

LAND CORRUPTION AND DISCRIMINATION

RESEARCH FINDINGS SOUTH AFRICA



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FOREWORD

By Melusi Ncala

Team lead for South Africa, Land and Corruption in Africa project

This report comes at an opportune time, falling squarely into the situation caused by the abysmal state of our politics, lack of basic service delivery, poor governance, and exceptional levels of inequality and poverty – hardly matters for us as a nation to hold aloft with pride.

South Africa, like the proverbial cat, seems to have nine lives. If not, how else can we explain the innumerable tense moments that push the country's young democracy to its limits? In addition to the daily protestations that take place in communities across the country, we have had the 2012 Marikana massacre and the July 2021 unrest as clutch moments that put the democratic order on tenterhooks and further damaged our social fabric.


Yet the country, though teetering on the brink of a point of complete failure, is presented with a chance to self-correct.

When we think of all these depressing occurrences, and if we are honest with ourselves, we would acknowledge that these ailments are indicative of the fact that while the political and economic elite devised creative solutions as a response to the land question, they were even more creative in their corruption schemes. Thus, the combination of landlessness and widespread graft served as a catalyst for hunger and homelessness, violence and lawlessness, and neglect.

Against this backdrop, this report comes at a time when social tensions are high, there is a scramble for resources, and lawmakers, academics, and activists are looking anew at the land question with the supposed intention to change legislation. This flurry coincides with several research inquiries by various actors in the land sector space, and presidential high-panel discussions and other government investigations whose findings have been withheld from public scrutiny.

All these processes methodically combed through data from land records, testimonials, landmark judgments, and international approaches to land redress, and the common truth in all of them is that decades into the democratic dispensation, the majority of the peoples of this land are displaced and dispossessed, while our country ranks among the most unequal in the world. This is despite South Africa's wealth of highly exported resources and its fertile land conducive to cultivating some of the world's greatest produce.





Corruption Watch has built a substantial body of work in mining communities, adding to that the release of its *Unearthing Corruption in the Land Sector report*, and submissions made in respect to several land issues. Following this, as part of phase 2 of the Land and Corruption in Africa project, with seven other African Transparency International chapters, we embarked on a research study looking at the intersection of land, corruption, and discrimination.

At the time of conceptualising the research activity, the team and I knew from our previous land-related work that vulnerable groups are often at the receiving end of the worst treatment from government departments, big business, and tribal authorities. This was particularly true for communities in the North West who were cheated out of large sums of money by the greed of politicians and traditional authority. In KwaZulu-Natal, as pointed out in our *Unearthing Corruption* report, hostel and shack dwellers were unceremoniously evicted and neglected because it made business sense to corrupt individuals in municipalities and companies.

In all such cases, the groups most marginalised are women, children, persons with disabilities, and people of colour.

Therefore, with the understanding that the farming sector accounts for billions of rands that go in and out of the country annually, and that government prides itself on its land policy reform in this area, my fellow activists and I spoke to grassroots organisations, with our discussions premised on our corruption incident reports.

We learnt of farm worker equity schemes, a policy initiated post-1994 that was aimed at incorporating farm workers into farm businesses and socially uplifting them. Information on the policy's implementation was scarce for the Department of Land Reform and Rural Development (as it is currently known) was not forthcoming and its officials disregarded complaints from civil society members – including farm workers and tenants.

“Vulnerable groups are often at the receiving end of the worst treatment from government departments, big business, and tribal authority.”



The reason for the reluctance and apathy became quite clear once we dug deeper, thanks to the assistance we received from brave whistle-blowers and our grassroots partners. However, the confirmation of our suspicions of wrongdoing did not prepare us for the reality that we witnessed during our fieldwork in these communities. Simply put, our interviewees suffered long and have nothing but calloused hands and heartache to show for what they have endured.

This report, extracted from a compilation of the work of other research chapters from Cameroon, Ghana, Kenya, Madagascar, Uganda, Zambia, and Zimbabwe, tells the South African story of the nexus between corruption and human rights abuses in the land sector.

Corruption Watch releases this South African section of the regional report in conjunction with a podcast series in which we not only underscore the critical issues emanating from this research report, but we let the voices of the marginalised speak about their reality as they see it and live it.

Moreover, it is my ardent hope that this will not be merely another body of work that people like you and I will appraise for its creativity and depth. But rather, I hope that we become emboldened to act upon the inhumaneness that these vulnerable persons have experienced. To do this, we would have to reach deep into our humanity and add our voices, through small and big deeds, to write a new chapter during this umpteenth life that our country has been given.

