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SEVEN

Land is More than Farming: Former labour tenants' views on land expropriation without compensation

Sithandiwe Yeni

INTRODUCTION

One hundred former labour tenants and their descendants from uMgungundlovu district in KwaZulu-Natal filled the Constitutional Court for their court case hearing on 23 May 2019. They were represented by the Legal Resource Centre (LRC) and supported by the Association for Rural Advancement (AFRA). The former labour tenants and their descendants applied to have a special master appointed to oversee the processing of about 11,000 land claims, which had not been implemented since their lodgement in 2001. On 20 August 2019, the court ruled in favour of the labour tenants and a special master was appointed. This ground-breaking constitutional ruling provides important insights into the post-apartheid government's failure to

implement a pro-poor land reform policy.[1] The former labour tenants' preferences for a time-consuming and costly legal strategy to settle their claims points to institutional weaknesses in the government's land policy regulatory regime.

South Africans from rural and urban areas emphasised land reform policy failures throughout the public hearings, organised by the constitutional review committee on amending section 25 of the Constitution.[2] Politicians, academics, commercial agriculture organisations and civil society commentators have dominated these public debates. Views from land claimants, such as the former labour tenants, are largely overlooked in public discourses on land expropriation without compensation. This chapter aims to fill this gap by bringing the views of former labour tenants into these debates.

The former labour tenants argue that black land claimants who were forcibly dispossessed of land, and continue to experience socio-economic exclusion, must get their land back and receive compensation for their suffering. They unreservedly reject the idea of the state paying compensation, particularly to the white farmers who currently own the land, which the former labour tenants and their descendants claim. Their land needs and uses are not limited to farming – reclaiming their dispossessed land will also allow them to live freely where they belong. The dominant framing of the land public discourse is based on agricultural production or food security considerations. It marginalises discussions on the divergent meanings and uses of land connected to nation formation and belonging (see Chapter 1 in this volume). This chapter focuses on the voices of these land claimants and their views on expropriation of land without compensation. These voices illuminate the contested meanings of land that challenge the conventional commercial land approach. The views of former labour tenants presented in this chapter were obtained through a series of

1 *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another*, http://www.saflii.org/za/cases/ZACC/2019/30.html, accessed 20 August 2020.

2 In February 2018, the majority of the members of South Africa's National Assembly adopted a motion to start the process to amend the Constitution to clarify the powers of the state to expropriate land without compensation.

focus group discussions.[3]

In this chapter I provide a brief history of land dispossession and labour tenancy in the then Natal Province, which resulted in a racially skewed agrarian structure, a process central to the arguments of the former labour tenants. I proceed to look at contemporary attempts by the democratic government to give land back to those who were historically dispossessed, such as the former labour tenants, paying attention to prospects and disappointments. This is followed by a closer look at section 25 of the Constitution and the debates around it, including uses and meanings of land, such as belonging, which are of importance to the former labour tenants and have been on the periphery in the public discourse. The chapter then returns to the views of the former labour tenants and their descendants from uMgungundlovu on why they believe the Constitution should be amended and land be expropriated without compensation. My concluding remarks suggest other mechanisms to address land and agrarian reform beyond amending the Constitution.

LAND DISPOSSESSION AND NATAL'S LABOUR TENANCY SYSTEM

African land dispossession and the destruction of the African peasantry in South Africa date back to colonial periods. On settling in Natal, the British colonists dispossessed Africans and allocated themselves Crown lands (land belonging to the monarch). They established their own private farms and created reserves for the Africans (Welsh, 1971). Not all Africans resided in these reserves, as some continued to live

3 The former labour tenants were from Mshwathi, Richmond, Mpofana, Mngeni, Mpendle, Gongolo, Muden and Mkhambathini in KwaZulu-Natal – all were concerned with unresolved land claims, lack of service delivery on the farms and threats of evictions. Collectively, they organised themselves into a forum called Siyanqoba, where they come together to learn, strategise and campaign around challenges they face on the farms. They requested that pseudonyms be used. I convened and facilitated focus group discussions in my then capacity as the national coordinator of Tshintsha Amakhaya, a network of NGOs and their constituencies working on land and agrarian transformation issues.

or farm on what became private farms on Crown lands, occasionally providing cheap labour for the white settlers (Welsh, 1971). Natal officially became a British colony in 1843 and the colonists complained that there was an acute or even chronic shortage of labour. The colonial state subsequently attempted to constrain economic development in reserves and destroy the African peasantry. The reserve economy was a threat because it enabled Africans to subsist without having to take up employment as labourers for the white settlers (Welsh, 1971). Despite these attempts, economic livelihood activities continued in the reserves and, in some cases, the African peasantry produced more than their white counterparts. Africans who did not move to the reserves but remained on the newly white-owned farms had an obligation to provide only labour. However, rentals were imposed as the number of Africans on these farms increased beyond the labour needs of the white farmers. Two systems of tenancy on the farms prevailed: (1) cash rents but no labour obligations; and (2) no rents but only the provision of labour. Rentals became too high, forcing Africans to leave the farms and move to the overcrowded reserves. Those who resisted the rent increases had their huts burnt and were evicted. In addition to land shortages, the African peasant farmers were hit hard by drought and pests, which led to crop failure in the 1870s. The state provided drought relief measures only to white farmers and not Africans (Williams, 1996).

