UMHLABA Wethu 12

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A bulletin tracking land reform in South Africa

PLAAS
Institute for Poverty, Land and Agrarian Studies
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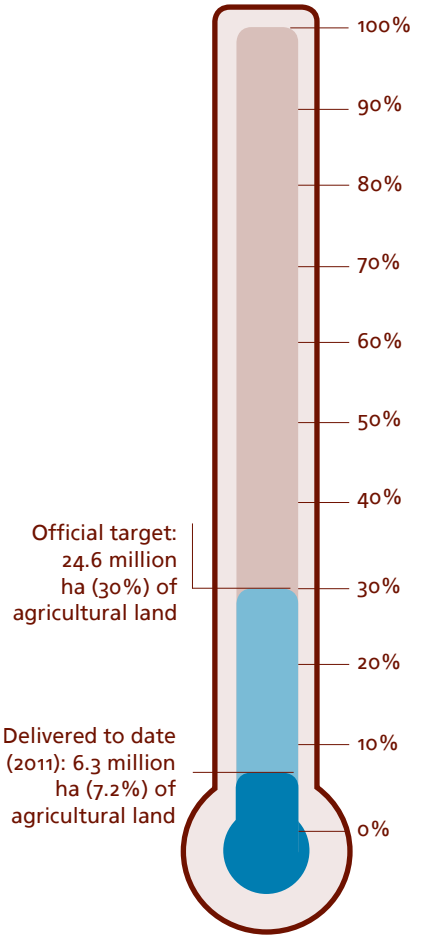
In this edition

In this edition we describe a civil society workshop convened by the Foundation for Human Rights (FHR) and the Institute for Poverty, Land and Agrarian Studies (PLAAS) entitled 'Re-thinking Rural Transformation in South Africa. Strategic Civil Society Engagement in Rural Transformation in South Africa', look at land reform statistics and provide an analysis of the Spatial Planning and Land Use Management Bill.

We also pay tribute to the work that was done by Kobus Pienaar – a land rights advocate and brilliant legal mind who worked tirelessly to make the provisions of the South African Constitution tangible for rural communities. The communities that he served also tell the stories of their journeys with Kobus to substantive rights.

Two years into the Zuma administration, which promised to deliver on land reform, agrarian transformation, rural development and approaches that were more people-centred, a number of policy processes have been on-going internally in the Department of Rural Development and Land Reform (DRDLR). However, very little interactive public policy engagement is taking place, and barely any negotiations and consultation with civil society in which substantial engagements in current agrarian policy-making are able to take place, are visible. Additional and meaningful platforms are needed in order for civil society and rural communities to be able to engage in the kinds of in-depth content-oriented discussions that can feed into policy.

Land Barometer



Source: DLDLR, March 2011

Rethinking Rural Transformation in South Africa: Strategic Civil Society Engagement in Rural Transformation

Earlier in 2011, The Foundation for Human Rights (FHR) and the Institute for Poverty, Land and Agrarian Studies (PLAAS) convened a civil society workshop to discuss new strategies of engagement, create platforms for new thinking on complex and contested land and related issues, and to contribute to more inclusive, open and participatory policy processes on rural transformation in South Africa. The substantive message from this workshop was clear: civil society has been systematically marginalised; not enough information is circulating for them to engage meaningfully in policy processes. the need for inclusive, participatory and transparent processes for developing a vision for the South African countryside and agricultural sector ; and for further analysis to develop a theoretical model for rural development.

The key issues for engagement included: the agri-food complex and protection of rights, the Land Tenure Security Bill, communal land rights and Communal Land Rights Act (CLARA), the Black Administration Act, the impact of mining on rural rights and the

more than 4 000 land entities identified as being in need of 'fixing' through recapitalization.

A number of critical questions were discussed:

- How do we address these issues in the limited interactive spaces for policy engagement?
- How do ensure spaces for engagement are broadened?
- How do we ensure rural voices are heard in policy developments?
- How do we support and facilitate a platform where rural communities can actively engage with, and make meaningful contributions when policy proposals affecting them are clarified and debated?

The workshop closed by underlining the importance of wider consultation and broader rural citizen participation in crafting a vision for rural development.