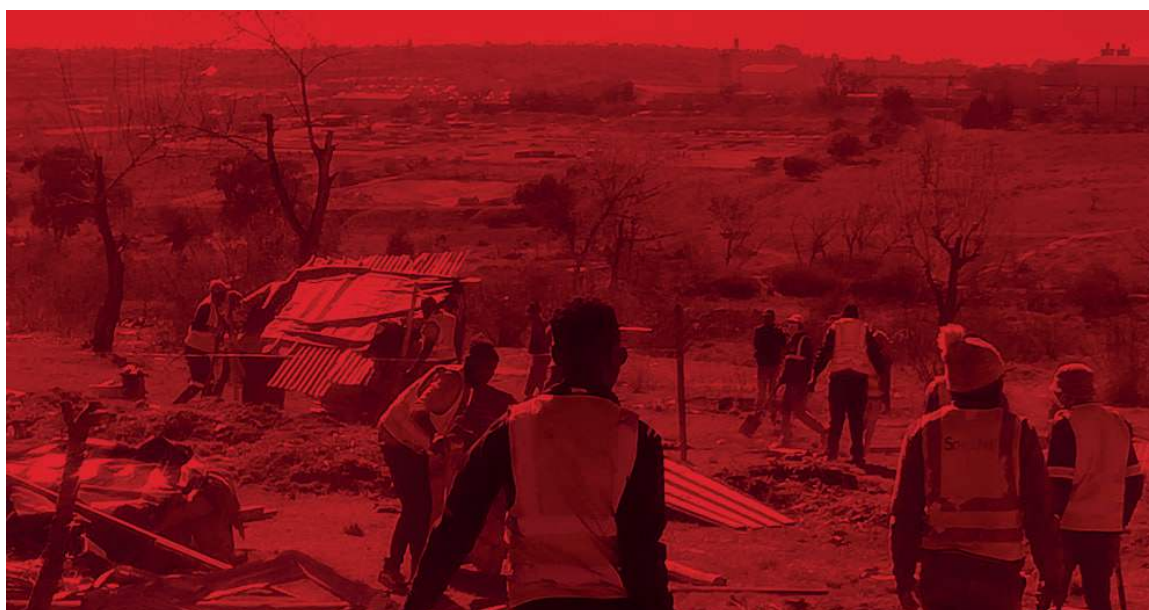
Time will tell if we succeed.



INTRODUCTION

In a nation defined by the historic injustices of apartheid, the “land question” in South Africa is deeply rooted in patterns of racial inequality. Colonial rule saw significant changes instituted to land tenure systems across the region. Customary arrangements gave way to a new, individualised system of land ownership that displaced indigenous practice and set the scene for the mass land disposessions and spatial segregation that were to characterise the apartheid state.¹

Legislation introduced in the first half of the 20th century resulted in black South Africans being forced to leave their homes and relocate to culturally and ethnically diverse reserves known as ‘Bantustans’ or ‘homelands’, overseen by traditional authorities and local elites co-opted by the ruling regime.²



By the 1960s, a majority of rural land – approximately 13% of the total landmass – was under state control and subject to the dictates of local officials. So-called ‘natives’ were formally prohibited from buying, selling, or leasing land outside of scheduled areas.³ This systematic denial of land rights continued throughout the 20th century; a driver and symptom of the official apartheid policy and rampant inequalities that penetrated every aspect of society.

Throughout the 1980s, the fight for equal rights dominated political discourse, but it wasn’t until the early 1990s that the apartheid regime was officially toppled. The Constitution of South Africa, enacted in 1996, lists equality and human dignity amongst its founding principles, and both are recognised as substantive human rights.⁴ The Constitution also establishes a right to property and goes on to define the contents of that right, requiring the State to act towards fostering equitable access to land and redress for historic inequalities.⁵

A range of land laws and policies have since been enacted, built upon the four limbs of restitution, redistribution, tenure reform and improved tenure security.⁶ In practice, however, the scars of apartheid run deep; continuing to define a country that is one of the most unequal in the world.

