and getting different people involved in land reform.

Writing in 2014, Rosa shows that this enthusiasm for the Landless People's Movement from Sihlohongyane (2005) was shared by many activists and academics but was quickly followed by a subsequent disillusionment of the movement shortly after 2005. When the LPM was founded in 2001, it attempted to create national solidarity for the “landless” i.e. those who did not have an historical link to land, through a grassroots movement. While showing promise in this respect, it did not have the organisational building blocks to determine how a national council would operate and failed to gain the membership of the landless. Another argument is

that the role of NGOs in influencing the direction taken by the LPM, has created a leadership that is characterised by a “middle-class intelligentsia”.

The resulting LPM and NLC has become ten NGOs split across the provinces, still failing to create a sustainable means of national solidarity. What it has become is a hybrid between party-like, hierarchical organisational structure and an agglomeration of grassroots struggles. However, Rosa (2015) argues that we should not jump the conclusion that the movement is dead or merely a “middle-class intelligentsia”, but we should rather ask the question of how these NGOs were rallied by the landless to form the NLC in the first place and investigate the “modest gatherings” of those still present in the grassroots struggle. The difference between NGOs and grassroots movements must be actively produced so that the role of each of these can be effectively utilised for the re-scaling of the movement (Rosa, 2015).

Alternatives

Commons

Theory

The “commons” is one concept which some authors present as an alternative to current approaches to land use. Federici (2011) does work on the theory of the commons, and how it is an emerging concept for the radical left. She sees the commons as something which appeals to a number of ideologies including Marxists, socialists, ecologists and eco-feminists. Huron (2017) outlines two ways in which the commons are talked about. Firstly, there are those who study the commons as common resources which people manage collectively with no constraints or imperatives from the state or the market. There are also those who study the commons as a political tool through the lens of capitalism. The first group mainly looks at the use of the commons in rural areas, but Huron (2017) sees the need for more theorising of the urban commons, because this is where she sees the world moving toward. The authors which Huron (2017) draws her arguments from, see the commons as made up of three main aspects; these are the resources themselves, the institutions which regulate the resources and finally the communities which uphold the institutions. Firstly, Huron (2017) defines the urban as being different to the city in that the ‘urban’ is defined by its connectivity whereas the city is simply the place. Bakker (2007) argues that the commons can be advocated for in order to further conservation efforts. Those authors see conservation as something to be achieved through the

deepening of collective approaches and solidarity. She uses the example of water management to illustrate how the commons approach can be helpful. The three main factors are; with community solidarity, water management can be done and be unaffected by the failures of the state and the market, with community involvement, water will be managed in a cultural and spiritually appropriate way which would not be guaranteed when left up to private companies and finally that water mismanagement affects the community first, therefore its protection should be left up to the community.

Federici (2011) adds that even though the origins of the term appeal to the Left, it has been appropriated by international institutions such as the World Bank and the United Nations to be used as a justification for privatisation. Often in the name of ‘conservation’ these institutions have taken land from indigenous peoples, and turned these spaces into reserves which generate profit through eco-tourism. She further cautions the left against defining the commons in such a way that can be used by what she calls the “crisis-ridden capitalist class” (p.3). In addition to her critique of the use of the term the commons, Federici (2011) also provides a very important aspect to the discussions of the commons, a feminist perspective. Initially, it must be recognised that in most communities, women are the primary dependents on natural resources, as they are usually the ones taking part in the reproductive work. Federici (2011) provides a number of instances where women were the primary defenders of the land throughout history, from the onset of capitalism to current projects of neoliberal privatisation; women have been at the frontline of struggle to protect natural resources. Across the world, women are providing alternatives such as in Africa where women have established banking systems as an alternative to the microcredit system which were introduced by the World Bank. Federici (2011) points out that if we are to look to the commons as a viable alternative, we must be prepared to recognise the role of women and their work with the land. It would also require a change in everyday life in an attempt to achieve social cohesion. It would mean confronting systems such as globalisation which have separated the producer from the consumer even more. Essentially, Federici (2011) sees the success of the commons as based on humans relying on the ideas of community and collectivisation, while opposing any projects which call for privatisation and systems which are built on the suffering of others.