Karin Kleinbooi, Editor

Land reform statistics and analysis

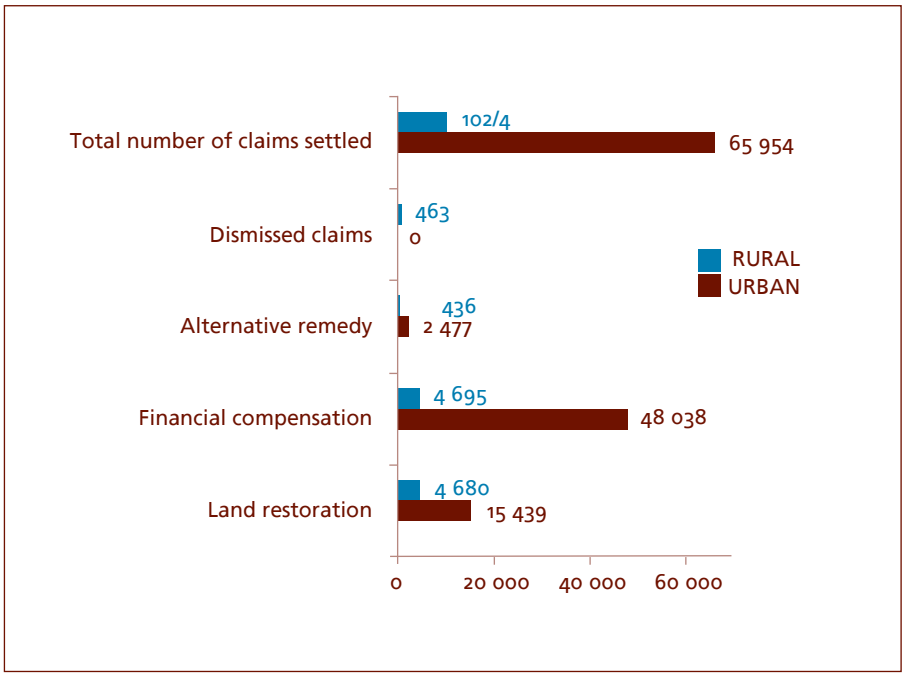
Table 1: Land claims to be finalised - February 2011

No. Of claims Lodged	Claims gazetted	Settled claims Finalised	Claims still to be Finalised	Claims to be researched
79 696	76 023	57 726	18 297	3 673

Source: DRDLR 2011-2014 Strategic plan

- The table above and the graph below provide the officially reported current state of restitution and demonstrate some discrepancies in the data.
- Since its inception, the Commission on Restitution of Land Rights has approved and gazetted about 95,4% of the claims out of the 79 696 claims lodged.
- Of those, about 72.4% of claims have been processed and finalised.
- Over and above the outstanding claims, the estimated 18 297 claims that have been approved (committed), still need to be finalised, transferred and paid for.
- The remaining outstanding claims are all rural claims.

Graph 1: Settled restitution claims – March 2011



Source: DRDLR, Chief Directorate: Planning, Monitoring and Evaluation

- By March 2011 the Commission reported 76 228 claims had been settled.
- Evidently the majority of urban claims were settled through financial compensation.
- Over 460 rural claims were dismissed
- The graph illustrates that far fewer rural than urban claims have been settled with the transfer of land.
- The most recent statistics (as at 31 March 2010, see Umhlaba Wethu 10) show that 3 850 rural claims were still outstanding while the table above lists 3 673 claims are still to be researched. The likelihood is that these may all be outstanding rural claims.

Land use management and land reform: unanswered questions

Spatial Planning and Land Use Management 2011 draft Bill

The Spatial Planning and Land Use Management 2011 draft Bill was drafted by the Department of Rural Development and Land Reform and published for comment in the Government Gazette No 34 270. It was heralded as an important milestone for both the department, and the national planning commission in supporting development (rural development being claimed as government's third most important priority). But it has been a disappointment: it does not assist in making land reform work and instead, passes the buck to the provinces and municipalities.

Like the department's draft Land Tenure Security Bill of December 2010 and the draft policy on the Expropriation Bill, this draft has not been discussed with stakeholders. A lot of work must still be done on the drafts, and the question is: When is the department going to start involving the affected constituencies in drafting laws?

The Communal Land Rights Act of 2004, championed by a previous minister of land affairs and passed by a previous parliament was declared unconstitutional. Work on a new tenure law for communal areas and the former homelands, and the necessary public participation in such a process has not even started. In the meantime the extraordinary governmental powers of traditional leaders are being strengthened - and not only in name. The Department of Justice is persisting with the contentious Traditional Courts Bill and is not prepared to withdraw and rewrite it.

Meanwhile, the Department of Traditional Affairs has starting consolidating the Traditional Leadership and Governance Framework Act, 2003 and the National House of Traditional Leaders Act, 2009 into a single piece of legislation. This has resulted in the drafting of the National Traditional Affairs Bill which will ensure an integrated approach to dealing with matters relating to traditional affairs. On 31 May 2011 the acting Minister of Cooperative Government and Traditional Affairs (CoGTA), Minister Mthwethwa, announced the 'National Traditional Affairs Bill' in his budget vote statement. This bill will be introduced in the current parliamentary season 'with the intent of removing all obstacles that hinder service delivery. Minister Mthwethwa said that

> Traditional leadership institutions … have identified land suitable for industrial and agricultural purposes in rural areas and pilots are already being rolled out in… KZN, Limpopo and the Eastern Cape… CoGTA will be working closely with municipalities and traditional leaders to release the land for development.

Given the obvious policy connection between the above mentioned two Bills, it begs the question as to whether the two departments compared their two drafts and considered whether a new land use management statute would be overridden by new law made by, and for chiefs.