See further, Cousins, B., “Characterising ‘communal’ tenure: nested systems and flexible boundaries”, in Claassens & Cousins (ed.), *Land Power & Custom: Controversies generated by South Africa's Communal Land Rights Act*, UCT Press, 2013, pp. 111-113; Land Portal, *South Africa - Context and Land Governance*, 2021; and Corruption Watch, *Unearthing Corruption in the Land Sector*, 2019, pp. 9-15.¹ *Ibid.*² *Ibid.*³ Constitution of the Republic of South Africa, Sections 1, 9 and 10.⁴ Constitution of South Africa, Sections 25 and 9(2).⁵ Written submission of Amy Barclay, Head of Land Centre of Excellence.⁶



“We have been struggling with transformation for the longest time. We have been struggling to get things to change from the colonial legacy of land administration.”⁷

Since the mid-1990s, socio-economic disparities have grown – rather than shrunk – and spatial inequalities (differences between urban and rural areas) are pronounced; a continuing legacy of segregation and colonial rule.⁸ Recent data suggests that the top 10% of the South African population possesses over 70% of the total wealth, while the bottom 60% holds just seven.⁹ These inequalities have a clear racial dimension: according to the World Bank, in 2018 “racial differences were the largest contributor to income inequality” in the country.¹⁰

A combination of agrarian reform, land restitution, and redistribution programmes have led to significant tracts of land changing hands.¹¹ However, land continues to be concentrated in the hands of the few, and these reforms have done little to address underlying structural inequalities. Recent estimates suggest that 0.28% of the country’s farms “produce around 80% of the value of agricultural production”, with a majority of small-holder farmers in rural areas, unable to meet their basic needs.¹²

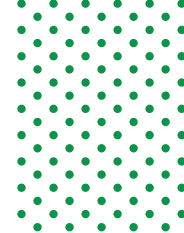
The opening up of the agriculture sector to international markets following the lifting of economic sanctions in the early 1990s was expected to boost economic growth and lift people out of poverty.¹³ In practice, however, the benefits of growth have not been distributed evenly, and many farmers remain impoverished:

“People have land, but there’s no contribution from that land to the fiscus (....) we are actually poorer than we were before the land was in the hands of the so-called white farmers.”¹⁴



Interview with Kearabetswe Moopelo, Landness Coordinator, Landness.⁷ World Bank, *Inequality in Southern Africa: An Assessment of the Southern African Customs Union*, 2022, pp. 3, 11 and 46-50. See also, Corruption Watch, *Unearthing Corruption in the Land Sector*, 2019, p. 5.⁸ World Bank, *Inequality in Southern Africa: An Assessment of the Southern African Customs Union*, 2022, p. 11.⁹ Ibid., p. 22.¹⁰ See further, Land Portal, *South Africa - Context and Land Governance*, 2021.¹¹ International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020, p. 41.¹² Ibid., p. 41.¹³ Interview with Le Fras Nortje, Strategic Land Acquisition, Department of Agriculture & Land Reform.¹⁴

RESEARCH



Experts interviewed as part of this report expressed concern regarding the weak implementation of land reform programmes, which have been stymied by a lack of transparency, accountability, and oversight.¹⁵ Fragmentation of the legal framework exacerbates the issue, creating obstacles for those whose rights have been violated to bringing claims and achieving redress.¹⁶

Against this backdrop, perceptions of corruption are high. Interviewees presented various examples which ranged from cases of nepotism in government institutions, to unlawful rent-seeking by public officials.¹⁷

“Land is allocated to friends and relatives by the department,” one respondent explained, “Nothing happens to [it] and we are unaware of who actually owns it.” Ultimately, “the land we were promised was allocated to other people.”¹⁸

A separate expert drew attention to corruption in land redistribution schemes, explaining:

“A whole bunch of farms were declared open for redistribution. These were all farms that had previously been redistributed [under the land reform programme] (...) A journalist went and scratched below the surface and found that there was someone in the local office who demanded his own rent, and if you didn't pay it, he could just reassign.”¹⁹

A Corruption Watch report issued in 2019 illustrates the scale of the problem. Based on 706 submissions received in a six-year period between 2012 and 2018, the report found evidence of a wide variety of corrupt practices, including bribery of public officials, embezzlement, misuse of public procurement processes, and distortion of laws and policies by political elites to facilitate the capture of land by business for development purposes.²⁰



Interviews with Le Fras Nortje, Strategic Land Acquisition, Department of Agriculture & Land Reform; Terrence Corrigan, Writer, Institute for Race Relations; and Annuschka Williams, Programmes Manager, Surplus People Project.¹⁵ Interview with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources.¹⁶ Interview with Mapula Debra, Founder, South African Women In Farming.¹⁷ Interview with Mapula Debra, Founder, South African Women In Farming.¹⁸ Interview with Terrence Corrigan, Writer, Institute for Race Relations.¹⁹ Corruption Watch, *Unearthing Corruption in the Land Sector*, 2019, pp. 21-23.²⁰

Corruption was most pronounced in rural areas, where land is often held by communities and administered in accordance with local custom or tradition.²¹ While privately held land was less frequently cited in corruption complaints, experts we spoke to expressed concern regarding the situation of persons living in informal settlements, which are often located around urban centres.²² Tenure security is often limited in these settings and in some cases, it was reported that residents had been forcibly evicted after purchasers colluded with authorities to obtain land for less than its market value.

