

South Africa After 30 Years of Democracy: Land Claims and Transitional Justice in the Spotlight

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EDITORIAL INFORMATION

Received: 03 May 2024

Revised: 12 October 2024

Accepted: 13 November 2024

Published: 17 December 2024

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DOI: [10.38140/ijss-2024.vol4.23](https://doi.org/10.38140/ijss-2024.vol4.23)

Abstract: Transitional justice is a universal strategy employed worldwide to secure peace and avoid warfare when an authoritarian regime is succeeded by democratic rule. The short duration of the transitional process and the lesser priority placed on social justice have impacted rural poverty, unresolved land reforms, ideological differences, and inequalities. This literature review explores the disadvantages of transitional justice and government policies regarding land reforms. It traces the causes of conflicts surrounding land that have affected rural poverty by examining the roles played by transitional justice, land acts, and government policies over the past 30 years. The research is underpinned by the conflict theory of Karl Marx and Engels, which does not commit to socialism or capitalism while highlighting the conflict between the wealthy and the poor. The literature reveals that South Africa is experiencing conflicts rooted in socio-economic challenges, political differences, inequalities, and poverty due to unresolved land issues. Based on the findings, the paper concludes that transitional justice has adopted a neo-liberal angle that compromises the rights of Black individuals. The implication is that transformative justice is

needed to represent the voices of the people, address inequalities, and enable access to land as a necessity for food security and residential purposes.

Keywords: Inequalities, land, poverty, transformative justice, transitional justice.

1. Introduction

South African democracy emerged from apartheid and colonial regimes, each leaving its mark on the nation's history. Both contributed to the dispossession of land and poverty among Black Africans, which has a bearing on the weaknesses of transitional justice and the social justice crisis faced by the country today (Mboti, 2023). The two historical periods also contributed to the current crisis that disrupted demographics, politics, socio-economic structures, and traditional ways of living. This disruption led to landlessness and poverty for Black South Africans, including forced labour and cultural suppression, such as massacres (Piotrowski, 2019). The most devastating effect of colonialism and apartheid was the dispossession of land, a situation that worsened during the apartheid era with the implementation of oppressive and discriminatory land policies. This led to continued poverty and sparked an ongoing debate in the post-apartheid era (Piotrowski, 2019; Moleah, 1993). The issue of land is particularly emotive due to scholarly evidence indicating that Black South Africans did own and effectively use the land before the enactment of the infamous Native Land Act of 1913 (Modise & Mtshiselwa, 2013). Against this historical backdrop, transitional justice became necessary to prevent civil war when an ANC-led government adopted democracy and took power in 1994.

Transitional justice, a global concept, encompasses amnesty and other justice strategies designed to facilitate a smooth transition from a repressive regime to a democratic administration (Laplante, 2009). While transitional justice was viewed as an ideal approach to end white political rule in South Africa, the post-independence period was marked by dissatisfaction, anger, criticisms, and

How to cite this article:

Molomo, P. A., & Dube, B. (2024). South Africa after 30 years of democracy: Land claims and transitional justice in the spotlight. *Interdisciplinary Journal of Sociality Studies*, 4, 1-14. <https://doi.org/10.38140/ijss-2024.vol4.23>

ideological differences surrounding the issue of land dispossession of Indigenous people. This reflects the overlooked social justice aspects within the political and socio-economic spheres, creating a disconnect and imbalance between the macro and micro elements that shape South African politics and debates. Unresolved questions about land and poverty significantly affect socio-economic conditions in rural areas, such that pervasive poverty undermines the socio-economic rights enshrined in the Bill of Rights (Theron & Mchunu, 2016).

We argue that social justice presents a relevant approach to addressing social problems, as transitional justice has overlooked a holistic diagnosis of real social issues, employing models that do not align with local challenges and continue to protect the interests of the white minority (Erasmus & Harry, 2017). This perspective is echoed by Millar and Lecy (2016), who assert that transitional justice adheres to a prescriptive global vision of norms for peace and justice that primarily benefit certain groups. The implications of adhering to principles prescribed by the international community have diluted the social justice agenda, which had previously been the ANC's stance before assuming power. The social justice agenda entailed resistance to economic monopoly, the maintenance of fairness, and respect for people's rights, including equity in land claims (Suttner, 1985). This line of thought is based on the view that, 30 years later, the ANC government has seemingly become comfortable with Black people residing in small townships and informal settlements, while the question of land restitution for Black people remains a mere rhetorical issue.

With the African National Congress (ANC)'s adoption of a liberal democratic constitution to steer a country riddled with rural poverty and land challenges, it employed policy and programmes as intervention mechanisms (Theron & Mchunu, 2016). The Reconstruction and Development Programme (RDP) became the first intervention project identified to address land reforms and rural development (Dlamini, 2014). The three pillars of the RDP included the distribution strategy, which introduced the concept of the willing buyer and willing seller; the restitution strategy, which focused on investigating claims for land by those whose land had been seized; and the land tenure strategy, which secured the rights of people living under land controlled by others (Dlamini, 2014). These strategies underpinned the RDP's efforts to address the land crisis (ANC, 1994). While the intention was noble, the RDP ultimately became an appeasing approach to the ANC government's failure to tackle the land question, raising the debate about what democracy means without land.

Our position is that social justice can be the solution to the long struggle for land reform and rural poverty. The research approach adopted in this article is qualitative, utilising a case study design and literature review, while the data was subjected to thematic analysis. The focus will be on examining the effects of the 1913 Native Land Act on rural poverty and African land dispossessions. The aim is to explore how transitional justice and a lack of policy direction failed to redress past land seizures and human rights violations and respond to social justice issues.

The research was guided by the following questions:

- What are the effects of the 1913 Native Land Act on rural poverty and land dispossessions in South Africa?
- How did the transitional justice process of policy direction address past land seizures and human rights violations?

