

**Burial Sites, Informal Rights and Lost Kingdoms:
the cosmopolitanism of land claims in South Africa.**

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Abstract:

Cosmopolitanism is best understood, according to Ferguson in his book on Zambia, as paired with its opposite localism. The two polarities together represent a full range of cultural and political possibilities. These polarities dovetail and interweave – neither on its own represents a “whole way of life” but the predominance of one over another must be seen in a specific political and economic context (1999).

This paper takes land as a text, with those dispossessed of it as a diaspora. 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 localised cultural experience such as grave sites, initiation lodges and cattle byres have acquired new significance: they became verifiable evidence of effective possession of – because proving what the Land Claims Commission calls “informal rights” in – land. They thus became grounds on the basis of 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 and policy makers/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 diasporas 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.

Introduction

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, having once owned farms but had them confiscated, now imagined their lands reinstated. Others had once lived on white-owned farms as tenants with no rights of tenure, and now

imagined themselves moving back to supplant the farmers who had long ago evicted them. Yet others were continuing to reside, with scant or non-existent rights, on white farms: they now imagined themselves free to herd their cattle across the land, unrestricted by fences and formal boundaries. Even more ambitious, members of new regional elites with links to hereditary chiefs imagined themselves reclaiming, not single farms, but entire lost empires. Some spoke with enthusiasm of the abundant herds they planned to keep and the maize fields and orchards they would cultivate on what appeared to be barren ground. Others evocatively described the factories, towns, shopping centres and casinos they envisaged as springing up on dry and rocky hillsides.

But this simple image of restorative justice, premised on ideas of racialised 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 characterise South African society. A picture of this complexity can be gained, albeit not an exhaustive one, if one bears in mind that the highest-profile episodes of land dispossession were usually those in which better-off people who had held formal title to their land were violently relocated at a single, and relatively recent, moment in time. In contrast, those episodes least visible to the media were those in which tenants or so-called “squatters” lost their rights over the course of many decades. The promise of restored property, raising expectations in both these sectors, was thus one which generated much tension and division: but not necessarily in the quarters or between the groups of people who might have been expected to come into conflict over it.

In the process of such disputes, an interplay can be discerned between cosmopolitanism and localism: not only as the “cultural styles” of Ferguson’s account (1999) but also as modes of political action. This correlates to some degree with an interaction between those in the new political elite (many of whom are drawn from the former titleholder class) and those in the ranks of poorer migrant/countrydwellers (many of whom are from the tenantry). The correlation is partial but not complete: as Ferguson says shared style

need not necessarily connote shared origins. Hence cosmopolitanism may be more prevalent within settings of greater privilege or within former property-holders whose possessions formed the basis of a middle class background, while poorer people may have more ready access to localist discourses. But to presume a simple equivalence of “style” with “class” or “social grouping” 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.

It is those in the emerging - and increasingly cosmopolitan - political elite who have generated an intense interest in localist repertoires relating to the land and to “getting the land back”. This has been done, in part, by politicians in the process of electioneering. But the discourse has arisen in circles wider than that of the political class as normally understood. It has spread through the ranks of the civil service and is particularly prevalent amongst those who were appointed to positions in the new Land Claims Commission. These office-holders have acquired their own interest in localist discourses on land via two routes. 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 bureaucratese. 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. To follow Ferguson: the intersection between cosmopolitan and localist discourses, here, is not simply an encounter between opposed cultural styles associated with divergent class backgrounds. It is a matter of an emergent culture: a set of interpretations converging on the key trope - or text - of land.

The paper focuses on one aspect of South Africa’s restitution programme: that 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 restitution's intended beneficiaries whose claims they are responsible for following through. Given the new emphasis on informal rights, it shows the various attempts to authenticate these rights through bureaucratic processes. It demonstrates how cosmopolitan elites have, in their intense and not entirely disinterested interaction with ordinary claimants, engendered a new interest in localist cultural discourses on land. These take the form of millennial expectations which, sadly, seem destined to be thwarted.

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 black-on-white 'farm attacks', as well as the recent rise of the Landless People's Movement (LPM) with its links to globalised organisations such as Brazil's *Movimento dos Trabalhadores Rurais sem Terra* (MST). Lesser-known than these attacks, but equally significant, is the vigilantism practised by white farmers against African farm-dwellers. The ANC is aware that the outcomes of land reform could have a significant impact on the party's credibility, effectiveness and future support. In a country whose former government statutes enshrined a division along racial lines, land reform could potentially exacerbate racial tensions, but handled correctly it could defuse these to establish new and fruitful partnerships.