By 1880, Crown lands became available for sale, and Africans were promised they would receive prior notification, but this did not happen and many were evicted. Some resisted the evictions, saying that the colonists had found them there. The Natives Land Act was passed in 1913 to restrict Africans from purchasing land outside of the reserves and, likewise, prohibit whites from obtaining land in African areas. It also contained other provisions to meet the demands of white farmers for more cheap African labour, particularly in the then Transvaal and Orange Free State Provinces, where sharecroppers were transformed into farm labourers or servants (Feinberg, 1993).

The labour tenancy system

A labour tenant refers to a black person living on a white-owned farm who undertook work for the landowner for part of the year in exchange

for the right to use a small portion of the land for their own purposes, such as grazing, growing crops and housing (Hathorn and Hutchinson, 1990). White farmers created this system with state support to enable them to expand their farms, increase production and have access to cheap or free labour (Williams, 1996). Its origin was a consequence of land dispossession and forced removals attributed to state-driven colonial conquest and capitalist development (Bundy, 1990).

Gender and generational dynamics within African homesteads are crucial for understanding how the labour tenancy system operated (McClendon, 2002). The system was reliant on the relationship between patriarchal white farmers and African homesteads. It depended on the homestead head's (male) ability to secure labour from his homestead, which entailed committing the labour of wives, sons and daughters to meet the demands of white (male) landowners. In return, they regained access to their land to grow crops for subsistence and engage in livestock grazing. These tasks were primarily performed by wives and children (see Chapter 6 in this volume).

With industrialisation, more young men (and a few young women) left the farms in search of better-paying jobs in the cities. The male migrant labourers sought employment in the mines around the 1930s and later other industries (Morris, 1977). This created a labour crisis on the farms and resulted in struggles between sons and fathers over generational authority (McClendon, 2002). The burden on women was heavy because of the gendered labour divisions on white landowners' farms. African women (wives/daughters) were responsible for crop production in farmers' fields and social reproduction within homesteads. The consequences of labour crises on the farms were evictions, as sons often refused to return to provide labour (McClendon, 2002). According to Mike Morris (1977), white commercial farmers and landowners viewed labour tenancy as an impediment to the development of more efficient agricultural production by the 1940s.

The advocacy urging state authorities to phase out the labour tenant system increased gradually during this period. A significant number of labour tenants were evicted from farms because of state policies or farm owners' decisions (Williams, 1996). The evicted labour tenants had limited alternative livelihood options due to restrictive migrant

laws, unemployment in towns and overcrowding in the reserves. These factors coincided with a decrease in employment in commercial farming and subsequently led to former tenants returning to the farms as 'illegal' squatters (Williams, 1996). Despite measures by the state to abolish labour tenancy, the number of labour tenants continued to increase through the 1970s. While labour tenancy no longer exists as a system, the former labour tenants and their descendants continue to live under harsh conditions as second-class citizens at the mercy of, predominantly white, farm owners. These people want their land back, not as a favour from the government but because this is a matter of justice. This demand must be contextualised within ongoing debates on post-apartheid land and agrarian reform policies – examined in the following sections.

LAND AND AGRARIAN REFORM PROGRAMMES IN POST-APARTHEID SOUTH AFRICA

In the first few years after coming into power in 1994, the African National Congress (ANC)-led government embarked on a market-based land reform programme constituting three tiers: restitution; redistribution; and tenure reform (Hall and Cliffe, 2009). Land reform is entrenched in section 25 of the Constitution, which makes provisions with regard to the eligibility of beneficiaries, land expropriation and its conditions. The section provides additional legislative measures necessary to ensure redress and equitable land access by all citizens. For the first time since the end of colonial and apartheid rule, land and agrarian reforms in South Africa entrenched equal rights to land as provided in the Constitution of the Republic of South Africa (Act No. 108 of 1996) (Hebinck, 2013). While the Constitution provided the legal basis for land and agrarian reform, the designated state departments developed policy instruments.

According to Ruth Hall, the World Bank was instrumental and influential in shaping the land reform policy direction, which resulted in the state adopting a market-based land reform policy (Hall, 2011). She explains that World Bank economist Hans Binswanger led the World Banks' mission to South Africa on land and agricultural policy

in the 1990s. He proposed three options for land redistribution: (1) a 'willing buyer, willing seller' approach, which would be supported by state land purchase through grants; (2) expropriation of land with compensation at market price; or (3) expropriation of land with compensation just below market prices, taking into consideration past state subsidies that were provided to white farmers and thereby eliminating distortions. Hall (2011) explains that arguments against expropriation included the cost of political opposition and lengthy legal processes. The drafters of the Constitution anticipated appeals from landowners through the courts, which could lead to delays and high administrative costs for the state.