2. Theoretical Framework

In this paper, the conflict theory of Karl Marx and Engels (Harman, 1986; Edara, 2016) was adopted. We acknowledge that the theory has many variations and concepts that were later developed by other scholars; however, for this paper, we focus on two constructs: the base and the superstructure. Marx believed that every society is divided into two groups: those who own the means of production, such as land, and the workers. Those who own the land, minerals, and other resources occupy the

base, while the workers are in the superstructure. He argued that the base always controls the superstructure (Basti, 2013).

In the South African context, land as a means of production is generally in the hands of a few privileged whites, who, through land ownership, can control various facets of working-class life (Tedman, 2010). This dichotomy contributes to a consistent conflict in society in the quest to control resources essential for human survival. The theory is appropriate for problematising the question of land ownership over the past 30 years in South Africa, where land remains primarily in the hands of a few whites, perpetuating class inequalities despite the advent of democracy. According to Marx, there is always a need for continual conflict to neutralise the power and dominance of class in society (D'Amato, 1999).

While the struggle in post-colonial South Africa may not be physical, there is a need for various elements, such as resistance and legislation, to reclaim the land. Such legislation or resistance against white supremacy is an act of social justice for the marginalised. This theory is particularly relevant for understanding the ongoing social injustices surrounding land, poverty, and inequalities in South Africa, as these issues are problematised and addressed to improve the lives of Black people. Considering the theory, we responded using the following methodology.

3. Methodology

This study employs a synthesis review to explore 30 years of democracy and the issue of land in South Africa. A synthesis review has been undertaken to evaluate and synthesise relevant literature, providing a clear overview of the effects of landlessness among Black South Africans. Through the synthesis review, we obtained articles that enabled us to make evidence-based arguments rather than relying on various methods (Omodan, 2024a; Omodan, 2024b), thereby keeping the paper qualitative in nature to address the research questions. A comprehensive search was conducted across different academic databases to identify relevant studies related to the Land Act, land use, and the democratisation of South Africa with respect to property rights. The following databases were searched: Google Scholar, ProQuest, Sabinet, and Emerald. Search terms using Boolean operators included "land issues" AND "Land Act of 1913," "LEWC" AND "The Constitution of South Africa," AND "Section 25 of the Constitution," and "Rural poverty" AND "social justice."

3.1 Inclusion and exclusion criteria

Searches were restricted to peer-reviewed articles published in English between 1914 and 2024, including a few newspapers with relevant information. Studies focused on the South African context were included. Criteria for excluding studies were established to ensure that only important and sound research was considered. Research not related to land and democracy in South Africa was excluded. Works that provided only personal opinions or analyses instead of empirical findings were also excluded to ensure that each selected study was based on real data. Additionally, non-peer-reviewed articles were excluded.

4. Emerging Themes

4.1 The impact of the 1913 land act

The passing of the Land Act of 1913 worsened poverty in South Africa, particularly in rural areas, leading to political and socio-economic inequalities. Plaatjie (1995) laments that the 1913 Native Land Act marked an era when Africans were not only treated as slaves but became strangers in their country of origin. This implies that the injustices that occurred in the past, when the 1913 Native Land Act was enforced, caused a land crisis and other injustices, leaving Black Africans with only seven percent of land occupancy through land tenures. The Act further limited the movement of natives, confining them to barren homelands where they could not productively use the land as farmers nor generate income. Instead, they were absorbed by White farmers to work for them

(Davenport, 1985). The dispossession of land was also exacerbated by the lack of support from the erstwhile government for emerging African farmers, who had to comply with existing laws and tax regulations. This left many with no choice but to leave their farms to work in industries and mines in order to pay taxes (Davids & Theron, 2016). As a result, a high percentage of land ownership fell into the hands of White commercial farmers, who were supported by the Apartheid state (Davids & Theron, 2016). The implications of the 1913 Native Land Act can be viewed as the cause of land dispossession among the Indigenous people of South Africa, which increased rural poverty.

According to the cultural beliefs of most Indigenous people in Africa, land is an entity for the community and communal activities under the authority of traditional leaders, rather than something for private possession (Resane, 2019). However, under the administration of colonialists and the apartheid regime, concepts like land tenures and title deeds were introduced in the Land Act of 1913 to validate private ownership, which still forms part of the land conflict today (Resane, 2019). Land reforms can thus be viewed as a legally endorsed clause in the Constitution that can restore justice by granting Black Africans, who were stripped of their rights by authoritarian regimes, access to land (Pienaar, 2015).

During the Apartheid era, following the passing of the Land Act of 1913, Black Africans were forcefully removed from urban areas to live in overcrowded rural native reserves, while the minority white population, making up almost 11% of the population, owned vast hectares of land and 86% of farms (Pienaar, 2015). As a result of the complexities surrounding the land issue, it can be concluded that the Land Act of 1913 was the genesis of discrimination and inequalities, which in turn planted the seeds of African poverty. The result of the 2017 government audit revealed that 72% of the nation's private farmland is owned by white people, in contrast to Black people, who are still unable to benefit meaningfully from the land (Resane, 2023).

4.2 Rural poverty and inequalities

As we begin this point, we argue that seemingly political freedom is paired with poverty in South Africa. Poverty constitutes a state of lack and deprivation that limits people from fully functioning and living a better life (Megbowon, 2018). The Natives Land Act of 1913 was enacted a century ago in South Africa but continues to impact the current socio-economic crisis of poverty and land scarcity experienced by black South Africans (Modise & Mtshiselwa, 2013). This state of lack has particular implications for rural dwellers in Southern Africa, who are deprived of their constitutional rights due to the unresolved land crisis. We contend that land reallocation has strayed from its original mission, having moved away from addressing the plight of the dispossessed and lost touch with the idea of social justice by adhering to colonial prescripts and norms. The repercussions of the Land Act of 1913 are still felt through the rising statistics of poverty among most black households, particularly in rural areas, which is exacerbated by land seizure (Stats SA, 2015; Yu, 2017). Although the 1913 Native Land Act can be considered the main cause of poverty, it left an alarming level of deprivation in the former homelands (Plaatjie, 1995). The current democratic administration under the ANC-led government is also to be blamed for the lack of political will to reinstate land rights to those affected by apartheid (Kirsten & Vink, 2019). So far, the state has allocated only 1.2% of the land to beneficiaries (Kirsten & Vink, 2019).

