

BURIAL SITES, INFORMAL RIGHTS AND LOST KINGDOMS: CONTESTING LAND CLAIMS IN MPUMALANGA, SOUTH AFRICA

Deborah James

In the tumultuous early 1990s, the social order in many national settings looked set to change completely. Such changes were forward-looking but were premised on the restoration of past property regimes. They prompted millennial expectations which were nurtured by an intense interest in the past and a promise of former lives to be regained. In South Africa, politicians standing for office in the first democratic elections of 1994 pledged the return of the land from which many country-dwellers had been alienated during the Apartheid period and under earlier colonial regimes. Getting 'land back' was one of the things 'we voted for'. What was at stake in the public imagination was nothing less than the complete redrawing of the map of South Africa. Some people, who had once owned farms but had them confiscated, now imagined their lands reinstated; others had once lived on white-owned farms as tenants and now imagined themselves moving back to supplant the farmers who had long ago evicted them. More ambitiously, members of new regional elites with links to hereditary chiefs imagined themselves reclaiming entire lost empires. Some spoke with enthusiasm of the abundant herds they planned to keep and the gardens and fields they would cultivate on apparently barren ground. Others described the shopping centres and casinos they envisaged as springing up on rocky hillsides.

But this simple image of restorative justice, premised on ideas of racialized dispossession, was misleading. The mechanisms of land access, the precise way in which property ought to be held, and most importantly the overarching question 'whose land?' (Murray 1992) have been matters of intense dispute. This is hardly surprising given the complexities and social divisions—*besides* those of race—which characterize South African society. Where the highest-profile episodes of land dispossession were the 'black spot' evictions in which former title holders were violently relocated at a single, relatively recent, moment in time, those episodes least visible to the media involved tenants (so-called 'squatters') losing their rights over the course of many decades. The promise of restored property, raising expectations in both these sectors, generated tension and division.

DEBORAH JAMES is Reader in Anthropology at the London School of Economics. Her research interests, focused on South Africa, include migration, ethnomusicology, ethnicity, property relations and the politics of land reform. She is author of *Songs of the Women Migrants: performance and identity in South Africa* (Edinburgh: Edinburgh University Press, 1999) and *Gaining Ground? 'Rights' and 'property' in South African land reform* (London: Routledge, 2007).

In the process of such disputes, cosmopolitan and localist discourses—modes of political action as well as ‘cultural styles’ (Ferguson 1999)—came into play. The former were mostly deployed by members of the emergent political elite (many from the former title-holder class) and the latter by poorer migrant/country-dwellers (many from the tenantry). But to presume a simple equivalence between style and class/social group would be to overlook the processes through which political expectations come to be enunciated and to take root and flourish, even within settings where they did not originate. It would also be to ignore how far political elites’ search for legitimacy leads them to phrase cosmopolitan aspirations in localist terms.

Some among the emerging political elite—such as politicians in the process of electioneering—have generated an intense interest in localist repertoires relating to the land and to ‘getting the land back’. But such discourses have spread through the ranks of the civil service and are particularly prevalent amongst those who were appointed to positions in the new Land Claims Commission.¹ There are two routes through which these office holders have acquired their own interest in localist discourses on land. First, they have been entrusted with the duty to ascertain precisely who is entitled to acquire land under the new dispensation and, in the process, to ‘verify’ the rights of such people through a series of procedures which combine evocative explorations of originary cultural landscapes with stifling bureaucratise. Second, many of them are drawn from the ranks of those who aspire, themselves, to get land back. They thus operate from the standpoint both of mediators between the state and other beneficiaries of the process, and of direct beneficiaries of the process themselves. The intersection here between cosmopolitan and localist discourses is thus not simply an encounter between opposed cultural styles associated with divergent class backgrounds (Ferguson 1999). It is a set of interpretations converging on the key trope—or texts—of land.

The article focuses on that aspect of South Africa’s restitution programme which aims to include claims based on ‘informal rights’ alongside those based on the holding of formal title. It uses case studies of a number of claims in Mpumalanga Province, detailing the interaction of Land Claims Commission officers with the intended beneficiaries whose claims for restitution they are responsible for following through. Elites, in their intense and not entirely disinterested interactions with ordinary claimants, have engendered a new awareness of land restoration amongst such claimants.

LAND REFORM IN SOUTH AFRICA: A THUMBNAIL SKETCH

Land reform is seen as being of crucial importance in South Africa. Awareness of its implications has been highlighted by the Zimbabwean land invasions and the escalation, in South Africa, of savage attacks

¹ Also known as the Commission on Restitution of Land Rights.

on and murders of white farmers, the vigilantism practised by white farmers against African farm-dwellers, and the recent rise of the Landless People's Movement (LPM) with its links to organizations such as Brazil's MST.² The ANC is aware that the outcomes of land reform could have a significant impact on the party's credibility, effectiveness and future support; that it could either exacerbate racial tensions, or, handled carefully, defuse these to establish new and fruitful partnerships.

What gave land its significance as a symbol of citizenship over the course of the twentieth century was the gradual, but ultimately systematic, exclusion of Africans from the right to own it. Mamdani's influential account, according to which a system of customary land tenure in separate 'ethnic' territories made rural Africans politically dependent upon chiefs (1996: 21–2; see also Ashforth 1990: 158), fails to acknowledge the uneven and disputed character of African land occupation over the course of the nineteenth and twentieth centuries (Delius and Cope 2007; Mulaudzi and Schirmer 2007: 353–4), and thus overemphasizes the monolithic character of Apartheid's project. But it is nonetheless accurate to say that, overall, the Apartheid state both created an inexorably divided sense of territory and in the process denied citizenship or assigned it on a second-class basis. Undoing Apartheid thus required that a unity of territory and government be created where previously there had been division.

Since space and territory had been of key importance in Apartheid's plans, resistance to the implementation of these plans was likewise spatial and territorial in character (Bozzoli 2004). Land and rights became indissolubly connected in the public mind, partly because of clashes – increasingly fierce towards the end of the 1980s – between the state and the people whose property, land and citizenship rights it was undermining (Delius 1996; Seekings 2000; van Kessel 2000). The drafters of South Africa's new constitution, seeing land as central in defining the rights that had formerly been denied, proposed to restore land rights – and with them the sovereignty and full citizenship of the African population (Ramutsindela 1998).

While LPM members and some politicians signalled support for the 'fast-track' approach of Zimbabwe, the South African government was determined to structure and organize land transfer, carefully designing policies and laws to achieve the ambitious target of transferring 30 per cent of farm land across the racial frontier.³ Rather than expropriation, the 'market' was proposed as a means to acquire such land, which – with the mediation of state officials – would be bought

² Movimento dos Trabalhadores Rurais sem Terra. Although the LPM has been extremely vociferous, the size of its membership base and the nature of its links to this base have been called into question (James 2007).