Would South African blacks imitate their counterparts in Zimbabwe and start to seize land from white farmers, given that members of social movements and some politicians were signalling support for these actions? The new South African government has been determined to structure the transfer of land as an organised process rather than allowing 'land grabs'. Well before the Zimbabwe disturbances, policies and laws had been carefully designed to ensure that the ambitious target of transferring 30% of farm land across the racial frontier would be carried out in a regulated manner. Rather than expropriation, there would be 'market'-based acquisition of land: it would be bought from 'willing sellers' by 'willing buyers' but with the mediation of state officials.

It was the systematic denial of rights in land which gave it its significance as a symbol of citizenship. A system of customary tenure had rendered communally-held land in separate ethnic territories the basis of political dependency upon chiefs for the rural African population (Mamdani 1996:21-2). This system defined rural Africans as chiefly “subjects” rather than citizens. It “mapped the social landscape” according to a particular conception of the innate relationship of “people to place” (Ashforth 1990:158), creating an inexorably divided sense of territory. Apartheid denied citizenship or assigned it on a second-class basis by allocating Africans to separate spaces. Undoing it required that a unity of territory and government be created where previously there had been division.

Space and territory were thus of key importance in apartheid’s plans. Resistance to the implementation of these plans was likewise centred on space and territory (Bozzoli 2004). If land and rights became indissolubly connected in the public mind, this linkage resulted, in part, from clashes – increasingly fierce towards the end of the 1980s - between the state and the people whose property, land and citizenship rights it was threatening to destroy (Delius 1996; Seekings 2000; von Kessel 2000). The drafters of South Africa’s new constitution thus saw land as central in defining the rights that had formerly been denied, and its restoration as a means to restore those rights and with them the sovereignty and full citizenship of the African population (Ramutsindela 1998).

Several branches of the program were designed: *restitution*, *redistribution* and *tenure reform*. *Restitution* would concentrate on returning land to titled landowners who had lost their property during the apartheid era as a result of “black spot” forced removals. The historical experience of dispossession among such groups had led to a ‘political demand for land’ within the emerging African political elite (Dolny 2001:100). People must be given not just any land, it was maintained, but the land they had formerly owned and to which they were sentimentally attached. Restitution based on past entitlement and rights was thus bound to be the guiding principle of South African land reform. But 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.

Redistribution would allow for those Africans who had never had secure - or any - claims on landed property to group together and purchase farms with the aid of a government grant. *Tenure reform* would protect 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.

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 Act (CPA)	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 (ie 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)

This subdivision of the programme represented a recognition of the differentiated nature of “the landless”. Some of the intended beneficiaries are former title-holding property owners while others – including those who have come to be defined as holders of informal rights – tend to belong to the tenantry (usually termed “squatters” over the course of the previous century). Both were left landless in the apartheid era, but the latter had never enjoyed property rights even before it. People in this category have gradually come to be seen in the advocacy literature, and by many in the NGOs, as more deserving of the benefits of land reform than the former. Thus this neat subdivision neither

forestalled ideological conflicts between those in charge of, or benefiting from, the restitutive and redistributive aspects of land reform respectively, nor prevented slippage between these two sub-categories of the programme. Strategic blurring between them was to the advantage of aspirant farmers with no former basis on the land who attempted to prove spurious connections to it through restitution, and to the advantage of people with a genuine sense of entitlement who, recognizing the difficulties of proof, attempted to benefit from redistribution instead.

There have been other sources of conflict as well, within the ranks of policy-makers. The initial importance of a language of rights owed much to the presence of the human rights lawyers who played a key role in the programme's design. But an alternative and increasingly predominant line of argument, adopted by the government after the second democratic elections in 1999, began to foreground the economic benefits to be gained from secure ownership of property. The two approaches were linked in the early years of the land reform program, which drew many human rights lawyers and officers from the land NGOS into state employment. The government's subsequent shift towards more explicitly neo-liberal economic policies has decoupled the rights-based approach from the property-based/economic one and favoured the latter over the former. Attempts to foster a land-owning, middle-class African farming constituency are now paramount, eclipsing the previous emphasis on safeguarding the basic residence rights and welfare of the rural poor through land redistribution or tenure reform (Cousins 2000, Hall and Williams 2003). With this altered direction and the substitution of personnel which accompanied it, many former NGO activists and human rights lawyers, having briefly worked in state employment soon after 1994, once again rejoined the NGO sector and have used legal means to challenge the government, attempting to contest its insistence on the private property model and to reinstate the more egalitarian vision of the programme's priorities.