Between 1994 and 1996, the first policy initiative of the Nelson Mandela administration was the Reconstruction and Development Programme (RDP), which aimed to redress the injustices of the past, including transforming racially skewed land ownership and discriminatory laws. The purpose of land and agrarian reforms was to correct and transform the agrarian structure (DLA, 1997). During the RDP phase, the state made available a Settlement/Land Acquisition Grant of R16,000 to black people with a monthly income below R1,500 to enable access to land (Lahiff, 2007). The class orientation of this policy was pro-poor and the state prioritised redistributing land for multiple livelihood uses (Hall, 2004; Lahiff, 2007). This is articulated in the White Paper on South African Land Policy of 1997, which lists urban and rural poor people, former labour tenants, farm workers and small-scale farmers as the targeted beneficiaries of land redistribution to support varied livelihoods (DLA, 1997). The period that followed under President Thabo Mbeki (2000–2010) saw a shift to the Growth, Employment and Redistribution (GEAR) policy, which placed more emphasis on a market-oriented land development strategy (Cousins, 2013).

GEAR came with the introduction of the Land Redistribution for Agricultural Development programme, which demanded contributions from land reform beneficiaries, while the type of land use prioritised agriculture (Hebinck, 2013). The beneficiary target orientation shifted from the broad segments of the working class to emerging black capitalist farmers (Hall and Kepe, 2017). The state

primarily focused on supporting a large-scale commercial agriculture model, with the gradual integration of black farmers into established commercial markets (DOA, 2001). Since 2006, the state has introduced the Proactive Land Acquisition Strategy, still premised on the willing buyer, willing seller model. But the grant system was discontinued, so state officials buy commercial land in open markets and then redistribute it to the beneficiaries. In this model, the land use is biased towards commercial agriculture and prioritises black, small-scale farmers who compete in formal markets (Hall and Kepe, 2017).

The big winners of the market-led policy approach were the willing sellers, that is, the white landowners who acquired millions from the post-apartheid state land reform programmes. One of the ways that the willing sellers became the winners was through joint ventures. These are partnerships between black people acquiring land and commercial farmers or private companies (Hall and Cliffe, 2009). They usually occur in sectors where production is capital-intensive and in regions with high land prices, such as the wine farms in the Western Cape. Critics of joint ventures highlight that they are a new form of exploitation, a mechanism through which white commercial farmers spread the risk of being part of a capital-intensive sector while enjoying market and political credibility (Hall and Cliffe, 2009). Some researchers add that high-risk and high-cost farming seldom declares profits, and members may have little say over how much should be reinvested in the business. Other controversies came from disputes over whether joint ventures contributed to tenure security, which is one of the objectives of land reform (Hall and Cliffe, 2009).

Some researchers have critiqued this approach, citing high costs and dysfunctional farming projects. They attribute the failures to imposed land uses with no proper support, which ultimately leads to conflicts among beneficiaries (Lahiff, 2007; Hall, 2009). In reviewing the evolution of land and agrarian reform policy and practice from 1995 onwards, Ruth Hall and Thembela Kepe conclude that 'the policy principles of tenure security, poverty reduction, gender equity, sustainable land use, and resilient rural livelihoods appear to have foundered in practice' (Hall and Kepe, 2017: 126). The former labour tenants are undoubtedly among those who have been excluded and who have felt the impacts of weak land policy implementation.

LABOUR TENANTS' EXPERIENCES AND LAND COMPENSATION SINCE 1994

The post-apartheid government introduced the Labour Tenants Act (LTA, No. 3 of 1996) to improve labour tenants' living conditions and address historical land injustices. Former labour tenants and their descendants expected the new government to restore their land rights and give them access to the farms from which they were evicted. Prior to the passing of this law, during the early 1990s, there had been a rise in evictions as conflicts arose between white farmers and African labour tenants, particularly in areas in the Weenen and Colenso districts in KwaZulu-Natal (Williams, 1996). Farmers evicted tenants, burnt their houses and impounded their cattle. This called for a legislative intervention in the form of the LTA, which was enacted to prevent arbitrary evictions and ensure that labour tenants benefit from land reform policies.

The Nkuzi Development Association conducted a survey on post-apartheid farm evictions. The findings highlighted that the number of farm evictions between 1994 and 2004 was greater than it had been in the last decade of apartheid, despite the laws and the Constitution which were meant to prevent evictions (Wagerif et al., 2005). Since the passing of the LTA, the process of settling the land claims has been slow and bureaucratic, with officials seemingly not playing their part in informing landowners about the claims or intervening to ensure that labour tenants have their tenure secured (Lahiff, 2009). By March 2001, about 19,416 labour tenants' land claims had been lodged, largely from KwaZulu-Natal and Mpumalanga provinces. But it is unknown what proportion of the total number of labour tenants this figure represents (Lahiff, 2009). The uMgungundlovu district former labour tenants and their descendants were among the thousands that lodged land claims when the government passed the LTA. However, these claims still remain unsettled.

