

Failing To Learn From Failed Programmes: South Africa's Communal Land Rights Bill (CLRБ 2003)

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Abstract

The controversial Communal Land Rights Bill (CLRБ) which South Africa has adopted in the year 2003 will affect about 14 million South Africans residing in the former homelands or harbour 72% of the total population considered as poor. These people hold insecure, conflicting and overlapping rights to land which are acquired through occupation and not through a statutory process. The objective of the CLRБ is to legalise security of tenure in South Africa's former homelands. The logic behind this process is that efficient use of land utilisation and investment inflows to these regions will be realised once security of tenure is recognised under statutory law. The CLRБ has revived the classical debates around indigenous/communal tenure systems vis-à-vis individual tenure systems. This paper offers a critical evaluation of the bill. It will be argued that the bill is a-historical and fails to come to terms with the sociological complexity and uniqueness that defines South Africa's rural societies with respect to land matters. A poorly drafted tenure policy is bound to exacerbate on the historically ingrained problems facing the rural population. The title of the paper, "Failing to Learn from Failed Programmes...." captures the failure of the drafter's of the CLRБ to learn from experiences of South Africa's land reform process over the last ten years

Historical Background

The rural areas in South Africa carry some of the worst forms of poverty in the country because of apartheid social engineering¹ strategies. The collapse of land administrative systems, overlapping and conflicting informal land

¹ Social engineering here is used to refer to the social and economic restructuring that was initiated by the former regime based on politically defined objectives.

rights regimes are key features endured by the apartheid-scarred constituencies which reside in these areas.

Until the 1990s, it was government policy that black people should not own land. In townships and homeland areas, the form that land rights took was generally subservient, permit-based or 'held in trust'. The land, approximately 17 million hectares or 13% of the country, was generally registered as the property of the government or the South African Development Trust. In many areas, the administration of this land is inefficient and chaotic so that people who have lived on land for generations may find that they have no legal right to the land in question, even if nobody disputes that they are the rightful owners of the land (Thomas *et al.* 1999).

The policy of forced removals and clearing of "black spots" not only generated feelings of bitterness and resentment on the part of those forcibly removed, but also brought a sense of insecurity for those on whose land those evicted were resettled. The original occupiers suddenly found themselves with a diminished land-base and had to accept other people as "refugees" from the state and other forces (Claasens 2000). Hence, one of the issues that inhibit development is the lack of clarity about the status of land rights in communal areas. Who has what rights? Who must agree to changes? Who has the legal authority to transact land? One of the consequences of this confusion is that the people who actually use and occupy the land are often pushed aside and dispossessed when development and land transactions do take place (PLAAS/NLC, 2003).

Insecurity of tenure in the communal areas is thus one of the greatest challenges the land reform programme is yet to tackle in its attempt to attain the virtues of substantive democracy in rural South Africa. Even though rights that people hold seem to be "strong", they are often weak in terms of their jurisprudential validity. Since land is owned by the state, the people who hold these rights hold only derivative or secondary rights. These forms of rights are not acquired on the basis of membership, but rather on the basis of occupation and use over a period of time. These rights tend to be nested, i.e. operate at different levels of social organisation like community, ethnic group or family (Cousins 2001). Rights held by women in this regard are even weaker than their male counterparts due to customary practice. The existence of male dominated traditional authorities

exacerbates this situation. Most of these administrative systems tend to be corrupt and this worsens land use and allocation systems in these areas. In addition, local government plans and service delivery interventions are thwarted or delayed by chiefs refusing to “release” land for development projects (Lahiff 2001).

There are long standing disputes between provincial and local governments and traditional leaders about who owns and controls the land. Traditional leaders often complain that local government initiatives undermine pre-existing land rights while councillors complain that traditional leaders block development to ensure that their authority remains intact (Adams et al, 2000: 117). With the dawn of democracy in South Africa in 1994, concerted attempts have been put into place in order to address the question of governance and ownership in communal areas.

