

UNEARTHING CORRUPTION IN THE LAND SECTOR

SECTION 25
OF THE CONSTITUTION

corruption
watch



**THIS IS NOT
A GAME**

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BANTUSTANS

SEXTORTION

SQUATTERS

BLACKSPOTS

HOMELANDS

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BACKGROUND

ILLUMINATING CORRUPTION IN THE LAND SECTOR

Corruption Watch is a civil society organisation that opened its doors in the first quarter of 2012.

Our work is built on reports of incidents of corruption brought to us by the public, and to date we have received almost 27 000 such reports, spanning a range of areas including, but not limited to, corruption in schools, the health sector, licensing centres, and the South African Police Service, as well as land and related issues.

The organisation's small but dedicated team of researchers, lawyers, journalists and investigators work hand-in-hand to capture the accounts in these reports of corruption through analysis, exposés, and strategic litigation. We also collaborate with a number of stakeholders in the human rights sector and government, and engage with communities in the rolling out of advocacy programmes.

As an official chapter of the Transparency International global movement, Corruption Watch joined Zimbabwe, Zambia, Uganda, Kenya, Liberia, Madagascar, Ghana, Cameroon and Sierra Leone in the Land Corruption in Africa (LCA) project that has been ongoing for nearly five years. The project's scope is wide, yet basic in its implementation, with the intention to understand the impact of corruption on land tenure or ownership with a greater focus on vulnerable groups - women and children.

Working on the premise that land is a vexatious matter throughout the world for a number of reasons, chapters in each country mapped out their roadmap for conducting research, engaging with communities, and developing an advocacy plan that mobilises, raises awareness and assists communities. All of this is approached from the perspective that the complexities in the topic of land arise from historical turmoil, socio-economics, environmental affairs and politics, and are further complicated by the vested interests of governments, corporations, lobby groups, traditional authorities and communities.

Considering debates pertaining to this topic in South Africa, Corruption Watch felt compelled to add its voice to the discussion and illuminate the scourge of corruption in the land sector with a view to cautioning and encouraging law- and policy-makers, interested parties and the public at large that we should continuously work toward limiting opportunities for corruption in laws, policies and programmes related to land.



Corruption in land is a topic not widely spoken about in South Africa. Eighty percent of the land is privately owned and registered as private property at the deeds office, creating the false impression that there's no room for corruption in this instance. Conversely, there are often reports of mismanagement of funds in mineral-rich communities where mining companies enter into agreements with community representatives to mine the land. We read reports of royalties benefiting only a powerful few. Traditional leaders are frequently featured in articles as enablers who facilitate mining deals binding communal land, without consulting the people as they should. These are the popular corruption stories in relation to land.

Privately-owned land on the other hand is seldom entangled in reports of corruption. This phenomenon highlights the apartheid spatial planning which still persists in democratic South Africa. The former homelands, consisting of the 13% of the land occupied by black people, is governed by a different set of rules to the rules governing urban land. People in rural areas do not have secure rights over the land they occupy even for residential purposes, whereas private ownership is a norm in urban areas.

**IT IS CORRUPTION THAT HAS BROUGHT US,
AS A SOCIETY, TO THE CURRENT STATE OF CRISES.**

LEGISLATIVE AND HISTORICAL CONTEXT



Even
Up

Twenty-five years into the dispensation of democratic rights in South Africa; the country continues to be a study of vast inequalities. This follows a tumultuous history of racism and prejudice left by colonial conquest and apartheid.

A LEGACY OF SEGREGATION, THROUGH RACIAL LAWS, STILL PARTITIONS THE COUNTRY INTO TWO PARTS, RURAL AND URBAN.

The country has adopted a Constitution that secures the rights of all to a dignified life. However, the reality of the majority of South Africans is still a far cry from the vision of its freedom document. Research suggests the existence of a massive gap in wealth and access to basic amenities, education, health and infrastructure¹. Statistics show that rural areas are the worst affected in terms of disparities² and that the most disadvantaged group are black women and children. Rural areas, previously referred to as homelands or black spots, were inherited from past apartheid laws which aimed to exclude the black majority's claim to land rights.

The incomplete fulfilment of the Constitution's vision, in terms of secure land tenure, informs the reality of the black majority.

A historical analysis of the colonial state at the forming of South Africa's property system will show that colonial officials began framing and imposing a western legal property system that conferred an inferior legal status to customary land tenure. This led to misguided assumptions about customary law and erasure of the black majority's claim to land rights. This colonial legacy was later propagated by the apartheid regime and led to further marginalisation of black women, relegating their status to that of minors with limited, or no, capacity to exercise their rights to land.

The report will identify policy and legislation that built on each other, from the colonial to the apartheid state, before finally turning to the current democratic order; considering what legislative progress, or regress, has been achieved in securing the land rights of rural women.

This will be done by considering policy interventions in the current dispensation of democratic rights.

THIS REPORT WILL ANALYSE HOW SOUTH AFRICA'S LEGAL LANDSCAPE, THROUGH STATUTE, HAS BEEN LARGELY PREJUDICIAL TOWARDS THE MAJORITY, ESPECIALLY RURAL BLACK WOMEN.



LEGISLATIVE & HISTORICAL CONTEXT

DISTORTING LAND RIGHTS



COLONIALISM LEGITIMISED LAND DISPOSSESSION OF INDIGENOUS COMMUNITIES. THE ASSUMPTIONS OF COLONIAL AUTHORITIES ABOUT CUSTOMARY RIGHTS COUPLED WITH THE DIMINISHED STATUS OF BLACK WOMEN FACILITATED THE ERASURE OF WOMEN'S LAND RIGHTS.

TO UNDERSTAND THE NEED TO PROTECT THE RIGHTS OF RURAL BLACK WOMEN IN THE DEMOCRATIC ORDER OF SOUTH AFRICA, WE NEED TO UNDERSTAND THE HISTORY LEFT BY COLONIALISM – STARTING BY ANALYSING THE USE OF LAW IN COLONIAL SOUTH AFRICA AS A TOOL TO FRAME LAND RIGHTS TO THE EXCLUSION OF THE BLACK MAJORITY, AND ULTIMATELY BLACK WOMEN.

The analysis at this part of the discussion will prove two notions. Firstly, that this particular framing of customary law eroded their security of tenure. Secondly, it legitimised land dispossession of indigenous communities.

Colonial authorities achieved this through their misguided assumptions about customary rights and the result undermined how indigenous communities experience relations to land.

These assumptions coupled with the diminished status of black women facilitated the erasure of women's land rights. In order to achieve constructive analysis on this particular form of distortion that colonial officials used, the discussion will home in on two legal tools to create customary legal principles – framing and status. Framing refers to the way in which land rights are created and understood. It is important to note that framing takes the form of the different sources of law³. However, this report will place particular emphasis on how framing was used to create legislation. In terms of the broader discussion about land rights, it would be significant to make a few considerations about framing.

Firstly, framing informs legibility (or the law's ability to recognise its people's rights and values)⁴. Secondly framing is pivotal for understanding concepts of power within a given society. This is based on the idea that framing gives the content to which rights can be given or taken away from its citizens⁵. As a final consideration, in relation to colonial South Africa, framing is concerned with whose rights should take precedence⁶. Put in the form of an inquiry, which rights (western or indigenous) are recognised as legitimate by the state?

Historical analysis suggests that the colonial state simplified, in law, its understanding of customary land tenure systems.

From the perspective of Okoth-Ogendo⁷, indigenous communities were subjected to assumptions and misinformed

understandings by colonial authorities. He notes how authorities asserted the notion that indigenous law did not confer any property rights on members of their societies. Colonials assumed that indigenous communities used land communally and held no exclusive rights over land. This led to authorities introducing western legal principles to remedy the perceived gaps of indigenous law.

Okoth-Ogendo further expands that adopting western law allowed officials to declare land of indigenous communities as vacant and ownerless. This stemmed from the notion that since indigenous land was used communally privilege, rather than rights, accrued to these communities. This top down, western framing of land tenure rights meant that indigenous communities would be regarded as tenants of the land they occupied. Without any legally enforceable rights over land, the power of these communities was transferred to the state. Bennett⁸ places the problem with how colonial courts chose to engage with customary law. He argues the courts opted to change customary law rather than to change its procedures.

Colonial officials chose to view African/customary systems through the lens of European legal frameworks. Bennett argues this disadvantaged customary systems as central features were overlooked and regarded as mere conventions.

He further notes that officials codified what they perceived to be the rules of customary law.

3. Nolundi Luwaya 'Understanding women's claim to land in an Eastern Cape Village' (2018) Ch 1, 14. Ibid. at 6, 15. Ibid 16. Ibid 17. HWO Okoth-Ogendo 'The nature of land rights under indigenous law in Africa' in Claassens and Cousins (eds) Land, Power and Custom: Controversies generated by South Africa's Communal Land Rights Act (2008) Ch 4, 8. Tom Bennett 'Official' vs 'living' customary law: dilemmas of description and recognition' in Aninka Claassens and Ben Cousins (eds) Land, Power and Custom: Controversies generated by South Africa's Communal Land Rights Act (2008) Ch 6

This single system of customary law created a particular understanding of customary land rights. In Bennett's words: 'colonial authors did as much to create the world they were writing about as to describe it'⁹. This perspective is shared and advanced by Mamdani¹⁰ highlighting that British colonisers had one model of customary authority in their conquest of Africa. The model suggests that all African systems of land tenure are organised around three bodies of authority, namely the monarch, patriarch and authoritarian.