In other cases, councillors were said to have enriched themselves by proactively purchasing land targeted for development, or by building and letting substandard accommodation on land designated for the provision of low-cost public housing.²³ On account of their socio-economically disadvantaged status, individuals living in informal settlements have few options available to them to challenge eviction orders or achieve redress:

“

*The poor and marginalised are isolated. We feel that we do not count in the eyes of the state, we don't count in the eyes of society in general. Those who are rich see us as criminals. When you live in the shack, when you live in the informal settlement, you are not regarded as a human being. You are not regarded as somebody who's worthy of a dignified life.*²⁴

”



Ibid., p. 5.²¹ Ibid., p. 19.²² Interview with Thapelo Mohapi, Secretary General, Abahlali Basemjondolo.²³ Interview with Thapelo Mohapi, Secretary General, Abahlali Basemjondolo.²⁴

As the price of land has increased, mineral-rich plots, including those located in the former homelands, have become ever more valuable.²⁵ Mining is an important source of jobs in South Africa, which contains “over 80% of the world’s platinum reserves”.²⁶ As countries move increasingly towards green energy production, respondents expressed their fears that natural resource exploration would increase, as companies search for new materials in areas that have previously been left untouched.²⁷

In addition to their implications for land use practices, these projects often have significant environmental and health impacts.²⁸ Working conditions are often poor, and a lack of monitoring and oversight means that the proposed developmental benefits are rarely felt.²⁹

Under the law, communities with informal tenure rights are required to be consulted before decisions are made on land use. However, in 2002 new legislation was passed which appears to forgo this requirement, permitting mining companies to enter into agreements with government for permission to mine without obtaining community consent.³¹ Recent court cases have sought to reestablish the status quo, emphasising the importance of community engagement.³² In practice, however, respondents noted that community members are often excluded from decision-making processes. Instead, consent is sought from traditional authorities, who make decisions on behalf of affected groups, giving rise to a perception of corruption.³³

“ The mine came and provided employment opportunities whereas previously people had to migrate to cities for better opportunities. They have become poor black people because of the mine. They weren’t necessarily completely well off, but because of the mine and the needs that it has created in this space, including a sudden boom in population, a sudden need for employment that is not there, the presence of the mine has created poverty.”³⁰

“Land is administered by traditional leaders, although it’s legally owned by the state and the minister is the trustee. But practically, traditional leaders are like a law unto themselves. They’ve become, in many ways, a fourth tier of government, making decisions on land allocations, land use, land disposessions, entering into deals for land to be developed and mined. The practice is, as long as you are an elite, your voice is heard and your needs are met (...) The people we work with are not, so in practice, they are silenced.”³⁴



Interview with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources.²⁵ Human Rights Watch and others, *We Know Our Lives Are in Danger: Environment of Fear in South Africa’s Mining-Affected Communities*, 2019, p. 14.²⁶ Interview with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources.²⁷ Interview with Tsepo Fokane, Research and Media, Alliance For Rural Democracy.²⁸ Human Rights Watch and others, *We Know Our Lives Are in Danger: Environment of Fear in South Africa’s Mining-Affected Communities*, 2019, pp. 14-20 and 22-25.²⁹ Interview with Tsepo Fokane, Research and Media, Alliance For Rural Democracy.³⁰ Interview with Kearabetswe Moopelo, Landness Coordinator, Landness.³¹ See further, Human Rights Watch and others, *We Know Our Lives Are in Danger: Environment of Fear in South Africa’s Mining-Affected Communities*, 2019, pp. 20-25. *Ibid.*, pp. 20-21.³² *Ibid.*, p. 22. Interview with Tsepo Fokane, Research and Media, Alliance Democracy.³³ Interview with Tsepo Fokane, Research and Media, Alliance For Rural Democracy.³⁴

Several respondents addressed the economic implications of the land question. While the benefits of investment on communities are often promoted for their positive effect on employment and improved economic outcomes, interviewees noted the tensions that may exist in a society that views land as both an “economic” and “cultural” unit.³⁵ As one expert described:

“

*The commercial use of land is more important in this government than the social value. We want to use land for our survival, so that we can live in it. And the state decided to set it to private ownership (...) The relationship between the marginalised people in this country and land has been, and still is today, that the ones who have money have access.*³⁶

”