South Africa has not been able to reinstate land rights to those who were previously disadvantaged by apartheid legislation. Of the 77.51 million hectares of land owned by the state, only 8.67 million hectares, or 1.2 percent, has been allocated to beneficiaries since 1994. Thus, the urban and rural land hunger statistics collected jointly in 2017 and 2018 are indicative of the deepening poverty and significant economic imbalances faced by rural dwellers in South Africa (Oxford, 2018).

4.3 Liberalism in Africa and injustices

One of the effects of the Land Act of 1913 was the promotion of property rights for the white minority. The protection of these property rights, while many Africans still experienced poverty and a lack of land, does not resolve the conflict over land. The agricultural sector is still dominated by white-owned profit-making farmers. The Land Audit of 2017 confirms that private ownership of agricultural land by whites stands at 72%, followed by Coloured individuals at 15%, Indians at 5%, Africans at 4%, while other entities own 3%, and co-owners hold 1% (Department of Rural Development and Land Reform, 2017). Akola (2019) refers to this as an inequality that could easily threaten national unity and peace. The liberal Constitution favours liberal markets and land policies that secure minority interests and endorse the rule of law impartially, to the neglect of the social justice project (Gready, 2010; Gready & Robins, 2014). This implies that injustice against those stripped of their land is perpetuated in the name of justice. The implication is that the liberal legal concepts of developed democratic countries are applied as a one-size-fits-all mechanism, which cascades down to other young democracies while ignoring the socio-economic challenges of such countries. This establishes the basis for the then Ghanaian president Kwame Nkrumah's inferences of Western interference as a post-colonial strategy for economic interest, control, and manipulation (Theron & Mchunu, 2016), due to colonial masters' maintenance of all clauses embedded in the Land Act of 1913. Such a notion is perceived by Stahn (2020) as a deprivation of justice that needs to be confronted. However, one of the difficult challenges surrounding the land issue is the question of whose land is to be expropriated from those who own it, since it is owned by the state, private individuals, traditional leaders, and private commercial farmers (Sebola, 2022). Arguably, this scenario, particularly land in the hands of private entities, makes the principle of land without expropriation a difficult and complex issue to navigate. Wendy Lambourne (2009) criticises transitional justice and peacebuilding initiatives, asserting that they were not designed around the recognition and redress of survivors' psycho-social needs but rather to maintain the status quo. On the other hand, Miller (2020) asserts that non-reformist models that reinforce liberal theories of land or property conflict will take ages to remedy, while Gready (2010) describes it as a structural strategy founded on social marginalisation, economic exploitation, and political interference. Despite the complexity of the compensation clause in section 25(2) of the South African context, the possibility of pursuing a sensible transformative land alteration is feasible if certain sections of the Constitution are revisited (Dugard, 2019).

4.4 Inequalities in the market

Another negative effect of the 1913 Land Act was the promotion of inequalities in the market concerning the skewed competition for farm produce between small-holding farmers and well-established farmers in South Africa, which further highlights the existing inequality gaps (Yu, 2017). Although small-holding farmers represent 92 percent of the farming population, they contribute only 8 percent of revenue (Yu, 2017). Earlier research pointed to the limitations and struggles of small-holding farmers to compete fairly with other players due to poor access to large agricultural markets (Bitzer et al., 2016). This situation indicates a need for the government to revisit land and rural planning to improve infrastructure and support rural farmers with modern farming equipment, access to technology, and educational programmes that can enable them to enhance their produce and compete fairly with large-scale commercial farmers. Agriculture serves as a foundation for economic growth in South Africa, particularly in rural areas, which can help alleviate the threat of poverty and food insecurity. However, the number of Black commercial farmers is alarmingly low (Land Audit Report, 2017). This disparity reflects an unfairness that further widens inequalities and suggests a lack of commitment on the government's part to improve this sector, thereby failing to reduce the deepening poverty experienced by rural dwellers and the inflated food prices affecting urban residents in South Africa.

5. Limitations of the Transitional Justice and the Direction of Access and Rights to Land

In this section, we discuss some limitations of transitional justice, the first being the maintenance of the status quo.

5.1 Maintained the apartheid status quo

When the authoritative Apartheid regime came to an end in ruling the country, a transitional justice strategy was employed in 1995, as prescribed by international law, to bring about political stability and a peace settlement using externally regulated legal norms (de Greiff, 2011). It appears that transitional justice, which focused on reconciliation and amnesty without adequately addressing the land issue, served as an indirect strategy to avoid civil unrest while maintaining the status quo, keeping land in the hands of a few minorities. This also implied the perpetuation of existing inequalities under the guise of democracy, as dictated by the liberal elite norms of capitalists – norms that De Klerk also utilised as constitutional pre-settlements, which led to further conflicts (McEvoy & McConnachie, 2013; Kersting, 2010). Furthermore, the former president of the National Party, as the chief negotiator, employed a preliminary strategic hidden agenda that included a referendum and rewording, which excluded Black people and Indians, with the motive of preserving the property rights of both the Afrikaner and English-speaking white minorities, while poor Africans remained landless (Kersting, 2010). Such an approach can be referred to as limited justice; it exposed the flaws in transitional justice in protecting the property rights of white minorities while Blacks remained dispossessed, thus deepening conflicts over land (Moyo, 2015). The Economic Freedom Fighters (EFF), a current left-wing party, have taken a radical stance in advocating for land to be given to the majority of Black people without expropriation (Sebola, 2022).

