

CRITICAL ANALYSIS OF INTERNATIONAL AND NATIONAL LAWS REDRESSING PAST APARTHEID LAND DISCRIMINATION AND INJUSTICE IN SOUTH AFRICA

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Abstract

South African land systems were brutally and cruelly administered by the colonial and apartheid rulers pre-1994 democratic dispensation. The rulers used the law to forcefully remove black South Africans from their land and they arbitrarily took over except for the non-arable and remote areas earmarked for the majority black. Post-1994, the South African government joined various international organisations as a member of the United Nations. International Conventions and treaties that promote restitution of land back to the people who were violently removed from their land by the rulers became imperative and as such, they were promptly ratified and adopted by South Africa. These international law instruments in conjunction with transformative laws and policies that have been put in place have been very helpful in the quest of ensuring that the black majority reclaim their land. To this end, salient provisions are being used to redress the past land injustices and redistribute land back to the rightful owners. However, the extent to which redistributed land are being used for productive purposes by the current beneficiaries leaves much to be desired. The paper examines various international law instruments and South African laws and policies in place to redress the past land injustices, their impacts, and challenges being faced by the beneficiaries to work the land productively.

Keywords: *access to land, conventions and treaties, forced removal, redistribution, productive use of land, South Africa.*

JEL Classification: K30, K33, K38

1. Introduction

The United Nations (UN) together with other international committees have recognised the right to access land as a fundamental right to all humankind. Pursuant to that, the UN put in place various international law instruments which could be used to ensure the right to access land. According to the Universal Declaration of Human Rights of 1948 (UDHR), everyone has a right to access land, irrespective of skin colour or race. Hence, it is of paramount importance for UN member states to promote laws that are aimed at ensuring equal right of access to land as espoused in the UDHR. The UDHR is one of the core declarations that advocate for equal access to land and encourage land development to improve the lives of those who are less privileged. Also, the UDHR advocates for the recognition of indigenous people rights over land they previously occupied. The indigenous people also mean black and native people. The significance is to ensure that while it is imperative to have access to land, it should be used for productive purposes. The land reform program was developed with the intention of ensuring that land is restored to the historically dispossessed people (indigenous people). However, since the land reform programme was introduced to date, it has not met the expected intentions of policy drafters and the expectations of beneficiaries. Instead, the program has encountered numerous challenges in the attempt to redress the injustices. Therefore, in this current paper, we aim to examine some of the existing laws in place for redressing land injustice, their effectiveness, and their challenges. Since the dawn of democracy in 1994, South Africa have ratified various international laws instruments fostering land equality and equity and have also, over the years put in place various legislation strategically to address critical land issues in South Africa. It is against the backdrop of this transformative land reforms that attempt is made to look at these international laws and legislation and showcase their impact on redressing land segregation and discrimination in South Africa.

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2. Universal Declaration of Human Rights 1948 (UDHR)

Article 17 of the UDHR provides that everyone has the right to own property (inclusive of land) alone as well as in association with others and that no one shall be arbitrarily deprived of his/her property. Hence, every person, regardless of skin colour or race, has a right to own land as a sole owner or in association with others and this includes the natives as well as the indigenous people. This UDHR provision is contrary to section 1 of the Native Land Act (NLA) which states that natives are not supposed to enter into any agreement to purchase, hire or acquire land from any person including from a fellow native. This indicates that the UDHR does not have the same objectives as those of the Groups Area Act of 1966 (GAA) together with its predecessors, particularly the NLA. The intention of UDHR is to ensure that every person is afforded the same right and privilege of property ownership. The UDHR provision is currently supported by section 25(1) of the Constitution of South Africa 1996 (Constitution) which provides that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.³

Article 17 of the UDHR is interpreted to suit the current challenges of redressing the previous injustices of land dispossession in South Africa which were executed by the colonial and apartheid rulers by using laws such as the NLA and GAA. These laws fostered poverty and landlessness among the black South Africans as they were used to forcefully remove and segregate them by relocating them to non-arable remote areas and they were also prohibited from acquiring land. Whereas, the application of Article 17 of the UDHR and section 25(1) of the Constitution allows any person to have ownership of land in communal areas or any part of the South African society. Undoubtedly, this would increase the value of the land, change the economic status of landholders in communal areas, place Black South Africans in a position of owning valuable assets that can be sold for a substantial price.