THE ASSUMPTION IS THAT "THE KING IS AT THE CENTRE OF EVERY POLITY, THE CHIEF AT EVERY PIECE OF ADMINISTRATION AND A PATRIARCH IN EVERY HOMESTEAD"¹¹.

Academics further contend with the concept of ownership that was employed by the colonial state¹². Ownership from the scope of traditional common law is a universal right enforceable against others. In other words, it is a right held by an individual to the exclusion of other rights. Legal scholars highlight that in the hierarchy of property rights, ownership is an individual's most complete, or strongest, right¹³. Put differently, the concept of ownership is instrumental in facilitating individual property rights; and all other rights are subordinate to it.

Colonial authorities viewed ownership as being constituted by individual and exclusively held right over land. Bennett further notes that as they developed customary law through descriptors, colonisers looked for examples of ownership¹⁴.

This approach often meant that where they could not find examples of ownership under customary law, they simply assumed that it did not exist. For this reason ownership was framed in a way to suggest it was alien to customary law, which was locked into descriptions such as 'communal', 'primitive' and 'uncivilised'¹⁵.

This is of particular significance in understanding how the coloniser legitimised the dispossessing of African communities' land. A complete theory of land tenure, under western legal frameworks, must satisfy two notions pertinent to ownership. Firstly, it must explain an individual's desire to own property and secondly, the need for others not to interfere with this right¹⁶. It is clear that ownership is underpinned by notions of superiority and completeness, especially with regards to the common law concept of ownership.

However, the risk of this method is that it undermines other theories that already exist, in this case African systems of land tenure. These systems emphasise that land tenure comes out of the need to protect the familial structure¹⁷. It is individual families that in turn make up the community. This extends even toward the authority that the King derives in such societies because without the existence of families, there are no communities for the King to govern¹⁸.

THE NATIVES LAND ACT CONFINED AFRICAN PEOPLE TO 13% OF SOUTH AFRICA'S LAND SURFACE, REFERRED TO AS BLACKSPOTS.



● "BLACK AREAS" 1913.

▨ "BLACK AREAS" ADDED BY 1936.

9. Ibid, at 140 I 10. Mahmood Mamdani Citizen and Subject: Contemporary Africa and the legacy of late colonialism (1996) 39 I 11. Ibid I 12. Bennett, note 8 at 141 I 13. Du Bois F (ed) Wille's Principles of South African Law 9 ed (2007) 470 defines ownership as: 'Ownership...is potentially the most extensive private right that a person can have with regard to property. In principle, ownership entitles the owner to deal with his or her property as he or she pleases within the limits set by the law.' I 14. TW Bennett Customary Law in South Africa (2008) 375 – 'One of the distinctive features of ownership is its "absoluteness", a quality that implies the concentration of all entitlements in one person, who, in consequence is free to use and dispose of the property at will' I 15. Okoth-Ogendo note 7 at 375 I 16. Luwaya note 3, Ch 2 at 13 I 17. Michelle Hay 'Customary Land Tenure without Chiefs? Rethinking land tenure and rural leadership in 20th century South Africa' Good Governance Africa (2017) at 21 I 18. Ibid at 23.

These nuances were often overlooked by colonial authorities who sought to use such structures in consolidating African land under western regimes.

The rationale behind using terms such as 'communal' is that it locks indigenous communities into misaligned assumptions. Furthermore, these enduring terms obscure the nature of rights of African communities¹⁹. Bennett asserts that by defining the laws of these communities, colonisers precluded ownership and individual liberties²⁰. He goes on to advance that the absence of ownership empowered the colonial government to expropriate and administer African land. Western legal systems were seen as complete and were granted legal recognition, through statute²¹. The Natives Land Act endorsed the notion that blacks were not able to own land. Land would be held in trust to government.

CHIEFS WOULD RUN THE ADMINISTRATIVE AFFAIRS OF THIS LAND ON CONDITION THAT THEY REMAIN LOYAL TO THE REGIME²².

It is important to note that no one could buy or sell this land as it formed part of communal land as conceived through the absence of ownership. This type of framing continued in 1936 through the Native Trust and Land Act. This policy, building on the foundation of the Natives Land Act, confined African people to 13% of South Africa's

land surface, referred to as blackspots. The aim of the colonial government was to move Africans from urban areas into reserves and class them in terms of their clans²³.

The report refers to status as an individual's social and legal standing – or in detailed terms, the individual's ability to freely enjoy their rights and contribute in their various communities²⁴.

The concept is particularly important for understanding how legislation was used to diminish the legal status of women. The status assigned to certain groups influence how land rights and intergroup relations are formed²⁵. Historically the law ascribed a diminished status to women so as to remove them from the matrix of land rights. The premise was that by relegating the legal standing of women the state influences how the law recognises their participation in their communities. Black women were assigned the status of minors, meaning they were subject to their husbands in the homestead and could not enter into contracts or hold title to land²⁶. Under common law these rights are important in understanding concepts of ownership. Effectively women were deprived of access to land limiting their ability to accumulate assets.

Mamdani notes how during the colonial era whites were considered civilised and were recognised as having full rights, while the situation for Africans was the direct opposite. Mamdani maintains the colonial state perceived blacks to be barbaric and had to be tutored into civilisation²⁷. This resulted in them having limited civil rights and no political rights.

The Black Administration Act is indicative of this, setting out the governance structure of blacks and the constructs of official customary law. This act was integral in assigning the status of a minor to African women²⁸.

SECTION 11 OF THE ACT RECOGNISED WOMEN AS MINORS AND HUSBANDS AS THEIR GUARDIANS.



Through legal and policy intervention the state was allowed to remove black women from white areas. This is evidenced in penal codes during the apartheid era, such as Circular 2 of 1982. **This policy allowed for blacks in white areas who were considered unproductive to be sectioned off to blackspots. Such unproductive persons included the aged, disabled, widows, and women with dependent children²⁹.**

LEGISLATIVE & HISTORICAL CONTEXT

LAWS, REGULATIONS AND POLICIES



AS DISCUSSED ON THE PREVIOUS PAGE, THE REPORT GRAPPLED WITH THE TOOLS USED TO CREATE HISTORICAL LAWS THAT ALLOWED FOR THE DISPOSSESSION OF AFRICAN COMMUNITIES.

The focus now will be to identify laws, regulations and policies, from the colonial to the apartheid state, which built on one another to completely erase indigenous communities' security to land tenure. The aim is to show how the two regimes consolidated land and reconfigured the politics of land in South Africa. Thereafter the discussion will turn towards the current democratic order and the reforms in place to redress the imbalance caused by such policies.



THE COLONIAL AND APARTHEID STATE

1894 THE GLEN GREY ACT

As mentioned previously, land dispossession occurred well before the formation of the apartheid regime.

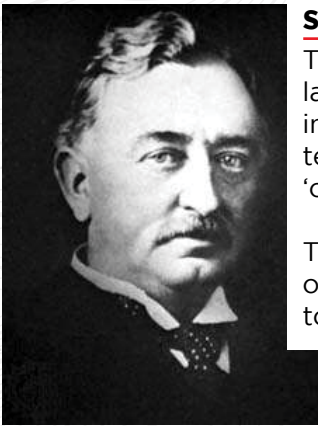
The Glen Grey Act³⁰ has been identified by some scholars as the foundational legislation for spatial segregation in South Africa³¹.

The act was concerned with land, labour and franchise. It further introduced an early model of quitrent tenure, which hinged on the tenet of 'one man one plot'³².

The idea, from the perspective of its drafter Cecil John Rhodes, was to assign a limited amount to

individual families of the ever-growing native population, with the head of the family holding title to occupy the land. Rhodes sought to apply the act to certain areas of the Cape Colony, and then to other colonies consolidated under British rule³³. Relying on the principle of male primogeniture, where the eldest son succeeds if the title holder dies, this was one of the first pieces of legislation to remove black women from holding land³⁴. The ultimate aim was to limit the ability of black people to accumulate land.

Luwaya marks it as the beginning of crystallisation in law into a narrative of customary land rights being linked to the principle of primogeniture³⁵.



Cecil Rhodes

NATIVES LAND ACT 1913

In 1913, the colonial government continued to entrench notions of African land dispossession when they adopted the Natives Land Act³⁶.

This act was concerned with further segregation and securing a native labour force, as per the vision of Rhodes. Furthermore the act skewed land holding rights to the benefit of white farmers and allocated a small percentage of land to natives, referred to as scheduled areas³⁷. It further prohibited black people from owning land outside these areas and did the same for whites regarding native reserves³⁸.

The implications meant that many African families were forced off land they had occupied much of their lives. The act also extended to African farmers who had lived close to white-owned land

through arrangements such as rental, labour tenancy and share croppers³⁹. Tenancy of this sort allowed for some black farmers to live on white-owned properties, paying rent through labour and sharing a portion of their crops. Some black tenants found success in these arrangements and became prominent small-scale farmers⁴⁰.

This practice was outlawed by the introduction of the Natives Land Act and these farmers lost share crops and livestock. The act further disrupted and displaced black farming families, forcing them to leave behind land they had lived on for generations⁴¹. Academics note the act did not address where the displaced families were to go until the mid-1920s⁴².