5.2 Failure to implement the TRC recommendation by the ANC government

The 1995 establishment of the Truth and Reconciliation Commission in South Africa is an example of a global model for reconciliation and the institution of justice set to deal with human rights violations issues in South Africa (Graybill, 2002). The implication is that it fell short of the nation's expectations by merely focusing on reconciliation and the maintenance of peace, which excluded land issues. The purpose of the Truth and Reconciliation Commission (TRC) was to hear the truth, redress past atrocities, and reconcile differences and inequalities using the law as a corrective tool to restore the dignity and rights of Black Africans, particularly individuals who were victims of land seizure by earlier regimes (Bowsher, 2020). However, the government failed to act on what the TRC recommended, particularly the finalisation of the Expropriation Bill, a clause that involved compensation for victims who were deprived of their human rights (Mathiba, 2021), and this is viewed as another shortfall of democracy over 30 years in South Africa, which can be referred to as a betrayal of justice. Transitional justice authority is thus questioned for its lack of enforcing social justice issues about land access, particularly independent land ownership, specified as one of the rights entrenched in the Constitution in the pursuit of justice as per the mandate of the TRC (Mathiba, 2021).

Neoliberalism is a global intellectual instrument used by Western powers to indirectly infiltrate and have a grip on former colonies as their subjects in furthering their entrepreneurial interests (Brown, 2015). The argument is that the transitional justice process in South Africa was dominated and operated from the prescriptions of neoliberal principles, which lacked local ownership principles (Sharp, 2014). We argue that the process followed violated land victims of their human and social justice rights. This implies that transitional justice has failed to restore land seized by earlier regimes. McEvoy and McConnachie (2013) argue that the way transitional justice in South Africa unfolded was chaotic, and those who were expecting redress became disappointed as perpetrators behaved as if they were the ones who were victimised, whilst it was the other way around. The other concern

raised by Baines (2010) is the notion that transitional justice was riddled with injustices whereby victims of past historical events turned perpetrators into victims.

5.3 Adoption of the Western liberal justice

McEvoy and McConnachie (2013) allude to another weakness of transitional justice as negotiations that took a Western liberal democratic justice angle, whereby the state is entrusted with land policies by supporting peace that secures others' rights whilst ignoring the plight of victims. The argument advanced by most authors is that transitional justice, instead of identifying the culture, values, and ways of living of the affected victims, persuaded the logic of the external Western legal system as part of the broader peace-building mission without digging deeper into the real causes of conflict (Turner, 2016; Gready & Robins, 2014). The implication is that the Western legal norms lack relevance and association with the real-life situation of Indigenous people, and historical cultural values; its main goal is to protect their market interests. It can thus be argued that justice was not served to people of native origin. Furthermore, transitional justice, like other forms of neo-colonial intervention, is criticised for promoting technocratic borrowed reforms of Western philosophies and knowledge to address native people in their land of birth whilst silencing their voices (Gready & Robins, 2014). Kwame Nkrumah, the erstwhile Ghanaian president of the early 1960s, warned the natives of a new form of remote control by Western powers and indicated that even though former colonies were freed from the political control of European powers, they were still remotely controlled and subjected to the economic policies of Western countries (Davids & Theron, 2014).

6. Prioritising Nation-Building Before Justice

Munyao (2021) views transitional justice as an instrument for peace and stability. However, Pradier, Rubin, and van der Merwe (2018) regard it as a political tool designed to entrench a liberalist remote control authority of Western powers through legalistic and externally formulated laws. Such a trajectory means that insiders whose peace is being prepared are placed outside the realm of their participatory rights and unheard voices, resulting in the misdiagnosis of their needs and binding them to the formulation of laws that are not meaningful or relevant to their context. This indicates that the South African negotiated transition was a compromise of justice for Black Africans because land, power, and wealth remained in the hands of colonialists and white monopoly capitalists. It is within this context that nation-building and the mediating strategy employed globally by democratic administrations took prominence.

Fundamentally, land reforms within the post-apartheid constitutional framework tie the expropriation and redistribution of land to market prices (Evans, 2019). The constitutional debate over the land issue has been a complex and enduring discourse that left the subsequent administration with no choice but to adhere to its laid prescripts of expropriating land without market-oriented compensation as part of the transitional settlement. Although in certain quarters, Nelson Mandela is praised for accepting the difficult peace mediation as the best possible outcome under the shadow of the brutal killing of ANC supporters and the global 1989 downfall of Russia's socialist movement (Cibane, 2015), the compromise made by Mandela has been one of the arguments put forth by the Economic Freedom Fighters (EFF), asserting that the land discourse is rooted in exerting pressure to annul the settlement deal and change the status quo. In light of the foregoing, we submit that land redistribution requires logical planning, where Black people become beneficiaries of their own land while being cognisant not to disrupt investments that empower humanity (Leon, 2018; Mubecua & Mlambo, 2021).

Other clauses in the 1996 Constitution of the Republic of South Africa were not implemented because the main priority was nation-building and a peace settlement. Thus, Ngcukaitobi (2021) agrees with Chief Ismail's statements, indicating that constitutional values are binding. However, the same 1996 Constitution of the Republic of South Africa ignores colour and race discriminatory practices

regarding land acquisition and access (Ngcukaitobi, 2021; McEvoy et al., 2013). This implies that justice has not been served because the rights of those who lost their land during the colonial land seizures could not be compensated, exacerbating the ongoing land conflict. The modus operandi of persecution, exemption, and amnesty agreements included in the interim constitution also introduced further complexities. Correcting the errors committed in the interest of nation-building is deemed a necessary step towards finding a real socially oriented transformative justice that was abandoned when implementing imported prescriptive policies (Heywood, 2019; Evans, 2019). This means that the outcry of Black Africans regarding land as a commodity, a social space, and a spiritual component of heredity that connects them to their ancestors, revealed during land investigations, has been ignored despite being 30 years into democracy.