Limitations of the Commons

The most prominent tensions around the urban commons that Huron (2017) points out is the conflict between openness and exclusion. In a theoretical sense, the idea of commons is inclusive, and because it is defined by its usage by all, in a collective manner many theorists

believe that it cannot exclude. However, Huron (2017) challenges this by saying that this might be true at a larger scale but when the argument is scaled down, one cannot ignore the boundaries which are negotiated. If this is interrogated, it begins to question who the commons then actually belongs to, is it to those who directly use it, or is it for the larger community, of which many may never even use it, but may still benefit from its use indirectly. Some authors which Huron (2017) looks at, attempt to answer this question by saying that those using the commons have a responsibility to use the commons in a way that still provides for future, unknown users.

Federici (2011) speaks about the failures of the Left to recognise struggles around defending the commons in various spheres, and its failure to unite these struggles to create a new mode of production.

South Africa

The idea of the commons is also something that South African authors have picked up on, and have applied to the case of South African land issues. Hall and Cousins (2013) argue that in order to form policies which are able to address rural poverty and inequality, the potential of livestock production on the commons as a robust form of property and production capable of supporting diversified agricultural livelihoods must be considered. Rangeland commons have traditionally been restricted to ex-Bantustans or “coloured reserves” and commonages around rural towns. However, through land redistribution processes there has been purchasing and transferring of commercial farm land to beneficiary groups whose land use practices are that of common property. They argue that South Africa’s land reform policy has focused on commercial cropland and livestock farming rather than commons which is a result of gender and class bias which has hampered women and the rural poor from opportunities to expand their livestock assets. According to Hall and Cousins (2013), rangeland commons can be used as a tool to address increased levels of social differentiation and the “livestock Gini”. There are three main points that these authors mention as being important. Firstly, that land reform needs to target certain areas such as extending commonages, decongesting communal areas and enabling access to diverse habitats to create livestock resilience for local farmers. Secondly, that institutions that deal with the rangeland commons management need to be strengthened in order to avoid these areas being captured by the elite. This should be done by drawing on existing institutions instead of on a business model. Lastly, that more appropriate common property management systems should be introduced, learning from local institutions is a key factor in this.

Food Sovereignty

Theory (Agroecology)

Woodhouse (2010) looks at the downfalls associated with taking an industrial agriculture approach to sustainability. He argues that although industrial agriculture provides more food, which is in line with population growth, there are massive costs associated with it. It also adds that the aggregate production of food is over the demand and these measures do not take into account access to that production. Another downfall is that there is an increased use of biochemical tools and machinery being used to farm, which are all linked to industrial development. This industrial form of agriculture has a negative impact on the environment such as water contamination, decrease in biodiversity and carbon emissions. Furthermore, in drier climates, these industrial forms of agriculture result in a depletion of groundwater and salination of the soil.

He argues that agriculture needs to move toward an approach which prioritises small scale farming, and presents this as another alternative to current land uses. Woodhouse (2010) outlines two sides to the debate around agriculture, one being the idea of an energy efficient, highly mechanised system, and on the other hand a more labour-intensive form of farming created through new forms of peasantries. He argues that small scale farms are more desirable because they can implement sustainable practices as well as give food security to the most vulnerable. Along with the call for small scale farming, Woodhouse (2010) calls for redistributive land reform and a food sovereignty model. The argument for small scale farming is that there is abundant labour and decreased availability of capital and land. Another argument in favour of small scale farming is that climate change mitigation strategies would be more suitable and effective with small scale farming, such as using farm waste as organic fertiliser. Rosset *et al* (2011) agree with this and add that small-scale farm production does not damage the environment or human health, as it does not rely on toxic chemicals or GMOs, and it can restore the lost productivity of degraded soils and agroecosystems. Small scale farms would also be less affected by rising and fluctuating fuel prices than large scale farms (Woodhouse, 2010).