3. United Nations Declaration on the Rights of Indigenous Peoples 2007

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a resolution adopted by the national assembly in 2007 to serve the individual and collective rights of indigenous people. The provisions of the resolution are aimed at advocating for the rights of indigenous people; however, member states are at liberty to implement certain provisions of this resolution and abandon certain provisions or not apply any at all as the resolution was adopted as a non-legal binding resolution and does not impose legally binding obligations on member states. However, it comprises of well drafted provisions that protect the rights of indigenous people. Some of those provisions are set out in Article 10 of the UNDRIP.

Article 10 of the UNDRIP protects indigenous people from unlawful evictions, which often occur when there is a business opportunity or development regarding the land in question. Oftentimes, developers make proposals to relocate people to a certain location where they will be given shelter and other benefits as compensation in exchange for their land. The forced relocation referred to in this Article relates to the South African land dispossession that took place during the apartheid era. Black people were forcefully removed from arable land and relocated to small overcrowded land without any form of compensation.

The relocations were done to make way for development which only benefited the white minority. To date, the legacy of the land dispossession still mirrors the current developments in the ownership of land. Although South Africa has a land reform with a three-tier system, one of which is redistribution, which focuses on redistributing large commercial farms. However, the program seems to favour the elite Black South Africans over the poor landless people. Although this could be justified to certain extent, that large commercial farms can only be afforded by a few with resources and that there is a need to ensure continuous farming on redistributed land. The need to have continuous productive use of the redistributed land does not necessarily mean that poor people are not suitable

³ Constitution of Republic of South Africa, 1996.

candidates for redistribution program. Therefore, this highlights the need for the State to invest in increasing land grants and resource funding to assist poor aspirant farmers to benefit from the redistribution program.

Article 11 of the UNDRIP requires the State to take positive approaches and mechanisms to redress historical injustices. The provisions of this resolution mandate member states to redress land dispossession by adopting effective mechanisms such as restitution which is a broad programme put in place post 1994 democratic dispensation based on social justice targeting majority Black South Africans who have been forcefully removed from their land by the apartheid state. Hence, through restitution, the dispossessed of their land are being given back to them post-1994 apartheid era. Although restitution is not possible in some cases, some other measures such as compensation are more convenient to redress the injustices of dispossessed people.

4. Indigenous and Tribal Peoples Convention, 1989 (No. 169)

The Convention 169 on Indigenous and Tribal People was adopted by the International Labour Organization (ILO) in 1989. This Convention is the only international binding Convention concerning the rights of indigenous people. The Convention requires the states parties to identify land traditionally occupied by indigenous people and guarantee their ownership and protection of rights. In addition, it provides that procedures will be effectively taken to protect the right of the masses concerning the use of land not solely occupied by them.

The Convention also requires the provision of legal measures to resolve land claims, founders' rights over natural resources, safeguards against forceful removal, and establishes a right of return and compensation for loss of land of equivalent in cash or in kind. In the South African land reform context, land claims are made on land which was previously owned by the ancestors. For instance, a land claim can be made against a particular piece of land in which a certain clan of people previously resided. However, sometimes, there are more than one claim against the same piece of land, and such claims are taken to the Land Claims Court where the presiding officer has to make a ruling on who is the rightful claimant. This is often a lengthy process where the claimants have to prove that their ancestors resided on the land in question. However, the question of which land to expropriate for redistribution is still problematic, as many of the vast lands of the South African land are owned by white individuals and companies and as a result, this creates another challenge of determining race from a juristic person.

In terms of section 19(1)(a) of the Companies Act 71 of 2008, a juristic person is a separate legal entity with rights to sue and be sued, basically, an artificial person who does not possess certain attributes such as race like a natural person, therefore, we cannot determine the race of a juristic person. In the case of *Dadoo v. Krugersdorp Municipal Council* 1920 AD 530 at 547, a private joint stock company, styled Dadoo was duly registered with share capital of 150 shares. Of these shares, 149 were owned by the appellant Dadoo and one by the appellant Dindar, who are both Asian. Dadoo Ltd took transfer of stand 340, in the township of Krugersdorp, and again in 1916, the company obtained another transfer of stand 171 in the same township. They were forthwith leased by the company to the appellant Dadoo, who carried on a grocery and general dealer's business on stand 340, upon stand 171 he resided.