7. Post 1994 Land Issue in South Africa

The Constitutional Court, borne out of South Africa's transition from apartheid, carried the land crisis into democracy (Khunou, 2016). With the establishment of the interim Constitution of 1994, the shortcomings of the infamous Land Act of 1913 regarding the failure to review Section 25(7) of the Constitution were also endorsed (Khunou, 2016). For Black Africans, this meant crushed hopes of reclaiming land that could not be restored to them, and a bitter pill to swallow: being stripped of their identity and pride, which became a mark of failure from a government they had voted for.

Section 25(7) of the Constitution represents a compromised settlement aimed at preventing war between Blacks and Whites, forming part of the transitional peace deal (Khunou, 2016). The route taken, which ignored other options, was the implementation of Section 25(7), also part of the RDP's reform project on land issues. This suggests that justice has not been served, indicating that the 1913 Native Land Act must be revisited and that policy must be comprehensively followed to avert unnecessary political gains and civil unrest. We submit that the answer to the plight of landless Africans requires a constitutional revisit, which spells out socio-economic rights and the meaning of respect for the dignity of others. This aspect has been neglected for years and can be described as the final nail in the coffin of the looming poverty.

Although efforts to address rural poverty are visible, such as social grants for both unemployed youth and the elderly, such an approach has little impact without people possessing land, which is considered a source of wealth and emancipation. Therefore, questionable land claims that contribute to rural poverty need to be revisited (Cudd, 2015). With the formation of the Economic Freedom Fighters (EFF) led by Julius Malema, a left-wing opposition party, a debate on the unresolved land issue was opened. Malema identified land as the source of poverty among Black South Africans and adopted a radical approach (Xaba and Akinola, 2023) to advocate for land expropriation without compensation. Malema's embodiment of the EFF's contention may be attributed to the failure of transitional justice and is a political move to disarm the ruling party of its power and popularity for not addressing the land issue swiftly.

8. The African National Congress Led Government and the Land Issue

The ANC adopted a socialist ideology in 1955 as a key principle embraced in the Freedom Charter (Breakfast, 2015). However, upon assuming power and being faced with the new realities of Western powers that dominated the global economy, it was forced to change its strategy, which culminated in the adoption of a neoliberal ideology (Breakfast, 2015). With increased challenges under Zuma's administration of patronage, corruption, lack of integrity, and accountability, including the undermining of key state institutions (Southall, 2016), the land issue crisis continued to receive less attention. The governing party also faced the possibility of losing votes in 2019; they used land expropriation without compensation as political electioneering (Sebola, 2022). Even though the ruling party tried to address some of the structural challenges, it cannot exercise control over economic challenges that are dominated by a Western capitalist global system, including internal

weaknesses of the national economy, which is predominantly in the hands of whites (Mudau, 2021). This economic dependence made it difficult for the ANC-led government to implement the land expropriation principle. According to Mudau (2021), with the ongoing issue of land dispossession, public engagement on the matter forced the South African National Assembly to amend section 25 of the Constitution. This resulted in the principle of land expropriation without compensation being adopted on 27 February 2018, and the move was also supported by the Mbeki Foundation (Pheko, 2018, cited in Mudau, 2021), indicating that this trajectory of the ANC ruling party was hailed as a return to what is contained in the Freedom Charter about the return of land to its rightful owners.

9. The EFF is a Left-Wing Opposing Party Stance on Land

The Economic Freedom Fighters (EFF) consists of former ANC Youth League members who, after being expelled from the ANC, adopted Marxist ideology and Fanonian philosophy upon entering politics in 2013 (Yende, 2021). The EFF demanded a review of the private property principle to facilitate the expropriation of land without compensation (LEWC), which is a key pillar of their manifesto and electioneering rhetoric (Xaba, 2021). As an opposition party, the EFF challenged the land expropriation without compensation clause with the same radicalism that led to the amendment of section 25(7) of the Constitution through parliamentary votes in February 2018 (Xaba, 2021).

The mobilisation and growing tensions between the EFF and the DA forced the ANC to revisit section 25(7) of the Constitution to fine-tune policy and address the land issue to accommodate the socio-economic and spiritual needs of land victims, culminating in the adoption of Land Expropriation Without Compensation (Xaba, 2021). The willing seller principle also contributed to the decelerating pace of land reforms (Mukhudwana, 2021). The EFF draws on the 1955 Freedom Charter, aligning itself with a social justice agenda (Yende, 2021). The integration of the Freedom Charter and the use of rhetoric as part of their strategy aims to appeal to the poor masses seeking social justice in the face of prevailing inequalities, poverty, unemployment, and landlessness.

Additionally, to achieve one of their economic goals of accountability and a corruption-free government, the EFF employs various mechanisms in parliament, such as chanting slogans, distracting debates, or walking out during discussions (Yende, 2021). The EFF has also exposed corruption within the ruling party by demanding accountability, which contributed to forcing Zuma out of power as president of the ANC, as well as highlighting the Democratic Alliance (DA)'s liberal position on race, land, and other social issues (Johnson, 2017).

10. Reflection on the past 30 years

Rural poverty and inequalities are prevalent in South Africa and represent a betrayal of the Constitutional Bill of Rights that emphasises the social side of justice to address the plight of the poor. This notion indicates that the land redistribution agenda under democratic rule in South Africa is a drift away from the ideal of social justice in favour of the neo-liberal remote control of the United Nations mandate of priced land reforms. The binaries between transitional justice and peacebuilding did not resolve conflicts over land; instead, they took a liberal angle of protecting the property rights and interests of elites at the expense of black people, thus justice was not served (Moyo, 2015). In light of this, justice must be pursued to address the imbalances created by the Land Act of 1913. Transitional justice, by underplaying local values and beliefs and implementing resolutions that are dominated by Western views, missed a holistic diagnosis of the real problems at the grassroots level by using models that are not in sync with local issues (Little & Madison, 2017). Productive use of land for development should not be debated from a compromising angle concerning how land is inhabited, used, and priced, but should instead focus on addressing inequalities and the principle of fairness. Section 42 of the Constitution of the Republic of South Africa places human dignity and human rights as key aspects of democracy, which strengthens the social justice angle, whilst the

economic side has a tight link to the global economic system, with the wealthy white private sector holding a stake in the local economy.