Rosset *et al.* (2011) agree that small scale farming is a sustainable use of land, and they go further by introducing the approach of agroecology. This is something that NGOs and local farmers prescribe to, and can be defined as farming practices which draw on principles from biology. The main principles are: paying attention to nutrient flows; using mulch and organic

matter to ensure healthy soil; system designs which are closed, avoiding nutrient loss; encouraging diversity of species and the promotion of regeneration and pest control without the use of external sources. Another helpful factor within agroecology is that it calls for these principles to be followed in accordance with local situations. Because of this need for context specific practices, indigenous knowledge becomes important. This centers the local farmers because they know how to implement practices which are appropriate for their local conditions. Additionally, if one is to compare conventional monoculture to agroecological practices, agroecology is more productive “per unit area, per unit of labour, and per unit of investment” (p.188). Finally, these authors point out that agroecological practices are more resilient to global economic or political shocks because it is not dependent on international imports.

Other authors such as Altieri *et al* (2012) argue for an agroecological development paradigm based on the revitalisation of small farms which emphasises diversity, synergy, recycling and integration, and social processes that value community participation and empowerment. They also argue for the scaling up of agroecology which has been successful not only on the production output front but also in community development, human capital enhancement and better use of local resources.

Federici (2011), in the context of the commons as well as urban farming speaks to the social impact of such projects. She sees the spaces of urban farms as not only an opportunity to control local food systems and environmental advantages, but is also a space to socialize, interact in different ways of knowledge production and cultural exchange. It has been said of urban gardens in New York that they “strengthen community cohesion” (p.4). She also highlights the point which is shared by other authors that these spaces are particularly significant because they produce food for local communities instead of on a commercial scale.

Possible Challenges to Agroecology

Rosset *et al.* (2011), speak about the challenges to agroecology as:

- Finance
- Achieving gender equality
- Getting policies, which support agroecology and movements for food sovereignty.

International Examples

There are successes of these systems which have been proven in various countries around the world, often as a response to the failure of the dominant systems to provide for its people.

Cuba:

Altieri *et al.* (2012) speak about how after the collapse of the Soviet Union and the US trade embargo, Cuba was unable to import food or materials needed for agriculture. Woodhouse (2010) adds to this by pointing out that during this time there was a drop-in export value, meaning the government had a difficult time importing oil. Rosset *et al.* (2011) contextualises this by highlighting the fact that before the revolution in 1959, Cuba had a high level of US capital, repressed peasantry and production of sugar for export. Rosset *et al.* (2011) adds that this high level of imports resulted in Cuba having high food security, but no food sovereignty. Altieri *et al.* (2012) touches on the attempts by the people of Cuba who are involved in attempts to reach food sovereignty. Over 100 000 small-scale farmer families practice agroecological methods and produce 65% of the country's food on 25% of the land. As this process advances, urban agriculture has also grown with 50 000 hectares of otherwise unused land being used for producing food. Along with the social effort, Woodhouse (2010) points out that there was also support from the government where Cuba sought to increase productivity on farms by encouraging labour and reducing scale of production. The labour was encouraged through better conditions and wages. They then also broke the larger farms up and allowed worker cooperatives to rent equipment from the state. The government also opened up any unused land in the country both in the rural and urban areas for farming. Altieri *et al.* (2012) believe that today, Cuba exhibits the highest indexes of sustainability, productivity and resilience. Woodhouse (2010) joins them in looking at Cuba as a good example of sustainable land use. He sees Cuba an example that proves that with the adequate support it is possible for small scale farming to meet the needs of the people, and can also be environmentally advantageous. There is a possibility that producing food in this way will allow for healthier foods to be sold and consumed in ways that avoid the exploitative exchange that occurs on the global market.