Dissatisfied with the slowness of the land claims process, and having been sent from pillar to post each time they followed up on the status, the former labour tenants of uMgungundlovu district approached AFRA for assistance. AFRA and the LRC first brought

the case to the Land Claims Court (LCC) in 2013 as a class action case on behalf of the former labour tenants, arguing that the court should appoint a special master to deal with settling these land claims. The court ruled in favour of the former labour tenants. The Department of Rural Development and Land Reform opposed the judgment, stating that it was their function and not the courts to deliver on land reform. Yet, the experiences of most labour tenant land claimants were that the state had proved to be incompetent in settling land claims.

Some claimants were even told that their claims were missing from the files and that they had to resubmit their applications. In 2018, the Supreme Court of Appeal (SCA) set aside the LCC judgment, which then led to AFRA and the LRC taking the matter to the Constitutional Court in May 2019. While preparations for the SCA hearing were underway in 2018, debates on whether to amend the Constitution to allow for land expropriation without compensation dominated the media, academic and civil society platforms. There is consensus among land researchers and stakeholders that land reform has failed to redress the injustices of land dispossession. However, there are different views on why it has failed and how it should be fixed. Notably, some land and agrarian scholars have argued that it is a lack of political will that is a hindrance to the delivery of a transformative and pro-poor land reform (Hall, 2004), while others attribute the failures to 'the property clause' (section 25) of the Constitution (Ntsebeza, 2007).

Section 25 of the Constitution has been at the centre of the land reform debates in South Africa since the beginning of 2018. Powerful interests in society played a central role in framing the debate on land expropriation without compensation. Some key discussions on the possible impacts of expropriation cite national food security, export earnings and economic growth as salient considerations. The media presented scenarios of possible economic collapse if land reform proceeded based on populist considerations. While the argument to revise the property clause is not new, as Lungisile Ntsebeza advanced in 2007, 2018 heightened the discourse between those in favour and those against its amendment.

For Hall (2004), the Constitution, as it stands, is not a hindrance to land reform. South Africa's current Constitution already gives the

state sufficient mechanisms to expropriate land in pursuit of land reforms. However, the state has not sufficiently exercised its powers to expropriate land for land redress purposes. This is often attributed to the lack of political will. Hall's view is supported by academics such as Professor Ben Cousins, lawyer activists in the LRC and Advocate Tembeka Ngcukaitobi. Their opposition to amending the Constitution suggests that the problem with the property clause rests on how it is interpreted. They argue that state authorities and legal precedents emphasise market value of land when determining compensation. Section 25 of the Constitution provides more than 'the market value of the property' and includes other conditions such as 'the history of the acquisition and use of property' and 'the purpose of the expropriation' (Mabasa, 2020).

Ntsebeza (2007), on the other hand, argues that the property clause in the Constitution protects the rights of private property owners while also recognising and protecting the rights to land of the dispossessed. Therefore, it is a hindrance to land reform because it protects the same land that must be redistributed to those who were dispossessed (Ntsebeza, 2007). The problem is beyond mere interpretations, but the actual protection of private property. Ntsebeza (2007) suggests that those that acquired property through land dispossession and state support have a right to such property, the same way as those who were dispossessed and displaced. Some legal scholars take Ntsebeza's (2007) argument further, bringing our attention to the fragility of the South African Constitution in its totality, and not just the property clause.

Tshepo Madlingozi (2018) suggests that the Constitution in its current form does not provide a thorough framework to redress the injustices suffered by black people under apartheid and colonial rule. While amending the property clause for expropriation without compensation is necessary for land acquisition, Madlingozi (2018) calls for an entire remaking of a 'post-conquest constitution' that starts with the recognition of the crimes exerted against the humanity of black people by the racist colonial regimes and is explicit about reparations. This is particularly crucial in a settler colony like South Africa, in which land dispossession of black 'natives' by white settlers was central to colonial conquest and later advanced by the apartheid

state. Having said this, the scope of this chapter is limited to the debates about amending the property clause.

Ntsebeza's (2007) argument exposes a dilemma: attempting to address the land question using the Constitution, which gives all, the dispossessed and beneficiaries of that dispossession, equal rights will keep leading to an impasse. A classic example of when the land reform programme reached a dead end was with the implementation of the willing buyer, willing seller policy, a political position adopted by the post-apartheid government for land reform in 1995, as discussed earlier. While land reform is embedded in the Constitution, the willing buyer, willing seller mechanism was a policy choice of government and is not enshrined in the Constitution (Lahiff, 2007). This policy choice did not produce success, as many farmers were unwilling to sell, and the government could not afford the market prices. This partly explains why there are over 11,000 labour tenant claims that have not been settled yet. A different approach is required in all areas of land reform, and it must consider the deeper meanings associated with land. The following sections present some ideas on how to discuss this wider conception of land, using both literature debates and views from the former labour tenants of the uMgungundlovu district.