30. Glen Grey Act 25 of 1894 ss 2 – 6, 26 – 29 and s 33. 131. Henry Bernstein 'Agrarian questions of capital and labour: some theory about land reform' In Ntsebeza and Hall (eds) *The Land Question in South Africa: The Challenge of Transformation and Redistribution* Ch 2 132. The Glen Grey Speech' given By Cecil John Rhodes on the second reading of the Glen Grey Act to the Cape House Parliament on July 30 1894 available at: http://www.sahistory.org.za/sites/default/files/glen_grey_speech.pdf 133. Ibid 134. Luwaya note 4 at 49 135. Ibid at 50 136. The Natives Land Act of 1913 available at: South African History Online <http://www.sahistory.org.za/topic/natives-land-act-1913> 137. Bernstein, note 31 at 29 138. Act 27 of 1913 section 1(1a) (b) (c) and section 1(2). 139. Adeline Piotrowski 'Colonialism, Apartheid and democracy: South Africa's Historical Implications on Land Reform Debate' (2019) *Journal of Interdisciplinary Undergraduate Research* at 57 140. Luwaya note 4 at 50 141. Piotrowski above note 39. 142. Ibid.

THE COLONIAL AND APARTHEID STATE

1936

NATIVES TRUST AND LAND ACT



In 1916, the report of the Beaumont Commission concluded with a recommendation to acquire more land for native reserves⁴³.

This land was acquired with the intention of accommodating the African families displaced as a result of the Natives Land Act of 1913. This resulted in the enactment of the Natives Trust and Land Act⁴⁴ in 1936. The act saw the creation of the South African Natives Trust – a state controlled institution used to acquire additional land in reserves⁴⁵.

These would later become the homelands, or rural areas in present-day South Africa. This act, intended to be read as a supplement to the land act of 1913, ended labour tenancy entirely. It introduced new concepts such as 'squatters'. In an attempt to reduce the number of labour tenants in what were then referred to as 'blackspots'⁴⁶, the act prohibited the existence of these tenancy arrangements, instead calling for black people to move into demarcated reserves.

APARTHEID 1948

THE HEIGHT OF RACIAL SEGREGATION

The apartheid regime has been described as an era that embedded racial segregation as part of the law.

The state used its power to brutally remove black people, thereby painting the picture of present-day South Africa.

Through relocation and influx control policies the apartheid state removed Africans from white areas, allowing them into these areas strictly for labour purposes⁴⁷.

These policies assigned Africans into territories referred to as bantustans or homelands, arbitrarily defined using tribal identities to divide the majority who migrated to white areas for labour purposes. These policies were informed by the Natives Land Act of 1913 and 1936 Trust Act, using force to dislocate African communities. These immoral actions were legitimised through the semantics of law and order⁴⁸.



1950 GROUP AREAS ACT

The 1950s saw the passing of the Group Areas Act, **a law which restricted black people from having any access to urban areas unless they were employed in that specific area.**

This act further demarcated South Africa into areas based on race and resulted in massive forced removals⁴⁹. Later, the apartheid government transformed the reserves into ethnically determined 'independent' homelands, which were accompanied by further waves of forced removals and land dispossession.

While commercial white farmers received financial subsidies and other support, black families lost their productive land, which undermined small-scale farming in rural areas.

By 1994, 40% of the country's population, or approximately 16-million people, were living in extreme poverty in the former homeland areas.



BLACK AREAS LAND REGULATIONS

1969

By 1960 most of the rural land in South Africa was state-owned and the majority of black people had limited land rights⁵⁰.

The Black Areas Land Regulations⁵¹ provided legal structure for land tenure in rural South Africa. It was inclusive of 'scheduled' and 'released' areas, as defined by the colonial land acts⁵². These regulations provided for two types of tenure systems in rural areas, namely quitrent and permission to occupy⁵³.

The only difference was that the former referred to surveyed land and the latter to un-surveyed land. In both forms title holders did not have full rights of ownership, in terms of common law.

The title holder was required to pay an annual fee, failure of which led to cancellation of the title⁵⁴. Furthermore, should the title holder find minerals, all minerals would be vested in the state⁵⁵.

As in the earlier forms offered in the Glen Grey Act, women were prohibited from becoming title holders and succession was accrued through male primogeniture.



43. Luwaya note 4 at 52 I 44. Ibid I 45. Cheryl Walker 'The Land Question in South Africa: 1913 and Beyond' Oxford Research Encyclopedia of African History March 2017 available at: <http://africanhistory.oxfordre.com/view/10.1093/acrefore/9780190277734.001.0001/acrefore-9780190277734-e-79> I 46. Piotrowski note 39 I 47. Sam Moyo 'The land question in Southern Africa' In Ntsebeza and Hall (eds) The Land Question in South Africa: The Challenge of Transformation and Redistribution Ch 3 I 48. Walker note 45 I 49. Land Governance in South Africa; Implementing the Land Governance Assessment Framework; Urban Landmark. Page 6. I 50. Moyo note 47 at 65 I 51. Proclamation R188 of 1969 as amended. I 52. Ibid Regulation 14(2) of Proclamation R188 of 1969. I 53. Martin Adams, Ben Cousins and Siyabulela Manona 'Land Tenure and Economic Development in Rural South Africa: Constraints and Opportunities' Overseas Development Institute I 54. Ibid at 19 I 55. Regulation 35(1) of R188 of 1969.



THE DEMOCRATIC DISPENSATION

**IN THE CURRENT DEMOCRATIC
STATE, ALL LAW IS DERIVED
FROM THE CONSTITUTION
AND ITS POWER IS SUPREME.**

Anything unconstitutional is rendered void or invalid⁵⁶. Property rights are found in section 25 of the freedom document, but have often been criticised for favouring private individuals, thus creating a buffer to land reform⁵⁷.

This view contrasts with those who believe that property rights are not adequately addressed in law. For instance, in Section 25 of the Constitution, property rights are limited in that the government may expropriate land in the public interest to address socio-economic matters primarily in relation to land restoration, redistribution and tenure.

All of this should be approached in a just and equitable way, i.e. the property owner should be fairly compensated for his or her piece of land.

The Constitution recognises the transformational imperative to redress those dispossessed and the need to protect, using law, those whose tenure rights were erased in the past⁵⁸. The onus is on the new government to create a statute that achieves the type of redress envisioned. Through subsections of the property clause the Constitution posits three forms of redress – land redistribution, tenure reform and land restitution. In terms of redistribution the Constitution is not very clear on its path. It places land redistribution as a socio-economic right requiring the state to implement measures aimed at achieving land redistribution⁵⁹.

The Communal Land Rights Act⁶¹ purported to act in the fulfilment of the constitutional obligation towards land reform. The aim was to transform communal land tenure in former homelands and independent governing territories. The act set out to substitute state ownership with community ownership. However in *Tongoane*⁶² the **credibility of the Communal Land Rights Act was questioned.** Communities and civil society organisations claimed that the act vested power in traditional leaders to allocate land⁶³. The Constitutional Court ultimately struck the act down on procedural grounds, as the act failed to garner community support and took time tabling a rescheduled debate on the act⁶⁴.

CURRENTLY PARLIAMENT HAS YET TO EVEN TABLE A DISCUSSION ON REDISTRIBUTION.

On the part of redress for tenure reform, s 25(6) deals with securing land tenure for those whose tenure was destabilised through past discriminatory laws⁶⁰.

Currently, the only piece of legislation that exists in terms of securing land tenure is the Interim Protection of Informal Land Rights⁶⁵.



To date Parliament has not replaced the interim statute with a robust piece of legislation. This means that in terms of redress, former homelands remain places of insecurity.

In terms of formal urban areas, rights are conventionally secured through a title deed, lease or deed of grant. However, most of the poor and previously disadvantaged fall outside the conventional property market, as well as the subsidised land and housing developments known as RDP (Reconstruction and Development Programme) housing, which are designed for low-income households. **In South Africa large tracts of registered land are occupied by informal settlements, which proliferate in or around urban centres, particularly within the major metropolitan areas of Johannesburg, Cape Town and eThekweni.** In 2010, it was thought that 18% of the urban population lived in informal settlements⁶⁶. In these settlements, there is no access to a formal title and rights are not formally registered or noted.

S 25(7) of the Constitution provides for restitution of property for those dispossessed after 19 June 1913, the day on which the Natives Land Act became law, as stated in s 2 of the Restitution of Land Rights Act⁶⁷. There are differing views on whether the date captured in the Constitution is accurate considering dispossession occurred prior to the enactment of the land act. However, this date is the only one recognised and required for proving a land redress claim.

In 2013 Parliament tabled a bill to re-open land claims until 2019. This was due to the closing of claims in 1998, after being open for a four-year period. The bill was passed as the Restitution of Land Rights

Amendment Act. The Land Access Movement of South Africa took the government to the Constitutional Court, claiming it had not done enough to ensure public participation in the process and would create an administrative backlog to ongoing land claims⁶⁸.

The Constitutional Court ruled in their favour and the act was struck down. Currently the process of re-opening date claims have been hampered, following the Constitutional Court's interdiction of the Commission on the Restitution of Land Rights from processing claims lodged after 2014.

By tracing at least part of the story of land rights as told through legal instruments and policy interventions, we are prompted to consider questions related to the progression and development of laws concerned with land. We also consider whether or not government is managing to make fundamental departures from historical legacies.

A DEPARTURE FROM THE APPROACHES OF THE COLONIAL AUTHORITIES IS CENTRAL TO BEING ABLE TO FULFIL THE CONSTITUTIONAL OBLIGATIONS OF SECTION 25.

The assertion here is not that such a departure has not taken place. However, our legal instruments, both enacted and proposed, have not resulted in real progress that carries into the everyday experiences of the majority, especially black women. For reasons shown above, it would be a fair assessment to utter the famous adage

“MORE HAS TO BE DONE”.