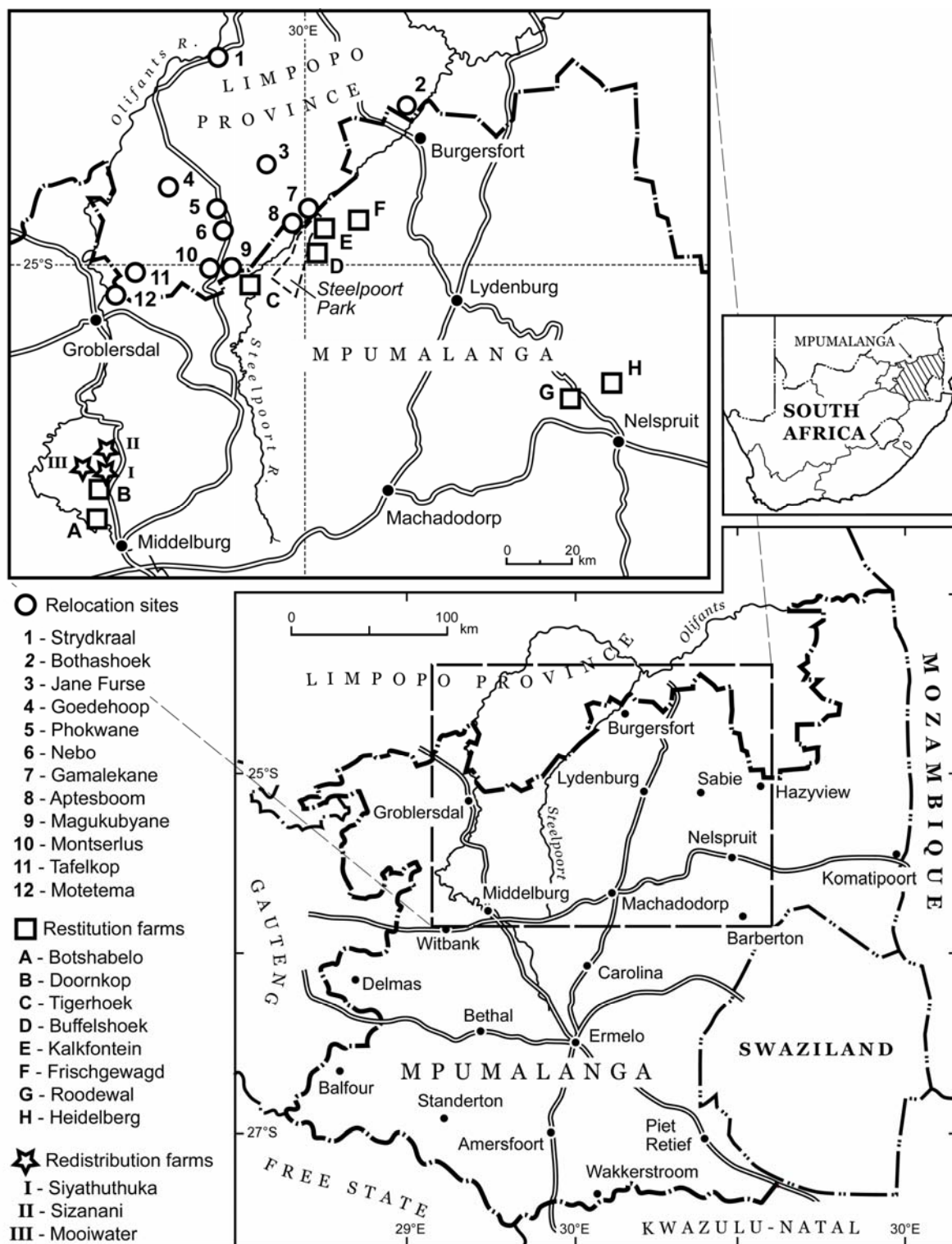
Throughout all these changes, it remains the case that landed property and citizenship in South Africa are integrally linked. Land is increasingly unlikely to form a substantial basis for any kind of economic livelihood, for reasons which cannot be explored here (see

James 2006). But land as “text” 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: getting land back was one of the things “we voted for”. The exact mechanism of land access, and hence the precise way in which property is held, has however been a matter of ongoing dispute.