In October 1919, the Krugersdorp Municipality applied for and obtained from the Transvaal Provincial Division, an order setting aside both transfers as being contrary to section 2 of Law 3 of 1885 which reads: "The native race of Asia shall not be capable of being owners of fixed property in this Republic, except only in such streets, wards or locations as the government for the purposes of sanitation shall assign to them to live". Dadoo took the matter before the Appeal court, and the Court held that a company is a separate legal entity that can acquire and own properties in its own name. Therefore, a juristic person has its own legal personality apart from the shareholders and CEO. This is yet another obstacle that hinders the land reform programme to efficiently and effectively redress the previous injustices of the apartheid era. Considering that many plots of farms were registered under companies, making it rather impossible to identify which piece of land to expropriate and which

not to. This practically slows the pace of realising the objective of restoring land to the rightful indigenous owners.

In terms of the international law, where relocations are being considered for black communities from traditional lands, the government has to duty afford people inclusive decision-making, and consent of affected people should be sought and obtained. International principles and ILO Convention 169 state that “relocation must be an exceptional measure. Where it is considered necessary, such relocation shall only take place with [the community’s] free and informed consent.”⁴ Again, the ILO Convention highlights the injustice that black South Africans experienced during the apartheid era. They were never consulted nor informed about their relocation, but they were forcefully removed from their land and placed in non-arable land where they could not farm to fend for their families.

The ILO Convention further states that if consent cannot be attained, removal can only happen if the “national laws and regulations, including public inquiries where appropriate, which provide the opportunity for the effective representation of the peoples concerned” are met.⁵ During the apartheid era, Black South Africans had no political recognition, and they were living under the dictatorship governance, therefore they were never favoured with public inquiry or public consultation in any matter including land. The ILO Convention also highlights the necessity to obtain the consent of communities affected by evictions and this is also projected in the guiding principles on development-orientated evictions, where the governments are tasked and obligated to guarantee “full and prior informed consent regarding relocation”.⁶ Additionally, the States are required to provide a solution where evictions are not carried out in compliance with international law.

According to ILO Convention 169, an assessment of damage to individuals should be “where the home and land also provide sole livelihood for evicted inhabitants, account for value of land”.⁷ With the South Africa land reform system, restitution and redistribution processes have not been easy to carry out due to many reasons such as when the land for which the claim is brought has already been developed and it is not feasible that restitution can take place. Furthermore, the conditions connected to forced evictions do not always allow restitution or restoration, but where conditions allow, in awareness of the development tasks, governments are guided to assist returning persons in getting back their possessions and offer them voluntary returns.⁸ As a result, most of the land claims are addressed by a way of compensation than redistribution.

5. Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998 (DRIGOSOURHRFF)

The DRIGOSOURHRFF advocates for recognition, protection, and promotion of fundamental human rights to all. Human rights are necessities of life and people cannot live well without their basic human rights; hence it is only fitting that these rights be legally recognised and protected. Article 1 of the Declaration acknowledges that everyone is entitled to human rights, whilst Article 2 mandates member states to implement, protect and promote human rights. This indicates that people’s livelihood depends on access to human rights. According to Garibaldi *et al.*, human welfare depends on the amount and stability of agricultural production, as determined by crop yield and cultivated area.⁹ To ensure the survival and well-being of people, there must be some sort of protection and recognition of their basic human rights. People need food, water, and shelter for

⁴ Convention 169 on Indigenous and Tribal People 1989, article 16.

⁵ *Ibid.*

⁶ Basic Principles and Guidelines on Development-Based Evictions and Displacement, article 56.

⁷ *Ibid.*

⁸ Elisabeth Wickeri and Anil Kalhan, *Land rights issues in International Human Rights Law*, „Malaysian Journal on Human Rights”, Vol. 4, No. 10, 2010, p. 16-25.

⁹ Lucas A Gribaldi, Marcelo A Aizen, Alexandra M Klein, Saul A Cunningham, and Lawrence D Harder, *Global growth and stability of agricultural yield decrease with a pollinator dependence*, Proceedings of the National Academy of Sciences of the United States of America (PNAS) April 5, 2011 108 (14), <https://www.pnas.org/content/108/14/5909>, consulted on 1.10.2021.

survival and land is of paramount importance to accessing these basic needs (food, clean water and shelter) in any society.¹⁰ Land is needed to farm and produce food crops, to tend to animals, to build houses, to drill and access water, basically human livelihood is closely dependent on land. Hence, Article 3 of the Declaration emphasises that member states should legislate laws that recognise, protect and actively implement basic human rights.