The ANC-led government denounced its socialist principles as underpinned in the Freedom Charter by adopting a democratic strategy in 1994 due to global and local pressure (Mosala et al., 2017). As a new government, it supported the status quo regarding the 1913 Act land issue of private individuals. It neglected social justice issues while protecting the global economic system and private entities. As a result, poverty and inequality rose in rural areas, particularly in former homelands and the Eastern Cape, where rural poverty is ranked high. The neglect of social justice and the ensuing rise of poverty and landlessness sparked fresh debates and exposed varying ideological differences over land issues. These debates culminated in a revisiting of the Constitution, considering a transformative agenda that places priority on social issues instead of focusing mainly on economic aspects. The challenge to the neglect of the social justice principle enacted in the Constitution was brought by the EFF, which embraces the Freedom Charter from which the ANC has departed, including the Marxist theory that prioritises the poor masses, culminating in the adoption of Land Expropriation with Compensation (LEWC).

Therefore, it is important to consider the productive way in which land will be used after being expropriated, whether it will benefit the economy or increase or decrease poverty. It is thus suggested that in all dealings involving conflicts and opposing ideologies, the rule of law, as a foundational value in section 1(c) of the Constitution of the Republic of South Africa, must take the supreme position to mediate and safeguard harmony and peace in the country while pursuing the transformational agenda. Taking erratic decisions that risk disorder, compromise international relations, and chase out investors may lead to serious mishaps that could plunge the country into civil war, further increasing poverty and inequalities. Therefore, a carefully planned post-settlement strategy when amending section 25 of the Constitution of the Republic of South Africa (Mudau, 2021) must be followed, lest investors and other international collaborative treaties are threatened, leading to poverty and socio-economic instability (Leon, 2018; Mubecua & Mlambo, 2021).

11. Conclusion

It can be concluded that transitional justice in South Africa has proven to be a complex and short-term difficult assignment to navigate, including its lack of monitoring of its recommendations. Its operational mode, characterised by a lack of penalties, an institution of criminal records, and a focus on confessions, forgiveness, and reconciliation, did not assist those affected in decreasing inequalities and landlessness. It can also be concluded that since 1994 to date, little has been achieved in terms of addressing poverty in rural areas, inequalities, and landlessness affecting the majority of South Africans. This suggests that the triple pillars of the RDP projects based on restitution, redistribution, and land tenure, including the clause of willing buyer and willing seller, have failed most citizens of South Africa. It is thus necessary to move beyond the transitional justice agenda to transformative justice to fully address injustices related to property rights and racialised inequalities in land distribution that have been experienced and not resolved during colonial and apartheid administrations, as well as in postcolonial times in South Africa. The pursuit of social justice is seen as a justified trajectory to address the rights of the people as spelt out in the Bill of Rights, aiming to tackle poverty and land issues that have been ignored for years. It can further be concluded that the LEWC policy still needs to be carefully planned, analysed, and implemented under the law to avoid increasing poverty or plunging the country into abject poverty or heightened socio-economic problems.

We also conclude that there is no one-size-fits-all model to resolve the socio-economic crisis of the dominant neo-capitalist model, which directly opposes the radical ideology of solely socialist principles to address poverty and land reforms. We thus propose that a carefully planned social justice model based on moderate principles of socialism, mixed with a moderate form of capitalism

that includes the state as one of the regulatory bodies, must be considered as one of the models that can be used to address socio-economic challenges without compromising people's development and economic growth. It can further be concluded that the challenges of poverty and landlessness highlighted above cannot be addressed without total de-link from a capitalist model that has been in existence for centuries and is the leading global system, which means that capitalism cannot be entirely eliminated. Whilst the micro-macro connection rooted in social justice conflict theory advocates for a balance of economic growth and social issues. However, a careful link between moderate socialism and moderate capitalism addressing the gap between the wealthy and the poor by distributing land to poor Black people with minimal compensation incurred by the state is suggested.

12. Declarations

Authors contributions: Conceptualisation (P.A.M. & B.D.); Literature review (P.A.M. & B.D.); methodology (B.D.); software (N/A); validation (P.A.M. & B.D.); formal analysis (N/A); investigation (P.A.M. & B.D.); data curation (N/A) drafting and preparation (P.A.M. & B.D.); review and editing (P.A.M. & B.D.); supervision (N/A); project administration (P.A.M.); funding acquisition (N/A). All authors have read and approved the published version of the article

Funding: The study received no external funding.

Acknowledgements: The authors declare no acknowledgements.

Conflicts of Interest: The authors declare no conflict of interest.

Data availability: This paper does not involve the collection or analysis of new data. All information and insights are derived from existing literature, publicly available sources, and theoretical frameworks. As such, no primary data is associated with this study. References to all sources used are provided in the manuscript.