For many in South Africa, land is not only an economic proposition. It also forms the basis for communal, cultural, and spiritual practice. Without secure tenure, people may risk losing their ability to access sites of religious importance.³⁷ In some cases, it was noted, tombstones had been damaged, graveyards had been disturbed, and religious buildings destroyed as a result of forced evictions and development projects.³⁸ Few avenues of redress were available in such circumstances.³⁹



Land is not only an economic proposition. It also forms the basis for communal, cultural, and spiritual practice

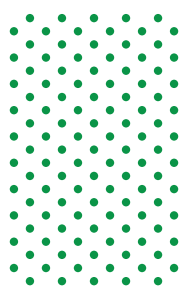
Interview with Terrence Corrigan, Writer, Institute for Race Relations.³⁵ Interview with Thapelo Mohapi, Secretary General, Abahlali Basemjondolo.³⁶ Interview with Kearabetswe Moopelo, Landness Coordinator, Landness.³⁷ Interviews with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources and Thapelo Mohapi, Secretary General, Abahlali Basemjondolo.³⁸ Interview with Le Fras Nortje, Strategic Land Acquisition, Department of Agriculture & Land Reform.³⁹

One expert gave the example of a plot of land that housed a Lutheran church. A mining company, which had obtained approval for a new project, had local residents removed from their homes:

“ A traditional leader and mining corporation had them evicted from the land. Police were called to escort the members off the land. Private interests can exercise an undue and corrupting influence. It's where parts of the State are corrupt, and it's where the people who should protect you take the path of least resistance. Having managed to keep their home through apartheid (...) this was how they lost it. And (...) if I remember correctly, their homes were actually burnt as they were being taken away. ⁴⁰ ”

Almost 30 years after the fall of the apartheid regime, vast inequalities continue to permeate South African society, preventing individuals from exercising their land rights on an equal basis with others. While the state has developed a robust anti-discrimination framework, non-implementation remains a challenge, and some areas have proven particularly difficult for the law to penetrate.

Historically, Black women in South Africa were prevented from owning or inheriting land. While the Constitution now provides for equality between men and women, in some rural areas, traditional beliefs and practices continue to confine women to particular roles within the family, *de facto* preventing them from administering property.⁴² Those who are seen to challenge traditional authority, or do not conform to social expectations (for instance, on account of their sexual orientation) face exclusion within the community.⁴³ Owing to their marginalised status, it was noted that certain groups of women, such as widows and divorcees, may face unique corruption risks, being seen as “soft targets” for disposessions.⁴⁴



**OUR
LAND
OUR RIGHTS**

“ Women's land rights are protected. We know this legally, but in reality (...) You cannot work your fields for a certain period of time (...) You're not getting a chance to participate in community meetings. You're not able to go and change your land. You can't take your livestock out (...) There are a number of practices holding women back. Although legally (...) on paper we have equality, the reality is very different. ⁴⁵ ”



Interview with Terrence Corrigan, Writer, Institute for Race Relations.⁴⁰ Interview with Mapula Debra, Founder, South African Women In Farming.⁴¹ Interviews with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources; Kearabetswe Moopelo, Landness Coordinator, Landness; and Annuschka Williams, Programmes Manager, Surplus People Project.⁴² Interviews with Tsepo Fokane, Research and Media, Alliance For Rural Democracy and Mashudu Masutha, parliamentary researcher focusing on energy and natural resources.⁴³ Interview with Tsepo Fokane, Research and Media, Alliance For Rural Democracy.⁴⁴ Interview with Tsepo Fokane, Research and Media, Alliance For Rural Democracy.⁴⁵

Ambiguities and inconsistencies in national legislation means that many are unsure of their rights, increasing the difficulty of challenging abuses when they occur.⁴⁶ This, in turn, creates space for corruption, as motivated individuals seek to exploit weaknesses in the system to their own benefit.

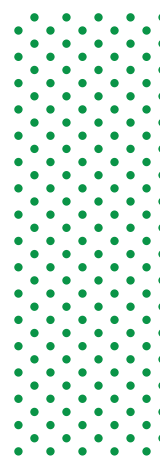
Complicated and lengthy legal procedures, inaccessible institutions, under-resourcing, and a lack of effective accountability mechanisms exacerbate the issue, which may be felt differently by marginalised communities because of their relative lack of voice and position within society.⁴⁷ Despite legal protections, it was noted that persons with disabilities continue to experience challenges accessing land and housing.⁴⁸ And while recent changes to the law means that legal aid is now available in land cases, accessing support is still a challenge for socio-economically disadvantaged groups.⁴⁹ These and related concerns led one commentator to conclude that:

**“
The legal system
in South Africa
is not designed
for marginalised
groups.⁵⁰
”**

Non-implementation of the legal framework was a common theme in respondent submissions. In some cases, serious human rights abuses were reported. Individuals that had raised complaints regarding corruption and land rights violations had reportedly been subject to violent reprisals by the State.⁵¹ Reports were also received concerning acts of sexual violence occurring on farms.