Furthermore, it is not only the wellbeing of people that is dependent on land, the development in this evolving world also requires access to land. As such, Owoeye *et al.* opine that land is a crucial element in property development process¹¹ and achieving sustainable housing delivery to people.

Within the South Africa legal context, basic human rights are recognised and protected by the Constitution. However, the realisation of some of the basic human rights are hindered by the slow pace of restoring land to black South Africans. The slow pace of land reform defeats the objective of availing land to everyone. Consequently, affecting realisation of basic human rights such as adequate housing and food. Where land reform programme has managed to restore land, there are no support services to aid the poor land beneficiaries to productively utilise the land to realise their basic human rights. The lack of comprehensive post-settlement support services to land reform beneficiaries does not only result in redistributed land laying fallow but also fails to alleviate poverty and hinders active realisation of basic human rights. Owoeye *et al.* are of the view that providing people with access to land coupled with empowering them to make effective use of it is crucial to poverty alleviation.¹² Article 13 of the Declaration read together with Article 3 states that people have a right to receive resources to enable them to actively achieve their human rights. In the land context it is imperative that land reform beneficiaries be afforded post-settlement support in funding and other resources to ensure that land reform beneficiaries actively achieve their basic human rights and combat hunger and starvation and poverty in their lives.

6. International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

The ICESCR also advocates for the recognition and realisation of basic human rights, outlined in Article 11. Article 11 acknowledges that every person is entitled to a dignified life of adequate standard of living including adequate food, shelter, and clothing. Land and housing are important assets for the poor which do not necessarily only provide shelter but also generate income for the poor.¹³ The economic benefit can be driven from productive use of land, such as commercial farming or leasing or even selling land and using the proceeds to improve livelihood. Omirin is also of the view that access to land and property rights is a major key element in economic growth and development.¹⁴ The ICESCR mandates member states to ensure that basic human rights are actively realised. However, to ensure that basic human rights are actively achieved, the member state must first ensure that there is access to land.¹⁵ Ensuring access to land in the South African land reform context will require radical implementation of the programme with the intention not to only redistribute land but also to ensure that land is used productively to combat hunger and starvation and consequently alleviate poverty.

7. General discussion on interrelation of Declarations promoting access to land and development

The 2007 Declaration on the Rights of Indigenous Peoples, states that “indigenous peoples

¹⁰ Owoeye OJ and Adedeji. 2015. YMD, *Urban land acquisition for sustainable housing delivery in Akure, Nigeria*, 4(1):10-20, International Journal of developing societies.

¹¹ Ibid.

¹² Ibid.

¹³ Bonyabancha S (2009) *Land for housing the poor by the poor, experience from the Baan Mankong nationwide slum upgrading programme in Thailand*, Environment and Urbanization, 21(2): 309-329.

¹⁴ Omirin MM (2002) *Issues in land accessibility in Nigeria, proceedings of national workshop on land management and property, tax reform in Nigeria department of estate and management*, University of Lagos, Akoka, Lagos, Nigeria.

¹⁵ Article 11 of International Covenant on Economic, Social and Cultural Rights 1996 (ICESCR).

have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired”.¹⁶ The Declaration states that indigenous people have a right to own and develop resources on their land, a right to legal recognition of indigenous lands by states, and a “right to redress for the lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged”.¹⁷

Although the Declaration is not binding on states, it entails provisions if read together with the Convention 169 on Indigenous and Tribal People, would make a great change in ownership of land and land administration systems particularly in the former homelands. Therefore, the interpretation of the Declaration in the South African context would mean that “Black Africans have the right to own and develop resources on their land, a right to legal recognition of indigenous lands by states, and a “right to redress for the lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged”¹⁸ during the apartheid era, In the South African context, the Constitution provides that everyone has a right to own property (inclusive of land), it does not limit access and ownership to indigenous people but extends to every South African citizen.

Both the Convention and the Declaration emphasise participatory dialogue and the need for “free, prior, and informed consent for decision-making about lands occupied by native peoples”,¹⁹ especially where the relocation of people from their land is under consideration within the international bill of human rights namely, the UDHR, and the two binding Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which are several articles are directly tied to rights to land.