Tenure Reform in Historical Perspective

The prospect of democracy in the early 1990s raised expectations that those dispossessed of their land by the Apartheid regime and before would be able to return to their land, but the terms on which political transition was negotiated constrained how this could happen. Despite calls for a radical restructuring of social relations in the countryside, the constitutional negotiations on the protection of property rights and on the economy more broadly ensured that land reform would be pursued within the framework of a market-led land reform model. The negotiated transitional arrangements were finally endorsed and reflected in the 1996 Constitution, which sets out the following framework for land reform:

“The state must take reasonable legislative and other measures, within its available resources, to foster conditions, *which enable citizens to gain access to land on equitable basis* (italics by the author) (Section 25(5)).”

“A person or community whose tenure of land is *legally insecure* (italics by the author) as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress (Section 25 (6)).”

“A person or community *dispossessed of property after June 1913* (italics by the author) as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress (Section 25 (7)).”

South Africa’s post-1994 Land Reform Policy rests on three pillars: land restitution, land redistribution and land tenure reform.

Land restitution’s key aim is to restore rights to land to communities/individuals who were dispossessed of their land since June 1913 because of a racially motivated law. Since its overall objective is rights restoration it is a rights-driven approach which has been criticised for being at the expense of attaining socio-economic development for the claimants.

Land redistribution aims to provide communities with a grant which they can use to purchase land for agricultural purposes through the Land Redistribution for Agricultural Development (LRAD) programme. Access of land for residential purposes is financed through the Settlement Land Acquisition Grant (SLAG).² (

The objective of *land tenure reform* is to create a unitary non-racial system of legal tenure rights in South Africa’s former homelands. This has been legislated through the new Communal Land Rights Bill (CLR) which aims at according legal recognition/formalisation of insecure land tenure rights. So both, tenure reform and restitution reform are rights based mechanisms established to either restore or accord legal recognition to informal land tenure regimes African communities hold in South Africa. The mechanisms established in this processes are highly legalistic, judicious, and often disenfranchising for the target communities.

It is doubtful whether a negotiated land reform can comprehensively address a century old system of land alienation processes that systematically denied ownership of land to the black majority. The unresolved challenges facing the tenure reform in South Africa are just a tip

² Initially, between 1994 and 1999, SLAG could be used to purchase land for settlement purposes and agricultural purposes. In 2000 this was changed and SLAG became available only for applicants keen to purchase land for settlement purposes. Acquiring land for production purposes was dealt with through the LRAD programme.

of the iceberg that reflects some of the challenges of consolidating nation building, reconciliation and democracy while at the same time attending to the imperatives of transitional politics such as the property rights clause and the needs of domestic and international capital.

The reform starts

In the period of the first democratic government, 1994-99, an effort was made to develop the necessary legal and administrative reforms, which would dismantle the apartheid map and secure the land rights of those living in the former homelands. The tenure reforms envisaged in the White Paper on South African Land Policy (DLA 1997) were to have been provided for in the first proposed Land Rights Bill. Its aim was to upgrade customary rights by giving them statutory recognition without changing their essential customary character (Adams 2001). A key aspect of the defunct land rights bill was that it had a redistributive aspect. In cases where it was impossible to confer rights, "tenure awards" were to be conferred in the form of additional land. The Land Rights Bill was therefore hailed as innovative in that it avoided the more impossible variants of awarding freehold ownership to everyone in the homelands (Ibsen and Turner 2000). However, this bill was deemed too controversial to be passed at a time when South Africa was gearing up for the second democratic elections in May 1999. Part of the envisioned controversy centred on the bills salience on the role of traditional authorities³ in the envisioned changes in land management systems in the former homelands.