The tragedy of the Chego claim

During the Christmas vacation of 2001/2, the South African newspapers reported a shocking event: one which would bring a heretofore unknown family to the nation’s attention, and which has since led to their almost daily mention on the radio. An open truck carrying about 50 members of the Chegos and related families had been on its way from their present place of residence - in the former Lebowa homeland (now Limpopo province) at Magukubiyane (9 on map) - back to gravesites at their original home around Tigerhoek (C on map) to undertake an ancestral ritual. It had overturned on a steep and slippery mountain pass. There were 43 fatalities. In the furore which followed, the claimants’ misfortunes were settled on as symbols of broader problems. The tragic accident was immortalized in 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 these an emblem of similar frustrations nationwide. One of the provincial Land Claims Commissioners put in a special appearance at the funeral. He made a series of promises, asserting (rashly as it later turned out) that the Chegos’ claim would be “fast-tracked” and implying that other, similar claims would be likewise speedily settled.

It was when reading the newspaper article about the Chego family’s land claim that I first became aware of how one aspect of the land reform programme, that of restitution on the basis of informal rights, had “opened the floodgates” for land claims, but of how the accompanying expectations were being thwarted by bureaucratic delays. But my



Map of Mpumalanga, showing relocation and restitution sites

knowledge of the longer-term history of this and related families' relocation from the white farming areas south of the Steelpoort river had dated from an earlier period of fieldwork (James 1987).

The grandparents of the present 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. The arrival of white settlers in the valley in the 1920s led to these lands being surveyed, fenced, and named as specific farms: Buffelskloof, Luiperdshoek, Standdrift, Tigerhoek, Groothoek (clustered around C on the map). The river, called Steelpoort by the settlers, was then designated as the boundary between white South Africa and the "native reserve" of Sekhukhuneland, and the occupants of the land now officially white-owned were pressed into various forms of labour tenancy. By the time the older Chego claimants had grown to adulthood – in the 1940s-50s – the demands of tenancy had become onerous. Justifying their actions by statements like "there cannot be two farmers on a single farm", white farmers were beginning to insist that tenants reduce the size of their substantial cattle herds. They were also unhappy that many of the young men residing on their farms were not available to do farm labour, but rather were spending at least 6 months of the year as migrant workers in Johannesburg.

Under these conditions, or simply being summarily evicted, 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"). Their relocation, although not forced in the same sense as some of South Africa's notorious "black spot" removals, nonetheless took place under some duress. Because resettlement was more gradual, members of extended families were strung out across the countryside over time rather than having being resettled at a particular moment. Related families from neighbouring farms, evicted or hearing about the prospects for a different life, moved to new homes in close proximity to one another: this is how some of the Chegos and other families, with long-standing ties of marriage, were in a position to continue these marriage alliances after the move had taken place. But resettlement was

an uneven process. Each relocating cluster left other branches of the family on the white farms. I discovered that there were presently seven Chego households still living at their original home, on and around the farm Tigerhoek (C on map). 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-in-exile had made regular visits back to Tubatse for weddings and funerals. More important, they had – especially since acquiring a heightened interests in the idea of getting their land back - begun returning to the farms to tend graves and propitiate their ancestors (*phasa badimo*). It was during a visit undertaken for this purpose that the terrible accident had occurred.

During a meeting of the Chego land claim committee, they asked my field assistant Mmapaseka Mohale and I for advice and help in bringing their delayed claim to the attention of the authorities. On the basis of investigations we had been conducting into restitution procedures, we talked of the sheer weight of claims in Mpumalanga province which the Commission was having to process. The Commission's task had now been augmented since circulation of the news that holders of informal rights, like the Chegos themselves, were entitled to lay claims alongside those who had held formal title to their lands. The recognition of such rights, after a definitive Land Claims Court judgement 1999, had widened the Commission's brief and complicated it: it was extremely difficult to confirm who had held such rights, and to which pieces of land.¹

The issue of informal rights, we pointed out, might have presented particular problems in this case. There were counterclaimants 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 - had also named Tigerhoek in his claim. The Commission's project officers would be sending out fieldworkers to accompany

¹ Kranspoort 48LS, LCC26/98, 10 December 1999 (LCC); http://wwwserver.law.wits.ac.za/lcc/summary.php?case_id=2468, consulted 22 September 2004.

claimants on exploratory walks on the farm, in order to confirm whether families could identify the sites of their cattle kraals 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. I later discovered from a Commission officer that this was indeed a factor stalling the Chego claim and many like it. The existence of rival claims, and the lack of skilled manpower within the Commission, had made it necessary to appoint a special consultant to attend to claimant verification, since such a task was beyond the remit of the Land Claims Commission's officers themselves. But this had not yet been done.