Brazil:

The industrial agricultural model imposed by the agricultural elite in Brazil has had dire consequences on food security, urban unemployment and suffering of the rural poor. This has led to various social responses in the form of innovative projects which are centred on decentralised agroecology in rural communities. The result has contributed significantly to the

livelihoods of local populations on a sustainable basis. The potential increase in the production of grain in Southern Brazil was 170 000 tons which contributed to an increase of over \$500 to the annual incomes of farming families (Altieri *et al.*, 2012).

Philippines:

What is considered the largest study undertaken on sustainable agriculture in Asia, analysed the MASIPAG, a network of small-scale farmers in the Philippines. They found that farmers who practiced agroecological organic farming produced over 50% more crops than conventional farmers. These farmers have become more food secure, are eating an increasingly diverse diet, are producing a more diverse range of crops and are experiencing better health outcomes (Altieri *et al.*, 2012).

Mexico:

Eakin *et al.* (2014) look into the case of Mexico and start by pointing out that agriculture in developing countries is still separated into a dual structure. In Mexico, the small scale campesino farmers still work together with the large scale commercial farms. In these communities there is now emphasis being put on agriculture in the face of high poverty rates and hunger and food insecurity. There are campaigns which are pushing agriculture as a tool that can be used to help alleviate poverty. Mexico's main agricultural export is maize, and a recent census revealed that there are more than 2.8 million maize farmers. In Mexico, after the revolution in 1910, there was an attempt at land distribution. The late 1930s saw a time of redistribution, focusing on large scale farms, because that is what was believed to be able to contribute to the development of the country. By the 1960s there was a dual agricultural sector, marginalising those within the system who were intended to benefit from the land reform and agricultural policies. The 1970s brought change, as the government saw the need to support small scale farmers, this was done through initiatives which supplied credit, seed, fertilisers and some technical assistance to help these farms trade in the commercial market, this approach was successful until the debt crisis of the 1980s which ended a lot of these initiatives. In the 1990s, policy shifted in favour of agribusiness and mechanisation, as small-scale farming was not seen as a viable option in a world with increased trade. In 1992, there was an amendment to the constitution which changed the way that land was owned, this created a system where land was either privately owned or socially owned. Eakin *et al* (2014) argue that even the face of a highly neoliberal society, with a lot of emphasis being placed on open markets and international trade by the government the persistence of the campesino production of maize in

Mexico is a testament to the resilience of small holding farms, and their ability to adapt under increasingly hostile conditions.

South Africa

Hall (2004) deepens her study by being critical of existing systems before presenting agroecology as an alternative. She argues that the first democratic administration in South Africa had the aim of addressing inequality, by attempting to alter the racial make-up of farm ownership in the country, but this neglected the overall flaws of the current agrarian system and the need for a complete overhaul of the agrarian regime. The article points out that the current agrarian system in South Africa is one which is dualistic in nature. On one hand, there is a sector which is characterised by wealthy and white owned farms which have the capacity to produce large yields and are locked into the global market. The other sector that exists in this dual system is one with majority black farmers in the rural areas who lack funding and are taking part in subsistence farming and hard labour. With this, Hall (2004) illustrated the very way in which racism and capitalism can complement each other. Aliber and Cousins (2013) also talk about the dual agricultural structure. They add that the white owned large farms add up to around 35 000, and they produce most of what is sold. Additionally, these authors add that it is around 5% of those commercial farmers who are in possession of almost half of the aggregate gross farm income. Furthermore, Aliber and Cousins (2013) highlight and agree with Hall (2004) with regard to the fact that the post-Apartheid government has not done enough to address this disparity and the dual system.

According to Aliber and Cousins (2013) the biggest issue in the South African context is the continued support by the government for the large scale commercial farming model. These authors see the LSCF model as not in tune with current South African socioeconomic needs, and as yielding less than significant result when it does work. In some cases, like in Namibia this commitment to large scale farming has resulted in a top down approach to business (Aliber and Cousins 2013).

