A MISTRA Policy Brief

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Land in South Africa:
Contested meanings and nation formation

MISTRA’s book argues that access to land shapes essential pillars in nation formation, such as citizenship, political identity, heritage, a sense of belonging and social disparities. These pillars cannot be fully understood within a paradigm of land as a commodity. Thus, authors argue, it is important to go beyond the productivist land approach and explore the contested meanings of land in society. These varied meanings challenge traditional land reform perspectives articulated by government and private sector policymakers over the past 26 years. They encourage South Africans to approach land tenure, redistribution and restitution policies differently. Contributors make the case for these varied meanings to be integrated into the overall framework of land reform in South Africa in order to decrease landlessness, policy incoherence, conflicts over land and continued land dispossession.

Authors also explore how this integration necessitates strengthening land-based citizenship and creating a policy environment conducive to deepening land rights across the country. They show how meaningful local community participation in land governance and decision-making is a valuable component of land-based citizenship. It requires powerful stakeholders such as state officials, traditional leaders and large corporations to follow...
legislative prescripts governing land tenure, with a particular emphasis on consultation. This consultation should acknowledge the varied ways in which communities interact with land and accommodate non-economic meanings of land such as identity formation, culture, heritage and religion.

The case studies and recommendations in this book provide insights for achieving an inclusive approach to land governance. Deepening democratic practices in land policy implementation will decrease the persisting race, class, gender and cultural inequalities in post-apartheid land power relations. The book emphasises the necessity of elevating community agency in the context of commercial land development. A socially cohesive nation formation process in South Africa requires land reform policies that address social inequalities, accommodate varied meanings of land in developing legislation and create a conducive policy environment for exercising land-based citizenship.

Recommendations for a land reform policy framework that supports social cohesion are spelled out below.

It is important to explore the contested meanings of land in society. These varied meanings challenge traditional land reform perspectives. They encourage South Africans to approach land tenure, redistribution and restitution policies differently.

**RECOMMENDATIONS**

**Land redress and nation building**

- **Land policies should be connected with inclusive nation building and social cohesion values**, as expressed in historically significant documents such as the Freedom Charter and South Africa’s Constitution. Land policy frameworks should be aimed at supporting socially cohesive nation formation rather than being limited to agricultural market considerations.

- **The government needs to consider the varied meanings of land when formulating instruments for compensation within the context of the Restitution of Land Rights Act (No. 22 of 1994)**. This consideration is crucial to determining what constitutes fair, just and adequate land redress. South Africa should not be over-reliant on narrow market-oriented compensation models, which have exacerbated social conflict and marginalised affected communities in several cases.

- **Similarly, the state should determine mining-related compensation in relation to the cultural, heritage, religious and livelihood dimensions of land within communities**. Section 54 (3) of the Mineral and Petroleum Resources Development Act (MPRDA, No. 28 of 2002) deals with determining the compensation payable to an owner or occupier of land that is destroyed by mining and prospecting. The MPRDA should be interpreted along with other essential legislation such as the National Heritage Resources Act (NHRA, No. 25 of 1999) so that compensation aligns with policies regulating non-economic aspects of land ownership.

- **Permanent judges should be appointed to the Land Claims Court** to improve the realisation of land justice and restitution. The Court adjudicates land claims by landowners, farm dwellers, labour tenants and land occupiers with tenuous tenure. Up to now the Court has operated without any permanent judges and this causes inefficiencies and delays in resolving claims.

- **The Land Claims Court should be encouraged to interpret land laws through a transformative justice lens**, which would enable it to incorporate varied meanings of land in its interpretation of laws. The court has mainly favoured and applied market-related interpretations to land issues, which overlook land-based citizenship rights and non-material meanings of land in society.

- **The Commission of Restitution for Land Rights should be given the resources needed to attract the skills and expertise required for appropriate oversight in the operations of the Commission**. It has operated with limited resources and consequently lost expertise and institutional knowledge over the years. In addition, the Commission’s budget should be increased so it can carry out its mandate effectively.
**Land tenure**

- **The dual land tenure system should be eradicated.** It consists of formal land rights fully protected by existing land tenure laws and off-register, informal land rights held by the majority of the population, which are not fully protected under current land tenure policy. This dualism supports the principles embedded in colonial and apartheid strategies and it undermines the land tenure rights of poor South Africans (mainly black Africans) in both rural and urban settings. South Africa needs to review the foundational principles on which the country’s property laws rest. This is important for transitioning towards a single but multi-faceted tenure system.