Rationalising and aligning the three spheres of government for land use development and plannning

Municipal incapacity

On the 11 August 2008, Kobus Pienaar made significant contributions to the Land Use Management Bill (as it was named at the time) public debate and his arguments still hold today. Nearly three years later, we submit that an indepth consultation and negotiation process needs to be undertaken to secure agreement amongst the three spheres of government on the range of legislative steps and measures be taken to ensure that land development and planning is implemented in order achieve the reconstruction and development of our society. The Spatial Planning and Land Use Management Bill (SPLUMB) seems to assume that land use management is a line function that can be narrowly regulated. In reality, it is environmental, heritage and service-related legislation that will continue to co-drive land use management. We need a negotiated process to provide for meticulously designed and implemented procedural systems, based on the knowledge that land development applications require broad-based approvals. The process will require on-going negotiations and support to ensure that to ensure that provincial laws are drafted in terms of concurrent legislative powers. An overarching framework legislation needs to guide and coordinate these systems. (Pienaar August 2008).

We now know far more about the need for alignment of laws and processes and the effects of the legislation on the fragile local government system. We have all learnt a great deal about the lack of capacity at municipal level and the futility (in many cases) of requiring poorly qualified municipalities to use consultants to prepare Integrated Development Plans (IDPs), which more often than not remain on shelves gathering dust. The IDPs do not direct or constrain political leadership, and do not guide budgets, infrastructure maintenance and development. Most IDPs did not (and still do not) include spatial plans, guidelines regarding the revision of land use management schemes and Strategic Environmental Assessments (SEAs), despite the fact that the Local Government Municipal Planning and Performance Management Regulations, 2001 require them to do so in terms of regulation 2(4).

The provisions of regulation 2(4a) of 2001 have been elevated to the status of statute and are largely repeated in Clause 20 of the draft bill. There is no obligation to comply with the requirement of spatial development frameworks as part of IDPs.

Background history of land use management policy and legislation

Land use management reform law has a long history. The Development Facilitation Act (DFA) of 1995 was always regarded as an interim measure and did not pretend to repeal apartheid provincial and homeland planning laws. Ironically, the DFA's criticism that it left a legacy of conflicting planning laws, applies equally to the 2011 draft bill. It does not, and cannot constitutionally repeal provincial planning legislation or old homeland planning and land use regulatory laws. At the very least, it could have encouraged provinces to rid our statute book of the redundant planning laws.

In 1999, the Development and Planning Commission under the DFA produced a green paper on planning policy, based on extensive surveys of redundant planning law. This resulted in the 2001 White Paper and the 2001 draft Land Use Management Bill. The draft bill of 2001 further developed the DFA normative principles for planning and development, emphasised the principle of subsidiarity and municipal obligations and introduced the idea of 'use it or lose it' development rights. The department neglected the proposals. Finally in 2008, a watered down version was introduced into parliament. It was criticised for its centralised control mechanisms and would not have passed constitutional muster. The portfolio committee made a few changes and Bill 27B of 2008 was presented for a second reading in the assembly, but not taken further. Now 10 years after the White Paper, draft 2011 has been released for public comment. It is supposed to take into account a number of intervening changes in the planning landscape, including:

- The Municipal Systems Act of 2002 and the uneven performance of municipalities in producing credible and legitimate IDPs;
- The department's failure to produce legitimate and legally sound tenure reform law as required, in terms of the property Clause of the constitution;
- The dismal performance of government at local, provincial and national levels to support the current land reform projects and communities;
- The constitutional court judgments on the planning jurisdictions of spheres of government; and
- The 2011 National Environmental Impact Assessment Management Strategy (NEIAMS) discussion document guidelines which say that 'an outcomes-based approach as an integrated management option should be enforced by means of a cooperative governance procedural structure and the Intergovernmental Relations Framework Act 13 of 2005 is proposed as a useful mechanism'.

The expectations of the bill

The draft bill was supposed to address a number of shortcomings in the DFA and retain the positive components of the DFA[1], in particular:

a) The general development principles;

b) Inclusion of independent experts in planning decision-making bodies;

c) A pre-hearing procedure;

d) Provision for key documentation/expert reports up front;

e) Specified time frames that are enforced;

f) Inclusion of public participation in a hearing process;

g) The ability to deal with complex development issues in one application; and

h) The ability to deal with tenure issues

Instead, the draft bill deprived the DFA and White Paper principles of any coherence or meaning, and scuppered the important DFA features listed above (c to h). Most importantly, the drafting, preparation and consultation processes leave much to be desired. The department ignored the report published by the presidency, in 2010:

> … a key learning from the DFA is that the process applied in developing new legislation is critical. This process needs to be highly participatory and consultative, allowing the opportunity for all stakeholders to express their views. In addition the development of the legislation should occur within a context of cooperation between the key stakeholders.
>
> (Urban Landmark and the Presidency, 2010)

Relevant provisions of the draft bill

Land use management

Land use management is addressed in chapter 5 of the draft bill, which provides for municipal land use schemes [Clause 22], rezoning [Clause 27] and ostensibly in Clause 29, alignment of state authorisations if the same activity requires multiple permits by various authorities. The proposed alignment amounts to separate authorisation or an integrated authorisation. But there is no further support or incentive for the much vaunted one-stop process heralded in the White Paper. Each municipality must adopt a zoning scheme for its entire area, including former homelands areas and farms. The scheme must comply with