According to Article 10 “Native people shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior, and informed consent of the Native people concerned and after agreement on just and fair compensation and, where possible, with the option of return.”²⁰ However, land was forcefully taken away from black South Africans without consent nor the option to return, but the present initiatives of land reform which seek to redress the previous injustices are in line with the provisions of the above mentioned Declaration and Convention. The land reform seeks to uphold the rights of black South Africans by restoring them to the position they would have been in had the land been not forcefully taken away from them.

Land dispossession of black South Africans is not only a loss of immovable property but also loss of dignity to the black community as they lost their good economic standing, their only source of generating income and their way to life when they lost their land. The ancestors of black South Africans relied solely on farming for food and a source of income, hence the land dispossession brought about hunger and starvation in the lives of black South Africans. According to Chukwujekwu land is not just only basic to human life but it also contains all necessities for life to exist and tool for obtaining social prestige, economic security, and political power.²¹ However, Omirin is of the view that economic development of the country depends on how efficient land redistribution amongst citizens and the system put in place to ensure its productive use.²² Therefore, availing land without comprehensive support services does not necessarily afford land reform beneficiaries access to all necessities for life neither does it allow the land reform beneficiaries an opportunity to participate in the country’s economy through productive utilisation of their land.

The UDHR and ICESCR protect the right to adequate standard of living; the standard which

¹⁶ United Nations, Declaration on the Rights of Indigenous Peoples, art. 26(1), Sept. 13, 2007, available at <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf [Hereinafter Declaration on the Rights of Indigenous Peoples]. 25, see article 26(2), 26(3) & 28>.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Chukwujekwu IE, (2006), *Facilitating low cost housing schemes: which way forward?*, Journal of the Association of Housing Corporations of Nigeria:1(10): 45-52.

²² Omirin MM (2002), *Issues in land accessibility in Nigeria, proceedings of national workshop on land management and property, tax reform in Nigeria department of estate and management*, University of Lagos, Akoka, Lagos, Nigeria.

black South Africans yearn to achieve in terms of Article 10. The right to adequate standard of living will require that black South Africans be placed on a similar scale as that of the white minority in ownership of land. In order to achieve this, land reform must be coupled with support services to aid black South Africans to utilise land productively.

The agricultural sector presents one of the major opportunities for substantial growth in the country's economy and concomitant creation of jobs. Blacks should be given opportunities to participate in the agricultural market and consequently contribute to the economy of the country. The UDHR and ICCPR further makes provision for protection of privacy and property rights. The number of economic, social, and cultural rights in the UDHR and ICESCR are intimately connected to access to land, including the rights to housing, food, health, and work.²³

The right to satisfactory shelter is principally relevant and land is a critical element of fulfilling the right. Indeed, land is a major requirement for sufficient condition on which the right to adequate housing is completely contingent for many individuals and even the whole society. The South African government cannot realise some of the constitutional rights such as the right to adequate housing as contemplated in section 26 of the Constitution, without resolving the issues of ownership of land. Most of the human rights (right to food, water, shelter) are directly connected to the availability of land or rather access to land. Therefore, failure to make land available will translate to failure to realise basic human rights. For the basic human right of adequate housing to be realised, land has to be made available in order to build proper houses befitting human inhabitants. Right to food is also directly linked to availability of land and access thereof, for without land you cannot farm and produce food crops.

International laws prohibit forceful removal of people or evictions, but provide an exception when eviction is practiced in agreement with international human rights law. Under Article 2(1) of the ICESCR, states are obligated to use "all appropriate means" to realise the right to housing, which includes "refraining from forced evictions and ensuring that the law is enforced against its agents or third parties who carry out forced evictions."²⁴ Article 17 of the ICCPR compliments the "right not to be forcefully evicted without adequate protection" when it "protects against 'arbitrary or unlawful interference with one's home'".²⁵ Article 2(3) of the ICCPR also requires state parties to provide "an effective remedy"²⁶ for the individuals who have their rights suppressed and violated, which includes "adequate compensation for any property".²⁷

With specific regard to South Africa's land dispossession, the state was supposed to have ensured that people who were previously dispossessed are well compensated or given their land back, but to this date, the pace to realise restitution of land to the black South Africans is inevitable due to the great number of fragmented land administration systems which have not been corrected. It is an ongoing process that leaves the society in a complicated situation concerning how long it will take for the government to redistribute the land back to the rightful owners. Perhaps the proposed land expropriation without compensation could be an answer to these questions, and maybe the government will be able to redistribute the land at no cost and still be able to fund the land reform beneficiaries with the necessary support services needed to aid them to utilise land productively.