The incoming Minister of Land Affairs, Thoko Didiza, put a halt to the work on the Land Rights Bill in 1999 following a pre-election pact between the president-to-be, Thabo Mbeki, and the Congress of Traditional Leaders of South Africa (CONTRALESA). This pact was critical for the ANC if they were to secure the votes of traditional leaders and their subjects in densely populated areas such as those in Kwazulu-Natal, a stronghold of the Inkatha Freedom Party (IFP). It took more than three years for the Minister

³ The position of the ANC towards traditional authorities has always been ambivalent despite the "pariah status" the traditional authorities hold in most of South Africa's former homelands or within certain community quarters partly due to their historical role in the apartheid era and the corruption associated with some of them. The ANC strategy of broadening its support base in rural South Africa, coupled by the support of these institutions within some quarter of the ANC has partly created this dilemma.

and the Department of Land Affairs to come up with an alternative to the Land Rights Bill. The drafting process of this bill begun in April 2001 (Adams 2001) and came to completion in 8 October 2003 when the bill was presented and approved by parliament.

The Communal Land Rights Bill (CLRB) from 2003 is mainly aimed at divesting the State of its responsibilities as trustee and owner and instead place greater reliance for land administration on the traditional authorities in areas where they exist. Leading critics of the bill among them academics from the Programme of Land and Agrarian Studies (PLAAS) at the University of the Western Cape such as Ben Cousins and NGOs such as the Legal Resource Center, the National Land Committee, the Landless People Movement or the Transvaal Rural Action Committee have hailed it as unnecessarily complex and bound to disenfranchise rural communities. Moreover, it is at dissonance with some of the fundamental principles of the Constitution of South Africa such as the right to gender equality.

A Critique of the Communal Land Rights Bill

The CLRB of 2003 has been criticised for its paradigmatic approach to tenure models. The Bill ascribes to the desirability of according statutory recognition to communal/indigenous land rights as part of a “modernisation project” informed through western jurisprudential and development experiences. The CLRB is viewed as an “ideological captive” of antiquated debates that have raged on about the best tenure regimes to have for agricultural development. The debate on the effectiveness and appropriateness of communal rights vis-à-vis freehold tenure has confronted many social scientists in Africa during the colonial and post-colonial epoch. There are those who claim that freehold tenure whose origin lies in Western jurisprudence is more conducive to agricultural development than communal tenure systems, which are seen as anti-modernist to economic development. Other scholars (Okoth-Ogendo 1998; Migot Adholla *et al.* 1994; Ondiege 1996) note that indigenous tenure systems are not as static as western-based conceptions of African property systems made them appear. From their point of view there has always been a spontaneous individualisation of land rights over time, which allowed for the acquirement of more exclusionary rights over land as population pressure and agricultural commercialisation proceeded. For Adams *et al.* (2000: 112) this debate on the efficacy and superior status gained from

western-style freehold property systems as opposed to the property systems found in African communities obscures opportunities for reforms which strengthen the land rights of local people and ensure that their land cannot be alienated or otherwise used without their consent, neither by government, nor by “developers” or other third parties.

One of the contentious issues of the CLRB is the concept of “community” on which it is based. The draft bill defines rights holders in terms of their membership of “a community”. The community again is defined in the bill in terms of “shared rules” as stated in section 1 of the Act:

“Community means a group or portion of a group of persons whose rights to land are *derived from shared rules* (italics by the author) determining access to land held in common by such group.”

However, rural communities in South Africa are a product of the apartheid forced removals where people were dumped in areas under the jurisdiction of chiefs recognised by the government. Thus the *de facto* rights of these people do not derive from “shared rules” but from their established occupation and land use, and from acceptance by their neighbours. The nested character of most systems of communal land rights, within a hierarchy of neighbourhoods, sub-villages, villages, wards and chieftainships makes the definition of “community” intrinsically difficult. The bill is unclear as to what the limits of community boundaries should be (Cousins 1999). The danger in assuming that there exist easily identifiable “communities” with “shared rules” is that this works to shore up the traditional leaders who may or may not enjoy the support of people under their jurisdiction (AFRA 2002: 6).