1 Urban Landmark and the Presidency: Land Use Management Bill Regulatory Impact Review Process: Development Facilitation Act Review Synthesis Report (Final) 20 March 2010. Rhizome Management Services / Gemey Abrahams Consultants in association with Ivan Pauw & Partners

environmental laws [22(2) (b)]. We are not aware of any environmental laws that impinge on land zoning and planning (as opposed to development activities), except in broad normative terms and language which promotes sustainability objectives. Clause 51 of the draft bill insists that no other law may prescribe an alternative or parallel mechanism on land use or development inconsistent with 'the generality of this Act. What this means in law remains a mystery. The scheme must 'give effect to Municipal Spatial Development Frameworks and Integrated Development Plans' [22(2)(g)] and incentives to promote the implementation of SDFs [22(2)(f)].

Spatial development frameworks

SDFs for municipalities must be prepared as part of the IDP processes in terms of the Municipal Systems Act. The public can make inputs before the framework is drafted, but what ends up in the framework cannot be influenced once it has been drafted [19(3)].

Any municipal SDF must give effect to the principles of the act, provide a representation of the plan for the spatial form for the municipality, prioritise investment in terms of corridors, spines and nodes, estimate the need for housing and employment and identify engineering infrastructure requirements [20]. In Clause 11, there is mention that SDFs must 'include previously disadvantaged areas, areas governed by traditional authorities, informal settlements and slums and land holding of state owned enterprises and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere', as well as 'address historical spatial imbalances in development'. Clause 20(k) states that municipal SDFs should 'identify the designation of areas in the municipality where incremental upgrading approaches to development and regulation will be applicable'.

Concerning former homelands and communal land, the draft bill says that municipal zoning schemes must 'include provisions that permit the incremental introduction of land use management and regulation in informal settlement, slums and areas not previously subject to a land use scheme'.[22(2)(c]. No further guidance is given. In fact, the national government relegates all responsibility with regard to incremental reform and development to the provincial sphere.

Schedule 1 to the draft bill lists the issues relegated to provincial law making. These include:

- the subdivision of land, including land use for agricultural purposes or farming land; and
- the formalisation or incremental upgrading of an informal settlement or slums, including any matters related to tenure, land use control and the provision of services.

The draft bill does now cover subdivision (as opposed to its 2008 predecessor), as it is included under the definition of 'land development', which is supposedly dealt with in Chapter 6 (according to Clause 3(d)), and in provincial legislation. Chapter 6 however, only deals with the setting up of municipal and provincial planning tribunals.

General comments

The only reference to 'land reform' in the draft bill is in the the relevant minister's job title. The development principles do refer to spatial justice and the need for 'redress in access to land and property' [Clause 6(a)(iii)] and state that 'land development procedures will include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas' [Clause 6(a)(v)]. Despite this, land reform is not mentioned as an issue to be addressed within spatial development frameworks [Clause 11], or municipal SDFs [Clause 20] (Muller 2011).

The draft bill is not set out logically and it is very difficult to see what the link between the various levels of SDFs are, how they will be aligned (also with other plans such as water, infrastructure and environmental plans, etc); what their legal implications are; or even what the link between zoning or land use schemes and land development/ sub-division will be (in the Western Cape this link is through specific zoning to allow sub-division, namely a sub-division area).

The draft bill still makes no contribution to better integration and co-ordination of planning legislation – it does not even mention land reform, heritage and transport as issues to be included in SDFs). In terms of environmental laws, it mentions in a few places that SDFs and land use decisions must be consistent with National Environmental Management Act, but that is the extent of its role in trying to co-ordinate planning and environmental impact assessment processes. For such a drastic new system, it is interesting that the draft bill is not accompanied by a discussion or motivation document. The draft bill is inconsistent. On the one hand it passes the buck on certain national competencies, such as tenure reform, to the provinces. But it also trespasses on the terrain of concurrent jurisdiction. The national sphere once more fills the policy space that is supposed to be shared by all three spheres to such an extent that it leaves very little leeway for the other two spheres. The draft bill even tries to limit the provinces' constitutional legislative powers[2].

2 See Clause 4 (defining municipal and provincial planning for the purpose of this act), Clause 10(1) (referring to provincial legislation that is consistent with this act), as well as Clauses 17 (regarding regional development frameworks to be approved by Minister- thus limiting the meaning of 'provincial planning'), Clause 51 (relating to other land use laws), and Schedule 1 (matters to be addressed in provincial legislation).

Strategically located land, land audits and rapid land release

Clause 8(2)(c)(iv) provides that the Minister must determine and prescribe compulsory norms and standards for land use management, including mechanisms for identifying strategically located vacant or under-utilised land and for providing access to, and the use of such land. However, no further reasonable legislative and other measures are instituted subsequently to ensure that this occurs, such as requiring that land audits be undertaken, for example, a land audit to identify suitable land for housing development and land reform purposes.

Of particular concern to the Department of Housing, land reform beneficiaries and civil society is the protection of Municipal Commonage land. Municipalities are owners of significant tracts of land, held subject to conditions of grant imposed by statute, over and above restrictive title deed conditions that enjoin municipalities to safeguard and allocate the land in the public interest and with due regard to the plight of the poor (Pienaar 2008).

