

ICWA LETTERS

Since 1925 the Institute of Current World Affairs (the Crane-Rogers Foundation) has provided long-term fellowships to enable outstanding young professionals to live outside the United States and write about international areas and issues. An exempt operating foundation endowed by the late Charles R. Crane, the Institute is also supported by contributions from like-minded individuals and foundations.

TRUSTEES

Joseph Battat
Carole Beaulieu
Mary Beausoleil
Richard Dudman
Peter Geithner
Gary Hartshorn
Kitty Hempstone
Will Knowland
Samuel Levy
Mildred Marcy
Peter Bird Martin
Joel Millman
Edmund H. Sutton
Steven Maly
Warren Unna

HONORARY TRUSTEES

A. Doak Barnett
David Elliot
David Haggood
Pat M. Holt
Edwin S. Munger
Richard H. Nolte
Albert Ravenholt
Phillips Talbot

The Institute of Current World Affairs
4 West Wheelock Street
Hanover, New Hampshire 03755

TY-1 1996
SUB-SAHARAN AFRICA

Teresa Yates is a Fellow of the Institute studying land-tenure and land redistribution in South Africa

The Scramble for Land *Legacy of Dispossession*

PIETERSBURG, South Africa

April 1996

By Teresa Yates

The story of South Africa's tragic history of forced removals and dispossession has been told and retold many times. Legally, the process of racial segregation of land began to intensify in the mid-19th century with the passage of a number of laws restricting where the black population could own or occupy land. For example: The Transvaal Volksraad prohibited black ownership of land in 1853 except where they could show a necessity and that they were of good behavior and obedient; In 1855 Ordinance 2 was passed in Natal giving magistrates the power to remove black squatters from public and private lands, and prohibited landowners from housing more than three black families on their farms; the Transvaal Squatters' Law (Law II



Teresa Yates' study of land-tenure and land redistribution in South Africa will take two years — but it's not her first brush with the subject. During her first interview with ICWA's executive director she mentioned, in a soft, understated voice: "I lived in a South African township for a while. I was shot at, and had to run."

Born in South Carolina, Teresa went at the age of 12 to live with an aunt in a New York City suburb after her mother died of cancer. Remembering her mother's final advice — "study!" — Teresa did, winning a full scholarship to Vassar College. From Vassar she went on to the University of Cincinnati College of Law, where she got a chance to travel to South Africa and the northern Transvaal to work with an advocacy group called Lawyers for Human Rights.

"My first weekend in the black township of Mamelodi," Teresa says, "is particularly memorable. I attended a town meeting in a soccer stadium. While in the 'old' South Africa peaceful gatherings often ended in violence, my friends assured me this would not happen in 1990, in the 'new' South Africa. The police, however, arrived. Without provocation they fired tear gas and rubber bullets into the crowd. I climbed over a ten-foot brick and barbed-wire wall, running into an open field, my eyes streaming, the surroundings unfamiliar.

"All around me were other black faces, strangers to me, speaking languages I could not comprehend. They ran with purpose and direction, seemingly unaffected by the teargas and the sound of gunfire. I tried to keep up, but my knees kept giving way underneath me. Luckily, my friends found me and took me home."

The next year Teresa returned to South Africa, studying African Customary Law, Constitutional Law, Criminal Procedure and Comparative Legal History at the University of the Witwatersrand in Johannesburg.

When she finished law school at Cincinnati, Teresa was the first person hired by the American Civil Liberties Union's Task Force on Civil Liberties in the Workplace. She was drafting legislation aimed at the protection of working women in New York State when, in 1995, the ACLU informed her that funding for her project had ended. She then applied for an Institute fellowship to return to South Africa just as the work of a Land-Reform Commission was scheduled to begin.

