

Land Redistribution Law and Environmental Justice in South Africa An Analysis of South Africa's Land Redistribution Law as a Means to Achieving Environmental Justice

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Abstract

South Africa's transition to democracy was followed by an extensive programme of land reform whose major objectives were, inter alia, to eradicate injustices of racially based dispossessions; to promote a more equitable distribution of land ownership; to reduce poverty and to promote economic growth through land reform; to provide security of tenure for all and to establish a system of land management that will support sustainable land-use patterns and the rapid release of land for development. While all of these goals are important, one of the purposes of my thesis is to suggest that an effective programme of land reform, in general, and an effective programme of land redistribution, in particular, could also go a long way towards achieving another equally important goal, namely environmental justice. The achievement of this goal, it will be argued, is critical in light of a history of massive land dispossession during the colonial and apartheid eras. Such policies against black South Africans compelled them to bear a disproportionate share of the environmental hazards caused by undesirable land uses on account of their race, whilst simultaneously denying them equal access to natural resources, in general, and to land, in particular, for the same reasons. The fact that black South Africans were denied equal access to land on the basis of their race during the colonial and apartheid periods has had serious economic, environmental and social consequences for them. This is because the amount of land set aside for them during the colonial and apartheid periods was hopelessly inadequate. It simply could not support the enormous number of people forced to live in the homelands. Apart from being hopelessly inadequate, the areas set aside for black South Africans were also characterised by a lack of work opportunities. The lack of work opportunities meant that black South Africans were forced to rely on the land for their survival. The land did not, however, have the capacity to support so many people and large areas soon became environmentally degraded.

The environmental degradation of the homelands led to widespread poverty. In order to survive, therefore, male family members were forced to relocate to the urban areas where job opportunities were available for unskilled labour. They were, however, not allowed to take their families with them and this led to a breakdown in family structures. Apart from suggesting that a programme of land redistribution may go a long way towards achieving environmental justice, another, and possibly more important, purpose of this thesis is to argue that a land redistribution programme should be accompanied by a move away from the ownership orientated system of land rights that has traditionally applied in South Africa towards a more fragmented use-rights orientated system of land rights.

In other words, a new land rights law should promote limited use rights and the adoption of environmentally sustainable land use. By so doing, a fundamental land reform, it is argued, would go a long way towards promoting the land aspirations of contemporary South African society in an environmentally sustainable way. The two basic questions this work seeks to address, therefore, are, firstly whether a fundamental reform of the land rights law can possibly address environmental injustice in South Africa and secondly, whether the post-apartheid land rights law is sufficiently well equipped to guard against environmentally unsustainable land use that can recreate adverse and dangerous environmental burdens and hazards on land based livelihoods and rural communities.