We drew their attention to an alternative strategy followed by a group – the Masha clan – whose land claim had recently been successful. Would it not be better to incorporate and unite with rival claimants, as the Mashas had done? Also based on informal rights, the Mashas' claim, centred on the farm Kalkfontein (E on map), had been settled two years previously in 2000. My investigation of this case, however, suggested it was distinguished from the Chegos' in a variety of other ways. 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 titleholder claims – with human rights lawyers and land NGOs. Their involvement had been sparked not only by the evident injustice of the removal, but also by the fact that the claimants had links to political organisations and labour unions: links initiated at the moment of the removal itself. These links were later to facilitate easier verification, since the case had received high levels of media attention at the moment of removal some 50 years earlier. It was this prominence in the media and in the files of government correspondence at the time that had left a clear trail of evidence of rights – all be they “informal” ones – for present-day restitution officers to use. Many of the farm's residents, having worked as migrants on the Reef and having cultivated urban-based political connections, called upon their ANC colleagues to help them stave off the eviction. There were well-documented visits to the farm, for example, by the ANC's Ruth First, among others. Also playing a part had been members of the Industrial and Commercial Workers Union (ICU).

The forebears of Kalkfontein's claimants, having lived there since the mid-19th century, had continued to reside there after the land was demarcated into farms and settled by whites in the 1920s. Living under their chief, however, it appears that they were never transformed into a resident farm labour force as the Chegos had been: instead they had retained some autonomy on their land. This, partly because it enabled a livelihood as labour migrants rather than farm labourers, had led to continual harassment by the soldiers and police of the segregationist regime even before the 1948 coming-to-power of Malan's Afrikaner Nationalist Government. The eviction was officially endorsed and carried out by the army only after that election.²

The evicted occupants then settled, north of the Steelpoort river, in various parts of the reserve which later became the Lebowa homeland. Each of these settlement venues came to be known as "GaMasha" (the place of the Mashas), after the name of the chiefly family. Some went to live with their chief himself - and later his successor, the present incumbent of the chiefship - to the farm Strydkraal deep in the heart of Lebowa (1 on map); some settled on the formerly white-owned farm Goedehoop which was later incorporated into Lebowa (4 on map); and others settled in a part of Lebowa that was closer to their original home: at Apiesboom just across the Steelpoort river (8 on map).

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, the media profile and the availability of evidence that they had been unjustly dispossessed of their land. But surely, we argued, this should not make it impossible for the Chegos to follow the Mashas' strategic lead? Led by their influential and far-sighted chief, the Masha clan had *incorporated* rather than *excluding* its rivals by claiming nine farms on behalf of a range of interrelated families who had previously lived in the area: families lacking 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

² This account is based on Schirmer (1994) and interviews with Chief Masha, Strydkraal, 26 November 2002; 11 February 2003.

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. Might the Chegos settle their differences with rival claimants rather than relying on the Commission, at much cost in time and resources, to do so?

During subsequent weeks we learned more about the Chegos and their claim. The story of their hopes and anxieties was emblematic, echoing the concerns of many other claimants on other nearby farms south of the Steelpoort river and elsewhere in Mpumalanga. The Chegos' 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, these customary sites would, it was hoped, serve as the markers of their former entitlements and hence as proof of their claim's validity.

The Chegos' 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.³ But perhaps it also served as a displacement for these expectations. Would there be any point in developing bitter enmity with one's former affines over a resource which never eventually materialized?

Intersecting interpretations

Like many other claimants the Chegos had not, before 1994, entertained the possibility of returning to their previous homes. For such holders of informal rights, the undertakings of ANC politicians had the effect of foregrounding land and the past life it symbolized. This interest was progressively sharpened and memories were re-awakened by the technical demands of the claiming process itself, as groups of claimants – sometimes in

³ This account is based on a meeting with the Chegos on 15 December 2002, as well as several other interviews in December at Magukubiyana with members of the claimant group: Samuel Rampedi, Miriam Rampedi, Johanna Chego, Petrus Chego, Podile Chego and his wife, Daniel Chego; and the following interviews at Sephaku: Selina Chego, 10 December and Elizabeth Chego, 11 December.

