

BADIL Fact Finding Visit to South Africa, 10-19 November 2003



BADIL Resource Center Fact Finding Visit to South Africa, 10-19 November 2003. Masithuthuke, Rietvlei, KwaZulu-Natal Region

In November 2003 BADIL organized a fact finding mission to South Africa that aimed to provide an opportunity for Palestinian refugee activists to learn more about the process of land restitution and public participation in peacemaking. A first mission visited Bosnia-Herzegovina in June 2002. BADIL staff member Nihad Boqai and refugee activist and researcher Mahmoud Issa (Denmark) report on the trip.

Part One: by Nihad Boqai' (BADIL)

During the 20th century, especially during its second half, South Africa and Israel were 'twin' examples of racist colonial projects and ongoing violations of basic human rights of 'native' peoples. During the 1990s, two relevant historic reconciliation processes took place: the Oslo agreements between the Palestine Liberation Organization (PLO) and the Israeli government in Palestine, and the agreement between the African National Congress (ANC) and the "White" government of South Africa.

As is well-known, the first process witnessed a total collapse following the failure of final status negotiations between Palestinians and Israelis at Camp David, USA (2000) and Taba, Egypt (2001). Israel subsequently extended its control over more Palestinian land through further land expropriation and displacement. Basic human rights are still ignored. Refugees remain especially vulnerable. In South Africa the national reconciliation process is ongoing. It has faced significant challenges, but at the same time, it has made significant achievements.

Between 10-19 November 2003, BADIL Resource Center organized a fact finding delegation to South Africa to



BADIL Delegation to South Africa

study the process of land reform and property restitution, community participation, and the challenges faced by South Africans in the post-Apartheid era. The delegation consisted of 9 Palestinian activists and researchers in the field of refugee rights from historic Palestine, Lebanon and Europe. The first BADIL fact finding delegation traveled to Bosnia-Herzegovina in June 2002 to study the return process of the Bosnian refugees and internally displaced persons. (See, *al-Majdal* 14, June 2002)

During the visit to South Africa, members of the delegation met with a number of government officials,

NGOs and researchers, in addition to community leaders and activists. The delegation also participated in a workshop on rural land restitution in the city of Nelspruit (Mpumalanga Province), and made a number of field visits in Kwazulu-Natal Province and around the city of Johannesburg.

Land reform is a critical issue for South Africa, in general, and for the reconciliation process, in particular. The history of land dispossession, which was characterized by brutal forced removals and evictions, has left a nation divided along racial lines and a black majority in need of land. These people, especially those from rural areas, lost their lands through a long process of dispossession combining elements of purchase, negotiation, force, legal fiat, fraud and displacement.

A history of dispossession

Dispossession of the black South Africans from their lands began in 1652, when the first European settlers arrived in the Cape Province of South Africa, and continued until the 1990s. During the last latter part of the 19th century, white European settlers promulgated a number of laws that provided the basic framework for the creation of separate African reserves to serve as a source of labor for the "white farms". This legislation included, the 1894 Glen Grey Act and the 1899 Cape Private Locations Act.

The government of the Union of South Africa, established in 1910, also adopted policies to inhibit the further growth of the African peasantry, and relocate them on white-owned farms. This included the introduction of the Native Land Act of 1913. The Act created a number of African "reserves" for the settlement of black South Africans, which would serve as pools of migrant labor for white-owned farms and urban-based industry.

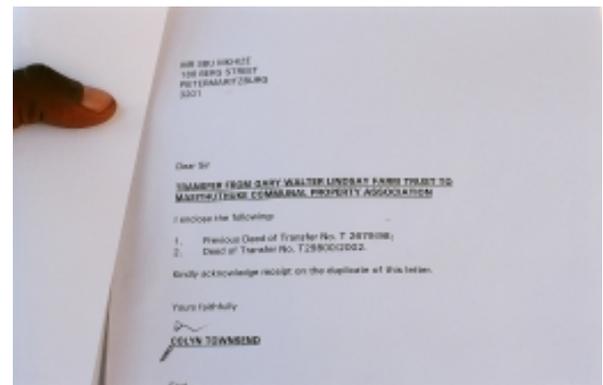
The government adopted further discriminatory laws to acquire control of more land. The Masters and Servants Law (Transvaal and Natal) Amendment Act of 1926, the Native Service Contracts Act of 1932, and the Native Trust and Land Act of 1936 forced all Africans outside of the reserves into the white agricultural economy, while extending existing controls over labour tenancy. In total, approximately 2 million people were tied to white farms through these laws.