This is one example of the drafter’s inability to learn from the experiences of the restitution process in South Africa. Communities who applied to the Restitution Commission for the restoration of their lost rights to a piece of land soon realised that different factions within their community paid homage to different tribal lineages. As a result of ensuing conflicts and contestations the process of restitution was delayed. Questions of power dynamics and vested groups were not considered in conceiving the target

group of the policy. The CLRB assumes a similar position in its understanding of what constitutes a community⁴.

The concept of community as applied within the land reform programme has often encumbered implementation of projects in the sense that it more often than not espouses the heterogeneity and fractures that cut through the community fabric. With such fractures, contests over resources and power, often mute the voices of the weaker members of the community. Given the sensitivity that most rural communities attach to land rights regimes and loyalty to different tribal lineages, the CLRB process will bring these conflicts within the community to the fore.

Under the CLRB new structures have been set up which are mandated with the administrative aspects of the bill and the management of communal land, namely the Land Administration Committees/Traditional Councils and the Land Rights Board. Traditional Councils are structures that have been set up through the Traditional Leadership and Framework Bill (TLGF). They are principally tasked with assisting communities on areas pertaining to their developmental needs, liaising with municipalities on these matters, and administering the general affairs of the community⁵.

So while the CLRB vests ownership in “communities” it places the administration of the right to tenure security in the hands of a structure that rural people cannot choose, elect or replace. However, if communities have no choice over who will administer and allocate their land rights, they have no effective means of asserting or protecting their land rights against the structure that “represents” them. What is the point of making the “community” the owner of the land if the law imposes a structure on the

⁴ Kepe’s (1998) work on “The Problem of Defining Community: Challenges for The Land Reform” elaborates on this ambiguity. It looks at varied conceptions of community: spatially defined with a focus on spatial units, i.e., people who share a common locality, or economically defined in economic terms where different groups share common interests, control particular resources or share similar economic activities to make a living. The question of “belonging” in a community is a vexed one.

⁵ Section 4 of the Traditional Leadership and Governance Framework Bill elaborates further on the functions of the Traditional Council. These functions and responsibilities are subject to customary law and practice and most critics are skeptical whether these structures will be gender sensitive in executing their role in traditional community.

landowners that they have no means of disciplining or replacing? (PLAAS / NLC 2003).

Another problematic aspect of the CLRB is that it reinforces existing gender inequalities in landownership. Women face serious problems as under customary law only men are allocated land. Women can generally access use rights to land only via relationships with men and wives lose everything at divorce because the land is held by the husband, and the marital house is often attached to the land. Furthermore, on the death of husbands who have not made wills, the land (and thereby also the house) passes to male relatives while the widow and daughters inherit nothing. The subservience of a woman's access to land to her husband's is also expressed by the fact that men can, and do, make unilateral decisions about how the land should be used during the course of the marriage (NLC/PLAAS Submissions 2003).

The unequal and discriminatory nature of women's access to land under customary law has been re-enforced by formal law. For example, the most common record of land rights in communal areas is through 'Permission to Occupy' (PTO)⁶. Yet the PTO regulations provide that PTOs are issued only to men. PTOs are thus an example of an old order right which were highly gendered in the allocation of land rights in communal areas.

If the CLRB is to transform these gendered old order rights into new order rights, the inherent gender inequality found in old order rights with respect to property relations will merely receive statutory recognition. This danger seemingly goes unnoticed in the conversion process the bill sets up at its generic start in Section 4:

"An old order right which is legally insecure as a result of past racially discriminatory laws or practices as contemplated in section 25 (6) of the Constitution must be legally secured in terms of this Act."

⁶ 'Permissions to Occupy' or PTOs as they are commonly termed was the main method of establishing rights under the regulations that governed land rights in communal areas. These regulations were the Black Areas Regulations R 188 of 1969, which were made under the Black Administration Act 38 of 1927 and the Development Trust and Land Act of 1936.