³ Similar strategies had, in fact, been pursued in Zimbabwe in the 1980s (Hoogeveen and Kinsey 2001; Kinsey 1999). Their lack of success was due not only to matters of livelihood but also to the emergence of a political context which lent itself to land-based patronage rather than to other more democratic alternatives.

from 'willing sellers' by 'willing buyers'. This approach generated much criticism (Hall and Williams 2003).

Several branches of the programme were designed: restitution, redistribution and tenure reform. The ANC's 'political demand for land' (Dolny 2001: 100) arose from the experience of titled landowners, the group from which much of the emerging African political elite was drawn and which had lost much of its property in 'black spot' forced removals. Restitution based primarily on past entitlement and rights was thus bound to be the guiding principle of South African land reform, and the Restitution Act of 1994 was controversially phrased so as to render more far-reaching (or more vaguely defined) claims, or those which dated from before 1913, illegitimate. The inclusion of 'informal rights' as a basis for restitution was, however, intended to enable at least some of these claims dating from an earlier period to be included. But those Africans who had never had secure—or any—claims on landed property would not be excluded. The policy arm known as redistribution would enable them to group together and purchase farms with the aid of a government grant. Finally, the rights of those residing on land but depending on others for their occupation of it—those continuing to live on white farms, or under chiefs in the homelands—would be assured through tenure reform.

This subdivision of the programme acknowledged the differentiated nature of 'the landless'. Some intended beneficiaries were former title holders while others—including the holders of so-called informal rights—belonged to the tenantry (often termed 'squatters'). Both were left landless in the Apartheid era, but the latter, who had never enjoyed property rights even before it, have gradually come to be seen in the advocacy literature as more deserving of the benefits of land reform than the former. But the neat subdivisions of the programme neither forestalled ideological conflicts between those charged with, or benefiting from, different subdivisions of the programme, nor prevented slippage between these two categories. Their blurring was to the advantage both of aspirant farmers with no former land rights who attempted to prove spurious connections to it through restitution, and of people with a genuine sense of entitlement who, recognizing the difficulties of proof, attempted to benefit from redistribution instead.

Attempted differentiations—and blurrings—have been in evidence amongst policy makers too. The initial importance of a language of rights owed much to human rights lawyers (Abel 1995). But an increasingly predominant line of argument, adopted by the government after the second democratic elections in 1999, foregrounded the economic benefits from securely owning property and using it productively. The two approaches were merged in the early years of the land reform programme, which employed many lawyers and NGO officers. The subsequent shift towards more explicitly liberal economic policies has decoupled the rights-based approach from the property-based/economic one, favouring the latter. Attempts to promote a land-owning, entrepreneurial African farming constituency have thus eclipsed the previous emphasis on the rights and welfare of the rural

Category	Date	Act	Intention
Restitution	1994	Restitution of Land Rights Act	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 (CRLR) and a Land Claims Court
Restitution/Redistribution/Tenure Reform	1996	Communal Property Associations (CPA) Act	To enable groups to acquire, hold and manage property as agreed by members and using a written constitution
Tenure Reform	1996	Land Reform (Labour Tenants) Act	To safeguard the rights of labour tenants who had been remunerated for labour primarily by the right to occupy and use land
	1996	Interim Protection of Informal Land Rights Act (IPILRA)	To protect people with informal rights and interests from eviction in the short term, pending more comprehensive tenure legislation (i.e. CLRA)
	1997	Extension of Security of Tenure Act (ESTA)	To give farm occupants rights of occupation on private land. Establishes steps to be taken before eviction of such people can occur
	2004	Communal Land Rights Act (CLRA)	To provide for legal security of tenure by transferring communal land to communities and provide for its democratic administration by them

FIGURE 1 South African land reform legislation (Source: (www.info.gov.za/gazette/acts); Adams 2000)

poor (Cousins 2000; Hall and Williams 2003). With this altered direction many former land activists left state employment to rejoin the NGO sector, attempting thus to pursue the more egalitarian vision of the programme's priorities.

Throughout all these changes, it remains the case that landed property and citizenship in South Africa are integrally linked. And notwithstanding these shifts of national policy, in regional settings the striving to regain land remains key. Although land is increasingly unlikely to form a substantial basis for any kind of economic livelihood (James 2007), it continues to symbolize citizenship as well as being seen as a material outcome, intended if not yet achieved, of citizens' exercise of their democratic rights. But the exact mechanism of land access, and hence the precise way in which property is held, is disputed.

FROM PAST TO PRESENT: LAND OCCUPANCY AND DISPOSSESSION

During the Christmas vacation of 2001/2, the South African newspapers reported a shocking event, which brought a formerly unknown family to prominence and led to their almost daily mention

on the radio. The reports highlighted both how restitution based on informal rights had sharpened expectations of land reform and also how the accompanying expectations were being thwarted by bureaucratic delays. An open truck carrying about fifty members of the Chego and related families had been on its way from their present place of residence – in the former Lebowa homeland (now Limpopo Province) at Magukubane (Figure 2: 9) – back to gravesites at their original home around Tigerhoek (Figure 2: C) to undertake an ancestral ritual. The truck overturned on a steep mountain pass, causing forty-three fatalities. In the furore which followed, the claimants' misfortunes came to symbolize broader problems. The accident became the focus of a radio advertisement promoting road safety, but it also pushed the family's ever-sharpening dissatisfaction about its unresolved land claim into the public gaze, making theirs an emblem of similar frustrations nationwide. One of the provincial Land Claims Commissioners, speaking at the funeral, rashly asserted that the Chegos' claim would be 'fast-tracked' and implied that other, similar claims would likewise be speedily settled.

The processes of land dispossession underpinning claims such as these (in the area of Mpumalanga Province, shown in the enlarged square in Figure 2) had been under way for more than half a century. These, although gradual and almost inexorable for many families, had allowed some choice and flexibility for others. It was because of the uneven character of this land dispossession that families like the Chegos continued to have some members living on farms in so-called 'white' South Africa while others had left to live in the former homelands. Hence the long journeys undertaken to visit burial sites – and hence the accident.

The grandparents and great-grandparents of the present Chego claimants had lived a semi-nomadic existence, cultivating and herding cattle, on the lands on either side of the river they called Tubatse in the area known by the same name. In the wake of Boer and British conquests in the nineteenth century, lands to the south of the river, termed Steelpoort by the Boer settlers, were surveyed, fenced, named – Buffelskloof, Luiperdshoek, Standdrift, Tigerhoek, Groothoek (around C in Figure 2) – and allocated to white settler/farmers (Delius and Cope 2007: 142). Despite considerable interruptions to the process of land alienation and the development of settler agriculture during the South African War (1899–1902), definitively racialized patterns of land use were established when government commissions proceeded to designate the river as the boundary between white South Africa and the 'native reserve' (Schirmer 2007: 295; Mulaudzi and Schirmer 2007: 356). The African occupants of the land were pressed into various forms of labour tenancy or, if they paid rent, inaccurately termed 'squatters'. These occupants, coming to rely increasingly on migratory wages alongside cultivation, strove to balance the labour requirements of farm owners against those of their employers in the cities (*ibid.*: 361–2). Some families, unable to reconcile these demands, experienced increasing displacement as the twentieth century wore on.