Agroecology is something that South African authors have written on. Brooks (2017) studies and explores the nexus between climate change, cultivation and food security in two rural villages in the Eastern Cape. The study found that although there has been a decline in agricultural production in rural areas, over 50% of people in these two communities are cultivating food in their own homes to save money. In addition, although people in these

communities were negatively affected by climate change and had knowledge of this, their major issues regarding their own food production were a lack of capital and proper fencing. Brooks (2017) argues that own food production and food security is complex and understanding these complexities are essential for creating robust rural development policies.

Gilmore and Chasomeris (2015) present the case of a small-scale farmer project in South Africa – Umbumbulu Agri-Hub in eThekweni municipality. Areas within this rural municipality were characterised by poor economic and living conditions, low service delivery and a potential to erode natural asset resources. Rural Agriculture Services and Marketing Hub at Umbumbulu: handling of produce and its delivery to the hub; cleaning and grading produce; marketing of produce; transport to markets; sale of agricultural inputs and packaging materials; provision of technical support. It is characterised by a decentralised, out-sourced and demand driven and participatory methods with extension officers and farmers who learn together and share knowledge. It is run as a hierarchical system of management, with the upper tier centers run by government that provide finance, research, training and policy for lower tiers which provide direct services to farmers and are run by NGOs and FBOs. It is managed by an NGO called Partner Farmer who focus on both subsistence and semi-commercial farmers. According to Gilmore and Chasomeris (2015), it has had an impact on the farmers because they benefit from this process. Their food security and operations have improved overall (90%). It has been successfully operated and provides sustainable extension services. The Umbumbulu Agrihub project is an example of one of the ways in which local government can provide support for small-scale farmers in precarious living conditions which has some participatory methods. However, its management system is hierarchical in nature and it is neither agroecological in practice nor democratic in terms of how the produce is sold and handled. It is therefore not an example of food sovereignty but merely an instance of how small-scale farming can be improved and supported by local governments and industry.

Participatory Land Audits

Currently, there is a lack of reliable and extensive land audits that have been done in South Africa. There is a need for an alternative approach to land assessment, which takes on a more participatory nature in order to address inequality in an integrated manner i.e. a participatory land audit which would be similar to the Participatory Guarantee System and Social Audit. One alternative is what Loconto and Hatanaka (2017) write about, which are the issues associated

with how sustainability is measured. In most neoliberal states, the government is more inclined to use standards of certification for producers, as well as to measure and assess sustainability through scientific methods. This is often done in a way which is very exclusionary and is left up to experts, which also means that these methods often prioritise technical and scientific knowledge. An approach like this, according to Loconto and Hatanaka (2017) tend to marginalise groups who are part of sustainable governance. These authors look at the Participatory Guarantee System (PGS) as an alternative to who these audits are currently being conducted. PGS were first used in France and Japan in the 1970s and are a way to involve experiential knowledge in the governing of sustainability. Loconto and Hatanaka (2017) see it as a vital part of governance for governments to create models which promote collaboration with various stakeholders. PGS usually work as networks which are established with communities, these networks include famers, experts, government officials, food producers and consumers. These networks work in a participatory manner and rely upon mutual trust and knowledge exchange between stakeholders. Producers are then certified by the network, based on their involvement with the network. The PGS promotes local exchange of food between local consumers and producers, while also exchanging knowledge about local methods of growing food in an organic and sustainable manner, essentially this is the purpose of a PGS, to create a direct guarantee. The networks then go on to measure and assess their sustainability through various methods. Although there are different interpretations of this method across various local communities, at its core, this method empowers communities through self-governance.

This idea of empowering communities by encouraging them to self-govern is also something that the Ndifuna Ukwazi (2015) group along with a number of other social justice groups shares. They illustrated this by putting together a social audits guide, in this guide they outline how to conduct social audits, as well as why they are necessary. The methods used in South African social audits are taken from those established by the Association for the empowerment of workers and peasants in Rajasthan, India in 1990. According to Ndifuna Ukwazi (2015) the inequality in South Africa is the main factor as to why social audits should take place. Many South Africans live in poverty, exposed to violent crimes and subjected to conditions which are undignified such as shared sanitation facilities as well as low levels of service delivery. there is also a high level of unaccountability and detachment by those who are providing some services, either government or private companies. Ndifuna Ukwazi (2015) points out that despite these realities, it is enshrined in the constitution of South Africa that all South Africans