Hence, it will be extremely difficult to create a balance with respect to gender inequality since the basis of the conversion is flawed. The Bill does not take into account the historical validity of how old order rights through PTOs were allocated or even challenge the institutional basis of women rights relegation through this process. So, the bill does not reverse the institutional based system of discrimination that existed under communal systems of land administration and governance but instead co-opts it uncritically.

Moreover, the Bill falls trap in understanding gender in a purely technicist and quantifiable mode devoid of any serious understanding of how gendered institutions generate skewed power relations that again shape gender inequalities in rural South Africa. Attaining gender equality goes beyond stating “numerical minimums” in terms of women representation. The required number of women members in a Land Rights Board, Traditional Council or criteria the Minister should take in her determination of land rights conversion are spelt out in various sections of the Bill (14 (g), 19 (b), 23 (b), and 27 (d) (i)). Section 23(3) of the Act mandates that at least a third of the total members of the Land Administration Committee must be women. With relation to the Land Rights Board, Section 27 of the Bill states obligates the Minister to oversee that: “at least two of its members are women.”

But the power relations at community and household level which act against women obtaining secure tenure are obscured in such technical considerations accorded to gender matters. Without a deeper understanding of power relations which structure access to and control over land in rural areas, it is unlikely that broad policy commitments such as the “numerical minimums” set for women representation will have any impact in addressing gender inequality. The right to equality and protection from discrimination on the basis of gender as enshrined in section 9 of South Africa’s constitution will be a distant chimera to many rural women who aspire full statutory recognition under formal land management systems. This shortfall of the bill with respect to traditional authority structures is symptomatic of the national paradox that characterises South Africa’s fledgling democracy. On the one hand, South Africa’s democracy boosts an impeccable attempt to uphold civic and political liberties while on the other hand, a wide range of political and social imperatives have compelled the

government to accord constitutional credence to tribal authorities which are anti-modern and unable to uphold the virtues of a modern liberal democratic model.

The CLRB also raises serious constitutional concerns given the wide discretionary powers vested in the Minister as the sole determinant of how the conversion of land rights will be undertaken based on the report of the land rights enquiry process. The minister is vested with wide discretionary powers to provide secure tenure or redress. This is in contrast to other land reform legislation passed in post-Apartheid South Africa such as Restitution of Land Rights Act 22 of 1994 and the Extension of Security of Tenure Act 62 of 1997 (ESTA). Through these Acts, to secure one's rights was an entitlement and did not depend on a Ministerial discretion. With the CLRB, the determination of the extent of the right to be secured or comparable redress to be accorded is left to the Minister. This is however unconstitutional as in section 25 (6) of the Constitution it is specified that "an Act of Parliament" and not the Minister should give effect to the rights and determine the nature and extent. The Bill thus transforms constitutionally guaranteed rights into a discretionary benefit based on a Ministerial decision.

The Minister's discretionary leeway is also evident in her having the sole powers to initiate a land rights enquiry, decisions about whether and how to subdivide communal land and/or to reserve portions as state-owned, decisions about which old order rights to convert to new order rights and which to cancel and the authority to determine who holds new order rights. There is no obligation on the Minister to secure the consent of the community affected by any of these decisions, nor is the Minister required to consult the relevant community before making a ruling. Her decisions will be based solely on the recommendations made in the land rights enquiry report. Community participation in the land rights enquiry is bound to be ineffective since the terms of participation are not dealt with in the bill. For instance, the bill (Section 14 (2)) only outlines general issues to be included in a land rights enquiry such as nature of old order rights, conflicting rights, interests of the state, options available for legally securing any insecure rights, comparable redress, equity issues, gender issues and spatial planning requirements. Such open-ended factors are bound to be

interpreted differently by officials concerned in this process, hence introducing inconsistencies in decision-making.