References

- African National Congress. (1994). *The reconstruction and development programme: A policy framework*, Johannesburg. Umyanyano Publication.
- Akinola, A. O. (2019). Farm conflicts and the South African unresolved land question. *Ubuntu: Journal of Conflict and Social Transformation*, 8(2), 75-92. <https://hdl.handle.net/10520/EJC-1a70ebf228>
- Baines, E. (2010). Spirits and social reconstruction after mass violence: Rethinking transitional justice. *African affairs*, 109(436), 409-430. <https://doi.org/10.1093/afraf/adq023>
- Basti, P. (2013). The base and the Superstructure. *International Journal of Humanities and Social Science Invention*, 2(3), 75-77.
- Bitzer, V., Obi, A., & Ndou, P. (2016). Keeping up with rising quality demands? New institutional arrangements, upgrading and market access in the South African citrus industry. In J. Bijman & V. Bitzer (Eds.), *Quality and innovation in food chains* (pp. 141-160). Wageningen Academic.
- Bowsher, J. (2020). The South African TRC as neoliberal reconciliation: Victim subjectivities and the synchronisation of effects. *Social & Legal Studies*, 29(1), 41-64. <https://doi.org/10.1177/0964663918822139>
- Cibane, S. (2015). South Africa's Negotiated Settlement: Did Nelson Mandela Sell the Rainbow Nation Cheap? Available at SSRN 2603401.
- Cudd, A. E. (2015). Is capitalism good for women? *Journal of Business Ethics*, 127, 761-770. <https://doi.org/10.1007/s10551-014-2185-9>
- D'Amato, P. (1999). Marxism and Oppression. *International Socialist Review*, 9(1999), 29-37.
- Davids, I., & Theron, F. (2016). *Development, the state and civil society in South Africa*. Van Schaik.
- de Greiff, P. (2011). Transitional justice, security, and development: Security and justice thematic paper. World Development Report 2011.

- Department of Rural Development and Land Reform. (2017). *Land Audit Report. Phase II: Private land ownership by race, gender, and nationality*. Department of Rural Development and Land Reform, South Africa.
- Dlamini, S. (2014). Taking land reform seriously: From willing seller-willing buyer to expropriation. <https://open.uct.ac.za/server/api/core/bitstreams/df273ceb-dd4e-43e5-aedd-a4bcd2802689/content>
- Dugard, J. (2019). Unpacking Section 25: What, if any, are the legal barriers to transformative land reform? *Constitutional Court Review*, 9(1), 135–160. <https://doi.org/10.2989/CCR.2019.0006>
- Edara, D. (2016). *Biography of a Blunder: Base and Superstructure in Marx and Later*. Cambridge Scholars Publishing.
- Erasmus, Z., & Harry, G. (2017). The South African error: Restorative justice sans social recompense. *Rethinking Reconciliation, Evidence from South Africa*, 337-352.
- Evans, M. (2016). Structural violence, socioeconomic rights, and transformative justice. *Journal of Human Rights*, 15(1), 1–20. <https://doi.org/10.1080/14754835.2015.1032223>
- Evans, M. (2019). Addressing historical wrongs in post-transition South Africa: What role for transformative justice? In *Transitional and Transformative Justice* (pp. 36–53). Routledge.
- Gready, P. (2010). *The era of transitional justice: The aftermath of the truth and reconciliation commission in South Africa and beyond*. Routledge.
- Gready, P., & Robins, S. (2014). From transitional to transformative justice: A new agenda for practice. *International Journal of Transitional Justice*, 8(3), 339–361. <https://doi.org/10.1093/ijtj/iju013>
- Harman, C. (1986). Base and superstructure. *International Socialism*, 2(32), 3–44.
- Heywood, M. (2019). “South Africa’s journey from socialism to human rights: The true confessions of an errant socialist.” *Journal of Human Rights Practice*, 11(2), 305–323.
- Johnson, R. W. (2017). *How long will South Africa survive? The crisis continues*. United Kingdom: Jonathan Ball Publishers
- Kersting, N. (2010). Direct democracy in constitutional processes: The South African plebiscite of 1992. *Politikon*, 37(2-3), 207-222. <https://doi.org/10.1080/02589346.2010.522330>
- Khunou, S. F. (2016). The Legal Crisis of Land Restitution in South Africa: A Critical Analysis. *RiA Recht in Afrika | Law in Africa | Droit en Afrique*, 18(2), 153-180.
- Kirsten, J., & Vink, N. (2019). Unravelling the complexities of land reform in South Africa. *Daily Maverick*, 29.
- Lambourne, W. (2009). Transitional justice and peacebuilding after mass violence. *International journal of transitional justice*, 3(1), 28-48.
- Land Audit Report. (2017). *Land Audit Report. Phase II: Private land ownership by race, gender, and nationality*. Department of Rural Development and Land Reform. Retrieved March 6, 2024.
- Laplante, L. J. (2009). Outlawing amnesty: The return of criminal justice in transitional justice schemes. *Virginia Journal of International Law*, 49, 08-26.
- Leon, P. (2018). Land expropriation without compensation: SA risks breaching international law and being massively sued. *BizNews, Johannesburg, July, 25*.
- Mathiba, G. (2021). Corruption in land administration and governance: A hurdle to transitional justice in post-apartheid South Africa? *Obiter*, 42(3), 561–579. https://hdl.handle.net/10520/ejc-obiter_v42_n3_a7
- Marx, K., & Engels, F. (2016). Manifesto of the communist party. In *Social Theory Re-Wired* (pp. 136-144). Routledge.
- Mboti, N. (2023). *Apartheid Studies: A Manifesto*. Africa World Press
- McEvoy, K., & McConnachie, K. (2013). Victims and transitional justice: Voice, agency and blame. *Social & Legal Studies*, 22(4), 489–513. <https://doi.org/10.1177/0964663913499062>
- Megbowon, E. T. (2018). Multidimensional poverty analysis of urban and rural households in South Africa. *Studia Universitatis Babeş Bolyai-Oeconomica*, 63(1), 3-19.