Teresa has based herself in Pietersburg, capital of the Northern Province — known in the 'old' South Africa as the northern Transvaal.

of 1887) implemented a five-family rule prohibiting landowners from housing more than five families on their farms; in the Cape the Vagrancy and Squatting Act of 1879 prohibited "idle and disorderly people of any race" from squatting on Crown land, on mission land or in native locations; and in 1881 the Pretoria Convention established by Proclamation a Native Location Commission to set boundaries for black location in the territory. By 1896 at least 22 locations had been identified by the Commission. The Pretoria Proclamation was invalidated by the Transvaal Supreme Court in 1905, thereby lifting the legal prohibition against black acquisition of land in the Transvaal. The result of this court ruling did not, however, dramatically increase black ownership of land in the region. Blacks simply did not have the financial resources to take advantage of this small window of opportunity.¹

Against this legislative background the Black Land Act 27 of 1913 was passed. The 1913 Act "identified" and "reserved" "traditionally black" land for occupation and use by blacks (approximately seven percent of the total surface area of South Africa), and all other land in the country was set aside for white use and occupation. Although the land "reserved" for black occupation was extended by the Development and Trust Land Act 18 of 1936, the total allocation still amounted to only 13 percent of the land for more than 80 percent of the population.²

In 1959 the Promotion of Bantu Self-Government Act abolished all Parliamentary representation for blacks and created nine ethnic territories for the black population: Lebowa (North Sotho), QwaQwa (South Sotho), Bophuthatswana (Tswana), KwaZulu (Zulu), KaNgwane (Swazi), Gazankulu (Tsonga), Venda (Venda), Transkei and Ciskei (Xhosa). KwaNdebele was later added for the South Ndebele, making ten ethnic territories envisioned by the government. The stated plan of the for-

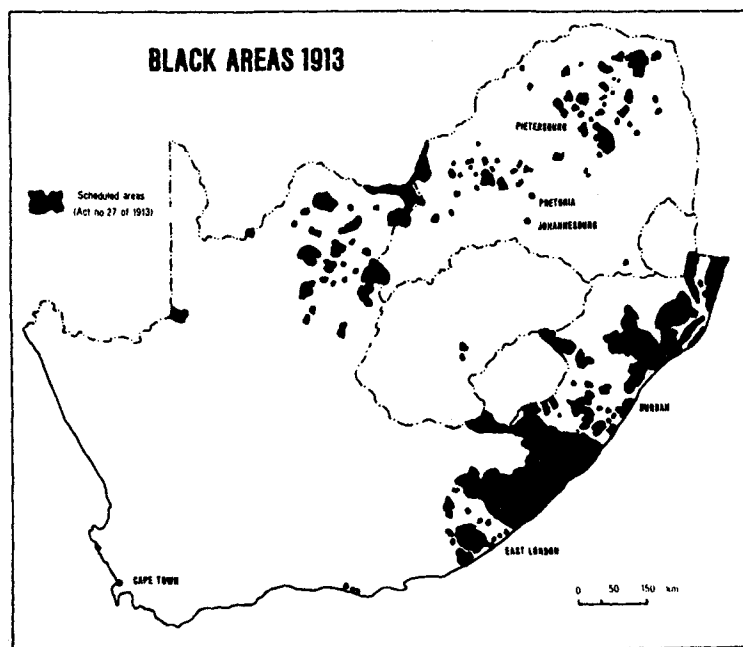


Figure 1: SCHEDULED AREAS

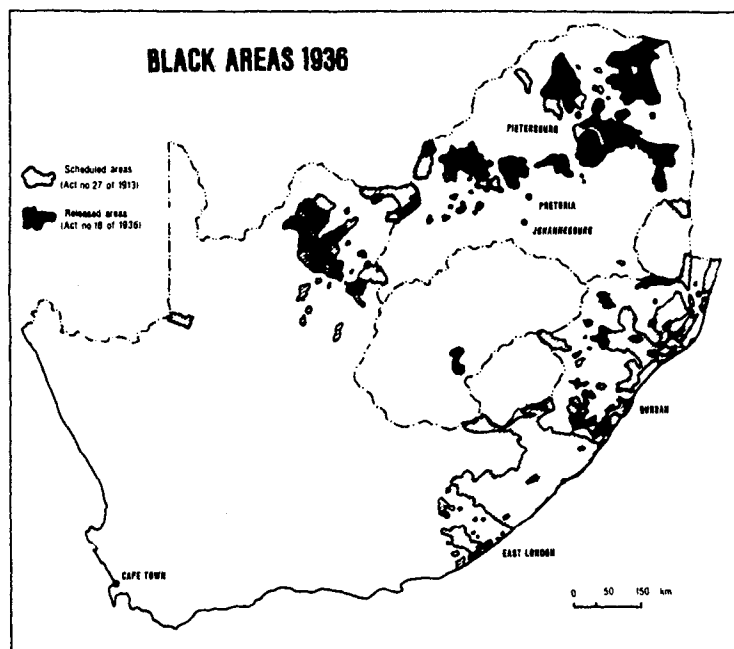


Figure 2: RELEASED AREAS

1. See, Essy M. Letsoalo, *LAND REFORM IN SOUTH AFRICA: A BLACK PERSPECTIVE*, Skotaville Publishers, Johannesburg (1987).