have the right to participate in political decisions and have the right to be responded to, under section 195. There is a failure from government at all levels to create platforms for communities to have their opinions taken seriously, the extent of participation by the community to that they are met with to be informed about decisions already been made. Social Audits provide an opportunity for communities to engage the government on issues that concern them in a truly participatory manner, and have the potential to significantly improve service delivery. Ndifuna Ukwazi (2015) sees this as a tool for public participation and an essential part of democracy.

A social audit is process whereby communities verify and review government, or private documents such as budgets, laws or policies which pertain to their chosen topic. They do this by looking at the documents and comparing those imperatives with the realities felt by community members, and presenting these findings at a public hearing where the testimony, knowledge and experience of communities are taken seriously. The gathering of evidence of their own realities is what Ndifuna Ukwazi (2015) sees as the factor that makes these audits truly participatory and empowering for marginalised groups. The Ndifuna Ukwazi (2015) points out three main differences between social audits and financial audits. Firstly, financial audits compare various documents to make sure there are no financial discrepancies, whereas social audits compare documents to reality to see if the implementation of policies and laws have been achieved. Second, financial audits are conducted by the government, and social audits are conducted by communities themselves. Lastly, Ndifuna Ukwazi (2015) sees social audits as having accountability a part of the process, in opposition to financial audits which merely report on discrepancy without accountability.

Ndifuna Ukwazi (2015) provides a guideline for how social audits should take place. Firstly, community leaders must be communicated with in order to establish legitimacy and support in the community. Then, those who wish to conduct an audit need to work with the community in order to find out what issue needs to be audited, this is then followed by the acquisition of government documents which are relevant to that specific issue. It is also important to identify the geographical area of the audit, many are done in rural villages. Following this it is up to the core group to mobilise community members and make connections with government officials. Once the preparations have been made, the audit is conducted by interviewing and recording community experiences.

Conclusion

Land has always been a contested issue. The Land & Accountability Research Centre (2016) point this out by stating that throughout the history of South Africa, colonial expansion has been characterised by the growth of white-controlled areas, established through the dispossession of Africans of their land. In an attempt to critically engage with the land issue, in a South African context this literature review has grappled with literature from a number of themes, specifically into three main sections, namely history, land reform and alternatives. In order to contextualise the contestations around land, this literature review begins with a history section of how land has been threatened and defended throughout history including colonial and apartheid land laws and regulations. The second section goes on to engage with the constitution's stance on land reform and subsequent laws and policies which have been put into place to try and address inequality through land reform. In this section there is a focus on the three pillars of land reform: land redistribution, land restitution and tenure reform. The authors in this section are also critical of the implementation of land reform in South Africa, and deal with key factors in the land issue such as women's rights and questions around customary law with regard for communal land. In an ever-changing world, and an urbanising world, it is also important that there is an engagement with land reform in the urban context, also included in this section. This section also explores papers by authors who are concerned with the shrinking power of states and the rise of neoliberalism, particularly how this affects the government's ability to deliver on their land reform promises. Given that there is a challenge which governments face when delivering, the next part of this section looks at various projects of land reform from below. This includes a number of cases of land occupation across the world by marginalised peoples who are facing landlessness and inequality, from Latin America, to India, to South Africa. Along with the land occupations, this section also touches on the role that NGOs have been playing in the land issue. The third theme of this literature review then deals with authors who have presented alternatives to current land uses and approaches to land reform and land assessments. This deals with the concepts of the Commons and Food Sovereignty through small scale farming. This section of the literature review deals with authors who speak to the theory of these concepts as well as case studies of both international and South African relevance. This section also deals with participatory auditing systems and includes a guide to conducting social audits in communities. Finally, this literature review provides possible limitations and challenges to the alternatives provided by

various authors. These themes, at their convergence can be very helpful in looking at the land issue in a nuanced way.

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