Critics of the CLRB such as the Programme for Land and Agrarian Studies (PLAAS) or the National Land Committee (NLC) were quite vocal in expressing the unilateralism that defined the decision making process enshrined in the bill. Similar views were expressed by other NGOs such as the Legal Resource Centre (LRC) and the South African Council of Churches (SACC).

They claim that one of the reasons why the bill has taken such a unilateral approach with respect to the land rights enquiry process and the determination thereof, is due to the fact that the drafters are aware of the inexorable nature of the disputes concerning boundaries, identity and power that land transfers would elicit and that if the bill opens any space for community consultation the process will unravel and get locked in endless delays and disputes. Delays due to the mediation of community disputes were often experienced in the restitution process in cases where community members/communities had multiple claims of a single piece of land. This not only meant unnecessary delays suffered by the claimant's communities but also frustration on the part of Government agencies tasked with the process.

Another major challenge facing the CLRB is that the institutions required for the bill to function effectively are beyond the current capacity government, civil society organisations and communities. Institutional incapacity especially at the level of local government has proven to be one of the weakest points of development delivery in South Africa..

The inclusion of new structures such as the Land Rights Board and Land Administration Committees will further complicate the "institutional matrix" that is supposed to enforce the delivery of policy.⁷ What is

⁷ I have compared two models of land redistribution projects between 1997-1999 and between 2000-2004, and came to the conclusion that both models of land reform projects have failed precisely because the expected post-transfer support required by community beneficiaries was not forthcoming from the government agencies tasked with this responsibility. Post-transfer support services is a multi-sectoral government process which is often hindered by the weak institutional structures and limited resources. For

confusing is that the Traditional Councils or Land Administrative Committees will in a de facto sense constitute a new tier of government which is not constitutionally acknowledged in chapter 3 of the constitution but which will nevertheless carry heavy developmental/public land administrative functions and powers bound to affect the new order rights holders.

Safeguard mechanisms against possible abuse of power emanating from these structures seem invisible in the bill. In fact, the only evidence of some veto been levelled at the Land Administrative Committees by the Land Rights Board for instance is stated in section 25 (2) of the Act where it explicitly states that any decision taken by the Land Administration Committee to dispose of the land must be ratified by the respective Land Rights Board within its jurisdictional control.

The bill is premised on a flawed assumption that South Africa has an advanced land administration system capable of implementing these complex reforms envisaged in the communal areas. Most importantly, for tenure reform to become a reality on the ground, rights holders need information on their rights and access to a wide range of support systems at local, district, provincial and national level. They will require ready access to government officials or non-governmental agencies to assist them to choose a structure to administer their rights, to resolve disputes, and to assist in setting up systems of record keeping. Monitoring of decision making by dedicated officials is vital to ensure that rights are respected and community administrative structures do enjoy the support of a majority of rights holders (AFRA 2002: 8).

Given the acute shortage of land rights awareness (in terms of legal literacy) experienced in other pillars of land tenure reform such as the Labour Tenants Act 3, 1996, the Extension of Security of Tenure Act, 62, 1997, and the Restitution Act 22, 1994, the communities affected by the CLRB are unlikely to effectively agitate against the procedural aspects of this bill. This bill will disenfranchise them and make them subservient to unelected structures to govern and manage their land rights regimes.

Given the above analysis, the CLRB will most likely not achieve its full objectives. In some interviews I did in April 2004 for the Land Redistribution for Agricultural development programme (LRAD)⁸, LRAD), interviewees were quick to mention the CLRB as a great challenge. A senior member of Land Affairs, made it evident that also officials within the Land Affairs are sceptical about the success of the new bill:

“I do not believe in the communal land rights bill. I do not believe that is the development path that one has to take but never the less I am going to implement it because that is my job, I am passionate about land reform. I do not want to see anything wrong happening (going on) but what do I do? We need to constructively criticise the programme. We are going to face many problems in implementing this policy, because in communities you have people who support the chief and those who do not support the chief, we anticipate those problems. Why don't you upgrade existing rights, do we really need new rights? If the chief is told he cannot administer land, it is going to be a problem. The chief will think his powers are been taken away. The administrative aspects of this bill are going to be insurmountable. It seems we have not applied our minds carefully, we have just copied a model. (Interview with Mampho Malgas, Deputy Director, Lowveld Region, Provincial Department of Land Affairs, 18/04/2004).”