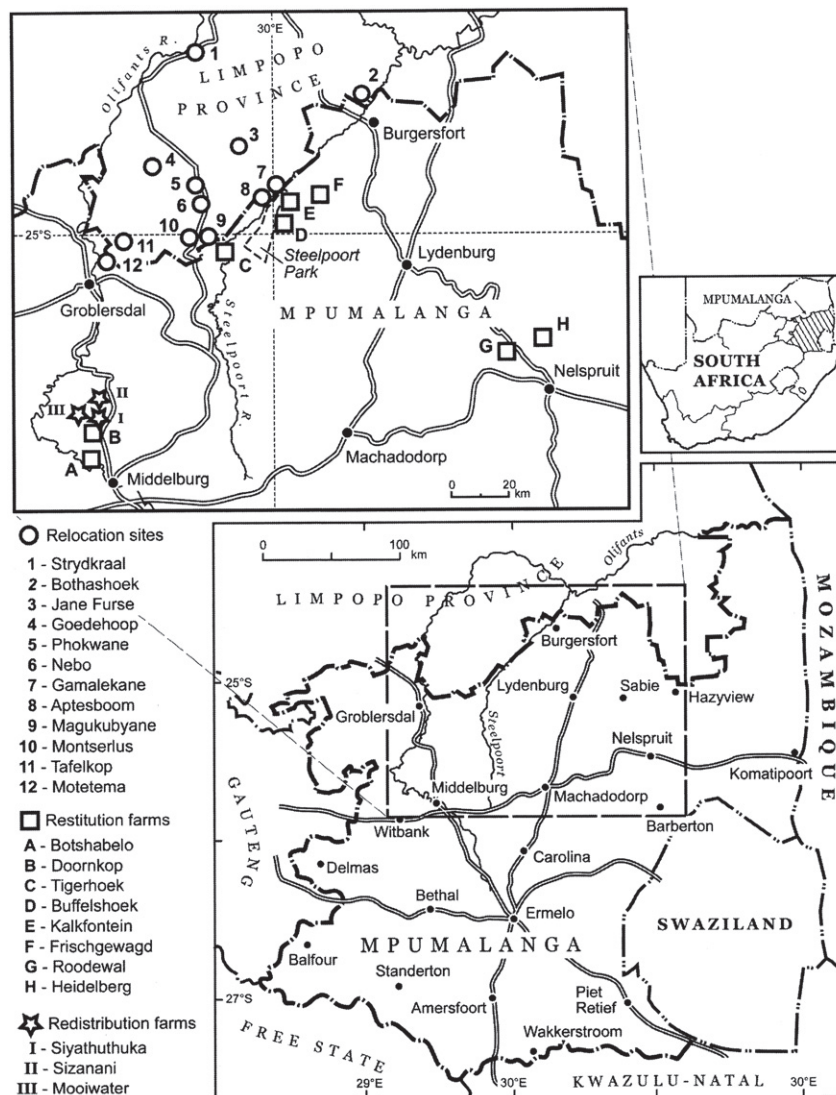


FIGURE 2 Map of Mpumalanga, showing relocation and restitution sites

By the time the older Chego claimants had grown to adulthood—in the 1940s and 1950s—certain white farmers were beginning to insist that tenants reduce the size of their substantial cattle herds, and were complaining that many of the young men residing on their farms, who spent up to six months of the year as migrant workers in Johannesburg, were unavailable to do farm labour. Evicted from these farms under the notorious *trek pas* system as farmers demanded a greater proportion of their time, or as white farming became more capital-intensive and

started relying on contract labour, some families had begun to move away, resettling on other white-owned farms from which they were then evicted in turn, and/or eventually taking up residence within the African reserves (later 'homelands'): places of greater residential concentration where they could gain access to schooling, shops and services. Others, however, continued to make a living while residing on white-owned farms: often those leased or owned by poorer farmers who had few sources of labour for their farming enterprise other than African tenants (James 1987; Schirmer 1994, 1995).

This form of relocation was more gradual than the infamous 'black spot' variety. It left members of extended families strung out across the countryside rather than resettling them all at once. Kinsmen from neighbouring farms, evicted or hearing about the prospects for a different life, moved to new homes in close proximity to one another: thus were the Chegos and other families, with long-standing ties of marriage, able to continue these marriage alliances once they had moved. Resettlement was also uneven. Each relocating cluster left other branches of the family on the white farms. At the time of fieldwork in 2003 there were seven Chego households still living at their original home, on and around the farm Tigerhoek (Figure 2: C). These remaining families had been included, alongside their diasporic relatives, in the land claim.

The continued presence of Chego family members on these white farms made for some continuity in the relationship which their relatives in the homeland diaspora had managed to sustain with their lands. The Chegos north of the river had regularly visited their former home for weddings, funerals and ancestral propitiation. The ritual traffic had intensified as the promise of restitution began to seem fulfillable. It was in the course of such a visit that the terrible accident occurred.

About a year later, during a 2003 meeting of the Chego land claim committee, my field assistant Mmapaseka Mohale and I were asked to help in bringing their delayed claim to the attention of the authorities. We talked of the sheer weight of claims in Mpumalanga Province which the Commission, we'd heard, was having to process, especially since the recognition of informal rights had been secured in the wake of a definitive Land Claims Court judgement in 1999. The Commission was finding it difficult to confirm who had held such rights, and to which pieces of land.⁴

Informal rights, we said, might have presented particular problems in the Chegos' case. There were counter-claimants to the same farm, and proof of absolute ownership was virtually impossible. A member of the Madihlaba family – connected in marriage to the Chegos over several generations (James 1987) – had also named Tigerhoek in his claim. The Commission's project officers would be sending out fieldworkers to accompany claimants on exploratory walks on the farm, in order to confirm whether families could identify the sites of their cattle kraals

⁴Kranspoort 48LS, LCC26/98, 10 December 1999 (LCC); (http://wwwserver.law.wits.ac.za/lcc/summary.php?case_id=2468), consulted 22 September 2004.

and graves. If two rival claimant families were found to have knowledge of these key cultural sites, it might be concluded that both had enjoyed rights on the same farm: some way would have to be found of sharing the land between them.⁵ A proposed solution to the problem of rival claims, and of the lack of skilled manpower within the Commission, was to appoint a consultant to attend to claimant verification. But this had not yet been done.