2. It is important to note that although 13% of the land was "reserved" for black use and occupation, the black population never occupied the total land allocated because the process of buying released land from white owners was never completed and because some trust farms continued to be used by the government rather than being transferred to the intended black population.

mer government was to separate the black population, often by force, according to their ethnic identity, and then to grant independence to these ethnic enclaves. From 1960 to 1980 an estimated three million people were forcibly removed from rural and urban land and corralled into these barren wastelands euphemistically called "tribal homelands."

112 of 1991 provided a vehicle for the transformation of various forms of black tenure to full ownership, primarily in urban areas. The abolition of racially-based restrictions on the ownership of land, although noteworthy in its scope, did nothing to give the millions of blacks, dispossessed as a result of these restrictions, true access to land.

Today South Africa is confronting its legacy of dispossession through an Interim Constitution and through legislation that is beginning to implement a very ambitious land-reform program aimed at providing some remedy for past injustices.

The official government land policy was first set out in November 1994 in the ANC's Reconstruction and Development Programme (RDP)³. Recognizing the need to make a strong commitment to resuscitate impoverished rural communities that have most severely suffered from the asphyxiating effects of failed apartheid land policies, the RDP stresses that:

"Land is the most basic need for rural dwellers. Apartheid policies pushed millions of black South Africans into overcrowded and impoverished reserves, homelands and townships. In addition, capital intensive agricultural policies led to the large-scale eviction of farm dwellers from their land and homes. The abolition of the Land Acts cannot redress inequities in land distribution. Only a tiny minority of black people can afford land on the free market.

"A national land reform programme is the central and driving force of a programme of rural development. Such a programme aims to redress effectively the injustices of forced removals and the historical denial of access to land. It aims to ensure security of tenure for rural dwellers. And in implementing the national land reform programme, and through the provision of support services, the democratic government will build the economy by generating large-scale employment increasing rural incomes and eliminating overcrowding.

"The RDP must implement a fundamental land reform programme. This programme must be demand-driven and must aim to supply residential and productive land to the poorest section of the rural population and aspirant farmers. As part of a comprehensive rural development policy, it must raise rural incomes and productivity, and must encourage the use of land for agricultural, other productive, or residential purposes.

"The land policy must ensure security of tenure for all South Africans, regardless of their system of land-holding. It must remove all forms of discrimination in women's access to land."⁴