Public participation and opportunities for participation in decision making by rural communities

Although some references are made to public participation [Clauses 6, 11 and 27], the lack of clarity on what this means is problematic. There are also no detailed principles about processes, participation, capacity-building and conflict resolution, such as those described n the DFA. [Clauses 8 and 27(3)] make provision for the minister to develop norms and standards related to these issues at a later stage. The draft SPLUMB consigns all the responsibilities that will ensure public participation to provincial legislation in schedule 1(f). The importance of public participation is succinctly stated in the 2001 white paper in paragraph 4.2.3:

> Apart from the plan-making role of government, municipalities will also be charged with the responsibility of taking decisions on land development applications made to them. Local government is the sphere of government at the coalface of land development…
>
> …Municipalities in the former homelands have not been extensively involved in land development management… The new law on spatial planning, land use management and land development will empower all municipalities to take all land development decisions…
>
> Together with the decision making powers of municipalities, comes the responsibility for municipalities to consult with their communities in making these decisions. The law on spatial planning, land use management and land development will prescribe the process of consultation to be followed by municipalities in making land development decisions.

Participation in decision making promotes a) informed decisions and b) decision legitimacy. Those who have participated in decision making are more likely than non-participants to believe in its appropriateness and efficacy. From the viewpoint of a rural community affected by land use decisions, participation in plan making and decision making would be attractive if the following factors are present:

- Importance: if the plan or decision is perceived to be important to the rights, interests and identity of the community;
- Efficacy: if participation is seen to have an effect on the outcomes of plans and decisions; and
- Efficiency: if there are not better alternatives for achieving the preferences (Pienaar, 2008).

The efficacy of new law and procedures to promote participation will therefore be measured by their relative success in screening relevant plans or decisions for importance and ensuring that participation is effective and worthwhile, with maximum impact on the decision. The SPLUMB of 2011 does not carry this shared load of responsibility.

The way forward

We started off by writing this update of Kobus Pienaar's comments on the 2008 Bill with the idea that we would not venture into proposals about alternatives. Kobus, insisted, correctly so, that an alternative vision must be developed with full participation of the stake holders and a recognition of the important contributions that could be made by the communities directly affected. However, when we last discussed the previous LUMB with Kobus, we agreed that our thinking was influenced by a book given to us by Prof Ben Cousins. We therefore refer you to of James Scott's (1998) shorthand rules: 'The challenges are to not see like the state, and to appreciate vernacular spatial arrangements, rather than planned space. This is what James Scott asks us to consider:

- **Be aware that every intervention has the potential to be an intrusion and is likely to raise strong feelings among the (local) experts who live where you are attempting to plan.**
- **Assume you start from ignorance; turn up as a curious learner.**
- **The next 25 years are uncertain so work accordingly and embrace this uncertainty.**
- **Take small steps based on embodied knowledge (e.g. Japanese water engineers will live by a water course for a year or two before making any attempt to work on it).**
- **Make sure your actions are reversible without too much damage.**

- The first law of tinkering is to keep all the parts!
- Expect surprises and change.
- Make so that people can improvise on your intentions or, better still, fully engage them from the beginning so they have the chance to reject your ideas and come up with something more suitable for their lives.

References

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Scott, J C (1998) Seeing Like a State: why certain schemes to improve the human condition have failed. New Haven: Yale.

Henk Smith and Eugene Khokhong, Legal Resources Centre, Cape Town

Reopening Restitution

The Restitution programme enables those forcibly removed by the 1913 Land Act to claim restitution of dispossessed land. The final cut-off date for the lodgement of restitution claims was 31 December 1998 and 79 696 claims were officially lodged. Recently, during election campaigning, President Zuma commented positively on the possibility of re-opening restitution lodgement. This followed a public statement by the Minister of Rural Development and Land Reform, Gugile Nkwinti, who agreed to further discuss the request for reconsidering the 1913 cut-off date and reopening the claiming period with Cabinet.

At intervals, the reconsideration of the 1913 cut-off date that left many who were historically dispossessed before 1913 outside of the restitution process, had been brought into public debate. However after much speculation on this matter, the Chief Commissioner at the time, Mr Tozi Gwanya, stated categorically at the Portfolio Committee on Agriculture & Land Affairs public hearings (29 May 2007) that 'the position of government is that there should be no re-opening of lodgement of new land claims'. Thus far, the current restitution process is still incomplete, with a backlog of predominantly rural outstanding claims. This exacerbates a process that has been both developmentally and politically challenging.