We drew the Chegos' attention to an alternative strategy followed by a group – the Masha clan – whose informal rights land claim, centred on the farm Kalkfontein (Figure 2: E), had been settled two years previously in 2000. Would it not be better to incorporate and unite with rival claimants, as the Mashas had done? Our advice here, while helpful in its intentions, was unintentionally disingenuous, since it failed to acknowledge a number of differences between the Chego and the Masha claims. The Mashas, although never holding title to their land, *had* been forcibly removed. The resolution of the case was thus facilitated by the claimants' longstanding involvement – as with many title-holder claims – with human rights lawyers and land NGOs, whose involvement had been sparked not only by the evident injustice of the removal, but also by the fact that the claimants had links – initiated at the moment of the removal itself – to political organizations and labour unions. Since the case had received extensive media attention at the moment of removal some fifty years earlier, these links later facilitated easier verification, since they had left a clear trail of evidence of rights – albeit 'informal' ones.

The forebears of Kalkfontein's claimants, according to oral tradition, had lived there since the mid-nineteenth century. After their land had been surveyed and sold to a land company, they continued to reside there as rent-paying tenants. Living under their chief, they had retained some autonomy rather than being transformed into a resident farm labour force like the Chegos. Their freer participation in labour migration had led to complaints from neighbouring farmers keen to secure a labour force; they were continually harassed by the soldiers and police of the segregationist regime even before the 1948 coming-to-power of Malan's Afrikaner Nationalist government. Many of the farm's residents, having worked as migrants on the Reef and having cultivated urban-based political connections, called upon their colleagues to help them stave off the eviction. There were well-documented visits to the farm by prominent anti-Apartheid activist and Communist Party member Ruth First, among others. Members of the Industrial and Commercial Workers Union (ICU) also played a part. These interventions did not, however, succeed in preventing the eviction, which was carried out by the army only after the 1948 election.⁶

⁵I later discovered from a Commission officer that this was indeed a factor stalling the Chego claim and many like it.

⁶This account is based on Schirmer (1994); Mulaudzi and Schirmer (2007: 364); and interviews with Chief Masha, Strydkraal, 26 November 2002; 11 February 2003.

Evicted members of the Masha chiefdom then settled, north of the Steelpoort River, in various parts of the reserve which later became the Lebowa homeland, each of which was termed 'GaMasha' (the place of the Mashas), after the name of the chiefly family. Some settled with their chief—and later his successor, the present incumbent of the chiefship—on the farm Strydkraal deep in the heart of Lebowa (Figure 2: 1); some moved to the formerly white-owned farm Goedehoop which was later incorporated into Lebowa (Figure 2: 4); and others settled in a part of Lebowa that was closer to their original home at Apiesboom just across the Steelpoort River (Figure 2: 8).

There were, then, differences between the Mashas and the Chegos in terms of the forcible nature of the removal, the levels of political involvement and influence, and the media profile and the availability of evidence that they had been unjustly dispossessed of their land. Following the Mashas' strategy of consolidating claims would nonetheless have been a wise move for the Chegos. Led by their charismatic and influential chief, the Mashas had *incorporated* rather than *excluding* their rivals by claiming nine farms on behalf of a range of interrelated families: families whose members would otherwise have lacked the know-how to jump through the bureaucratic hoops in order to make their claims in time for the deadline. Chief Masha had stated his intention to relinquish particular pieces of land by dropping them from the claim if specific families subsequently insisted on individuating their own claims. Based on this and other examples, we suggested that cases uncomplicated by the demands of competing groups might receive preferential treatment by the Commission, and that the Chegos try to settle their differences with rival claimants rather than relying on the Commission, at much cost in time and resources, to do so.

The story of the Chegos' hopes and anxieties was emblematic, echoing the concerns of many other claimants. Their interest in ancestral graves—and their newly kindled awareness of associated artefacts of African 'customary practice' such as initiation lodges and cattle byres—had intensified with the promise of impending restitution. When the Commissioner or the hired consultant finally arrived, it was anticipated that these customary sites would serve as the markers of their former entitlements and hence as proof of their claim's validity. Their suspicion of rival claimants was an index of the heightened expectations, and resulting frustrations, aroused by the chimerical promise of land restitution based on informal rights.⁷ Although in at least one local case, that of the Mashas, the promise had been realized, others were being endlessly delayed.

⁷This account is based on a meeting with the Chegos on 15 December 2002, as well as several other interviews in December 2002 at Magukubyana with members of the claimant group: Samuel Rampedi, Miriam Rampedi, Johanna Chego, Petrus Chego, Podile Chego and his wife, and Daniel Chego; and the following interviews at Sphakhu: Selina Chego, 10 December and Elizabeth Chego, 11 December.

INTERSECTING INTERPRETATIONS

Prior to 1994, many claimants had not entertained the possibility of returning to their previous homes. The undertakings of ANC politicians and the activities of the Land Claims Commission served to draw attention to land and the past life it symbolized. This awareness was progressively sharpened, and memories reawakened, by the technical demands of the claiming process itself, as groups of claimants – sometimes in secret – accompanied officers on strolls across the familiar contours of their former homes and pointed out the sites of cattle byres and ancestral graves.

This process of remembrance signals a more general re-engagement with the glorious African past and has, as discussed below, found expression in a self-conscious reworking of history by the new political elite and by recently appointed public servants holding important office. Its effects among ordinary claimants seem less grandiose, more immediate. But both are underpinned by a spirit of localist cultural revivalism, making land into a key text, a set of symbols. In cosmopolitan/elite and localist/popular consciousness alike, and as a result of intense interactions between the two in the course of restitution processes, there is evidence of renewed commitment to the traditional values of cattle keeping and ploughing, interest in the rituals of initiation and circumcision, and dedication to ancestral propitiation and to maintaining the graves where this is pursued.

Located ambiguously between the two are officers in the Land Claims Commission. Working with claimants and becoming conversant with the contents of the State Archives on behalf of these claimants and of themselves, they are newly fascinated with their own and their clients' intertwined pasts. Their rediscovery of roots is not merely a means to regain land on their own or on claimants' behalf. Regaining land is tied up with bids for material resources and power in the contemporary political world, but also signifies a more general, more disinterested, restitution of history.⁸

The need for recognizable proof of 'beneficial occupation', amongst Commissioners and claimants alike, has led to a sharpening of memory and to a rethinking of the past. In the process, aspirant chiefs have tried to reconstitute empires; subjects have rejected chiefs and affiliated themselves to other leaders; and anthropologists, restyled as consultants, have collected genealogies and traced the location of cattle byres and initiation lodges in an attempt to find 'fixed proof' of land occupancy. Graves, in particular, have acquired a heightened significance as sites for the concentration of social memory.

Informal rights: officers and claimants

'Go home to your own place' was Mandela's injunction before the 1994 election. His government, and Mbeki's after 1999, promised to make

⁸Such a spirit informed the publication of the book *Mpumalanga: history and heritage*, research for which was funded by the Mpumalanga premier.

this possible through the programme. Such promises by politicians helped to generate new awareness of restitution, in Mpumalanga as elsewhere in South Africa, but leaders and followers did not necessarily share precisely the same expectations. In the Eastern Cape, for example, there were differences of opinion between middle-class, urban-based leaders and their poorer, rural-based followers with more practical concerns. Where the former, motivated by politicized ideas about going 'back to the land', had a restitutive vision with sights set on particular farms, the latter have been more interested in the general practicalities of land access and land use, wanting a place where they could hold ceremonies, trade from home, farm, retreat at weekends, retire to, and die. Inspired by a more redistributive vision, they wanted land that would be 'theirs' even if they had not owned it in the past (R. Kingwill, personal communication).