- **A unified tenure system should be developed which recognises a diverse set of landholdings** – some of them originating in the precolonial era – within black African communities. These include individual, family and homestead landholdings. This system must accommodate how most South Africans interpret landholdings and protect indigenous landholding governance, devoid of colonial distortions.

- **A transformation of South Africa’s Deeds Registry Act (No. 34 of 1937, as amended in 2019) and land titling systems is essential for transitioning to a single, inclusive tenure structure.** Current registration and titling systems are based on market principles of land exchange, and on formal land rights enshrined in Roman-Dutch and English common law. Both registration and title-deeds systems should be amended in order to accommodate diverse informal, off-register land rights. This requires strengthening government capacity for effective land record-keeping and administration, as a crucial step in the transition towards a single land tenure system. Government policy frameworks need to take into account the different ways in which land possession is established and passed on.

- **Legislation governing the role of intermediaries and traditional authorities in customary land governance needs to be fundamentally reformulated.** Currently, existing legislation curtails the land rights and tenure of citizens, especially in rural ‘communal’ areas. Although the system of traditional leaders is sanctioned in the Constitution, the state is cautioned against regulating this system in a manner that subverts citizens’ land tenure and democratic rights in the former bantustans.

**Land governance and citizenship**

- **The laws and policies governing meaningful and informed consent should be clarified and strengthened, as they are currently vague.** In addition, stakeholders should be educated about what constitutes meaningful and inclusive consent in land-development processes. There is contention over what constitutes credible engagement with a community, especially in the South African context where land laws recognise intermediaries such as traditional leaders, community property associations and community trusts as custodians of community interests.

- **Implementation of the National Heritage Resources Act (NHRA, No. 25 of 1999) must be strengthened in order to protect intangible heritage resources, which find expression in indigenous cultural and religious practices.** These resources include, but are not limited to, sacred sites like rivers, mountains and caves, considered significant by black African communities to their spirituality, religion and sense of belonging. The sacred sites must be protected in a meaningful way and not automatically viewed as secondary to short-term commercial developments or tangible sites such as museums and buildings.

- **Urgent attention should be paid to the complicity of local and national state authorities in contemporary cases of land dispossession.** Legislation such as the MPRDA and the National Environmental Management Act (NEMA, No. 107 of 1998), which hold state authorities accountable in the regulation of land processes, must be strengthened and properly implemented. Local police stations and courts need to protect the constitutional rights of civil society organisations dealing with land rights. This includes carrying out proper criminal investigations into violence, including murder committed against local land activists.

- **Government should release the final findings of the Special Investigation Unit report that**
examined allegations of corruption within the Department of Agriculture, Rural Development and Land Reform. (The Unit handed over a report on its findings to the Presidency in 2018.) The final recommendations should include holding individuals within the department and private sector accountable for contraventions of land legislation or prescripts. The report’s findings should equally inform government interventions aimed at creating a transparent, fair and accountable land reform programme. Citizens who have experienced land dispossession and financial loss as a result of corruption must be adequately compensated.

Land reform and livelihoods

- Legislation governing land and agrarian development should take into account the structural inequalities experienced by women in post-apartheid society. Particular emphasis should be placed on black African women in low-income communities engaged in agrarian livelihood activities. Policy interventions should support small-scale women producers in commercial and subsistence economies. These include providing infrastructure to support land development; using public procurement to address gender imbalances in agrarian value chains; and resolving gender disparities in access to land.

- State authorities are encouraged to transcend policy biases towards large-scale agrarian production. Such bias overlooks the diversity of land-based agrarian livelihoods in communities. Government policy should be orientated towards strengthening agrarian and land-based livelihood activities through the provision of subsidies, secure land tenure, and improved access to land, water and other natural resources.

- Social compacting measures must be introduced at local level to address long-standing conflicts between private corporations and communities over commercial land development. This requires clear guidelines on informed consent and community participation, as well as agreement on targets for socio-economic development. Government authorities are encouraged to follow all the legislative prescripts governing land tenure and commercial land development before issuing operating licences.

Recommendations should include holding individuals accountable for contraventions of land legislation.