8. The impact of land reform regarding the livelihoods of land reform beneficiaries

Dlamini and Ogunnubi assert that the country's land reform programme has been extremely sluggish. This could be owing to several reasons such as the bureaucratic lengthy process of land claims applications and the unavailability of state resources to acquire land for redistribution and restitution. As result, calls for the expropriation of land without compensation have been made by

²³ United Nations, Universal Declaration of Human Rights (UDHR), art. 23, 25, Dec. 10, 1948, available at <<http://www.un.org/Overview/rights.html#a25>>.

²⁴ General Comment 7, article 3, International Covenant on Economic, Social and Cultural Rights.

²⁵ Article. 17(1), International Covenant on Civil and Political Rights.

²⁶ Article 2(3), International Covenant on Economic, Social and Cultural Rights.

²⁷ General Comment 7, article 4, International Covenant on Economic, Social and Cultural Rights.

some sectors in South African society. These calls have invited into the social and political arenas of the country apprehensions concerning land tenure, land usage and land administration, particularly very problematic when it comes to land under traditional leaders. Dlamini and Ogunnubi are of the view that land occupation security is, perhaps, an extremely imperative issue that needs to be engaged for the people who are living in the rural villages.²⁸ According to Lahiff, land reform programme has been criticised for failing to meet its target and consequently deliver on its multiple objectives of historical redressal.²⁹ Some of these objectives include redistribution of wealth and opportunities and ensuring economic growth through redistribution of land to historically disadvantaged people to allow them to use land productively and generate income to improve their livelihood. Hall opines that land reform was meant to be one of the ways in which the new South Africa can redress the injustices of the apartheid era, through redistributing land to black South Africans, however, land reform has fallen short of both public expectations and official targets.³⁰

Tenure security for people living in the countryside could be the only way these people could experience ownership of land, however, it does not address the question of alleviating poverty amongst countryside people, it equally gives ownership same as redistribution of land, but fails to cater for the productive use of land to eliminate poverty and contribute to the economy of the country. However, the issue of tenure security is not less important than alleviation of poverty, hence the need for a theoretical link between land reform policies and poverty alleviation policies to ensure that the need for land ownership and alleviating poverty through utilising land productively is addressed.

Since 1994 South Africa embarked on land reform program which seeks to redress the injustices of the historical land dispossession. However, challenges ranging from inadequate support services for land reform beneficiaries to use their land productively to failure of alleviating poverty amongst land reform beneficiaries through provision of land have been rampant. As such, redressal can be achieved through provision of comprehensive support services by the State to ensure that restoration and redistribution of land positively impact the lives of land reform beneficiaries. Land reform programme intent is to restore more than land to historically disadvantaged people, its main focus is to restore livelihoods and eradicate poverty amongst black people. However, these have not been achieved due to several reasons ranging from the implementation challenges such as limited of resources from state to acquire and redistribute land, lack of sustainability of support services given to land reform beneficiaries, corrupt practices and costly programmes such as willing buyer willing seller as an intervention to secure land for redistribution.

It is not clear why black South Africans who were affected by land dispossession by forceful relocation were not favoured with remedies during the apartheid era. Such remedy must “provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property”.³¹ In the South Africa land reform context, that remedies are restitution and redistribution of land to the black South Africans coupled with necessary mechanisms to enable the people to use land productively to regain their social and economic status in the society, and alleviate poverty, hunger and starvation.

The South African land reform programme is duly influenced by international laws, treaties and conversions. The development and adjustments made on the land reform programme since its adoption are merely customisation to suit and address present challenges faced by South African land beneficiaries. Generally, land reform in South Africa is perceived as a ticket to escaping poverty for the majority of the black South Africans who believe that if they can gain rights of ownership to land, their economic challenges will be resolved. However, since the introduction of land reform programme, the expectations of Black people have not been met. This does not indicate that black

²⁸ Siyabonga Dlamini, Olusola Ogunnubi, *Land Reform in South Africa: Contending Issues*, Journal of Public Administration, Volume 53, Number 2.1, June 2018.

²⁹ Edward Lahiff, *Land reform in South Africa: A status report 2008*, available at: <http://hdl.handle.net/1056614481>, consulted on 1.10.2021.