CONTESTED LAND MEANINGS

While the dominant debates on land and agrarian reform have focused largely on the agricultural aspects of land, some scholars have highlighted other aspects that are equally important. Sam Moyo, Praveen Jha and Paris Yeros (2013) critique a view of the classical agrarian question in Marxian political economy that focuses solely on capital accumulation through capitalist agriculture. They argue that agrarian and land reform debates are naturally connected to the national question in societies with a colonial history (Moyo et al., 2013). Similar views are shared by Ntsebeza (2007), who states that even though the liberation struggle in South Africa was not fought explicitly around the land question, there was always an expectation that addressing centuries of land dispossession and oppression of black people by white settlers would be among the priorities of a democratic South Africa. There are cases where land was

returned through the land reform programme, where beneficiaries were expected to continue with the agricultural business operations, yet they opted to use the land for settlement (Hall and Cliffe, 2009).

The unplanned uses of land led to relevant authorities disengaging from projects (Hall and Cliffe, 2009). This use of land, which does not fall within a commercially oriented land development paradigm, needs further attention. The land question is still not addressed, and the public interest in the debates about the amendment of the Constitution and land expropriation without compensation indicates this.

What seems to be neglected in the dominant competing views for addressing land and agrarian reforms are the non-productionist functions of land. These go beyond agricultural production or housing and are concerned with other land uses and meanings associated with people's notions of belonging. Notions of belonging are concerned with discourses, social practices and institutional arrangements through which people make claims for resources and rights, the ways through which they become 'incorporated' in particular places (Rutherford, 2008). This aspect of land use and meaning is important for rural black people, such as the former labour tenants and their descendants. They experienced land dispossession during the colonial and apartheid periods, which violated their citizenship and property rights. Such dispossession processes and outcomes are referred to by Bernadette Atuahene (2011) as 'dignity takings', as they occur when a state confiscates land and property rights from owners it deems to be subhuman, without any compensation for all that is lost. 'Dignity taking' was not a one-off event, but a process that continues to shape the livelihood options and life opportunities of those who were dispossessed and their descendants (Fay and James, 2010). Land is not limited to farming. Cross et al. (1996: 122) argue:

> Land includes savings in cattle, income in cash and in kind from production, growing demand for small business sites, rights to water, energy and other basic needs taken from a natural resource base, it also relates to land-based social networks as mechanisms for insurance and livelihoods security, and these need to be fully recognised.

This shows the diverse demands for land one could find in one locality. Drawing on their research on social reproduction on a former labour tenant's farm and communal land in KwaZulu-Natal, Cousins et al. (2018) emphasise that land and property rights are significant in different ways, even when their contribution to agriculture is limited. They further highlight how 'land is pivotal for the establishment of a homestead, the locus of daily and generational reproduction, which is why customary norms and practices offering guaranteed and free access to land to accepted community members remain important' (Cousins et al., 2018: 22). Jocelyn Alexander (2007) uses her research on Zimbabwe to explain that land is about identity, alongside production and class formation. It is equally about varied meanings and values that landowners or occupants attach to it. Such meanings are contested and not fixed (Alexander, 2007).

For a long time, the former labour tenants in KwaZulu-Natal demanded land for agricultural production, particularly cultivation, grazing and tenure security (Marcus et al., 1996). A need for security of tenure goes beyond farming but includes secured land rights to live with no fear of evictions. This security preserves dignity and secures land or homes for the future generation as well. My work with former labour tenants in uMgungundlovu district and northern KwaZulu-Natal illustrates how the demands for land are still the same. I have observed that while some aspire to be small-scale commercial farmers, and others do not, the common assertion is that they belong to the land, referring to the private farms they live on, which are also their homes. Cross et al. (1996) suggest that land rights, natural resources, self-determination, preservation of sacred sites and customs are among the pressing problems facing postcolonial societies today.

State-driven land reforms are an attempt to respond to such problems. Cross et al. (1996) elaborate that people claim belonging in varied, complex and often contradictory ways. These claims do not allow for a simple analysis or definition; they can be expressed in different ways, ranging from how people habitually use the land to its political value. The cultural meanings contained in naming land and a community's legal perspective also reveal claims for belonging (Cross et al., 1996). These aspects of land are important to black South

Africans such as the former labour tenants.

The following sections surface the forgotten voices of former labour tenants, who represent one of the most marginalised social groups in South Africa, and whose views were often peripheral in the public discourse. These are essentially the voices of ordinary black South Africans who still have fresh scars and memories of forced removals. The violent dispossession included white farmers taking their cattle away from them, burning their houses, displacing them from their land and forcing them into labour tenancy (Williams, 1996). Today, they continue to live in inhumane conditions in their homes that became privately owned farms as a result of land dispossession.