58. Constitution of the Republic of South Africa, 1996 ss 25(5) | 59. Iles note 56 at 559 | 60. Constitution of the Republic of South Africa, note 57 | 61. No. 11 of 2004 | 62. *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (6) SA 214 (CC). | 63. *Ibid* at para [93] | 64. Tongoane paras [10]-[27] | 65. Act no. 31 of 1996 | 66. Land Governance in South Africa: Implementing the Land Governance Assessment Framework; Urban Landmark Pg. | 67. Act no. 22 of 1994 | 68. Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others 2016 (5) SA 635 (CC).

CORRUPTION IN THE LAND SECTOR

CORRUPTION IN LAND GOVERNANCE IS COMMONLY DEFINED AS THE ABUSE OF ENTRUSTED POWER FOR PRIVATE GAIN WHILE CARRYING OUT THE FUNCTIONS OF LAND ADMINISTRATION AND LAND MANAGEMENT⁶⁹.

LAND CORRUPTION HITS POOR AND MARGINALISED MEN AND WOMEN HARDEST AS THEY HAVE LIMITED ACCESS TO INFORMATION

When traditional authorities are able to manipulate these processes for their own benefit, corruption is likely to occur. There are also instances of opaque deals between private investors and government officials or when citizens have to pay bribes to facilitate land administration processes.

Land corruption hits poor and marginalised men and women hardest as they have limited access to information, limited participation in decision-making, and insufficient avenues for access to justice, and have to navigate complex laws and procedures that regulate land ownership.

A large contributing factor in South Africa is the limited anti-corruption oversight of land administration by independent bodies, as well as a general lack of consequences for abusing power in land administration.



There are several forms of corruption that fall under the aforementioned definition of land corruption, including **bribery, sextortion, procurement irregularities and political corruption.**

In the case of **bribery**, public officials solicit money or private individuals offer to pay money in order to obtain privileges that they would otherwise not be entitled to such as the registering of a piece of land or the approval of developmental or building plans.

Meanwhile, **sextortion** is a form of corruption that generally affects women from whom public officials solicit sexual favours from in processes relating to the registering of properties such as the awarding of public houses.

Procurement irregularities and political corruption often occur on a grand scale and typically involve corporations and government personnel including elected officials. In the former case, procurement processes may be flouted to give an advantage to a business that has put in a bid to develop a piece of land for the government. It may be that the company does not meet the criteria to be granted the contract, but it might strike a deal with officials whereby they will receive kickbacks once the funds are awarded to the business. As for political corruption, officials create environments, by either promulgating laws or developing policies, that will favour big corporates in the acquisition or development of land.

THE EFFECTS AND CONSEQUENCES OF THE MANIFESTATIONS OF THESE VARIOUS FORMS OF CORRUPTION ARE DIRE AND FAR REACHING.

The most noticeable ones are:

- A.** People being displaced and dispossessed;
- B.** People's inheritance and heritage is under threat;



- C.** An increased risk to food insecurity;
- D.** It may lead to conflict and loss of life;
- E.** A decrease in a country's economic growth which leads to poverty;
- F.** Greater disparities between men and women, the rich and poor as well as other social groups; and
- G.** Environmental damage such as water and air pollution, which affects agriculture and wildlife. This may also cause health hazards for affected communities.

OUTSIDE THE DEFINITION OF LAND CORRUPTION, CORRUPTION WATCH BROADLY SPEAKS OF CORRUPTION AS THE ABUSE OF ENTRUSTED POWER FOR PERSONAL OR PRIVATE GAIN.

This usually involves an intersection between a public official and a private individual wherein a public resource such as money is misused, stolen or appropriated to self-enrich at the expense of the designated recipients of that resource, who have bestowed powers unto the public representative

to safeguard their interests. It is within this working definition, further sharpened by the earlier meaning of land corruption, that we discuss the **706 reports of corruption pertaining to land and related areas, housing and mining, received between 2012 and the end of 2018.**

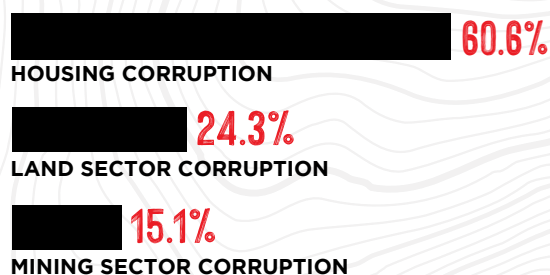
The cases that we have collected in the seven years bear testimony to the pillaging of resources and the violation of people's basic human rights by both public servants and private entities.

These cases depict a national picture of rampant bribery, misappropriation, embezzlement and theft of resources, and a patronage network in which a person is recognised based on his/her proximity to power. Though there is a synergy amongst all the focus areas with regards to the theme of land corruption, in the national outlook, **60.6% of the reports of corruption received by the organisation are about housing issues, while 24.3% and 15.1% relate to land and mining sectors respectively. The majority of reports of corruption, 38.3% of the total, emanate from Gauteng province. This is followed by KwaZulu-Natal at 11.4% and North West at 9.2% of the reports of corruption collected.**

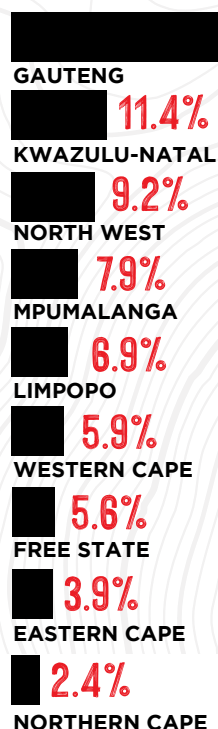
However, the latter provinces show a different picture with respect to the mining and land sectors. From North West, the organisation has gathered its highest number of reports of corruption in respect to mining, 25.7%, while KwaZulu-Natal leads with 20.3% of reports of corruption regarding the land sector. Meanwhile Gauteng, where the organisation and most of its activities are based, leads by 51% with regards to reports of corruption in housing matters.

But other plausible explanations for the high numbers are the economic opportunities and an increase in population figures⁷⁰.

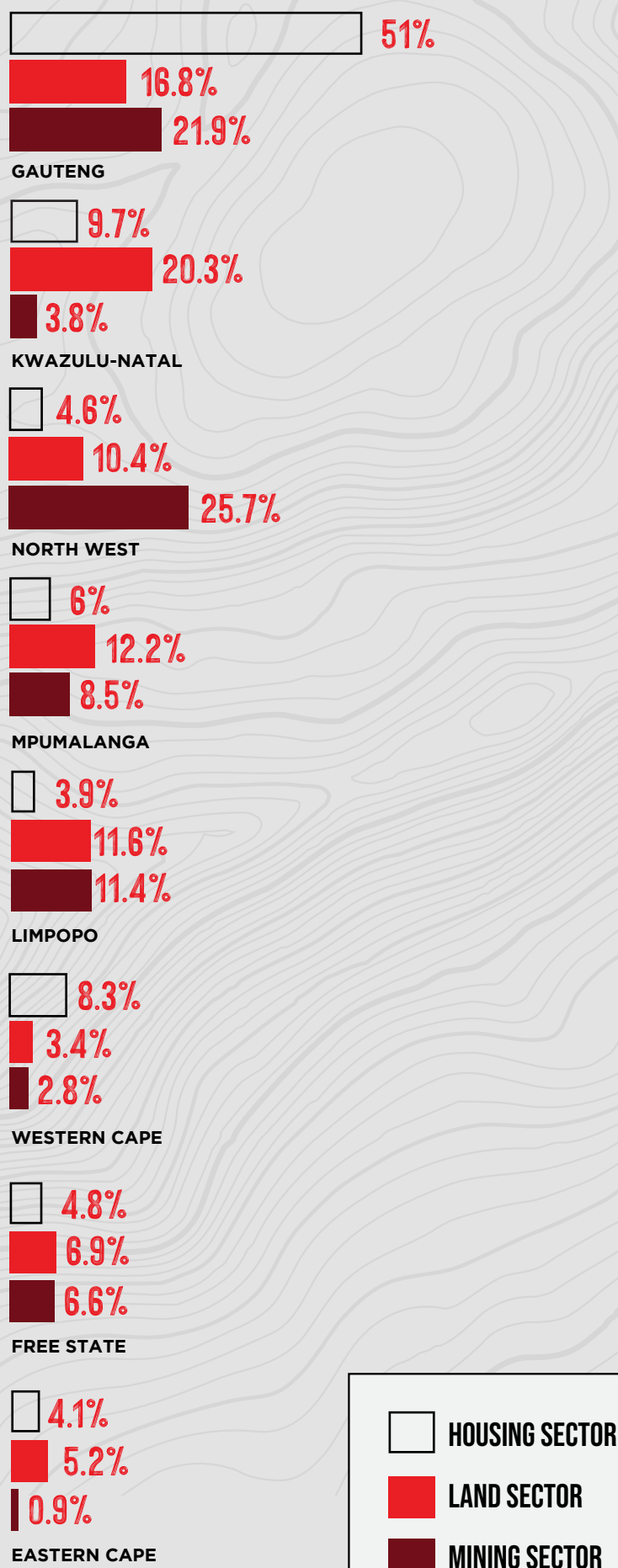
FOCUS AREAS BREAKDOWN 2012 TO END OF 2018



PROVINCIAL BREAKDOWN 2012 TO END OF 2018



HOUSING, LAND SECTOR AND MINING SECTOR BREAKDOWN - 2012 TO END OF 2018



In terms of the types of corruption forms that are most pervasive overall, these are:

A. The embezzlement of funds and theft of resources – in the 25% of corruption cases received in this regard, whistle-blowers allege that persons in both the public and private sectors take funds that are meant to develop communities, assist land claimants, and benefit employees. In one of the cases, it was reported that a group of officials in the Agriculture, Land and Rural Development Department devised a scheme in which they gave vouchers to illegitimate land claimants, receiving tens of thousands of rands in kickbacks. But this nefarious act extends further as we have reported on a case, Malamala Land Claim, in which a R750-million deal was inflated to well over R1-billion without any explanation⁷¹. In another case, a leader of a community property association (CPA) siphoned funds provided by government departments so as to develop a piece of land.