³⁰ Ruth Hall, *A political economy of land reform in South Africa*, Review of African Political Economy, Volume 31, 2004, Issue 100, p. 213-227, available at: <https://doi.org/10.1080/0305624042000>.

³¹ Ibid.

South Africans have not benefited from land reform program. Land reform program has redistributed about 8,2 Million hectares of land to black South Africans. Although some land reform beneficiaries have managed to utilise their land productively, most of the redistributed land is laying fallow and are not utilised productively. This is owing to number of reasons ranging from lack of post-settlement support services to difficulty in identifying land beneficiaries.

The current redistribution policy has taken a huge turn in transferring rights of ownership to land reform beneficiaries to leasehold system. This seems to favour the rich and disadvantage the poor. The focus of land redistribution process is mainly for black South African emergent farmers as opposed to poor people. The majority of black South Africans are poor for obvious reasons; they cannot afford to run commercial farms without financial assistance. Where financial assistance is afforded, there's lack of farming skills, training, and other necessary resources needed for purposes of farming productively. Consequent to this background, most black South Africans fail to use their land productively. As a result, they continue to live in poverty whilst in possession of redistributed land.

The impact of land reform on socioeconomic status of black South Africans has not met the intended expectations, of redressing previous injustices and inequalities of apartheid era and consequently alleviating poverty amongst black people. There is still a lot that needs to be done to ensure that land reform meets the expectations of the policy drafters and that of beneficiaries. The current legislation on land reform program is well drafted, however, it lacks theoretical link to poverty alleviation strategies as its primary focus is on equipping land reform beneficiaries with land. As such, the implementation of land reform legislation appears to have loopholes in addressing the issue of poverty amongst land reform beneficiaries. It rather focuses on redistributing land to people who can utilise the land productively, meaning the selection criteria of beneficiaries is now based on people who can farm productively, rather than poor landless black South Africans.

The state implemented this strategy to redistribute agricultural land to people with the capacity to farm to ensure that the economy of the country and food production is not negatively affected by its decision to expropriate and redistribute land. However, this reason negatively affects the poor as they are not given a chance to participate in farming projects to better their lives and fend for their families.

The selection criteria are not poverty driven but production driven. Meaning the focus has shifted from assisting black South Africans to alleviate poverty but focuses on maintaining production and generating profit. Although the selection criteria can be justified to some extent, the question of what the state is doing to assist poor black South Africans to escape the poverty-stricken lifestyle remains unattended. Hence there is a need for post- settlement support services to ensure that even poor people are granted an opportunity to participate in farming projects to improve their livelihood. South Africa has well drafted legislation but lacks the theoretical link to certain objectives such as poverty alleviation strategies. Hence the study investigated policy drafts and other scholarly writings from other countries and lessons that can be learnt that can assist to close the loophole identified in the South African land reform program.

9. Conclusion

Land reform is a very difficult and complicated issue particularly in South Africa. The country did not only experience land dispossession but also political oppression that led to the deaths of many black South Africans. In this regard, land reform in the South African context cannot be effective without addressing the political struggle of black South Africans. During the apartheid era, the Blacks did not have political recognition, hence, they were treated unfairly legally as even the laws that were enacted only favoured whites and oppressed the blacks. Despite the knowledge of international legislation on issues of equality and property, land included the apartheid government proceeded with unjust laws and oppressed Black people denying them rights to own land.

The democratic government of South Africa seeks to redress the previous injustices and inequality by redistributing land to historically dispossessed people. However, the land reform system

has not yet met the expected outcome of redistributing land to black South Africans and consequently alleviating poverty. This could be due to failure to advance adequate support services to land reform beneficiaries to aid them to utilise land productively or poor implementation of laws and policies advocating for productive use of land and sustainable development in South Africa. According to the international instruments discussed above, the right to access to land is not a conclusive solution to redressing historical injustices. There is a need to ensure that the right to land fosters the realisation of basic human rights through the utilisation of land productively. Therefore, to afford basic human rights to land reform beneficiaries, the state needs to provide land reform beneficiaries with comprehensive post-settlement support services that will enable land reform beneficiaries to use their land productively. Land reform is recognised internationally as the tool to bring about change in the livelihoods of the historically disadvantaged people by affording black South Africans an opportunity to farm productively and participate in the agricultural market.

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