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 found expression in a self-conscious reworking of history by the new political elite and recently-appointed public servants holding important office. Among ordinary claimants, its effects seem less ambitious and grandiose, more immediate. But both are underpinned by a spirit of localist cultural revivalism, in which the land features as a key text or set of symbols. In cosmopolitan/elite and localist/popular consciousness alike, and as a result of intense interactions between the two which the process of restitution itself has brought about, there is evidence of a 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 government's Land Claims Commission. Having worked with claimants on an everyday basis and acquired a thorough acquaintance with the contents of the State Archives on behalf of these claimants and of themselves, they find themselves newly fascinated with their own and their "clients' " intertwined pasts. This amounts to a rediscovery of roots which, although it might be seen as motivated by the promise of land gain, goes beyond mere material acquisitiveness. It is here that land as text has part of its resonance. Regaining it is tied up with bids for power in the contemporary political world, but also signifies the disinterested restitution of history.

The need for recognizable proof of land's having formerly been occupied has led, amongst Commissioners and claimants alike, to the sharpening of memory and to an increased awareness, even a rewriting and rethinking, of history. 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 graves, cattle byres and initiation lodges in the

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: Land Claims 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 this possible through the programme outlined above. Such promises by politicians were partly responsible for generating the kind of interest demonstrated in cases like that of the Chegos. Evidence from elsewhere in South Africa reinforces this impression, showing differences of opinion between middle-class urban-based leaders and their poorer, rural-based followers with more practical concerns. Where better-off community representatives, motivated by politicized ideas about going back to the land, have set their sights on particular farms, their followers have been more interested in the practicalities of land access and land use, wanting a place, any place, where they could hold ceremonies, trade from home, farm, retreat at weekends, retire to, and die. Seemingly inspired by a more redistributive vision, they wanted a place 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”. But far more than the pronouncements of remote political figures however popular, it has been claimants’ interactions with the officers of the Land Claims Commission which have sustained, informed and directed this interest. Reciprocally, these officers’ relationships with claimants have sharpened their awareness of the intricate historical details and complex procedures required in proof of former ownership or occupation. In this way, cosmopolitan and localist discourses have converged to create some uniformity in how “land as text” is interpreted.

The recognition of informal rights alongside formal property rights ones as a basis for restitution, and Commission officers’ attention to establishing and verifying such rights, sparked a wider interest in getting land back. An examination of the brown folders in the

office of the Mpumalanga Land Claims Commission revealed that claimants like the Chegos would be able to satisfy the terms of the 1994 Restitution Act by showing 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, for former farm tenants in Mpumalanga, 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 (see Figure 2). The process of dispossession had been a slow one. In a study of the area in which the Chegos’ claimed farms are situated, historian Stefan Schirmer shows how “the struggle for the land” was waged within the district as a whole rather than over specific farms. If a family’s “land rights” were not able to be realized on one farm due to encroaching restrictions exercised by the farmer, then they could be secured through that family’s ability to move from one farm to another (Schirmer 1994, 1995:522-3). But such freedom of movement was gradually whittled away, leaving some families little option but to relocate into the homeland as several clusters within the Chego clan had done. As revealed by an examination of the brown folders in the office of the Mpumalanga Land Claims Commission, proof of racial dispossession was not difficult: it simply necessitated the re-use of roughly the same form of words in each of an endless succession of bureaucratic documents.

4 Land rights claimed

...claimants were dispossessed of their unregistered rights of beneficial occupation of the property for a continuous period of not less than 10 years prior to dispossession. ...Their relatives’ graves are on the farm and they have no free access to them.

5 Basis for the claim

.. past discriminatory law in terms of Proclamation 177 of 1956, issued in terms of Chapter 4 of the Natives Trust and Land Act 1936 (18 of 1936) [which] created separate living areas for people in SA based on their race..... they were then deemed to be illegal squatters and their presence was ‘unlawful’.

6 Circumstances of removal

... Africans could only stay provided they gave labour ... they were told to leave for released areas that were reserved for African settlement.

7 Compensation

None, as they held informal rights and hence were not liable.

8 Post-dispossession profile

No land found for them – they had to look on their own and ended up in areas like Ga Masha in Sekhukhuneland.

Figure 2: Proving the racial discrimination basis of loss of informal land rights (identical wording from a series of files in office of the Land Claims Commission, Mpumalanga)

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 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 commissioners’ histories

In the early days of restitution, before it had become clear that claims needed to be clearly-bounded and verifiable (and despite the 1913 cut-off date), there were several submissions which represented an attempt to recapture the glorious past of ancient chiefdoms. Soon after learning of the restitution process, 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.⁴

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 (G on map) – it was clear that the restitution process had initially stirred imperial, and ethnically divisive, visions of the African past.