B. Irregularities in the allocation of RDP housing – in the 19.5% of corruption cases received in relation to this form of corruption, whistle-blowers claim that public officials, mainly counsellors, wrongfully act to advantage themselves and those close to them in the awarding of public houses. The allegations range from waiting lists being manipulated to place friends and family members and those willing to pay bribes ahead of applicants who have been waiting for decades for houses. In other instances, officials rent out the houses or use them as their own personal space either for purposes of residence or storage.

C. Bribery and irregularities in procurement – in the 11.2% and 9.1% of corruption cases which respectively pertain to these forms of graft, the whistle-blowers allege that public officials solicit bribes and accept bribes from private individuals to either gain access to information or persons in authority, or be awarded lucrative contracts related

to land development projects. A typical case in this respect relates to a piece of land that was sold to land restoration claimants who later discovered that sections of their land were sold to other persons without any plausible reason. In turn, the rightful claimants were asked by an official at the Department of Agriculture, Land and Rural Development to pay R80 000 should they wish to be granted audience with the minister who may then resolve their problem. In another example, it was purported that officials received kickbacks from a subcontractor in a land development project after flouting processes which, as a result, ensured that the tender was awarded to the company in question.

It was to empirically learn more about how people's daily lives are affected by this specific type of corruption, that Corruption Watch organised a series of face-to-face engagements with communities grappling with land corruption.

We decided to initially focus our attention on KwaZulu-Natal for a number of reasons. It's the second-most populous province in the country. It is struggling with numerous issues – mining-related corruption, environmental issues, a busy port, interest from large corporations.

We spent a week in the Clairwood community in Durban, interacting with not only that community but with numerous others of different natures living in the city and surrounds – hostel dwellers, fisher folk, disabled people, rural village communities, and more.

Each of them had a story to tell. Our experiences and findings are documented in the next section.



ETHEKWINI:

A CASE STUDY



IN 2019 THE CORRUPTION WATCH TEAM VISITED SEVERAL COMMUNITIES IN ETHEKWINI AND SURROUNDING AREAS.

The team held community engagements and key informant interviews to understand the experiences of communities in relation to land corruption in the area.

CLAIRWOOD AS IT IS TODAY IS SADLY TESTAMENT TO THE DECADES-LONG EFFORTS OF THE CITY COUNCIL TO REZONE IT AS AN INDUSTRIAL AREA.



The section below highlights some of the key findings and reflections.

If you drive through Clairwood, Durban, these days it's a very different community from the one that long-time residents have known. The once-homely residential suburb, where some churches and temples are over 125 years old, has been invaded by trucking companies, scrap yards and other small to medium industries, most of them illegal or at best, irregular.

There are already around 50 trucking companies in the small suburb, and heavy-duty trucks navigate the narrow streets with difficulty, creating noise and pollution as they go. They park on crumbling pavements, while businesses carry on their work in between the houses. This is an untenable situation - but the municipality has allowed it to happen.

The history of KwaZulu-Natal's Clairwood community goes back well over a century.

In her 1994 doctoral thesis titled ***Communal space construction: the rise and fall of Clairwood and district***, Prof Dianne Scott of UKZN's School of Development Studies describes the suburb as the heart of early Indian settlement in Durban.

“THE CLAIRWOOD OF TODAY IS THE FORMER HEART OF A MUCH LARGER INDIAN RESIDENTIAL AREA LOCATED TO THE SOUTH OF DURBAN BETWEEN THE BEREA AND BLUFF RIDGES,”

The land was rejected by the white settlers of Durban as a swampy, mosquito-infested backwater, but nonetheless the early Indian indentured labourers were attracted to it, not least because of the absence of municipal controls.

The immigrants, who were mainly Hindu, came to work in the sugar cane fields of Natal and in the 1880s they began to settle in the area that today is known as Clairwood. The shopping district and most of the social, religious and educational facilities were established on a small node of privately-owned Indian land in Clairwood, Scott noted, and these areas soon became surrounded by a sprawling informal settlement.

The suburb was only incorporated into the Durban municipality in 1932 and by then it was growing steadily. The community numbered in the 50 000s by the 1960s, and was considered to be the largest Indian settlement outside India at the time. All the facilities and communal institutions, including schools, temples, mosques, churches and sports fields, were built by the local community.



ETHEKWINI

The suburb as it is today is sadly testament to the decades-long efforts of the city council to rezone it as an industrial area.

Residents at a Corruption Watch community engagement in Clairwood spoke of their fears and frustrations at the degradation of their community. **“Traffic noise, destruction, crime, excessive scrap, and pollution are affecting us.”**

We also drove through the suburb and saw for ourselves what a mess it has become. Piles of crates and containers are everywhere.

THE NOISE OF INDUSTRY IS UNRELENTING.

There is no peace and quiet in the once-sleepy little suburb. The side roads are barely wide enough for a car, but trucks force their way through and in some cases, we were told, cause damage to property as they do so. This damage may be fixed, or it may not, depending on the whim of the truck owner.

“The municipality is trying to force us out by allowing the trucking companies to take root,” residents told us, **“because we’re close to Durban harbour, which means that developing the area into an industrial hub will be financially profitable for the municipality.”**

But this means that the largely multi-racial community, which has been there for over a century, will be displaced. Family businesses that have grown and thrived over decades will have to shut down. People who own their own properties and raised their families and extended families in the community, will be uprooted. This is what the community is fighting.

“They brought us here against our will,” said a community member and activist, referring to forced relocations during the apartheid years, **“and now they want to move us out again.”**



A community's fears and hopes

Corruption Watch spent a week in June engaging with this community and others who are affected by various types of corruption in relation to land matters.



Photo Source: www.bereamail.co.za

The meetings also yielded countless stories of an uncaring municipality that is willing to put profits above people, eager to make promises that are never kept, and refuses to engage with their constituents to work out issues and do the job they are paid to do.

The fight has been going on for around 60-70 years, while the chaos in the area grows by the day. **“Our rights are being violated. We want Clairwood to remain residential because of its history, heritage and diverse culture, not be turned into a warehouse and logistics area,”** residents stated adamantly.

They also want an investigation into who is giving special consent to the businesses. **“It is unbearable that illegal businesses are getting permission,”** the residents said. **“Illegal businesses erode the residential part. It’s more money for the council, in their back pockets.”**

“OUR RIGHTS ARE BEING VIOLATED. WE WANT CLAIRWOOD TO REMAIN RESIDENTIAL BECAUSE OF ITS HISTORY, HERITAGE AND DIVERSE CULTURE”

WE HEARD HEART-BREAKING STORIES OF PREJUDICE, POOR PLANNING, NO PUBLIC PARTICIPATION IN DECISIONS THAT AFFECT THE COMMUNITY, THE STRUGGLE OF PENSIONERS, MANAGING AGENTS THAT DO NOT MANAGE, USE OF RESIDENTIAL LAND FOR NEFARIOUS PURPOSES, AND MANY OTHER ISSUES.