The aspirations of African nationalist leaders – whether Mandela or these lesser figures – have thus been key in shaping the 'political demand for land' (Dolny 2001: 100). But more than the pronouncements of national political figures, however popular, it is claimants' interactions with the officers of the Land Claims Commission that have sustained and directed this awareness. Reciprocally, these officers' relationships with claimants have sharpened their recognition of the historical details and complex procedures required in proof of former ownership or occupation. In this way, cosmopolitan and localist discourses have converged to create a relatively uniform interpretation of land as text.

The recognition of informal rights alongside formal property ones as a basis for restitution, and Commission officers' attention to establishing and verifying such rights, thus sparked a wider interest in getting land back. The brown folders in the office of the Mpumalanga Land Claims Commission reveal that the terms of the 1994 Restitution Act would be satisfied by proof that they had been removed from their lands by 'racially discriminatory legislation' (see Figure 1) even if this had not involved forced removal *per se*. The legislation in question was Proclamation 177 of 1956, issued in terms of Chapter 4 of the Natives Trust and Land Act 1936 (18 of 1936): a law which had converted these occupiers into illegal squatters and made their presence unlawful, thus effectively denying their land rights (Figure 3; see Mulaudzi and Schirmer, 2007: 362; Schirmer 1994). Evidencing the denial of these rights required a recognition of the peculiar way in which dispossession had occurred: as mentioned earlier it had been a slow and gradual process, in which families had moved from farm to farm and eventually into the homeland (Schirmer 1994, 1995: 522–3). Proof of racial dispossession did not seem difficult: the Commission's brown folders reveal that it simply necessitated the re-use of roughly the same form of words in each of a succession of bureaucratic documents.

Actually *finalizing* their claims on the basis of informal rights, however, proved to be much more difficult. Given the lack of visible proof such as a title deed, there were greater possibilities for multiple claimants on any given piece of land. This placed more stringent demands on the officers charged with the bureaucratic process known

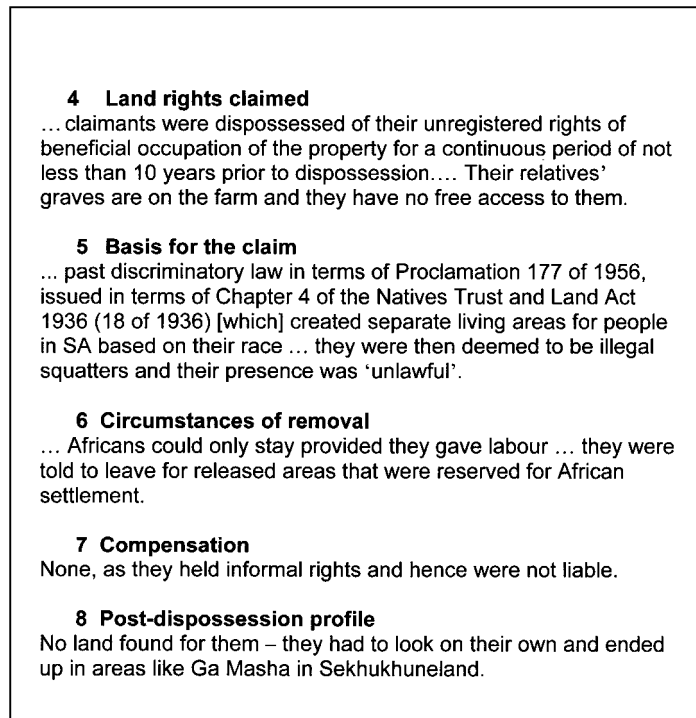


FIGURE 3 Selected quotes, taken from files in office of the Land Claims Commission, Mpumalanga, documenting racial discrimination as a basis of loss of informal land rights. Identical wording was used across a series of cases.

as 'claimant verification', since this required extensive investigation into oral histories – notoriously inconsistent and subjective – alongside site visits to the lands in question to seek for visible proof.

Elite, commoner and Commissioner histories

Despite the 1913 cut-off date, and before the need for verifiability had been explained, several claims were submitted which represented an attempt to recapture the glorious past of ancient chiefdoms. Members of the Mashego clan resolved to lay claim to a huge area south of the Olifants River, stretching from the Vaal River and along the Kwazulu-Natal/Free State border to Swaziland. They did this under the umbrella of the broader Mapulana polity which was alleged to have occupied the area before the arrival of the Swazis.

Such claims were later dismissed by Commission officers as 'frivolous' on the grounds that they dated back to the dawn of the colonial period, to a time when major disputes over territory were taking place between the chiefs and subjects of competing African polities rather than between white farmers and black tenants. The

dismissal was also prompted by the claim's basis in, and attempt to reinstate, the jurisdiction of chiefly polities rather than reflecting the land rights (based on actual use) of particular families. Although the Mashegos were then persuaded by the officer to make a more realistic and verifiable claim to the farms where their members had actually lived—around eight in number and centred on the 'anchor farm' of Roodewaal (Figure 2: G)—it was clear that the restitution process had initially stirred imperial, and ethnically divisive, visions of the African past.

These were not only oriented to history, but also connected to the realities of contemporary status. The chairman elected to represent the community was a person of local political standing. Formerly active in South Africa's dissident civic associations and in the trade union movement during the Apartheid era, he had then been appointed to a position in the Mpumalanga Government. Having grown up with a more 'coloured-sounding' surname (in part to disguise himself from his pursuers in the South African police), his current role as lead land claimant echoed his involvement with a more Africanist identity politics in which his descent from the original chief Mashego was key. Mixed with urbanity and sophistication, there was perhaps a taste of opportunism alongside a genuine search for identity in his rediscovery of African roots.

Motivated by equally intense if chimerical visions of lost imperial splendour were chiefly attempts to regain land across international borders of more than a century's standing. Chief Mlambo Mahlalela tried to lodge a claim to a vast swathe of land crossing both the Swazi and Mozambican borders:

[H]e is supposed to be a chief of the Swazi. He is claiming land in Swaziland, saying that his forefathers were never aware, when they put up the international boundary, that it was anything more than just a cattle fence. He also claims he lost land, jurisdiction, and tribute, in respect of some land which was demarcated as part of Mozambique.⁹

Such aspirations were not merely founded upon memories of the historically distant European conquest. They drew on, and seemed set to reignite, strongly felt emotions concerning a long-standing border dispute between South Africa and Swaziland (see Griffiths and Funnell 1991; Makhura 2007: 113). But they were also prompted by present and immediate events. Mahlalela felt his authority was under threat from restitution claims by other groups who, for a time, had acknowledged him as chief. These claims, in turn, had been laid in order to reverse the effects of other, earlier, Apartheid resettlements.