⁴ David Mashego, Nelspruit, 30 January 2003..

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 some standing in the world of local politics, having been active in South Africa's dissident civic associations and in the trade union movement during the apartheid era. He had grown up as a member of the coloured community assuming a more "coloured-sounding" surname (in part to disguise himself from his pursuers in the South African police), but 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. Urbane and sophisticated, there was perhaps a taste of opportunism alongside a genuine search for identity in his rediscovery of African roots.

This case illustrates how the joint power of land and history may buttress the authority of the new political elite. Another case shows how members of the emergent elite have coattailed on the re-engagement with the past undertaken by land claims committees. Here, restitution and the history which goes with it promises to augment contemporary sources of political influence. Jeri Ngomane, 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 (see map). The claim, 350,000 hectares in total, is one of South Africa's biggest. Jeri claims not to "know anything about the claim ...it is my elders who are organising it", but 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 which the ANC in Mpumalanga has promoted. 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'.⁵

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 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 were, after 1994, 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, there are others at lower levels in the Land Claims Commission hierarchy who 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

⁵ Jeri 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.

which might be adduced in support of their – and simultaneously of their clients’ – claims.

One such person is Land Claims Commission officer Philip Mbiba. He has worked on a variety of cases in the Lowveld region and has himself laid a claim to the land where his forebears lived. 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 rather less glorified version of the Ngomanes’ history, and one which focuses upon more recent events.

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.

In the archive he had been reading correspondence between Jan Smuts and the local Native Commissioner which demonstrated how the state with its then segregationist policy, upon which apartheid was subsequently modelled, had started to envisage population resettlement in the days well before the advent of the Afrikaner Nationalist government. After Malan formed his new government in 1948, further evidence suggested that experimentation with one removal by the local state served as a stepping-stone which would later lead to another. Here Mbiba came upon an account of the Mashas’ removal from Kalkfontein: the group whose strategies of consolidation we had brought to the Chegos’ attention. Mbiba’s archival research was helping him to build a comprehensive picture of the state’s policy of forced relocation in the region as a whole, and to acquire 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 at this stage was Mr Balk, stationed in Pietersburg: he removed the Mashas in terms of Proclamation 84 of 1951, 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. They asked him to sign a letter, and he agreed. 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*.⁶

(Such insights caused him to observe, laughingly, that "a new Oxford History of South Africa will have to be written": something he will 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. Although Mbiba had tracked down this evidence in the archive, 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

⁶ Philip Mbiba, Nelspruit, 26 January 2001.

based on aerial photos from the 1930s, in order to put together a picture of land usage in that period.⁷

This subsidiary process of claimant verification on the basis of informal rights has led Philip Mbiba to a clearer understanding of the kinds of proof which might be needed in support of his own land claim. Being too small-scale and low-profile to have left a record in the archives, his family's occupancy of the farm where they lived as tenants will have to be proved using other means. The catalogue of evidence he is 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 cosmopolitan-style politicians attempting to reconstitute entire precolonial empires to the views of more humble localist claimants not unlike Philip Mbiba himself, we can see that the restitution process and such claimants' frequent interaction with the Commissions' officers has led them to re-envision the past in their own way. Mr Mthetwa, 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 politicised, 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, he has memories of a life once lived on the land which contain the promise of a future there. The conditions of life he recounted – being paid only in kind but restricted from working for wages off the farm, 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 – echo those of the Chegos. His lament was tempered by a sense that life on the farm had been preferable to his subsequent existence spent in a relocation village in the homeland, and later an urban township: “where we live now ... we are packed together like chickens”. Asked about his motivation for lodging a claim, he said

⁷ Philip Mbiba, Nelspruit, 30 – 31 October 2003.

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.⁸

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 some scepticism, given that his subsequent life experiences, albeit disrupted, had probably resulted in far greater material well-being than he could have achieved as a farm-dweller. It was after a period of wage labour that he started his small-scale minibus taxi business. If he eventually uses his reclaimed farm as a means to “feed the future generations”, an increasingly unlikely prospect in the light of the evidence, 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 resonates with the Chegog’s testimony. The presence of his parents’ and grandparents’ graves on the farm Heidelberg has been central to his claiming of the farm. When he was forbidden to visit these graves during the intervening years, he felt his rights had been violated:

... we 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’.⁹

Similarly restrictive has been the experience of other former farm-dwellers, as a glance at claimant files in the Commission testifies:

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.¹⁰

Proving knowledge of the existence and whereabouts of such graves has become a means through which Commission officers attempt to prove informal rights. Mthethwa, like many others whose claims are under investigation, has accompanied the project officer

⁸ Mr Mthethwa, Nelspruit, 13 November 2002.