A lack of tenure security, and the perception of corruption within police services were each identified as factors that prevented individuals from raising complaints.⁵² These issues contribute towards a broader climate of fear and mistrust of public institutions, impeding the effective functioning of the law and allowing corrupt actors to operate with impunity.

For their part, national courts have sought to uphold Constitutional values and ensure that the rights of historically disadvantaged groups are observed. But without effective enforcement, the impact of such decisions was substantively limited:



Interview with Kearabetswe Moopelo, Landness Coordinator, Landness.⁴⁶ Interviews with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources and Mapula Debra, Founder, South African Women In Farming.⁴⁷ Interview with Jace Nair, CEO, BLIND SA.⁴⁸ Interview with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources.⁴⁹ Interview with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources.⁵⁰ Interview with Thapelo Mohapi, Secretary General, Abahlali Basemjondolo.⁵¹ Interviews with Annuschka Williams, Programmes Manager, Surplus People Project and Moses Sekobane, Mediator, Rural Legal Trust.⁵²

“

The courts have rich judgments when it comes to issues of land (...) You have the jurisprudence that advances much quicker to ensuring the protection of marginalised communities than the legislature has. The courts have said that communal land is perfectly attainable through traditional processes, through custom. That's not what the legislature says. The legislature says that there needs to be a traditional governance structure in order for you to have land ownership (...) the problem is there's not much you can do with a good judgment. As beautiful as those judgments are, as well written as they are, as impactful as they are, if [practice] does not catch up to what is said in courts whether in implementation or in monitoring then all you have is a really good judgment. ⁵³”

Addressing the challenges of land governance in South Africa requires a concerted range of action. While there is some progress, as the following case study shows, reform processes have failed to produce the kind of transformative equality impacts envisioned by the Constitution.

The testimony received for this report – although limited in scope – paints the picture of a country struggling with the problems of the past and a land system creaking under the weight of its own history.

Further reform is needed. Yet land invokes a range of interests, and to date, political will has been lacking.⁵⁴ On two occasions since 2004, the Constitutional Court has been forced to strike down legislation adopted by government that would grant traditional authorities the power to enter into agreements on behalf of their communities without their consent, for want of public participation.⁵⁵ While new legislation, establishing a dedicated Land Court, gives cause for hope, much more is needed to challenge corruption and inequality within the land sector.



Interview with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources.⁵³ Interview with Mashudu Masutha, parliamentary researcher focusing on energy and natural resources.⁵⁴ See, *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others*, 2010, and *Mogale and Others v Speaker of the National Assembly and Others*, 2023, invalidating the Communal Land Rights Act 11 of 2004 and Traditional and Khoi-San Leadership Act 3 of 2019, respectively. The latter case follows a 2020 judgment of the High Court of South Africa, declaring individuals living on land administered by the Ingonyama Trust Board the “true and beneficial owners.” Leave to appeal the decision was subsequently denied. See further, Yende, S., “Court dismissed Ingonyama Trust appeal, orders it to refund residents”, *City Press*, 25 August 2022.⁵⁵

FARM WORKER EQUITY SCHEMES: *Failing to Deliver*

Authored by Corruption Watch

Following the formation of the democratic government in 1994, land reform was high on the policy agenda. Centuries of colonisation and apartheid rule saw black South African's systematically dispossessed of their land, which concentrated in the hands of the white population.⁵⁶ In the 1980s, it was estimated that "60 000 white commercial farmers owned 12 times as much land as the 14-million rural poor".⁵⁷ To redress the imbalance and overcome a torrid history of racial segregation, the state embarked on a progressive programme of land restitution and redistribution.

One of the earliest measures to be introduced was Farm Worker Equity Schemes (FWES).⁵⁸ These schemes seek to support beneficiaries to become shareholders in a farm, typically in an area of high agricultural value, while equipping them with the skills and support necessary to establish their own livelihoods.⁵⁹

As these schemes are voluntary in nature, the precise details can vary between farms, based on terms agreed between the landowner, the relevant government department, and the proposed beneficiaries. However, each follows a similar format: government provides a grant, supporting workers to become beneficial shareholders in a farm, which entitles them to a portion of the ownership of the business and related entitlements, such as voting rights and dividends.⁶⁰

While farm worker equity schemes have been around since the early 1990s, public information on them is limited. An unpublished government report obtained by Corruption Watch does, however, provide some insight. Since their introduction, hundreds of equity schemes have been rolled out, a majority of which are located in the Western Cape. By 2013 almost ZAR700-million had been paid to privately-owned farms, and almost 24 thousand hectares of land had been redistributed.