Overall, the joint power of land and history may thus buttress, or undermine, the authority of new, or aspirational, political elites. Another case shows how members of the emergent elite have coattailed on the re-engagement with the past undertaken by land claims

⁹ Philip Mbiba, Nelspruit, 26 January 2001.

committees. Here, restitution and its accompanying history promises to augment contemporary sources of political influence. Jeri Ngomane, in 2003 the new mayor of Ehlenzeni where Nelspruit is situated, is related to members of the committee of claimants to Ten Bosch, a vast area between Nelspruit and the Mozambique and Swazi borders (Mulaudzi and Schirmer 2007: 363). The claim, 350,000 hectares in total, is one of South Africa's biggest. Ngomane, although professing not to 'know anything about the claim . . . it is my elders who are organizing it', has nonetheless developed an intense interest in the history of his forebears which closely parallels the progress of restitution. Glorifying his family name serves to bolster his position within the framework of re-ethnicized politics in Mpumalanga. His vision of the 'lost kingdom' blended Internet and archival sources in Britain and South Africa with his elders' oral accounts which restitution had brought to the fore:

I am writing a book on the Ngomanes. These old men are the ones who have told me about it . . . I have also read the document by C. Myburgh, and some work by an Afrikaner which I got from the Internet. It tells how the Ngomanes extended into the Kingdom of Zululand . . .

The story of the Bagangomane is in a document in the archives in Britain, written by H. S. Webb . . . The Ngomanes were a nation, like the Swazi nation . . . There is a perception that this has always been a Swazi area, but this is not true . . . This document shows the real scope of our original land, who ruled it, the history of the kingdom. The Ngomane area took in the whole of the Kruger Park, and the Underberg . . . It also took in parts of Nelspruit. The document tells about the beacons which marked this territory, which river, which mountain, and so on. It tells about how great the last king was – Matjembene . . . It tells all about how the kingdom fell, and about the arrest of the first Ngomane who was imprisoned – in Lydenburg. And about the other chiefs who resisted.

Malooth Park, South Africa's most beautiful holiday destination, is actually *Ebukhosini* – the place of the kingdom, the royal kraal. We want to revert back to these names, we want to have our royal kraal remembered. There is a place described in *Jock of the Bushveld*, where they cut across the river. This was one of our kraals. We call it *Mandabulela* – meaning 'a river that cuts through'.¹⁰

In such visions, history, inscribed in the land, is rewritten as part of the process through which newly reimagined ethnicities come into play in the sphere of regional politics. The disputing of Swazi hegemony in the Lowveld region of Mpumalanga by members of the new political elite is here bolstered by a rewriting of the past.

The relationship between claimants and Commissioners interweaves itself into these rewritten histories. Many Land Claims Commission

¹⁰Jeri Ngomane, Nelspruit, 13 November 2003. *Jock of the Bushveld* is Percy Fitzpatrick's tale of the feats of a settler transport-rider and his dog. The 'Afrikaner' is N. J. van Warmelo (1974), who describes the Ngomanes in the Barberton area as Tsonga-speakers who had once spoken only Northern Sotho. See Makhura (2007: 96, 105–7, 127, especially footnote 46) for more on the Ngomane group, details of the Myburgh document, and an account of Jeri Ngomane's document, 'Tenbosch: the monologue from the kraal'.

officers are simultaneously land claimants. From early on, the African researchers and fieldworkers appointed by the land NGOs to act as their translators, researchers or mediators had, themselves, been recruited from dispossessed and resettled communities. Many of these, after 1994, were then employed by the Commission and have continued to hold office there. African land claimants occupy positions right up to the highest levels of office in the Commission: they include both the original Chief Land Claims Commissioner, Joe Seremane, and his successor, Wallace Mgoqi. But in addition to these elevated personages who are drawn from the ranks of former title holders, others at lower levels in the Land Claims Commission hierarchy have laid claims to ancestral land on the basis of informal rights rather than of former title. They have correspondingly acquired a strategic knowledge of the kinds of historical evidence and forms of localist cultural knowledge which might be adduced in support of their – and simultaneously of their clients' – claims.

One such person, who has worked on a variety of cases in the Lowveld region and has himself laid a claim to Makobolwane, the land where his forebears lived, is Land Claims Commission officer Philip Mbiba. In the process of investigating claims he has gained detailed knowledge about the history of the area, and of his own family. A history graduate, his work on the Ten Bosch claim has involved intensive work in the National Archives. He provides a version of the Ngomanes' history which focuses upon more recent events, and which shows the inextricable connection between different episodes of Apartheid resettlement.

The Ngomane people, who'd been living at Ten Bosch and had formerly lived in the present-day Kruger Park, and had at one stage lived in Mozambique as well, were resettled, in order to accommodate returning white soldiers after the war. They were settled at Nkomazi, one of the former homelands. . . . The resettlement happened in 1954, and the Mahlalela were displaced in order to make room for these incomers.

The land, formerly owned by one of these mining exploration companies to whom the occupiers had paid rent, was finally sold to Griffiths Engineering Company in 1944, and Griffiths decided to develop Ten Bosch: it began to put plots of land under irrigation. There is a whole file full of letters written to Jan Smuts and to the Commissioner: they were the ones who decided to remove the people. This was in the days before Apartheid became official policy.

He had read archived correspondence between Jan Smuts and the local Native Commissioner demonstrating how the state with its then segregationist policy had envisaged population resettlement well before the advent of the Afrikaner Nationalist government. After Malan formed his new government in 1948, experimentation with one removal by the local state served as a stepping-stone which would later lead to another, as Mbiba discovered from an account of the Mashas'

removal from Kalkfontein.¹¹ His archival research was furnishing a comprehensive picture of the state's policy of forced relocation in the region as a whole, and providing insight into the interwoven stories of a number of resettled groups:

Before this [Ten Bosch/Ngomane] removal, the Masha people living at Kalkfontein had been removed. The Chief Native Commissioner . . . removed the Mashas . . . as a kind of experiment to see whether the Ten Bosch case could then be pursued.

After the Masha removal, he served an eviction notice on Ten Bosch's Chief Mpothi Ngomane, a Tsonga-speaker. The chief was deported to Vryburg, and they told him, 'if you [and your people] refuse to be relocated to Nkomazi we'll bring you here to this dry land'. They showed him the Native Administration Act, saying they would depose him if he didn't agree By this time the community—or those who agreed—had already been removed. Others were scattered all over, some women and children abandoned their kraals and were never heard of again. There was a huge dispersal—some went to Witbank and some to Pretoria.

They'd been rent tenants in 1920. Some were migrants, but others were seasonal labourers on Lowveld farms. There'd actually been a recruitment camp there, for recruiting seasonal labour. They seem to have had a traditional lifestyle, with cattle as a mainstay. In 1939 there was a cattle culling, because of foot and mouth disease, and the community started to hate the agricultural extension officers because of this.