During the Apartheid era (1948-1990), the "Nationalist government" embarked on a systematic program of eliminating squatting and transforming labor tenancy into wage labor through the vigorous enforcement of the 1936 Act. Attempts to increase the removal of "squatters" from farms, and from urban areas, led to the introduction

of the Prevention of Illegal Squatting Act of 1951. This legislation empowered white farmers and local authorities to evict farm tenants with relative impunity. These powers were given further effect through the 1964 Bantu Laws Amendment Act, which allowed for the rapid eviction and removal of tenants and "black spot" (segregation areas) residents.

As result, over 600,000 black people living in black spot communities were resettled through large-scale brutal removals carried out by government until 1958. In addition, it is estimated that between 1960 and 1983, a total of 2.3-3.5 million people were removed from white rural areas around the country. About 450,000 people in rural Natal were forcibly removed from their homes and their land under apartheid legislation between 1948 and 1982. With the end of the Apartheid era, land reform became a major focus due to the fact that 80 per cent of the country's population was living on only 13 per cent of the land due to apartheid policies and laws.

Land restitution



Land claims decision, KwaZulu-Natal Region

Addressing the history of land dispossession in South Africa was, therefore, one of the first steps and the main challenge of the new government after the collapse of the Apartheid regime. Through meetings with South African officials, including the Chief Commissioner on the Restitution of Land Rights, Mr Tozi Gwanya, and Cheryl Walker, former Commissioner for the Restitution of Land Rights in Kwazulu-Natal province, and NGOs, the delegation looked at the government program on land reform and restitution in the post-Apartheid era. Since 1994, land reform policy in South Africa has focused on three components: the restitution of land rights, the reform of tenure systems, and a land redistribution program. Each of these components have established their own laws and institutions to implement land reform.

The restitution component aims to restore rights in land to those who lost them as a result of racially discriminatory legislation or practice since 1913. Victims of land

Meeting with residents of Masithuthuke in the Rietvlei area, KwaZulu-Natal region.



dispossession were given until December 1998 to lodge a claim for the restoration of their rights with a Land Claims Commission, which would endeavor to reach a settlement between claimants and land owners, or provide settlement or compensation via the Land Claims Court. The basic principle of the process is a commitment to restorative justice and redress for the land dispossession suffered by black individuals and communities during the colonial period and under apartheid.

There are two significant policy frameworks governing the restitution of land rights: the Constitution of South Africa, and the Restitution of Land Rights Act of 1994. The Constitution of South Africa (1996) outlines the basic principles under which restitution shall take place in Section 25(7): "A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress." The Restitution of Land Rights Act of 1994 provided for the establishment of a Land Claims Commission and Court to implement the requirements of the Constitution.

Restitution proceeded from 1994 to 1998 at an extremely slow pace, and proved to be a difficult process for communities. By mid-1998, a paltry 28 claims had been resolved out of a total of 42,000 submitted. Of the 63,455 claims lodged, only 41 were settled by March 1999. This led the Department for Land Affairs and the Land Claims Commission to change the land restitution policy in order

to resolve different categories of claims. Through this strategy the large numbers of individual urban claims would be rapidly resolved through financial compensation payments. Until 2000, around 10,000 households received lands (around 174,000 hectares), in addition to another some 3,000 households, which received compensation. In total, around 4,000 claims were settled.

The pace of restitution accelerated rapidly since 1999. By March 2003 this had risen dramatically to 36,488 claims, affecting more than half a million hectares (750,000 by end of June). However, a study by the Programme for Land and Agrarian Studies in the University of Western Cape (PLAAS) found that most of the settled claims are urban claims that have been settled through financial compensation. Despite the political pressure that has been applied to settle all claims by 2005, there is no indication that this is possible, given the number of outstanding large rural claims.

One of the important issues raised by the delegation and discussed during various meetings and field visits was the case of the rural land restitution, especially during meetings with Association for Rural Advancement based on Pietermaritzburg city-Kwazulu-Natal Province (AFRA), and the National Land Committee (NLC) in Johannesburg. The BADIL delegation also participated in a workshop on this issue in Nelspruit organized by PLAAS, in addition to the field visits to the farms and "townships" in Kwazulu-Natal Province that are home to the majority of the rural population.