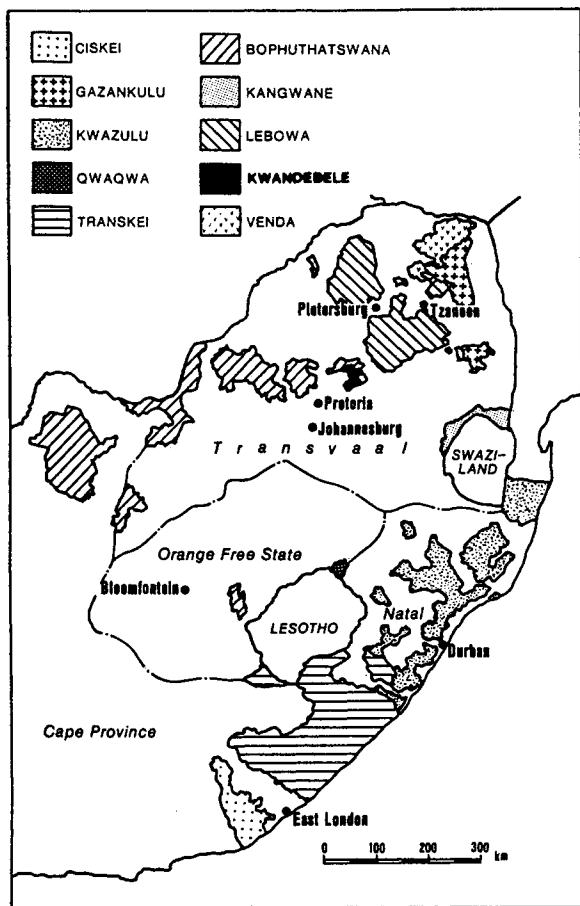


Figure 3: TRIBAL HOMELANDS

THE WINDS OF CHANGE

In 1991, after more than forty years of failed attempts to separate the population based on race and ethnicity, the National Party, under the leadership of F.W. de Klerk, presented its new land policy in the form of a White Paper on Land Reform. The most significant aspect of this new policy initiative was the introduction of legislation that abolished most of the apartheid land legislation. The Abolition of Racially-Based Land Measures Act 108 of 1991 repealed the Land Acts of 1913 and 1936 and many other apartheid statutes. The Upgrading of Land Tenure Rights Act

3. The RDP is the ANC's policy framework and sets forth the party's vision for the future social and economic restructuring of South African society.

4. African National Congress, THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME: A POLICY FRAMEWORK, Umanyano Publications, Johannesburg (1994), pp 19-20.

THE GREEN REVOLUTION

The most recent land-reform policy proposal, entitled "Green Paper on South African Land Policy," has been released by the Department of Land Affairs. The final policy statement was scheduled to be released in May 1996 in the form of a "white paper" on land reform. The three primary elements of the draft reform policy are: restitution, redistribution, and tenure reform.

Restitution

The Restitution of Land Rights Act of 1994 (copy attached) is the cornerstone to what is currently the most emotionally charged part of the reform process. The Act was mandated by the Interim Constitution to address the legacy of forced removals and to govern the return of certain land taken from blacks as a result of racially discriminatory laws.

The scope of this Act is limited by Section 121 of the interim Constitution, which allows a person or community to claim restitution only if that person or community was dispossessed of such right after a date fixed by the act, but not earlier than 19 June 1913. Professor Howard Venable of New York University Law School, an expert on the history of dispossession in South Africa, has pointed out that the 1913 cutoff date allows only for the restitution of approximately 20 percent of the land that was wrestled away from the black population. Historical claims (claims pre-dating 1913) are to be entertained only at the discretion of the Minister of Land Affairs. Some of these claims will be handled through the redistribution process, but first there has to be a determination by the Land Department that "a great need for land exists."

The National Commission on Restitution and the Land Claims Court are charged with managing this program. The Commission will review all claims and make attempts to either restore claimants to their original land or find comparable land. In those instances where neither is possible the Commission will recommend compensation. The Land Department will represent the state's interest in these cases. In those cases where agreement on settlement of land or compensation cannot be reached, the Land Claims Court will make final determinations.

The government has set time limits for completion of this program: three years to lodge all claims; five years for the Commission and Court to finalize all claims, and ten years to implement all Court orders.

Redistribution

The purpose of the redistribution program is "the redistribution of land to the landless, poor, labor, tenants, farm workers, women and emerging farmers for

residential and productive uses, to improve their livelihoods." The program will be tested through a series of pilot projects in selected rural areas in each region. Under the Pilot Projects, land for redistribution will be identified and offered for sale to communities identified as beneficiaries of the program. Each eligible household will be entitled to a maximum R15,000 (US\$3,750) government grant to assist in the purchase and/or development of the land. Communities are expected to pool their grants to allow for the purchase of larger tracts of land, but even with the pooling of grants there will be little chance that rural communities will be able to purchase desirable land at current market prices without further financing from the government or from private financial institutions.