- Millar, G., & Lecy, J. (2016). Disciplinary divides in post-conflict justice and peace: Tracking if and how we share ideas. *Journal of Intervention and Statebuilding*, 10(3), 302–320. <https://doi.org/10.1080/17502977.2016.1199481>
- Miller, Z. (2020). Embedded ambivalence: Ungoverning global justice. *Transnational Legal Theory*, 11(3), 353–381. <https://doi.org/10.1080/20414005.2020.1830571>
- Modise, L., & Mtshiselwa, N. (2013). The Natives Land Act of 1913 engineered the poverty of black South Africans: A historico-ecclesiastical perspective. *Studia Historiae Ecclesasticae*, 39(2), 359–378.
- Moleah, A. T. (1993). *South Africa: colonialism, apartheid and African dispossession*. Disa Press.
- Mosala, S. J., Venter, J. C. M., & Bain, E. G. (2017). South Africa's economic transformation since 1994: What influence has the National Democratic Revolution (NDR) had? *The Review of Black Political Economy*, 44(3-4), 327-340. <https://doi.org/10.1007/s12114-017-9260-2>
- Moyo, K. (2015). Mimicry, transitional justice and the land question in racially divided former settler colonies. *International Journal of Transitional Justice*, 9(1), 70–89. <https://doi.org/10.1093/ijtj/iju026>
- Mubecua, M., & Mlambo, V. H. (2021). The Expropriation of Land Without Compensation in South Africa: A Strategy for Alleviating or Worsening Poverty? *The new political economy of land reform in South Africa*, 55-77. https://doi.org/10.1007/978-3-030-51129-6_4
- Mudau, J., Mukonza, R. M., & Ntshangase, B. A. (2018). A comparative overview of land reform experiences in Zimbabwe, Namibia and South Africa: a lesson that South Africa can learn from. *Journal of Public Administration*, 53(2-1), 580-601.
- Mudau, J. (2021). Land expropriation without compensation in a former settler colony: A polemic discourse. *African Renaissance*, 18(3), 163–183. <https://doi.org/10.31920/2516-5305/2021/18n3a8>
- Mukhudwana, R. F. (2021). Conspicuous and performative Blackness as decolonial political branding against the myth of the post-colonial society: A case of the EFF. In *Decolonising Political Communication in Africa* (pp. 26-44). Routledge.
- Munyao, M. (2021). 'New wine, old wineskins': a comparative study of interfaith engagement and transitional justice in Kenya and South Africa. *Journal of the British Academy*, 9(s2), 103–125. <https://doi.org/10.5871/jba/009s2.103>
- Ngcukaitobi, T. (2021). *Land matters: South Africa's failed land reforms and the road ahead*. Penguin Books.
- Omodan, B. I. (2024a). Redefining university infrastructure for the 21st century: An interplay between physical assets and digital evolution. *Journal of Infrastructure, Policy and Development*, 8(4), 3468. <https://doi.org/10.24294/jipd.v8i4.3468>
- Omodan, B. I. (2024b). Decolonising student services: Implications for conflict management in higher education. *Routledge Open Research*, 3, 21. <https://doi.org/10.12688/routledgeopenres.18311.1>
- Oxford, T. (2018). *The complex insecurity of hunger in South Africa*. Mail & Guardian.
- Pienaar, J. M. (2015). Land reform embedded in the constitution: Legal contextualisation. *Scriptura: Journal for Contextual Hermeneutics in Southern Africa*, 114(1), 1-20.
- Pradier, A., Rubin, M., & van der Merwe, H. (2018). Between transitional justice and politics: Reparations in South Africa. *South African Journal of International Affairs*, 25(3), 301-321.
- Plaatje, S. T. (1995). *Native life in South Africa*. Ravan.
- Piotrowski, A. (2019). Colonialism, apartheid, and democracy: South Africa's historical implications on the land reform debate. *Journal of Interdisciplinary Undergraduate Research*, 11(1), 4-11.
- Resane, K. T. (2019). The role of the church in the land debate. *Scriptura*, 118(1), 1–9.
- Resane, K. T. (2023). Theology of Land: Reflections and Dialogue from a South African Socio-Political Perspective. *Scriptura*, 122(1), 1-15. <http://dx.doi.org/10.7833/122-1-2094>
- Sebola, M. P. (2022). "Land Expropriation without Compensation." Populist Political Charade and Electioneering Slogan in South Africa's 2019 National Elections. *African Journal of Development Studies*, 12(1), 297.

- Sharp, D. N. (2014). Addressing dilemmas of the global and the local in transitional justice. *Emory International Law Review*, 29, 71.
- Stahn, C. (2020). Confronting colonial amnesia: Towards new relational engagement with colonial injustice and cultural colonial objects. *Journal of International Criminal Justice*, 18(4), 793–824. <https://doi.org/10.1093/jicj/mqaa052>
- Statistics South Africa (2015). *General Household Survey 2014. Statistics South Africa*. Statistics South Africa, Pretoria, 0001.
- Suttner, R. (1985). The Freedom Charter: The People's Charter in the 1980s. *Crime and Social Justice*, (24), 72-95.
- Tedman, G. (2010). Base, Superstructure, Aesthetic Level: further notes on a theory. *New Proposals: Journal of Marxism and Interdisciplinary Inquiry*, 4(1), 23-28
- Turner, C. (2016). *Violence, law and the impossibility of transitional justice*. Routledge.
- Xaba, M. B. (2021). South African land question and the dilemma of land expropriation without compensation: A critical examination. In A. O. Akinola, I. Kaseeram, & N. N. Jili (Eds.), *The new political economy of land reform in South Africa* (pp. 73–89). Palgrave Macmillan. https://doi.org/10.1007/978-3-030-51129-6_5
- Xaba, M. B., & Akinola, A. O. (2023). A reflection on the nexus between South African land reform struggles and the unresolved national question. *International Journal of African Renaissance Studies*, 18(1), 136-155. <https://doi.org/10.1080/18186874.2022.2095922>
- Yende, N. E. (2021). The Economic Freedom Fighters (EFF) as a “super-sub” in the South African Parliament: Fostering Accountability in Organised Disruptive Chaos. *African Journal of Development Studies*, 11(4), 53. <https://doi.org/10.31920/2634-3649/2021/v11n4a3>
- Yeni, S. (2018). Land is More than Farming: Former labour tenants’ views on land expropriation without compensation. *Focus*, 1, 23.
- Yu, D. (2017). The comparability of the statistics South Africa October household surveys and labour force surveys. *Stellenbosch Economic Working Papers*: 17/07.

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