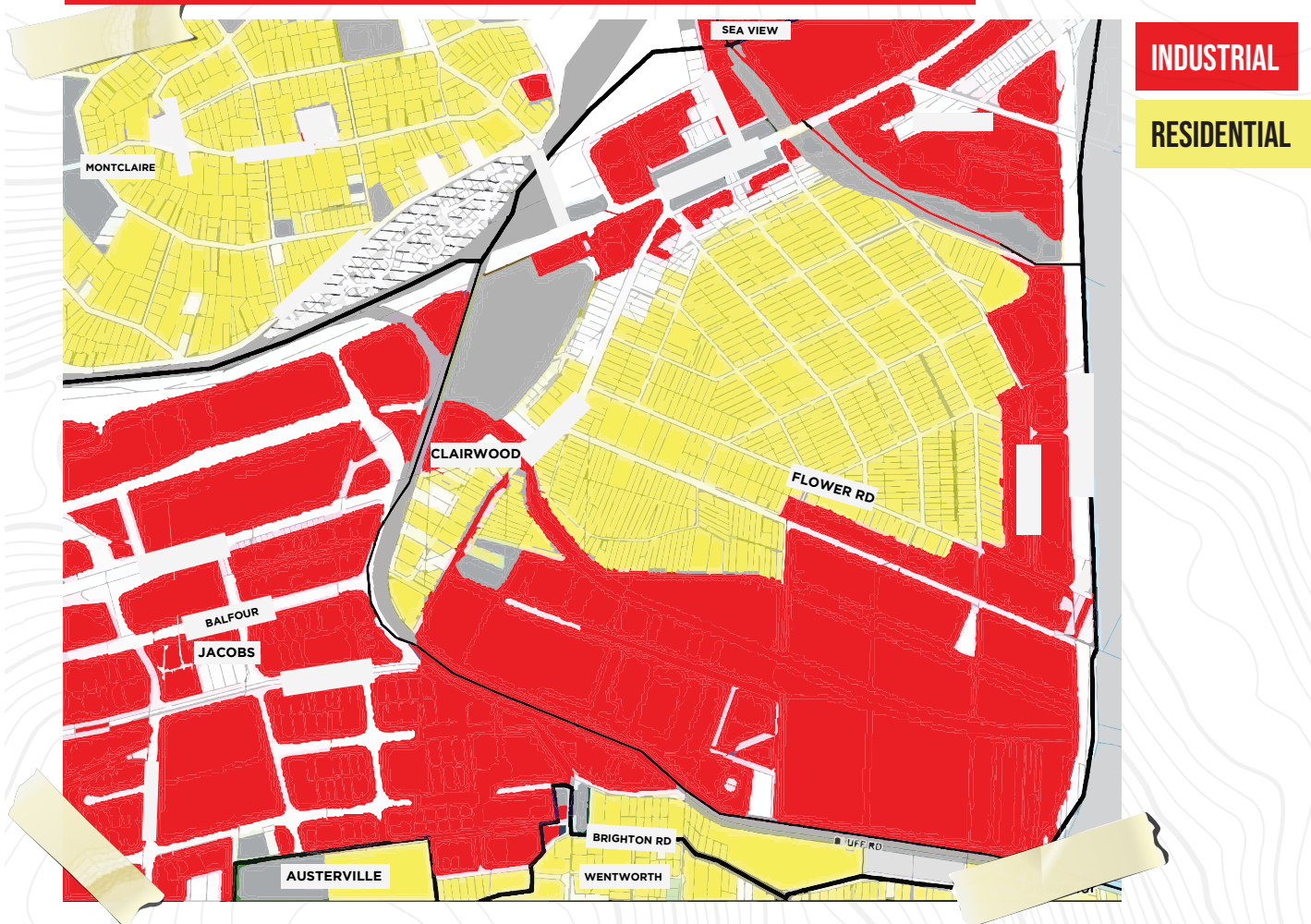


INMMEHETHE ETHEKWINI

The main issues expressed by attendees on Tuesday 25 June, the first day of our engagement, included:

- 1 Managing agents are not managing the buildings under their responsibility**, so municipal accounts are not paid and funds are vanishing.
- 2 Impoverished communities are being targeted and people are becoming more desperate.** We need to find solutions in combating that.
- 3 The public are denied the chance to participate in decisions that affect communities.** “At the end of the day, people have to be consulted before changes are made. People have to be involved and studies have to be done. The community needs to be part and parcel of the process.”
- 4 Residential land is taken for industrial use** – the process of allocating this land is flawed, residents claim. Special consent is given to industries, turning residential land into light industrial areas, which means higher rates and taxes, all to enrich the council;
- 5 Land taken during apartheid for an abattoir in the area, is still vacant 30 years later.** “We were moved out but the land was never developed, and now we want the land to be developed for desperately needed housing.”
- 6 Random landlords buy pieces of land in the area**, colluding with the municipality.

INDUSTRIAL VS RESIDENTIAL ZONES IN CLAIRWOOD



Source: Graham Muller Associates & Iyer (2011). "Back of Port: Concept, Framework, Precinct Plans and Zoning" Framework Report". Retrieved from: http://www.durban.gov.za/Resource_Centre/

COMMUNITIES SUFFER WHEN MUNICIPAL OFFICIALS ARE CORRUPT

Community members expressed their hopes at getting through to the municipality, with the help of Corruption Watch, and getting to the bottom of the corruption there. Some of them have spent as long as nine years writing endlessly to the municipality to complain about and seek clarity on the matter of issuing industrial licenses for residential property, but they say nobody is interested in their woes.

“They come out and issue fines [to the industrial companies], but that is not a solution,” one resident said. “The municipality does not provide any documentation as to permits issued.”

Said documentation includes a social impact study, traffic study, and pollution study – the municipality has not been able to produce the documentation proving that the studies have been done. The problem in dealing with a corrupt council, residents said, is that processes are bypassed or tailored to suit an agenda.

Furthermore, the rezoning of the area is flawed. “Clairwood is a blanket zone for residential property, which the council wants to rezone to light industrial. We are not consulted on this matter, and there’s no chance for us to raise objections. Now there are scores of motor graveyards and huge warehouses in between our houses.”

People are outraged at this violation of their rights. “The apartheid municipality did the same thing. The reverse of apartheid is what is happening to us now.”

The Clairwood Ratepayers Association has taken up the cudgel with the municipality, but so far their efforts have been fruitless.

MANAGING AGENTS WHO CAN’T, OR WON’T MANAGE

A representative from the Poor Flat Dwellers organisation told us that managing agents – companies appointed to oversee and manage apartment blocks – are making matters worse for residents, rather than assisting in making their lives easier.

Management rule 46(1) (a) of the Sectional Title Act states that trustees may appoint a managing agent to “control, manage and administer the common property and the obligations to any public or local authority by the body corporate on behalf of the unit owners and exercise such powers and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor or caretaker.”

However, this is not the case. Instead, managing agents are appropriating funds from impoverished communities. Adding to the burden, municipal bills have increased dramatically over a period of years – but payments have been made sporadically, and for the most part the bills were not paid. As a result, people are often without water or electricity, although they had paid the required amounts to the managing agents.

“There are no success stories. The managing agent is not working according to their contract,” residents told us. “The scenario remains the same even changing from one to another.”

They complained of structural damage that has happened over the years because of neglect. Buildings are becoming dilapidated, and money paid to the agents is being siphoned off. “Lifts haven’t been working for 10 years, there are elderly people who can barely walk up the stairs. There is no common property lighting,” a resident told us, describing her apartment block.

This situation has arisen partly because some managing agents do not have sectional title training, meaning that untrained and unqualified people are running the buildings.

“We’ve tried various measures such as marches, media exposure, etc.,” said the Poor Flat Dwellers representative. However, this has been only partially effective because there is no unity among the larger group of residents. Only a handful are prepared to fight for the cause. “We want some sort of policing and oversight. We have a civil suit against our previous agents, who are denying all allegations.”

Corruption Watch learned that there are 44 districts that are grappling with the same issues. And sadly, pensioners, grantees, and people with disabilities are the victims – they can’t afford to pay the costs of incompetence and corruption, such as a sudden increase in levies that comes with a 34% (at the time of interviewing) interest rate on arrears. The managing agents are not dealing with the arrears situation either, residents said.

“NPOs have come in to give us resources to best accommodate every issue at hand and to resolve those issues. Also for us, this is probably the only positive action that we can see.”

Other issues brought up by residents in this regard include:

- While residents appreciated the fact that houses had been built in their communities, they pointed out that housing is not built to acceptable standards, and can easily collapse. “Some people are living on what may be termed a building site.”
- Storm water drains are dangerous or ill-maintained – when it rains, crossing the overrun or stream is dangerous for elderly people;

- Developments are taking place without public participation. For example, some houses were built on a park, but the public was not consulted. “Every business has to report to government, and then government has to report to the community during the consultation process.”

- Some people are allowed to build and extend without filing plans, but others are fined if they build without a plan. There is tremendous inconsistency;

- Pensioners are forced out of their properties because the owners are turning them into student accommodation. “How is this being policed or overseen? How is it regulated? Where are the laws? What channel can we go to if the laws are not being adhered to?”

- Again, residents complained that the special permissions given to industries are creating “chaos”. “Our rights are being violated.”

The apartment residents are making three demands:

- A full investigation into the town council;
- A full investigation into managing agents;
- Residents also called for shelter for women and children who have been displaced from their land.

“HOW IS THIS BEING POLICED OR OVERSEEN? HOW IS IT REGULATED? WHERE ARE THE LAWS? WHAT CHANNEL CAN WE GO TO IF THE LAWS ARE NOT BEING ADHERED TO?”

DISREGARD FOR PEOPLES' RIGHTS

On the second day of our community engagement attendees came mainly from the Clairwood Ratepayers Association, the fishing community, and the Abahlali baseMjondolo organisation. Fishermen told us of problems with certain areas they are not allowed to enter, due to rezoning restrictions that they are unaware of as persons who have lived and fished in the area for generations. However, navy boats patrol the sea, and other boats are fishing.

The complainant also said that police target them by taking the fish that have been caught and keeping it for themselves, in a classic example of abuse of power and extortion. They also make spurious arrests. "Harbour police come into the areas where we're fishing."

Residents claimed that the council will not take away refuse from certain shacks, because those residents are not ratepayers. But this affects the residents living around the area, and is also a health hazard. These shacks have been built on vacant land, and, they added, a "random guy claims to be the chief of the land and others have to pay him."

In Chatsworth, one attendee told us, a school is bringing small businesses, such as scrapyards, onto their land. These businesses are located directly opposite people's houses. "The businesses pay money so the school can have more money to operate, but there are holes in the school fence which are not being addressed. This is a public school and the school land is being misused," the resident claimed.

Another resident claimed that municipalities own land in their area, but it is not known how this came to be. "We have no access to land and have no way to fend for ourselves. The municipality sells off the land illegally, and we don't know who is buying it." When residents try to use the land for instance, to grow small crops, they are told they cannot do so unless they buy it. They also don't know who owns land, and when they seek clarity nobody is willing to provide the information.

Vacant land is not used for agreed purposes. Furthermore, human rights are violated, people are evicted, their shacks and personal belongings are burned. The police will not accept complaints and refuse to open cases against parties responsible. When cases are opened they are not heard due to outside interference, we were told. "What will be done about the police corruption? Who compensates for that malicious damage?" residents wanted to know. "Retaliation towards people who are suffering is also not good for the society." Councillors give preferential treatment to some people in terms of land distribution, the residents said. "There have been no changes since 1994; the rich are getting richer and the poor are getting poorer," one resident lamented.