Provincial offices of the Department of Land Affairs (DLA) do not seem to have been involved in the drafting of this bill, reflecting on the national competency status of land reform policy making role currently vested with the National Department of Land Affairs, Pretoria Office. A director of a local NGO working in Mpumalanga Province had this to said the following about the Bill:

“The provincial leadership will face serious challenges with respect to this new bill. They don't have a clue about it and they

⁸ This programme (LRAD) was initiated in 2000 and its key aim is to generate a stratum of black commercial farmers in South Africa. A policy analysis and Case Study based work I have written on this programme is available from the author on request.

were not even aware that there was this bill, they were never work-shopped on it, they don't know the implications. Recently I addressed some councillors and I asked them if they know this bill and they said no, they did not know the implications of the bill and yet it will impact on their administrative responsibilities. The councillors felt they were sold out. (Interview with Chris Williams, Director, The Transvaal Rural Action Committee, Mpumalanga, 19/04/2004)."

The above assertion again reflects the non-participatory character of the bill. Different tiers of Government are unaware about the bill and its implications and this is bound to create problems during its implementation.

Conclusion

There is limited hope that the bill will succeed. Aspects of the bill are unconstitutional and it lacks a firm sociological base in understanding the "rural community" it targets to "develop". Therefore it is likely that it will instead end up disenfranchising it in the process. Weak institutional structures e.g. ineffective land management systems will encumber the implementation of the bill. Intractable conflicts within the community will further derail the Bills success. These problems have also come to define the key features of South Africa's institutional experience with regard to land reform implementation process in the past decade (1994-2004). It is therefore unlikely that the Department of Land Affairs (DLA) will be able to process more than one hundred transfers per year. At this rate critics (e.g. Cousins, 2002) estimate that it will take 200 years to transfer land to the estimated 20 000 rural communities in the ex-homeland areas.

So the questions remains why South Africa has not learned from its own experience with land reform processes over the last ten years and the experiences of other African countries with respect to tenure reform?

Abstract:

Die Communal Land Rights Bill (CLRБ), die vom südafrikanischen Parlament im Jahr 2003 beschlossen wurde, betrifft die Landrechte von 14 Millionen SüdafrikanerInnen, die in den ehemaligen Homelands leben oder 72% der als arm bezeichneten Bevölkerung des Landes. Die Landrechte dieser Bevölkerungsgruppe sind nicht formell abgesicherte und daher unsicher und zum Teil sich überlappend. Das Ziel der CLRБ ist die Sicherheit in Landbesitz in Südafrikas ehemaligen Homelands zu erhöhen in der Hoffnung, dass eine formelle Sicherung von Landrechten zu effizienter Nutzung des Landes und verstärkten Investitionen führt. Das die Zusammenhänge jedoch nicht so einfach sind zeigt die in diesem Artikel durchgeführte kritische Evaluierung der CLRБ. Es wird argumentiert, dass die CLRБ a-historisch ist und im Widerspruch zu einigen wesentlichen in der Verfassung verankerten Punkten, wie beispielsweise Gendergleichheit, steht.

Es wird argumentiert, dass die CLRБ der Komplexität der südafrikanischen ländlichen Gesellschaften in Bezug auf Landfragen nicht gerecht wird und die historisch bedingten Probleme mit denen sich die ländliche Bevölkerung konfrontiert sieht noch verstärken könnte. Der Titel des Artikels "Failing to Learn from Failed Programmes...." bezieht sich auf das Versagen der für die CLRБ Verantwortlichen von den Erfahrungen des südafrikanischen Landreformprozesses der letzten 10 Jahre zu lernen.

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