PLAAS senior researcher, Ruth Hall, recently gave her view on the current debate around reopening:

> The Department now recognises that settling the existing claims will take at least another decade, and even among the claims that are already officially settled, there were several thousand which cannot be finalised because there is a funding backlog amounting to several billion Rand, for which future budgets will have to make provision. It is surprising that the Minister is now proposing to reopen the process, in view of the consistent efforts of the government up to now to defend the cut-off date of 1913 and to refuse to accept any new claims. What is less surprising though, is that the calls to revisit the constitutional settlement have been raised consistently over the past 15 years.
>
> Accepting claims relating to dispossession prior to 1913 would require constitutional amendment, and it seems unlikely the ANC will amend the Constitution to make this change possible. However accepting claims from people who are already eligible, but who missed the deadline for lodging claims in 1998, would be more straightforward by amending the Restitution of Land Rights Act which itself has been amended several times since it was promulgated in 1994. Even so, she suggests, this move by the Minister and the popular demands to which he is now responding, show frustration with the existing land reform programme, and indicate that the political temperature around land reform is rising. This underlines the urgency for policy reform, for the publication of the long-delayed Green Paper on Land Reform and for meaningful civil society engagement and public debate about a new way forward.

Karin Kleinbooi, PLAAS

Publications

Women, Land and Customary Law by Debbie Budlender, Sibongile Mgweba, Ketleetso Motsepe and Leilanie Williams of the Community Agency for Social Enquiry, February 2011.The overarching goal of the research described in this report is to explore the interface between rights and 'custom', through investigating the nature of women's land rights in three rural ex-homeland areas of South Africa and, to the extent possible from a cross-sectional survey conducted at one point in time, to explore how the nature of these rights might have changed over time. In particular, the survey aimed to explore how women access land (including different types of land such as residential land and fields); their actual use of the different types of land; their decision making capacity in relation to the different categories of land; and the extent of their security, or vulnerability to eviction. The survey also wanted to explore the impact of marital status on the nature and content of women's land rights. The ultimate objective is to record current living customary law with particular reference to women's struggles for justice, as evidenced in court cases, policy development, and political engagement from the local to national levels.

Innovations for securing women's access to land in East Africa: A synthesis report of action-research projects in Eastern Africa on women's access to land, by Gaynor G. Paradza, published by International Land Coalition & PLAAS, March 2011. Women's capacity to develop and improve their situation is hampered by limited access to resources like land, financial capital, economic capital, labour and technology. In recognition of this, various initiatives have been undertaken in east Africa at government level to improve and secure women's access to land. The initiatives have had limited impact, partially because of the limited resources and effectiveness of government. Research in East Africa has revealed how community based interventions can not only complement government policies, but also provide more effective means through which these policies can be implemented for the benefit of women. The paper draws on research carried out in Uganda and Kenya to illustrate the ways in which local level and non-governmental institutions can improve women's access to land by drawing on existing government policies and legislation.

Zimbabwe's Land Reform: myths and realities by Ian Scoones, Blasio Mavengedze, Jacob Mahenehene, Felix Murimbarimba and Chrispen Sekune (James Currey, Weaver Press and Jacana). The authors provide an insight into Zimbabwe's controversial land-reform programme and try to dispel some of the bias against it. The comprehensive empirical evidence and field data from Masvingo province challenge the popular myths that the Zimbabwean land reform has been a total failure: beneficiaries of Zimbabwean land reform have been largely political 'cronies'; there is no investment in the new resettlements; agriculture is in complete ruins, creating chronic food insecurity; and the rural economy has collapsed. The authors suggest alternative policy narratives that capture the complexity and and clearly reflect that there is no single, simple story of the Zimbabwe land reform.

News

National Planning Commission launches diagnostic report for development

Minister Trevor Manual, chairperson of the National Planning Commission, released a Diagnostic Report and a Vision document. The latter is a vision statement, which talks about the kind of country we want to achieve by 2030 - mainly drawing on the provisions from the Constitution and the Bill of Rights. The diagnostic report analyses the challenges that confront the government's development paradigm. The nine identified challenges are:

- poor educational outcomes
- high disease burden
- divided communities
- uneven public service performance
- spatial patterns
- under-employment
- corruption
- economic reliance on resources
- crumbling infrastructure

The report provides details about each of the nine challenges, which explain why these problems persist. The report falls short of contextualising our current political environment and how it impacts on South Africa as a developmental state. Ambitiously, over the next three months the Commission intends through consultations, to engage all South Africans on the contents of the diagnostic report in an attempt to achieve consensus on the way forward to 2030. See http://www.npconline.co.za/ for more details.

Research Updates

Over the remainder of 2011 until March 2012, PLAAS will investigate the changing nature and strategies of rural civil society and will use this research to develop a model that can assist in strengthening grassroots capacity to engage with policy issues pertaining to poverty. The project, entitled *Overcoming Rural Poverty*, reviews learning and advocacy strategies and will identify appropriate methodologies to support and strengthen rural civil society. This project is funded by Atlantic Philanthropy. The contact person for this project is Ms Obiozo Ukpabi at oukpabi@uwc.ac.za

Appointment

Dr Michael Aliber joined the Department of Agriculture, Forestry and Fisheries (DAFF) as Project Coordinator in the Director General's Office. Dr Aliber was previously employed by PLAAS until March 2011 and had been involved in researching the livelihood impacts of land and agrarian reform, particularly in the Limpopo area. His keen interest and extensive research on the prospects for smallholders to develop sustainable agriculture-based livelihoods, with particular reference to value chains and links to markets; will be a continued focus in his tenure at DAFF.