"IF YOU DON'T HAVE MONEY YOU DON'T HAVE ANY RIGHTS."

"Politicians will come to communities when they want votes and then they are most friendly and dishing out food parcels," the residents noted cynically. "But oppression of the people seems to be systemic.

In 2010 the city decided to remove poor dwellers from the city area so that tourists would not see them."

Issues brought up by this group:

- "We need to vote out corrupt councillors, rotate them to different areas so they don't get too comfortable, and also address those who are committing the corrupt acts.";
- The human rights factor should be a priority. "Mindsets need to be altered so you need to stop thinking of personal gain. It has to be done, not only spoken about."
- Law enforcement needs to play a more proactive role not just in doing their duties but in humanitarian efforts too. "Their oath is to protect and serve."
- If councillors in the area are inaccessible the community has no joy;
- Quality of houses is poor in terms of materials. Cracks will appear on the walls because a certain amount is budgeted but not all that money will be spent on the actual building because the people involved will want to pocket some of that money;
- Media can play a role because marches and protests have been ineffective, but once you put it in the media many more people will be aware of what is happening. Also social media, where stories are shared widely and effectively;
- "If you speak out they will kill you. It's not easy or you will become a target."
- Residents are being abused. "They are selling the units to people who should get it for free."

ETHEKWINI. ETHEKWINI. ETHEKWINI.



ETHEKWINI.

ONE-ON-ONE
INTERVIEWS

The last two days were taken up by one-on-one interviews with complainants and whistle-blowers. Complainants ranged from civil society activists and home owners, to gogos and hostel dwellers.

A disabled woman, who has two children and three grandchildren and lives in Nduzweni Centre for the Blind in Umlazi, told us of an outrageous situation where the municipality is trying to force blind people in her community out of the centre that they've occupied since before 1994. This is where they make handmade goods which, for many, is the only livelihood. However, the municipality wants to turn the land into a training centre – this is not feasible for the blind people, our lady told us, because they're familiar with the centre and know its layout, and to get used to another place will be hard, especially for the elderly members of the group.

Despite writing to the Department of Social Development, under whose jurisdiction the centre falls, and visiting the regional offices in Pietermaritzburg, the group has had no luck because nobody was ever available to talk to them.

“And in 2017 while we were still at home during vacation period on 9 January, a week before we were due to go back to the centre, we got a phone call from the department saying we were not to go back.”

Our whistle-blower added, “The department said there was work to be done at the centre and it would be renovated by Public Works. We requested a meeting between us and the two departments. At the meeting, vehicles came and we were told that we would be escorted home. The vehicles were from the department.”

Regardless of their grievances, which went as far as protests that were met with violence when the police were summoned, the department has gone as far as to seek an eviction order.

“We are reluctant to leave because there has been no written confirmation that we will be allowed to come back. The municipality owns the land but they have remained silent.”

The order was challenged by the Legal Resources Centre, and the matter is still gridlocked, although it was due back in court in October 2019.

Our complainant was still hopeful for a good outcome – **“this is why we come to gatherings such as this because we will meet other organisations and communities to talk about our matter and create awareness of it.”**

In the meantime, they have formed into an organisation to come up with solutions themselves, as blind people find it hard to get employment. Assisting blind people to have a livelihood is part of the legacy they wish to create.

This was not the only heart-breaking story we heard. Another attendee told us of a quarry that had been opened in 2014 in his village in the Eastern Cape, against the wishes of the people.

“The businessman went behind our back and consulted with the chief. The chief gave him the authority to open the mine in 2014. From then to today we've been fighting this guy, and the community is not benefiting from the mine.”





Only a very few have seen their lives improved, the man told us – for example one person is living right next to the gate in a one-bedroom mud hut, but the ward councillor's mother also lives there and had a brick wall built around her house to protect it.

He said that the quarry is destroying not only people's homes, because of blasting that cracks walls and breaks windows, but their health as well. **"People are getting TB and asthma because of the dust coming from the mine, and the trucks are destroying the road. People can't sleep peacefully because they are working 24/7, the trucks are always on the move, and it's also promoting criminal activities such as prostitution – we've had one incident of a girl selling her body to the truck driver. People we don't know are starting to fill up our area. An old lady was killed at night and we don't know who did it."**

Before the mine life was good, even though the community was struggling, he said. **"We were fighting about poor service delivery and now we have the mine as well. It's like putting salt in the wound."**

There was no consultation with the community, he said. **"We suspect that the mine guy bribed the tribal authority. It was just the chief and his council, and the ward councillor represented the**

municipality. The ward councillor owns many cars and a house in Margate."

Others who were living in hostels spoke of the specific issues they faced. One told us of a housing project that had been started to allow hostel dwellers to live with their families. This was never finished, although the municipality later promised to build high-rise apartment blocks at the hostel. To date neither of those promises have come to fruition.

"Another promise made during the 2014 election season was that new houses would be built and people would be moved to a new area, and that would happen in 2015." The houses were built, he said, but people from outside the community have moved in. **"Other people occupied the houses but they were not the intended recipients. To this day the hostel dwellers and shack dwellers don't have anywhere to live."**

People are afraid to take matters into their own hands, he said, because they fear the ward councillors. **"They can't even march – that's way too risky because the councillors will target the ones that instigate the process, and lives might be lost."** They feel hopeless, he said, because this situation affects the entire diverse community – students, women, men, and children.

Another hostel dweller shared with us an account of an RDP housing project started in 2011, for which 80% of the hostel dwellers qualified, according to a survey. **"The housing project has not been completed until now. The municipality says the money is finished but at the same time they started another project called phase 2, while phase 1 is not even completed yet. We suspected there was corruption because the money was disappearing during the process."**

The hostel dwellers have written letters and met with the municipality, but all the meetings were unsuccessful. In February 2016 they decided as a community to march to the municipality and hand over a memorandum.

“To this day they have not responded.” Soon after the march they met with the KwaZulu-Natal human settlements department. **“The head of department promised to visit the site and identify what we were talking about, and bring engineers. To this day she never came.”**

Even writing to the Public Protector brought no joy.

“All of those meetings became inefficient because so far nothing has happened. The Public Protector’s office said they would not investigate because it was actually a problem of service delivery and not corruption.”

All these people – and indeed, everyone we met with – want is to exercise their constitutional rights to housing.

Some of the issues our interviewees raised included:

Many informed us that they were not aware of their land rights. Some said that in terms of tribal custom they were aware of their rights, but not as far as the Constitution is concerned;

Land and the concept of land ownership and security was important to them. “The dignity of having a home is a humane factor and cuts down on corruption because if you have a home there’s no need to engage in corruption,” a resident told us;

Municipalities were spectacularly unhelpful. “Every time they changed people when I went there. You never spoke to a person more than once. They took my details but I never got any response.

I spoke from humble clerks up to the MEC. I still have waited while others are comfortable in homes right now.”

Many people claimed that rampant corruption in the municipalities was hampering the exercising of their constitutional rights;

Municipal housing allocation systems are compromised, documentation gets lost, and people who have been on the list for years never get a house, or are told, repeatedly, that they need to reapply. “I had a child, but these people who got RDP houses were not only after me but they didn’t have any children,” a community member told us.

But their challenges have moved many to take up the struggle and fight on behalf of their families and communities. **“It’s affected me by giving me more passion and strength to fight for victims of the same suffering,”** said one of the co-founders of the Poor Flat Dwellers movement. **“I formed the NPO with Desmond D’Sa and I am always striving to learn more and know more.”**

She believed the differing levels of education people received separated them and as a result people don’t stand together. **“Rather, we fight each other. But I’d rather die trying to do something about that, than not try at all.”**

LAND IS IMPORTANT BECAUSE I HAVE FAMILY, THEY ARE OVERCROWDED,

people are living in dire straits where they have no land to build on. The drive comes from seeing my family going through the same thing – **apartment resident.**

Land is important because jobs are scarce and many young people are sitting at home, nothing to do. Some are graduates, some have skills. Land will can support farming, gardening, we can live off the land – **Community Member.**

Land is important – as human beings you want to have a house, but you can’t have a house without land. We understand that there is land for us to build but the problem is that our government doesn’t bring that development accordingly – **Community Member.**

Land is important because it’s part of our heritage and it adds to economy, environment, stability. Whether it’s a park or place to socialise, we must take care of what we have – **Poor Flat Dwellers representative.**

The **land is important because it’s where I get to live and fend for myself,** and it’s a representation of wealth – **disabled representative of Nduzweni Centre for the Blind.**

Land is important because of my family of eight children and 23 grandchildren that are living with me – **Community Member.**

LAND IS IMPORTANT BECAUSE YOU CAN DO VIRTUALLY ANYTHING ON THE LAND THAT YOU OWN

– **another Community Member.**

CONCLUSION AND KEY OBSERVANCES

The land question is complex, for it seeks to address the needs and desires of a number of interest groups, as noted in this discussion.

BUT THE QUESTION OF LAND AS A RESOURCE THAT SHOULD BENEFIT AN ENTIRE NATION AND ITS INHABITANTS IS MADE FAR MORE COMPLICATED BY INEQUALITY AND POVERTY.

It is also undeniable that the scourge of corruption compounds the matter, leaving in its wake chaos, a culture of lawlessness, economic stagnation and a countless number of landless families and communities.