One pivotal question related to the redistribution program is what land is to be offered to the prospective buyers. The government has stated that it will first identify "willing buyers and willing sellers" before any attempts at expropriation of privately owned land will begin. Expropriation will, therefore, be a last resort. Thus far, however, in the Northern Province all of the identified pilot-project land is state-owned. So, the government has postponed the inevitable conflict with white land owners that will arise when non-state-owned land is identified for redistribution purposes.⁵

Tenure Reform

The reform of land tenure is just beginning. The broadly stated purpose of the program is "to extend security of tenure to all South Africans under diverse forms of tenure." In its draft policy statement on tenure-reform the Land Department has identified seven principles and activities that are to be advanced and implemented over the next two years:

1. A "rights-based" approach to tenure reform. Extension of registrable tenure rights to all landholders, and elimination of landholding systems based on permits;
2. Creation of a framework for diverse forms of tenure, including communal, group and individual ownership, on the basis of local preference;
3. Administrative structures are to be derived from and subject to Constitutional principles of democracy, equality, and due process. The Department will work to ensure gender equality in all aspects of landholding systems;
4. Systems of administration for communal and group land tenure systems will be reviewed and strengthened, to ensure efficient administration of land and protection of rights;
5. Development of framework legislation giving final legal recognition to communal and group tenure systems;

5. If the program is to succeed, private land will have to be expropriated because there is not enough government-owned land to meet the current demand.

6. Proposal of reforms to tenancy laws, to ensure fair terms and conditions of tenancy.

7. Provision of interim administrative and legislative measures to reduce tenure insecurity and administrative chaos where it currently exists.⁷

One major obstacle to this tenure-reform program is identifying current tenure practices in rural areas where informal tenure practices do not fit neatly into any legal definitions. I have asked members of the Provincial Government and researchers working on land tenure reform in the region and none of them have been able to articulate the specific tenure systems that exist in the rural areas of the Northern Province.

THE NORTH

The goals of the government's Green Paper are admirable but the best of intentions are always somewhat distorted when the theory is transformed into practice. I have, therefore, settled in Pietersburg, the capital city of the Northern Province, to observe the attempts of the national and local governments to implement this ambitious land-reform program. The Northern Province is generally recognized as the poorest of the nine Provinces. Some key economic and social indicators support this assessment:

Real unemployment is conservatively estimated at 48 percent;

The average per capita income is R725 (US\$180), less than half that of the next lowest region;

40 percent of households live in abject poverty, with no permanent source of income. Another 40 percent earn below the minimum level (R800 per family for the Province in 1994);

The majority of people live in about 1,500 villages, with an average population of less than 4,000. As a result there is a desperate need for basic services. Development, however, is slow and costly because the communities are so small;

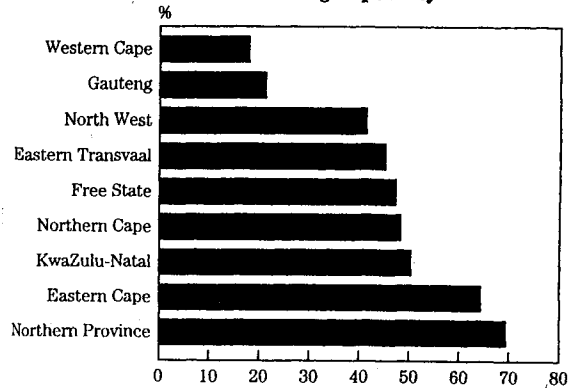
The Province has the lowest literacy rate in the country, estimated at between 40 percent and 60 percent. Forty-five percent of all women are illiterate and 35 percent of all men. One study suggests that nearly 60 percent of residents have less than four years of schooling;

There is a steady drain of educated people to urban areas;

The infant mortality rate is 57 per 1,000 births;

The region has the fastest population-growth rate, with 49% of the population under 15 years of age.⁷

Poverty Head Count – Provinces
% Individuals living in poverty *

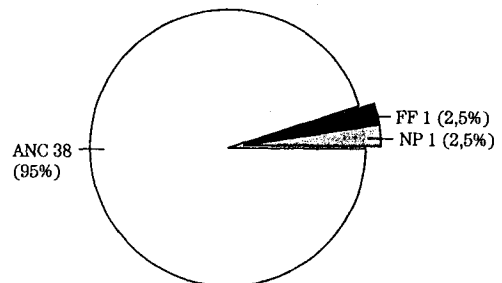


Source: Human Sciences Research Council, 1995

Northern Province *

Premier	N Ramathlodi (ANC)
Capital	Pietersburg
Area (sq km)	116 824
Population, 1993	5,12 million
Population density (persons/sq km)	43,8
Functional urbanisation	12,1%
Labour force, 1993	1,13 million
Unemployment rate, 1994	47,0%
Literacy rate, 1991	52,7%
Income per capita	R725
Percentage of total GDP	3,1%