Tribute to Kobus Pienaar: A different breed of Afrikaner

Many lessons around rural communities have emerged since 1994. Kobus Pienaar, attorney and regional director of the Legal Resources Centre in Cape Town, who died on the 4th of February 2011, took to heart the lessons he learned from rural communities through his entire working life of providing dedicated legal support to these communities. He was a passionate supporter of 'democracy in action' in its most direct forms. He highly valued cooperation between NGO's and was instrumental in organising civil society networks to share information, consider and contribute to new policy initiatives and above all to continue to report back to communities to ensure they understand the implications of new developments and to enable them to engage in processes that could improve their lives. One of Kobus' characteristics was his deep understanding of rural voices and his ability to redirect these stories back to the powers that be.

In recent years, Kobus like so many of us, became increasingly alert to the mistakes and pitfalls of earlier reforms. However, his concerns remained focused on the substantive contents of rights, especially within the Communal Property Association (i.e. who gets what, when and how). We pay tribute to a remarkable comrade.

Karin Kleinbooi, Editor

Kobus Pienaar — or 'Kobus Konstitusie', as he was known in NGO circles for his passionate belief in the fundamental importance of the South African Constitution — was a man deeply committed to the marginalised people of South Africa, and to eradicating poverty and inequality and realising socio-economic rights.

Kobus Pienaar worked closely with PLAAS since 1995. Kobus' relationship with PLAAS was based on his work on land restitution, commonage and land tenure reform legislation. He strongly believed that a workable policy on land reform was essential for South Africa and tirelessly campaigned for this cause. Crucial to his vision, was the belief that land reform and restitution had to be linked to coherent, participatory development thinking. As a young lawyer in Port Elizabeth, Kobus was central to the visionary thinking pioneered by the Port Elizabeth Land and Community Restoration Association (PELCRA), which emphasised that restitution had to be linked to the conscious re-constitution of community and coherent urban planning. From 2001, he served as a module co-ordinator in the PLAAS Postgraduate Diploma and MPhil in Land and Agrarian Studies, and lectured on the Legal and Socio-Legal Dimensions of Land and Agrarian Reform. Researcher and Postgraduate Diploma co-coordinator, Moenieba Isaacs, recalled how he enthused students about the merits and importance of adopting a rights-based approach. In addition to his work on our teaching course, he also supported our efforts to

monitor land reform implementation and disseminate information about land and agrarian reform. He was central to the 'Land Clips' service we run on our website and worked closely with PLAAS researcher Karin Kleinbooi on this.

Ben Cousins recalls the first time he met Kobus with Henk Smit and Jean du Plessis shortly after his own return from exile in the early 1990s: 'They were talking at high speed in Afrikaans. I hadn't spoken Afrikaans for nineteen years. After a while I interrupted them and told them they were a different breed of Afrikaner to what I'd ever met before.' They were not merely against apartheid: they were young Afrikaans radicals, thoroughly schooled in critical social theory — intellectually keen, passionately committed to the social transformation of capitalist society - but also plain-speaking, convivial and down-to-earth in their personal relations, allergic to pompousness, and skeptical of those who sought personal power or aggrandisement.

Just a few days before his death, Kobus attended a workshop on Rural Transformation in South Africa hosted by PLAAS and the Foundation for Human Rights, and shared his views on the new bill on security of tenure for farm workers, critiquing the proposed changes of moving farm workers to villages off the farms where they were born, lived and worked. Full of energy and enthusiasm, he spent the day debating with participants and justifying everything he said in terms of the provisions of the South African constitution, insisting on the central importance of wide consultation and citizen participation in crafting a vision for rural development.

Kobus was an extraordinarily passionate fighter for socio-economic justice, who genuinely served South Africa well. We will all remember him for the indelible mark he has left on our work.

PLAAS Staff

Municipal commonage - stories from emerging farmers supported by Kobus

The Stellenbosch Small Farm Holdings Trust

The Stellenbosch Small Farm Holdings Trust was formed in 2002 after twelve emerging farmers moved on to 65 hectares of Municipal Commonage, which was land leased from Stellenbosch Municipality by the Spier Estate on the Annandale Road. Some of the farmers had been part of an early land reform project at Spier which had failed. The 65 hectares of land then became known as Farm 502BH. Spier continued supporting the farmers in the initial years by paying the rent and water charges.

Gerrit Hendriks, the Chairperson of the Stellenbosch Small Farm Holdings Trust, tells the story:

> As a group of emerging farmers we were isolated and it was vital at that early stage to get the best advice and assistance on how to become established and organised on the land. The group approached the Legal Resources Centre and Kobus Pienaar stepped in to become the main support and continuing reference point in facilitating dialogue with the Stellenbosch Municipality until his death in February 2011. We came to understand early on that we were in the hands of an undisputed expert on commonage, who was totally committed to ensure we gain independence of the land from Spier and to do whatever was necessary to secure our long-term use of the land. We quickly learnt the importance of the Constitution (Kobus's favourite source of reference) in supporting our objectives, and he assisted in clarifying the provisions in government programmes that could be helpful to us. We also learnt from our own developing experience the difficulties in getting effective support for small-scale farming from government agencies.