There are very evocative stories of how the troopers came in to shoot the cattle. The Ngomane used dogs to scare the troopers, and the troopers shot the dogs and even some people. There are stories of people running helter-skelter, of the rivers running red with blood. They called this event *Esitsotsongwane*.¹²

Such insights caused him to observe, laughingly, that 'a new Oxford History of South Africa will have to be written': something he may sadly be prevented from accomplishing by the sheer weight of effort involved in processing land claims.

Although neither the Ngomanes of Ten Bosch nor the Mashas of Kalkfontein had held formal title, these were two linked cases in which 'racially discriminatory legislation' and its enforcement had incontrovertibly resulted in communities' dispossession of land, and where archival evidence was available to prove this. Mbiba had tracked down this evidence in the archive, but his building of the Ten Bosch case required further validation. He arranged to hire an anthropologist-turned-consultant, At Visser, who spent months interviewing old householders, compiling genealogies and drawing up maps based on aerial photos from the 1930s as evidence of former land usage.¹³

This process of claimant verification on the basis of informal rights clarified the kinds of proof which might be needed in support of Philip

¹¹This was the group whose strategies of consolidation we had brought to the Chegos' attention.

¹²Philip Mbiba, Nelspruit, 26 January 2001.

¹³Philip Mbiba, Nelspruit, 30–31 October 2003.

Mbiba's own land claim. Being too low-profile to have left a record in the archives, his family's occupancy of the farm where they lived as tenants required other kinds of proof. The catalogue of evidence he was slowly amassing includes things like graves, initiation lodges and cattle byres as well as the ruins of a school which some of his cousins attended.

Redirecting our attention from politicians attempting to reconstitute entire pre-colonial empires to the views of more low-level claimants, interaction with Commission officers has likewise led to a re-envisioning of history. Mr Mthethwa, who currently owns a small taxi business, has a specific claim to the farm Heidelberg nested within the broader Mashego claim discussed earlier. His visions of the past, although less grandiose and politicized, and more localized and concrete, than those of his leaders, are equally intense.

A former occupant of the farm who once worked as a cook for its owner, his memories of a life lived on the land contain the promise of a future there. He recounted conditions similar to those of the Chegos: being paid only in kind, restricted from working for migrant wages, having his quota of cattle gradually restricted and later confiscated, eventually being prohibited from conducting traditional rituals on the farm, and finally being evicted with his family. His lament was tempered by a sense that life on the farm had been preferable to his subsequent existence in a relocation village in the homeland and later an urban township: 'where we live now . . . we are packed together like chickens'. His motivation for lodging a claim was that

we want to go back because we lived there, farming and having livestock. I was born and bred there, I grew up farming, and I want to go back, to feed my children and the future generations.¹⁴

Combining distress at past ill-treatment with a promise of better times ahead, his account is reminiscent of much of the 'golden age' testimony of resettled people (Harries 1987). It could be viewed with scepticism, given that his subsequent life experiences – a period of wage labour followed by starting a minibus taxi business – had resulted in greater material well-being than he could have achieved as a farm-dweller. If he eventually uses his reclaimed farm as a means to 'feed the future generations', the success of his farming enterprise will probably depend as much upon its funding by his entrepreneurial achievements as upon access to the land itself.

Ancestral graves: sentimental ties and evidence

The importance of ancestral graves in Mr Mthethwa's claim has been central. Being forbidden to visit these graves during the intervening years was a source of grievance:

¹⁴ Mr Mthethwa, Nelspruit, 13 November 2002.

[W]e visited, but the new owner did not want us to go there. He said 'just take the people away from the graves and rebury them where you are staying'. I contacted the funeral parlour and the police, and they negotiated on my behalf. We negotiated with the farmer that I would always arrange to call him in advance, not just come along unannounced for what he called 'a party'.¹⁵

Similarly restrictive has been the experience of other former farm-dwellers:

Presently we cannot visit our graves as the whites refuse us permission – or they put conditions and rules if they do allow us. It is difficult to follow our culture.¹⁶

Knowledge of the existence and whereabouts of such graves has become a means to prove informal rights. Mthethwa, like other claimants seeking 'verification', has accompanied the project officer onto the farm to show him 'where we used to live, where the graveyards of our grandparents are', as did those lodging the overarching Mashego claim of which Mthethwa's is a subdivision:

[W]e still have some elders who know the places exactly. We have gone to the farms to identify the gravesites and so on . . . They were able to say, 'this site here was a burial place for the Mthethwas, together with Mzawe, Mashego', and so on.¹⁷

As in other cases, members of the Mashego claiming committee had to do this clandestinely, given that the farms in question are still in the possession of their white owners; white farmers, increasingly anxious about the claiming process, are aware that graves are fast becoming the most powerful proof of former residence.

This we did underground – illegally. We still have access to the farm and some of our people are still staying there, so we do visit them. But it was rather difficult. We do still go from time to time go to clean the graves. Initially the farmers did not mind but now they are resisting.

Thus informants' commitment to the specific sites of their forebears' graves, like the importance of the past more generally, has intensified during the claiming process itself. For the Chegog, the ANC's election promises had sparked an awareness, resulting in more frequent visits to discuss the claim with those still living on the farms and to perform ancestral rituals at the grave sites. This ritually inspired traffic flow between the former Lebowa homeland and the white farms at Tubatse led to the traffic accident, which in turn deepened the sense of community solidarity within the group, its commitment to the now

¹⁵ Mr Mthethwa, Nelspruit, 13 November 2002.

¹⁶ Commission claimant file KRP 2427, Buffelshoek and others, Phadzimane Community, Mr Madala Lawrence Maphanga.

¹⁷ David Mashego, Nelspruit, 30 January 2003.

tragically restocked community graves, its determination to regain its land, and its frustration at the delays:

I think this [claiming] was brought up by the accident the Chego people had, even though the idea was there before the accident The accident made them start thinking more about the land.¹⁸

. . . We were visiting our people in Tubatse, and people from government also became interested They wanted to validate whether the place was ours or not – then they went with us to see where our people were buried . . . they took photos of our place and graves, and they told us, ‘You must go back to your place – Tubatse.’¹⁹

Although propitiation of ancestors is central to customary religious practice, the canonical texts in South African anthropology carry no indication of its needing to be carried out at grave sites. Traditionally, these were in any case not marked out for special attention, being simply contained within the cattle byre.²⁰ The current importance of burial sites in South Africa appears to be motivated as much by the wishes of disrupted people to secure their own future burial, and hence their place in the genealogical line of shades, as by the need to live close to a long lineage of already-buried ancestors (James 2000). The emphasis on graves, then, has grown in inverse proportion to resettled people’s distance from them; it reflects a sense that graveyard access has been unjustly denied. Such an observation does not suggest a lack of authenticity in claimants’ insistence on access to graves, but it demonstrates the intensifying significance of these in the cultural revival which has accompanied the land claims process.