Despite these impressive figures, concerns abound regarding the implementation of the schemes.⁶¹ In 2009 the (then) Department of Rural Development and Land Reform introduced a brief moratorium.⁶² However, the moratorium was soon lifted and in 2014, the department developed a new set of policy proposals that placed farm equity schemes at their heart.⁶³

New pilot schemes have since been introduced, and it is clear that the farm worker shareholder model remains a key part of the government's current redistribution agenda.⁶⁴



Corruption Watch, *Unearthing Corruption in the Land Sector*, 2019, p. 15.⁵⁶ Land Portal, *South Africa - Context and Land Governance*, 2021.⁵⁷ Land Reform Policy Committee, *Procedures for Farm Worker Equity Schemes*, PC.DOC.9/1997.⁵⁸ Human Rights Watch, *Ripe with Abuse: Human Rights Conditions in South Africa's Fruit and Wine Industries*, 2011, pp. 78-79.⁵⁹ Land Reform Policy Committee, *Procedures for Farm Worker Equity Schemes*, PC.DOC.9/1997.⁶⁰ See Human Rights Watch, above, pp. 78-79.⁶¹ Ibid., p. 79.⁶² See Department of Rural Development and Land Reform, *Final Policy Proposals on Strengthening the Relative Rights of People Working the Land*, 2014.⁶³ See Department for Rural Development and Land Reform, *Annual Report 2015/2016*, 2015, p. 73; *Diagnostic Evaluation of Strengthening the Relative Rights of People Working the Land: 50/50 Policy Framework*, 2017, p. viii; and Department of Agriculture, Land Reform and Rural Development, *Strategic Plan 2020 - 2025*, 2020, p. 18.⁶⁴

Nevertheless, concerns remain. It is within this context that Corruption Watch – a chapter of Transparency International working to fight corruption in South Africa – decided to investigate. In 2023, we interviewed 35 members of eight farm businesses located in the Western Cape. Each participant discussed their experiences of FWES, with many articulating a number of serious issues. Perceptions of corruption amongst beneficiaries are high, and despite initial hopes, for a majority, the intended equality benefits are yet to be felt.

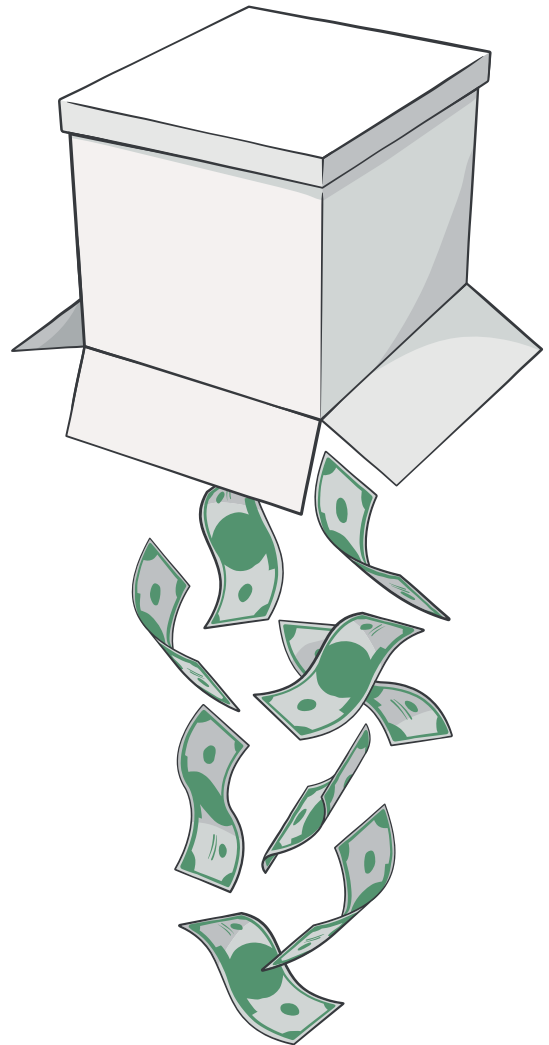
MISSING MONEY: TRANSPARENCY AND PARTICIPATION

Although the exact terms of each scheme differ, beneficiaries under the FWES are expected to receive dividends, corresponding to their share. However, several participants reported seeing few, or no benefits from the scheme. In one case, it was reported that workers received a payment in the mid-2000s and did not receive a second until 2022. In other cases, dividends were paid seldom and irregularly. Despite raising concerns, beneficiaries at several farms did not receive an explanation for the low rate of payment.