Fortunately, Kobus was a tireless advocate who never gave up on pursuing the commonage agenda and he managed to exhaust all possible avenues in government ranks to assist us. The outcome of his tireless efforts was that the Trust first became the substitute lessee (via Spier) of the land, and eventually the principle lessee of the land in our own right. We are the first group of 'previously disadvantaged' farmers to have received such a lease in the entire Winelands, which is dominated by white commercial agriculture. Amongst us, each farmer has an individual tenancy agreement with the Trust for their 5 hectare allotment. Kobus encouraged Stellenbosch Municipality, through a succession of political administrations, to honour their mandate and responsibilities in respect of commonage. A municipality is empowered through the Commonage Programme and funds in terms of the Grant for the Acquisition of Land for Municipal Commonage (Department of Land Affairs, 1997)), to afford access to land without costly steps to acquire and transfer land, resettle farmers, devise a regulatory framework, and build institutions. This led to an application by the Municipality for a support grant from the national Department of Rural Development and Land Reform which will see the land equipped with adequate infrastructure.

We have walked a long road from being ill-informed and isolated to having agency to leverage the real benefits of land reform, thanks to Kobus Pienaar. Very sadly we now have to carry on without his continuing hand on the process, guiding, questioning and challenging the agencies involved, with his usual directness, insistence and rough humour. He never allowed those involved around the table to forget that the primary purpose of any negotiation was to serve the needs of disempowered people.

We will miss his many visits to the land to discuss the way forward. We will sorely miss his presence at formal meetings with agency officials, where his direction and his support for the farmers were always a significant contribution in moving deliberations ahead. And we miss the man, and his friendship, his wit, his irreverence, and his great generosity.

The Ebenhaeser Land Claim

William Fortuin and Pieter Love from the Ebenhaeser Land Claim Committee write:

The name of the late Kobus Pienaar who died tragically on the 4th of February 2011 is profoundly captured in the history of Ebenhaeser and the Ebenhaeser community is thankful for the enormous contribution and selfless service of this incredible Kobus. The Legal Resources Centre (LRC) and more prominently Kobus Pienaar were involved in the Ebenhaeser land reform processes and the Ebenhaeser land claim process since 1993 until his death in February. The LRC continues to be involved in the land claim process in Ebenhaeser.

With the support and legal advice from Kobus the community was able to lodge a land claim and engage in challenging and frustrating negotiations with the Land Claims Commission and other role players. Under his guidance the community was able to turn down the first offer from the state of R20million compensation in 1999. This was subsequently adjusted to R100million in 2005, and additionally included benefits such as the preservation of other state support to the community. An incredible heritage Kobus helped develop was the complete documentation of the history of dispossession of Ebenhaeser land and this documentation was developed and shared with the community. Today, all the correspondence around the land claim is a record of all the efforts Kobus put into making the land claim beneficial and a long-term workable option for the community.

After 15 years of engagement and negotiations with the ever-present support and legal advice from Kobus we are at the point of a final settlement. The last leg of the process involves the development of the Ebenhaeser Land Acquisition Plan and Development Plan. It is ironic that we will reach this point without Kobus Pienaar who had put a tremendous amount of his effort and energy into the restitution of our dispossessed land and the restoration of our dignity as a community. The loss is felt in the conclusion of the Ebenhaeser Land Claim process, but his passing is also a huge loss to land reform in the country.

Bryce Anderson, a source of support to the Stellenbosch Small Farm Holdings Trust wrote this poem on 12 February 2011, a day after the memorial of Kobus Pienaar, which was attended by numerous communities, colleagues and policy-makers:

Saturday a.m.

day dawns bright
and sea flattens out
after days of turbulence
slowly we begin to breathe again
through pores seized with grief
disbelief and anger

the memory of the man
who died so sudden
in the taking
begins to shape
from returning images
of his lived presence

now held close
to protect
from further loss
of cherished sense
of his being
here together

a lone guinea-fowl
calls distraught
from the midst
of the kiggelaria

HAMBA KAHLE KOBUS PIENAAR

PLAAS

Our blog, http://anothercountryside.wordpress.com offers a space for democratic debate on policies and other key aspects of the politics and economics of land and agrarian change in southern Africa. Please feel free to participate in discussions.

If you would like to contribute content on topical debates around land and rural transformation, poverty, livelihoods, fisheries or any of PLAAS's other research areas, please contact our Information and Communication Officer, Rebecca Pointer on rpointer@uwc.ac.za.

We have created this space where we – and you – can speak and argue and debate about key issues relating to land and agrarian change in the subcontinent. Let us all imagine another countryside.

Like us at http://on.fb.me/plaasuwc

Follow us at http://twitter.com/PLAASuwc#

PLAAS obtained information for *Umhlaba Wethu* from a wide range of sources, including documents from the Department of Rural Development and Land Reform and the Commission on Restitution of Land Rights: http://www.ruraldevelopment.gov.za. Views expressed here do not necessarily reflect the views of PLAAS.

Send suggestions and comments on this publication to:

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