CONCLUSION

The symbolic and economic claims on land can be hard to reconcile. Arousing millennial expectations and exaggerated fears, land policies have been charged with conflicting tasks. On a practical level, land reform has been counted upon to ameliorate unemployment and rural poverty, and to create a new and prosperous class of African farmers. On a symbolic level, the aim is to restore lost citizenship and nationhood and to provide restitutive justice. At the same time, land reform is expected to resolve racial tensions which it has itself partly created.

This article has tried to show how these contradictory expectations play out in just one aspect of the programme: that in which ‘informal rights’ form the basis for claims. It demonstrates how land in South

¹⁸ Miriam Rampedi, Magukubyana, 17 December 2002.

¹⁹ Johanna Chego, Magukubyana, 17 December 2002.

²⁰ My own earlier research among Sotho- and Pedi-speaking migrant women indicated that such rituals could as effectively be performed by scattering snuff or pouring libations on the ground in the corner of a house – even in a servant’s domestic living quarters in town – as at the site of ancestral graves (James 1999).

Africa is like a 'text' which has rich symbolic meanings, and how its restoration has become a fulcrum both for contestations and for some convergent interpretations between cosmopolitan and localist ideas about the nature of citizenship.

Locally, there is an insistence that land restitution was intended to benefit *all* Africans rather than just former title holders or members of the new elite. Policy makers defined restitution with sufficient breadth to accommodate at least some such egalitarian visions of land entitlement. But restitution has nonetheless served to reaffirm old hierarchies (James 2007: 105–29; Murray 1996, 2000) and to create new ones. For elite leaders of high-profile claims, such as Mashego or those among the Ngomane group who are heading the Ten Bosch application, the successful conclusion of their cases would certainly buttress, though their failure would not necessarily undermine, their new-found importance as political figures in the region. For the Mashas, a high-profile group with an influential chief and a recognized place in the history of Apartheid struggle, the 'political demand for land' was answered at the moment when the Minister of Land Affairs ceremonially 'handed over' the farm to its claimants, though its future in practical, economic terms was still being negotiated at the time of writing. But other, humbler claimants like the Chegog, despite their sad accident, were still waiting.

Land alone would in any case make little difference to the livelihood of claimants who lack other sources of income and influence. It is in fact widely recognized that land, if delivered without accompanying support and protection, is disconnected from the social dependencies which might enable claimants to use it: that is, from the various paternalist frameworks which—at least in idealized, remembered terms—once operated to stabilize their forebears' lives on the land. Although paternalism and political patronage run counter to state policy, the circumstances are such as to encourage the intervention of brokers: mediators between the state and land reform's beneficiaries. Some, like the Land Claims Commission officers discussed in this article, have been appointed to do so, in recognition of the fact that migrant/country-dwellers with little education would have difficulty accessing state resources or participating in state programmes without help. On a less official level, others include chiefs, entrepreneurs and the members of new elites who are consolidating their positions along ethnic lines. Land, rewritten histories, and cultural revival have become part of the process—but they have significance beyond a mere crude consolidation of resources or power.

A further meaning of the 'text' of land, in this context, is that of restitutive justice. Restitution has been seen, in part, as furnishing a Truth and Reconciliation Commission of the South African countryside. Some claimants feel that they deserve to have the land back 'so we can farm it as the whites once did'. For others the need to affix their names to land claims is driven mainly by a sense of wanting public acknowledgement for past wrongs suffered at the hands of farmers, or—in the case of the Mashas or Ngomanes—at the hands of the police or army

personnel who forcefully evicted them from the farms where they once lived. Despite much decrying of state inadequacy, a number of targets have indeed been met in pursuit of the goal of transferring land across the racial frontier. But such successes nonetheless pose the question: where farming no longer receives state subsidy and where farmers are expected to 'go it alone' in an era where market principles predominate, can land be farmed any more successfully by blacks than by whites?

This question, like others raised by the land reform process, is only just beginning to be answered.

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ABSTRACT

In the new South Africa, the promise of land restitution raised millennial-style expectations amongst dispossessed and dispersed former landholders. Partly

prompted by emerging policy discourses, iconic tropes of localized cultural experience such as grave sites, initiation lodges and cattle byres acquired new significance. Because they proved what the Land Claims Commission calls 'informal rights' to land, they became verifiable evidence of effective possession, and thus grounds on which to claim the restoration of such land. The meaning of land, the nature of ownership and the legitimacy of its restoration were all matters contested between claimants, policy makers and human rights lawyers. They were also contested by those at different levels in the hierarchical social order of the new South Africa. Members of the African nationalist political elite, in dialogue with lawyers, cherished one set of understandings, while ordinary migrant/country-dwellers tended to hold to another. Both, however, were mediated through the new discourse on informal rights. It is neither purely through the activities of cosmopolitan elites with their 'political demand for land' nor through the unmediated localist experience of less sophisticated country-dwellers with more practical orientations that the significance of land becomes evident, but in the interaction between the two. Based on local understandings, transformed in the course of thirty years of 'land back' struggles, and finally negotiated over the course of the last ten years, a new diasporic consensus on what 'the land' signifies has been established.

RÉSUMÉ

Dans la nouvelle Afrique du Sud, la promesse d'une restitution des terres a suscité des attentes de style millénaire parmi les dépossédés et les anciens propriétaires terriens dispersés. Poussés en partie par des discours de politique émergents, des tropes iconiques d'expérience culturelle localisée comme les lieux d'inhumation, loges d'initiation et étables ont acquis une nouvelle signification. Parce qu'ils ont prouvé ce que la commission chargée d'examiner les demandes de restitution de terres appelle des «droits informels», ils sont devenus des éléments de preuve vérifiables de possession effective, et par conséquent des motifs de revendication de restitution de ces terres. Parmi les sujets de contestation soulevés par les demandeurs, décideurs et avocats spécialistes des droits de l'homme figuraient la signification de la terre, la nature de la propriété et la légitimité de sa restitution. Autant de sujets également contestés à différents niveaux de l'ordre social hiérarchique de la nouvelle Afrique du Sud. Les membres de l'élite politique nationaliste africaine, en dialogue avec des juristes, affectionnaient un corps d'interprétations, tandis que les migrants/ruraux ordinaires avaient tendance à se référer à un autre. Tous deux, cependant, passaient par le nouveau discours sur les droits informels. Ce n'est ni dans les activités des élites cosmopolitaines et leur «revendication foncière politique», ni dans l'expérience localiste sans médiation des ruraux moins sophistiqués et leurs orientations plus pratiques, que l'importance de la terre devient manifeste, mais dans l'interaction entre les deux. Fondé sur des interprétations locales qui se sont transformées au fil de trente années de luttes pour le «retour des terres», puis négocié au cours des dix dernières années, un nouveau consensus diasporique a été établi sur ce que signifie «la terre».