Legislature
Northern Province *



Source: Development Bank of Southern Africa

Against this dismal economic background, land reform in the North has begun at a snail's pace, with only 298 claims for restitution filed as of January. This figure is well below the numbers expected from a province with more than 80 percent of the population living in rural areas that were once part of three separate "homelands."⁸

6. Draft ANC Land Tenure Reform Programme, Unpublished, 24 October 1995.

7. Land and Agricultural Policy Centre, WORKING PAPER 24 NT 2, LAND REFORM RESEARCH PHASE ONE: PROVINCIAL OVERVIEW, NORTHERN TRANSVAAL (March 1995).

8. Gazankulu, Lebowa, and Venda.

*NOTE: In these South African charts, commas are used instead of decimal points.

Republic of South Africa

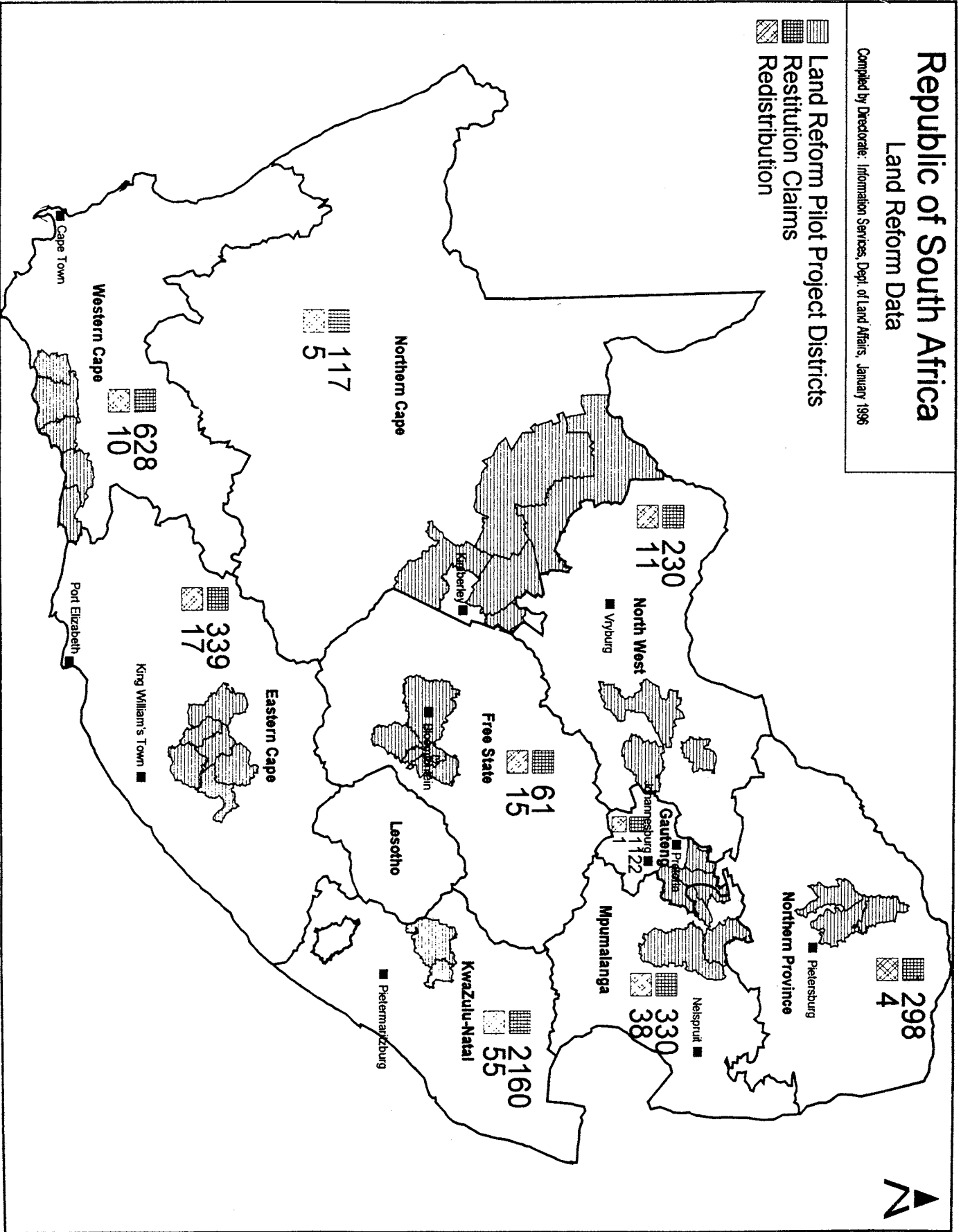
Land Reform Data

Compiled by Directorate: Information Services, Dept. of Land Affairs, January 1996