VIEWS FROM THE 'RIGHTFUL OWNERS' OF LAND

The group of former labour tenants, who participated in the debate about amending the Constitution, came under the banner of Siyanqoba. Siyanqoba was set up by its members as a forum to fight for land, better working conditions, humane living conditions, access to basic services and livelihood opportunities. Established in 2017, Siyanqoba brings together women and men, aged between 20 and 60 years. They were all born on commercial farms around uMgungundlovu district and they still reside in the area. Some of the members worked as labour tenants when they were young, while others shared experiences of their parents and grandparents who were labour tenants. The livelihood strategies of Siyanqoba members vary. Some derive income from seasonal jobs in the local municipality, commercial farms and in public employment programmes such as the Expanded Public Works Programme (EPWP) offered by the Department of Public Works. In these EPWP jobs they clean and repair roads. Others engage in informal businesses, such as selling refreshments and airtime vouchers in their local communities, or they engage in small-scale agriculture, mainly for subsistence. These are often combined with remittances from relatives and government social grants. These precarious livelihood strategies are common in rural South Africa today and can be explained by the agrarian changes that have unfolded over time (Neves and Du Toit, 2013).

The challenges of the former labour tenants living on commercial

farms are often tied to property and power relations (Brandt, 2018). Some of the violations that the former labour tenants continue to endure on the farms include being prohibited from keeping livestock. In some cases, farm owners do not allow them to keep dogs and walk freely on the farm (Ms Mkhize, 2018). These restrictions on private farms highlight the powers of private property holders and demonstrate the contradictions of the property clause emphasised by Ntsebeza (2007). The private property rights of farmers, clash with those of former labour tenants, who have an equal claim to the land; this then becomes a hindrance to land reform policy implementation (Ntsebeza, 2007).

Siyanqoba has repeatedly challenged the local municipality over poor service delivery on the farms and has urged the officials to implement the provisions of the LTA to secure tenure and prevent evictions. These engagements with the municipality have sometimes included pickets and marches as well as court cases (Ms Zuma, 2018). Members of Siyanqoba participated in a series of discussions in preparation for the public hearings to voice their views on the question of whether the Constitution should be amended and if land should be expropriated without compensation. Their historical frustration was captured in the following words: 'Stop calling us farm dwellers, we are the rightful owners of this land, these were our homes before they became private farms and we were forced into labour tenancy' (Mr Dlamini, 2018).

Who should get which land and why? Should the Constitution be amended to allow for land expropriation without compensation and why? These questions framed the debate among the 40 former labour tenants and their descendants who participated. I have organised responses to these questions into the following sections. All interviewees have been allocated pseudonyms to maintain their anonymity.

Who should benefit from land expropriation?

One of the labour tenant land claimants criticised those who refer to former labour tenants as farm dwellers. He explained that this is dangerous, incorrect and dilutes their history, resulting in former labour tenants being seen by white farm owners and the state as

having weaker rights to claim back the land (Mr Dlamini, 2018). The term farm dweller is used to describe farm workers, ex-workers and other citizens residing on farms that they do not own. Many farm dwellers are long-term residents, tracing their occupation back through generations. Under apartheid, farmworkers were tied, by law, into highly subservient relationships with white landowners, severely restricting their rights to change jobs or move off a farm (Lahiff, 2009).

Today, farm dwellers are constantly fighting against evictions from the farm and they often fail. The Extension of Security of Tenure Act (ESTA) of 1997, which was meant to protect farm dwellers from farm evictions and give them tenure security, has been challenged by academics, civil society and land rights activists for being too lenient on white farmers (Lahiff, 2009). In ESTA, farm evictions are allowed on condition that the farm owner follows legal procedure. In reality, most farm evictions occur illegally and, since ESTA was enacted, no single white farmer has been charged for any illegal farm eviction (Tshintsha Amakhaya Workshop, 2018). A significant feature of former labour tenants is that they experienced land dispossession and were forced to provide free and/or cheap labour for white farmers. It is this historical fact that gives them entitlement to getting their land back through the LTA.

The land claimant further elaborated that, as descendants of labour tenants, they are actually the 'rightful owners' of the land because had it not been for colonial conquest and apartheid, which saw their land and homes forcibly turned into private property, the country would not be having debates about who should get the land. His views were held by many who participated in the debate. They were against reducing labour tenants and their history to a mere loss of land through some unknown process. This view resonates with Madlingozi's (2018) argument on the fragility of the Constitution: that if we do not name colonialism and apartheid as crimes against humanity and are not explicit about who was responsible, who benefited and continues to benefit, then our work on restitution and reparations becomes untenable. All labour tenants across gender and age affirmed that they are the 'rightful owners' in the discussions. There was broad consensus among participants that former labour tenants and their descendants must get their land back as a matter of priority.

What do former labour tenants want land for and what does land mean?