The troubling state of affairs is further challenged by the deeply concerning belief that those who are elected to represent the people are tardy, self-serving and place the interests of business (or the elites) above the poorest and most vulnerable.

Land is a resource that provides economic opportunity and human settlement in the forms of housing and sustenance. It speaks to issues of identity for it carries people's heritages and provides the freedoms to practice cultural and religious activities.

All of this is enshrined in South Africa's supreme law, the Constitution, and is supported by several laws, policies and programmes provided for by the state. However, decades into the new dispensation the country is counted among the most unequal societies in the world with tens of millions of people living in abject poverty.

Part of addressing South Africa's land challenges is to concede that corruption impedes on the rights of people regarding restoration, distribution and security of tenure.

It is also important to consider including transparency and accountability mechanisms in the drafting and enhancement of laws and programmes, as well as the enforcement of laws relating to criminal and corrupt activities for those alleged to have acted illegally with regards to land affairs.

If the belief is that previous and current attempts at land redress have largely failed because of a lack of political will, laws that are not stringent or explicit enough, and, as shown in this report, corrupt dealings,

IT IS IMPERATIVE TO THINK ABOUT ANTI-CORRUPTION MEASURES DURING THIS TIME WHEN THE COUNTRY IS PRESSED TO ADDRESS THE MATTER OF LAND EXPROPRIATION WITHOUT COMPENSATION.

THE OBSERVATIONS MENTIONED BELOW ARE NOT CONFINED TO ONE PARTICULAR AREA, SECTOR OR GROUPING, BUT THEY ARE BASED ON A WIDE RANGE OF MATTERS THAT RELATE TO LAND ISSUES:

1.

To be able to understand the manifestation of land corruption in the South African context, we need to appreciate historical and legislative environments, especially prior to 1994 that legitimised corruption through inhumane and brutal acts that were promulgated as law. These actions stripped people of their fundamental human rights and, subsequently, dispossessed them of land and left them displaced.

Though constitutional and legal efforts have been made to correct this injustice post-1994, the graft, perpetuated mainly by self-enriching public officials and greedy corporations, persisted. As a result, the land question remains unresolved.

2.

Due to the complex nature of South African land and property laws, the administrative red tape related to the acquisition, selling and administration of land, as well as the overlapping responsibilities amongst different authorities, e.g. state departments, state owned companies, the spheres of government and traditional authorities, a major challenge that is presented in this regard is the identification of enablers of corruption in the South African context.

One of the ways that the challenge could be addressed is to embark on a multi-stakeholder mapping exercise. This is to understand on a deeper level the intersection of multiple layers that exist between the laws, policies and programmes, and the role played by officials in government departments, agencies and institutions, as well as industry players.

3.

In the community engagements we had, a message that was unequivocally clear is that people are discouraged to be whistle-blowers even in cases that affect them directly.

They fear for their lives because they strongly believe that there will be retaliation and, in such instances, their lives (including the lives of their loved ones) are put at risk. Apart from whistle-blowing not being promoted, what is also worrying in this respect is that potential whistle-blowers are unaware of their rights and have little (to know) knowledge of the Protected Disclosure Act.

Additionally, there is no standardised protocol to receive and handle complaints from whistle-blowers and, though provided for by the law, public members who do blow the whistle on corruption are not guaranteed protection by officials.

4.

Even though many community members who we talked to were affected either directly or indirectly by land corruption, there was little knowledge and understanding of the topic.

Until that point, no one had discussed the issue with any of them and, barring some of the community leaders, the topic of corruption was generally something they heard and read from various media platforms.

LAND IS A RESOURCE THAT PROVIDES ECONOMIC OPPORTUNITY AND HUMAN SETTLEMENTS IN THE FORMS OF HOUSING AND SUSTENANCE.

REFERENCES

'Even it Up: Time to end extreme inequality' OXFAM Report (2014, October) available at: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/cr-even-it-up-extreme-inequality-291014-en.pdf

Statistics South Africa 'Census 2011 provinces at a glance' (2012) at 20 available at: http://www.statssa.gov.za/census/census_2011/census_products/Provinces%20at%20a%20glance%2016%20Nov%202012%20corrected.pdf and in **The Guardian 'Inequality index: where are the world's most unequal countries?'** available at: <https://www.theguardian.com/inequality/datablog/2017/apr/26/inequality-index-where-are-the-worlds-most-unequal-countries>

Nolundi Luwaya 'Understanding women's claim to land in an Eastern Cape Village' (2018) Ch 1.

Ibid

HWO Okoth-Ogendo 'The nature of land rights under indigenous law in Africa' in Claassens and Cousins (eds) Land, Power and Custom: Controversies generated by South Africa's Communal Land Rights Act (2008) Ch 4

Tom Bennett 'Official' vs 'living' customary law: dilemmas of description and recognition' in Aninka Claassens and Ben Cousins (eds) Land, Power and Custom: Controversies generated by South Africa's Communal Land Rights Act (2008) Ch 6

Mahmood Mamdani Citizen and Subject: Contemporary Africa and the legacy of late colonialism (1996) 39

Bennett, note 8 at 141

Du Bois F (ed) Wille's Principles of South African Law 9 ed (2007) 470 defines ownership as: 'Ownership...is potentially the most extensive private right that a person can have with regard to property. In principle, ownership entitles the owner to deal with his or her property as he or she pleases within the limits set by the law.'

TW Bennett Customary Law in South Africa (2008) 375 - 'One of the distinctive features of ownership is its "absoluteness", a quality that implies the concentration of all entitlements in one person, who, in consequence is free to use and dispose of the property at will'

Okoth-Ogendo note 7 at 375

Luwaya note 3, Ch 2 at 13

Michelle Hay 'Customary Land Tenure without Chiefs? Rethinking land tenure and rural leadership in 20th century South Africa' Good Governance Africa (2017) at 21

Okoth-Ogendo note 7 at 375

Bennett note 8 at 141

Bennett note 8 at 142

Luwaya note 3 at 16

Jon D. Unruh 'The Property Rights Prescription and Urban Migrant vs Rural Customary Land Tenure in the Developing World' In Smith, Mark, Ehrlich (eds) The Mystery of Capital and the Construction of Social Reality (2008) at 112

Luwaya note 3 at 16

Bennett note 14 at 381

Mahmood Mamadani 'Citizen and Subject: Contemporary Africa and the legacy of late colonialism' (1996) 16-17

SA Law Reform Commission Report on the repeal of the BAA of 1927 (2003) at 23.

TW Bennett Customary Law in South Africa (2008) 249.

Glen Grey Act 25 of 1894 ss 2 - 6, 26 - 29 and s 33.

Henry Bernstein 'Agrarian questions of capital and labour: some theory about land reform' In Ntsebeza and Hall (eds) The Land Question in South Africa: The Challenge of Transformation and Redistribution Ch 2

The Glen Grey Speech' given By Cecil John Rhodes on the second rereading of the Glen Grey Act to the Cape House Parliament on July 30 1894 available at: http://www.sahistory.org.za/sites/default/files/glen_grey_speech.pdf

Luwaya note 4 at 49

Ibid at 50

The Natives Land Act of 1913 available at: **South African History Online** <http://www.sahistory.org.za/topic/natives-land-act-1913>

Bernstein, note 31 at 29

Act 27 of 1913 section 1(1)(a) (b) (c) and section 1(2).

Adeline Piotrowski 'Colonialism, Apartheid and democracy: South Africa's Historical Implications on Land Reform Debate' (2019) Journal of Interdisciplinary Undergraduate Research at 57

Luwaya note 4 at 50

Piotrowski above note 39

Luwaya note 4 at 52

Cheryl Walker 'The Land Question in South Africa: 1913 and Beyond' Oxford Research Encyclopedia of African History March 2017 available at: <http://africanhistory.oxfordre.com/view/10.1093/africanhistory/9780190277734.001.0001/acrefore-9780190277734-e-79>

Piotrowski note 39

Sam Moyo 'The land question in Southern Africa' In Ntsebeza and Hall (eds) The Land Question in South Africa: The Challenge of Transformation and Redistribution Ch 3

Walker note 45

Land Governance in South Africa; Implementing the Land Governance Assessment Framework; Urban Landmark. Page 6.

Moyo note 47 at 65

Proclamation R188 of 1969 as amended.

Ibid Regulation 14(2) of Proclamation R188 of 1969.

Martin Adams, Ben Cousins and Siyabulela Manona 'Land Tenure and Economic Development in

Rural South Africa: Constraints and Opportunities' Overseas Development Institute

Ibid at 19

Regulation 35(1) of R188 of 1969.

Constitution of the Republic of South Africa, 1996 section 2.

Kevin Iles 'Property' In Ian Currie and Johan de Waal (eds) The Bill of Rights Handbook ch 25

Constitution of the Republic of South Africa, 1996 ss 25(5)

Iles note 56 at 559

Constitution of the Republic of South Africa, note 57

No. 11 of 2004

Tongoane and Others v National Minister for Agriculture and Land Affairs and Others 2010 (6) SA

214 (CC).

Ibid at para [93]

Tongoane paras [10]-[27]

Act no. 31 of 1996

Land Governance in South Africa; Implementing the Land Governance Assessment Framework; Urban Landmark Pg.

Act no. 22 of 1994

Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others 2016 (5) SA 635 (CC).

Land and Corruption Recounted, available at <https://landportal.org/book/thematic/land-and-corruption> accessed on the 20 may 2019.

<https://www.gcro.ac.za/about/the-gauteng-city-region/>

<https://www.corruptionwatch.org.za/forensic-probe-launched-malamala-land-claim/>



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