Land Reform Pilot Project Districts

Restitution Claims

Redistribution



ONE MAN, ONE FARM

"There are white farmers in this region owning six and seven farms, and blacks who want to farm and have no land. The government must implement a policy of one man, one farm, so that everyone who wants to farm has access to land."

This was the view expressed by one frustrated black farmer in Pietersburg at a recent public meeting organized to discuss the Green Paper. The Land Department has been touring the country to allow the public to ask questions and to express their opinions of the policy proposals.

The Pietersburg meeting attracted approximately 120 people, mostly black, who came to listen to Glen Thomas from the Department of Land Affairs Restitution Division, Essy Letsoalo, the Director of the Land Affairs Northern Province Office, and Tienie Burgers from the Provincial Department of Agriculture, explain the different aspects of the Green Paper and its implications for the Province.

The questions and comments from the audience mainly concerned the process of filing restitution claims, and questions about personal claims that have been filed or that people were planning to file. Some participants also criticized the policy and its planned implementation.

For example:

"The R15,000 is not enough money to buy land for livestock or for commercial farming. If we are getting only this small amount then, we can only buy two-hectare plots that will only allow for subsistence farming. This scheme will keep us impoverished."⁹

"What happens if I don't have [written] documentation for land that was taken away?"¹⁰

"Where will the government get land for restitution and redistribution if you don't want to expropriate white land? You say that where possible state land will be parceled out, but we all know that there is not enough state land to meet the demand. The government will then have to buy land from white farmers, and at the end of the day the government will come to me and say that there is no more money and that I must pay additional taxes. I am then paying for my own land."

And finally, "What about redistribution? You keep

talking about identifying beneficiary groups, when every black person in South Africa should be considered part of the beneficiary group!"

Indeed, wherever one travels in this country the question of land is foremost on the minds of the majority of the population. With 87 percent of the land currently owned by 12 percent of the population, the attempts to provide some equity of land ownership is a massive task. And anyone you ask will tell you, emphatically, in any one of the eleven official languages, that this is,

Izwe Lethu	Ilzwe Lethu
Shango Lashu	Tiko Ra Hina
Naga Ya Rona	Live Letfu
Naha Ya Rona	Naga Ya Rena
Inarha Yethu	Ons Grond
Our Land!!	

Credits

Figures 1, 2, and 3: E. Letsoalo *Land Reform in South Africa: A Black Perspective*, Skotaville Publishers, Johannesburg (1987).

Republic of South Africa Land Reform Data Map: Department of Land Affairs, *Green Paper On South African Land Reform* (1996).

Bar and Pie graphs: Editors, Inc., *South Africa at a Glance 95/96*

Bibliography

South African Department of Land Affairs, *Green Paper on South African Land Policy*, Pretoria (1996).

Letsoalo, Essy, *Land Reform in South Africa: A Black Perspective*, Skotaville Publishers, Johannesburg (1987).

Draft ANC Land Tenure Reform Programme, Unpublished, 24 October 1995.

African National Congress, *The Reconstruction and Development Programme: A Policy Framework*, Umanyano Publications, Johannesburg (1994).

Land and Agricultural Policy Centre, *Working Paper 24 NT 2, Land Reform Research Phase One: Provincial Overview, Northern Transvaal* (March 1995).

9. Currently, white farmers own an average of 1,000 hectares of land each while black farmers' average farm size is two hectares.

10. Glen Thomas' response to this question was: "You can go to the deeds office in Pretoria and trace the past title holders of the land." But Mr. Thomas failed to inform this woman that most of the deeds in Pretoria will show the government, or a white landowner as the original title holders. Many blacks in the region will have to turn to archival documentation in order to show that they have some interest in their lost land.