Some want ownership of homes and small fields that they already live in. They also want the land portions that are currently utilised by white farmers to be expropriated and redistributed among them (the 'rightful owners') for commercial agriculture (Mr Khumalo, 2018). The former labour tenants can succeed in small-scale commercial agriculture with proper state support, especially if it includes the policy support measures provided to white commercial farmers during apartheid. Tessa Marcus, Kathy Eales and Adele Wildschut (1996) remind us that the former labour tenants in KwaZulu-Natal demanded land for agricultural production, particularly cultivation and grazing.

Not all the former labour tenant land claimants want to pursue small-scale commercial agriculture or any form of agricultural production for that matter. Some emphasised that land meant dignity, belonging, housing and other livelihood opportunities (Ms Mkhize, 2018). One of the land claimants shared a story of how the white farm owner, who owns the property on which she resides with her grandfather, shot and killed her dog for loitering. She recalled several occasions when family relatives, friends or AFRA staff members were aggressively questioned when they visited her homestead. Mrs Mkhize (2018) added:

> We can't live like we are in prison. There are many South Africans who travel on the N3 over there, all they see are large farms with high fencing, they do not know these are actually prisons to us. We want our land back because we belong here and have every right to live freely, with our dogs, cats or whoever we like.

Her views resonated with many who shared similar experiences about their visitors being interrogated whenever they were seen on the farm. When asked what land meant to them as former labour tenant land claimants, Ms Msomi (2018) explained:

> Land means everything to us here, you can come to the farms and ask each person there, they will tell you the same thing. Land means having a home for you and your children, and their children to come, it means food, it is where our ancestors were buried and where we also shall be buried. The problem with government and all these delays with the processing of our land claims is that they think land is only a farm. Yes, we farm on the land, but that's not the only thing it is used for.

These material and symbolic meanings of land often determine how people use the land. I have observed this in my family homestead, but also through my work in rural South Africa over the years. This ranges from the kinds of crops people grow, the structures they construct in the homestead, the position of the sites for graves and the kraals for livestock. There was no single person in the room that disputed the take on the meaning of land shared by the land claimant above; instead there was a big round of applause after she spoke, which I took as agreement. However, there were tensions and points of disagreement on some issues that emerged during the debate.

Imagining the future

Disagreements in the debate hinged on two issues: (1) should the current white farmers operating on the farms leave when land claims are settled? and (2) should the former labour tenants that do not live on the farms for a range of reasons come back when the land is returned to the claimants? Some claimants expressed the view that the white farmers would have to go, and that those former labour tenants who want to increase their farming production would share the land accordingly. One of the land claimants, Mr Luthuli (2018), explained this position:

> I think it is obvious that the white farm owners will have to go. I am just thinking about the white farmer on our farm. He simply hates us and does not see us as humans. Now tell me how can we share that land with the same person when we finally get our homes and land back? I say no, they must go, and they must not be compensated.

Another land claimant, Mr Khumalo (2018), held a slightly different view:

> On the question of compensation, I fully agree that the government must not pay them. Where I differ is on the issue of whether they must stop farming and leave the property. I think those who want to use some parts of the land to continue with agricultural production should do so, but not on their terms. The problem is that they have land ownership papers and so they also treat us like they own us. Once those papers become invalid, then we can talk.

There was no consensus on this subject, and those who felt strongly about the white farmers leaving concluded by suggesting that more debates on this point were crucial, perhaps drawing on experiences from other areas. Indeed, this is an issue that the land claimants on each farm will have to grapple with, especially because some of them are employed by the production side of the farm, and not all of them want to pursue small-scale commercial agriculture. This, however, does not change their position regarding transferring land ownership to them. How will the land be shared among the claimants and governed once the claims are settled? This is a separate question from the one about acquiring land through expropriation without compensation. Although they are closely related, the two issues need to be dealt with separately.

The second point of disagreement during the debate was about whether those that had left the farms should be allowed to return once the land claims were settled. A distinction was made between those who had left because they were evicted by farm owners and those who had volunteered to leave. One of the land claimants felt strongly that those who had volunteered to leave must not come back. His reason was that 'we are fighting alone here, even going to courts, where are they? They can't only come in the end when our claims are settled' (Mr Mpungose, 2018). Another land claimant, Ms Zuma (2018), swiftly responded:

> Let us hang on a bit, we know what happens on these farms, people are forced to leave because of hardships, so we can't say they volunteered as if it was a happy choice. You know when a white farmer does not want you on the farm, they make it very difficult, like cutting your water and threaten to beat up your

> children. There are many people who left the farms, yet their parents are buried on the farms. They also belong with us.

A land claimant emphasised that all those people who lodged land claims, and do not live on the farms for whatever reasons, have the same rights to claim the land as everyone else in the room. He said that 'those are our allies' (Mr Khumalo, 2018). This is another issue that the former labour tenants of Siyanqoba must discuss further because it could potentially cause conflict among land claimants in the future.