⁹ Mr Mthethwa, Nelspruit, 13 November 2002.

¹⁰ KRP 2427, Buffelshoek and others, Phadzimane Community, Mr Madala Lawrence Maphanga.

onto the farm to show him “where we used to live, where the graveyards of our grandparents are”. Similar verification took place in the overarching Mashego claim of which Mthethwa’s is a nested subdivision:

we 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.¹¹

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 and given that many white farmers, increasingly anxious about the claiming process, are aware that graves are fast becoming the most powerful proof of former residence. As David Mashego told me

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 (*ibid.*).

These excerpts demonstrate how informants’ commitment to the specific sites of their forebears’ graves has, like the importance of the past more generally, intensified during the claiming process itself. For the Chegos, it was the ANC’s election promises which first intensified their interest, this then resulted in a greater frequency of 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 Lebowa homeland and the white farms at Tubatse led to the terrible traffic accident, and this event in turn has further deepened the sense of community solidarity within the group, its commitment to the now 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.¹²

...they used to hold claims meetings. I think that was the main cause of this accident. ... We were visiting our people in Tubatse, and people from government also became

¹¹ David Mashego, Nelspruit, 30 January 2003, p6.

¹² Miriam Rampedi, Magukubya, 17 December 2002.

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.’¹³

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.¹⁴ There is some evidence that the current importance of burial sites in South Africa is 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 has, then, 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 case of Mpumalanga demonstrates that land in South Africa is not understood merely in material terms but is like a “text” which has rich symbolic meanings. Its restoration has become a fulcrum for contests between cosmopolitan and localist ideas about the nature of citizenship, but also for some convergence of interpretation between these.

The symbolic and economic claims on land are difficult to square. Arousing millennial expectations and exaggerated fears, land policies have been charged with conflicting tasks. On a practical level, land redistribution is 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. At the

¹³ Johanna Chego, Magukubiyana, 17 December 2002.

¹⁴ 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)

same time, land reform is expected to resolve racial tensions which it, itself, has partly created.

Locally, especially among ordinary claimants, there is an insistence that land restitution was intended to benefit *all* Africans rather than just former title-holders. Policy-makers have redefined restitution with sufficient breadth to accommodate at least some such visions of land entitlement. But restitution has nonetheless served to create new social divisions between the middle class and poorer people who formerly lived as tenants. Somewhat ignoring the interests of its original supporters from within the property-holding African middle class, the new political elite has tried to appease these ordinary claimants and to accommodate their visions of citizenship. Ultimately, however, it resorts to practical models of redistribution in order to resettle the poor rather than sticking to a wholehearted respect of “rights” across the socio-economic spectrum. For this reason the “political demand for land” was bound to be realized unevenly. For the Mashas, a high profile group with an influential chief, this demand was recognised in the restoration of their land. But the Chegos, despite their sad accident, were still waiting.

People are ultimately aware that land, delivered without accompanying support and protection, is disconnected from the social dependencies which might enable them to use it: from the various paternalist frameworks which – at least in idealized, remembered terms - once operated to stabilize their forebears’ lives on the land. Thus, although paternalism and political patronage runs counter to state policy, the circumstances are such as to allow for the intervention of brokers who mediate between the state and land reform’s beneficiaries. These include chiefs, entrepreneurs or the members of new elites who are consolidating their positions along ethnic lines and using land as a means to do so. They also include the Land Claims Commission officers discussed in this paper.

Land restitution is seen as a kind of Truth Commission of the South African countryside, with some claimants feeling that they deserve to have the land back “so we can farm it as the whites once did” while for others the need to affix their names to land claims was

being driven mainly by a sense of wanting public acknowledgement for past wrongs at the hands of farmers. In neither case did economic considerations predominate. Within the ambiguous racial politics of land reform, too, the role of brokers has been crucial: specific project officers or consultants become responsible for “selling” state policies to threatened farmers and frustrated land claimants alike, often using their knowledge of white farmer indebtedness in order to buy land for the settling of claims (James 2006). Such successes nonetheless beg the question: where farming is no longer viable in its current form, and where the state has removed all subsidies for farmers, can land be any more successfully farmed by blacks than whites?

These, like other questions raised by the land reform process, are only just beginning to be answered.

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