While some interviewees were occasionally provided financial statements (displayed on screens during meetings and presentations) this was a rare occurrence. When workers raised their concerns, they were often ignored, being told that “business was not looking good” and that they should sell their shares if they were not happy.

Several participants interviewed expressed concern regarding a lack of transparency and access to information relating to the running of the business. In one case, participants explained that they were never told the details of their scheme. They simply received papers, which they were told to sign so that the farm owner could receive government funding. Beneficiaries also lacked clear guidance from public officials on how the FWES were intended to operate. Once workers had agreed to participate in a scheme, they rarely received information on the financial status of their shares, despite their legitimate concerns.

A range of participants indicated that they had been excluded from shareholder meetings and were unable to participate in decisions that affected the running of the business. On one farm, shareholder workers nominated four trustees who would attend meetings on their behalf. However, when the farm went bankrupt, the trustees and shareholders suspected they had not been given access to all of the relevant information, which resulted in many workers signing over their shares without fully understanding the causes and consequences of the bankruptcy. Workers on another farm were also represented by trustees. However, the shareholders explained that they had no say in who was appointed and were given no information on the decisions that were made.



A MISSED OPPORTUNITY

These issues resulted in a strong perception of corruption amongst interviewees. When beneficiaries received fewer dividends than expected, when businesses went bankrupt without warning, or when they were asked to sell back their shares back to the landholder having received few or no prior payments, many believed that they had been taken advantage of. Some believed that farm owners benefited from government grants without providing the support and payments they should have under the terms of their agreement. However, a lack of oversight and regulation means that these terms are often obscured: individuals do not know what the farm owners' obligations are, and have few avenues to report their concerns, beyond internal channels.

Farm worker equity schemes were designed to raise up disadvantaged workers, but few participants felt that their situation had changed. While some had received dividends when times were good, conditions on the farm remained hard, and labour rights violations were reported.

Improper accounting processes and unregulated time-sheet record-keeping practices which impacted on wages paid, were discussed. Unsafe working conditions, including a lack of protective clothing and equipment was highlighted by one participant, and several reported the unavailability of trained medical support. In one case, a worker explained that they had to wait several days for an ambulance to arrive following a medical incident. Where transport to nearby medical facilities was provided, it was only available on certain days and at certain times.

One of the biggest concerns raised by participants related to land and housing. While accommodation was regularly provided as part of one scheme, it was only temporary, and workers explained that there was no guarantee they could stay on the land after they finished working.

There was also no possibility of family members inheriting the home, and living conditions were said to be poor. One interviewee explained that their house was in a state of disrepair, but the landowner would refuse to fix the issue or provide funds for the occupier to do so themselves. In several interviews, the ability for family to visit and reside on participants' property was said to be limited. One worker reported they had to pay for their children to live with them and several others explained that they needed to register visitors whom, if they failed to do so, would be removed.

Across the board, individuals appeared unsure of their entitlements, or whether they were being treated fairly in relation to their housing situation. Because FWES typically grant beneficiaries a share in the business (rather than the land they work), tenure security remains weak.

In some cases, examples of discrimination on farms were reported. Some participants noted that men and women tended to be treated equally, but others indicated that women were paid less, despite performing work of equal value. Discrimination against persons with disabilities was also highlighted. On some farms there were no ramps and no bathroom modifications. In one case, we were alerted to abusive behaviour towards a deaf person. The foreman, according to one of the participants, would shout expletives at the worker whenever instructions were misunderstood.

As many shareholder workers are formally employed by the farms they work on, they are entitled to legal protections under the Employment Equity Act. However, a lack of knowledge of their legal rights means that many feel they have nowhere to turn when abuses take place.



CONCLUSION: EQUALITY IMPEDED BY CORRUPTION



Farm worker equity schemes are a case study in the challenges of effective governance. The novel design of the scheme, which seeks to redress historic harms by democratising agricultural systems, represents the best of South African ingenuity.

But governance failures, including a lack of transparency, oversight, resourcing, and effective implementation means that the ambition of the scheme has not been fulfilled. Instead, workers feel as though they have been failed. The result of this failure is that patterns of discrimination persist. Disadvantaged workers still lack equal opportunities to participate in agriculture to the same extent that larger commercial, and mostly white-owned, farms have.

Colonialism and apartheid did not just dispossess farmers of their businesses, but also of the land on which they lived. Yet for many, tenure security remains a distant reality. Corruption risks impeding equality. If change is to be achieved, accountability is needed.

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