On the amendment of the Constitution and expropriation without compensation

Atuahene (2011) describes historical land dispossession and the development of the labour tenancy system as the 'dignity takings', as discussed earlier. This violent appropriation informs former labour tenants' views on justice, which, according to them, is expressed in expropriation and redistribution of land without compensating white farmers. They argue that they must get their land back and any form of compensation should be directed towards them. This position is based on all the cheap labour provided to white farmers by different generations of labour tenants, and other forms of suffering they endured since experiencing dispossession. As one of the land claimants, Ms Ngcobo (2018), elaborated:

> Why was the word compensation in the property clause in the first place? Who put it there? I ask this because I can see that this compensation is only intended for white farmers, they are promised to be paid for returning the land that belonged to us in the first place and was taken by force and black people died in the process. Is this what the government means by land reform?

Responding to these questions and views, another former labour tenant, Mr Luthuli (2018), nodded in agreement, adding:

> As a young boy it was very painful to see my father cry as the white man confiscated about 30 of his cattle; we never saw those

> cattle again, in fact if you need a cow for *umsebenzi* [traditional ceremony] today, you buy it from a white man.

The views expressed were challenging and questioned the foundation of the property clause, and the purpose of land reform broadly and whether it is really about redressing the injustices of the past or merely a perfunctory exercise that is far from dismantling inequality, as Ntsebeza (2007) observes. A claimant, Ms Mgoma (2018), emphasised:

> As long as white farmers are private owners, even if we get access to bigger portions of land for our own production, we will never live freely, they must not be the owners period. In other words, land must be returned to its rightful owner.

Many agreed that the racially skewed and unequal property relations on the farms caused and exacerbated the harsh living conditions. This included the ruthless treatment that most of them received from the white farmers on a regular basis. Therefore, returning the land to its rightful owners through settling pending land claims is non-negotiable. One of the land claimants, Ms Maphumulo (2018), sealed the two-hour vigorous debate by asking:

> If the government pays white farmers for our land (that they now call theirs), where will the money come from? Will it come from everybody's tax? How can my land be taken away and then later my tax be used to pay the white farmer who took my land compensation? We are being fooled here. They must remove that compensation thing from the Constitution. In a nutshell, the Constitution must be amended.

There were no objections from anyone else in the room. The members of Siyanqoba gave a round of applause, one member shouted '*Amandla*' (Power), to which everyone replied, '*Awethu*' (It's Ours/To the People).

Conclusion

It is clear from the views of the former labour tenants of uMgungundlovu, who are also land claimants, that no compensation should be paid to white farmers who currently own the land for which they have lodged claims. If the Constitution is not explicit enough on the matter of expropriation without compensation, the former labour tenants argue, it must be amended (Siyanqoba members, 2018). I have outlined the reasons for their position on the matter. Central to their argument is a history of land dispossession and the development of capitalist agriculture, which occurred through displacing the black peasantry, forced removals and the exploitation of black people's labour – all of which unfolded over generations (Morris, 1977; Williams, 1996). According to the Siyanqoba members, nothing will ever compensate for the historical dispossession and vicious cycle of poverty resulting from landlessness. They argue that any compensation should be paid to them, and many other former labour tenant land claimants, as reparations for colonial and apartheid land dispossession rather than the state compensating white landowners.

This chapter has also discussed the democratic government's failure to address the racial injustices suffered by former labour tenants and their descendants, and how the latter have responded to these disappointments through protests and court actions. The disconnection between the state's land reform model and the needs of those it is supposed to benefit comes out clearly in the focus group discussions and existing land reform literature (Hall and Kepe, 2017). Former labour tenants and their descendants need land because they belong to it. Land is not just a commodity, it is also a place of belonging and this is expressed in different ways (Bundy, 1990; Alexander, 2007). The state has put little emphasis on other land demands and uses that are not productivist in nature. Yet, for black people, such as the former labour tenants who were dispossessed of their land, symbolic dimensions of land, such as belonging, are crucial. Belonging is an important dimension of the ongoing work of transformation in South Africa, where capitalist development was premised largely on racial segregation and the economic exploitation of black people (Morris, 1977).

Overwhelming numbers of ordinary South Africans attended the public hearings on the constitutional amendment. This indicates the importance of the land question and how land reform programmes have not brought about desirable redress for many black South Africans. Even if the Constitution is amended and explicitly provides for land to be expropriated without compensation, the political will of the state will still be crucial for the implementation. The evolution of land reform programmes articulated in this chapter provides little hope on the political will of the state to deliver on pro-poor land reform. What these observations suggest is that there is an urgent need for many black people, such as the former labour tenants, farm workers, small-scale farmers, rural and urban landless people, to use their agency to organise and strengthen their power to put pressure on the state. The ugly picture of structural poverty and inequality must be challenged, and radical land redistribution that addresses colonial and apartheid ills is a good place to start. This requires laws and policies informed by the experiences of the marginalised, such as the former labour tenants of uMgungundlovu.

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