Despite the rapid increase in the total number of settled claims, the bulk of the rural claims are still outstanding, yet these hold most potential to transform landholding, redress the past and address poverty. Of the 36,488 claims settled by March 2003, the PLAAS study could identify only 185 rural claims settled with land rather than compensation. According to the same study, in Mpumalanga Province (61.5 percent of the total population are rural), there are 6,473 claims lodged (1,226 urban 19 percent and 5,210 rural 81 percent), however, until March 2003, only 635 claims were settled, of which 297 were rural.

Land redistribution

The Land Redistribution Program provides the poor with land for residential and productive purposes in order to improve their livelihoods. Land redistribution was intended to assist the urban and rural poor, farm workers, labor tenants, and emergent farmers. The Program aimed to redistribute 30 percent of farmland in the period until 1999. The Program provided a Settlement and Land Acquisition Grant to households or groups to purchase land from willing sellers, including the state, according to the Provision of Certain Land for Settlement Act of 1993. The Constitution of South Africa (1996) also outlines (Section 25(5)) also the basic principles for redistribution: "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis."

There are approximately 82.8 million hectares in use by commercial farmers in South Africa. Until 2000, only 667,285 hectares of farmland was redistributed, or approved for redistribution, or around 0.81 percent to date.

Land tenure reform

Land tenure reform as the third component of the program aims to protect people from evictions. Tenure reform refers to changes in the terms and conditions, under which land is held, used and transacted. There are four major tenure laws: the Extension of Security of Tenure Act of 1997, which provides people living on commercial farms with measures to regulate evictions and provide tenure security; the Land Reform (Labour Tenants) Act of 1996, which protects residential and land use rights, such as grazing and crop rights, of labor tenants on farms where they live, and gives them the right to purchase that land; the Communal Property Association Act of 1996, which enables communities or groups to acquire, hold and manage property in terms of a written constitution; and, the Interim Protection of Informal Land Rights Act of 1996, which provides a short term measure to protect people with informal land rights and interests in land -

primarily in previous homeland areas - from eviction or other infringement. In addition, the Constitution re-enforces land reform under the Section 25 (6). "A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress."

In practice, the government program has faced many challenges, problems and obstacles that make the land reform process slow. One of the problems is related to political basis of land reform. Although the first explicitly segregationist and comprehensive Land Act was introduced in 1913, it is clearly an arbitrary date from which to determine justice in restitution. Segregationist land reform was already well under way by the time the 1913 Land Act was introduced, and well before its introduction black South Africans lost their land, or their rights in land. Ways of dealing with pre-1913 claims that satisfy the needs of these communities have still not been found. A second contentious area has been how to deal with the existence of a range of rights that are not explicitly recognized in a historical context of colonialism, segregation and apartheid. Throughout the period before and after 1913, many black South Africans struggled to retain access to land though a range of agreements which, while initially temporary, grew permanent over time. Labor tenancy and sharecropping are examples of this. Although the Restitution Act recognizes that a right in land may include such interests, they have not been accepted as restitution claims.

In addition, claims for commercial agricultural land are costly and most of the rural population (around half of the rural population are unemployed) cannot pay. Current owners must also agree to the sale of the land and compensation to current landowners must also be fair and just. These underlying limitations of the redistribution process provide special protection to the current property owners. The "willing-buyer, willing-seller" framework and the requirement of "fair and just" compensation for existing landowners, has placed financial constraints on the extent of land transfer. NGOs and land activists have expressed their lack of trust in the government's commitment to the land reform process.

Voices of the grassroots

During the visit, members of the delegation met with a number of popular leaders of landless South Africans, especially in the townships. In addition to the NGOs that support land rights for black South Africans, like NLC and AFRA, delegation members met with activists of the Landless People's Movement (LPM) that are leading the struggle for the defense of land rights.

Most of the activists of the landless movement in South Africa accuse the government and the African National Congress of excluding rural black communities, and the NGOs and other civil society organizations from real participation in the decision-making processes of land reform. At the same time, community activists are pressing officials to implement their rights. LPM has conditioned its support for the ANC in getting lands for the residents, and has threatened to boycott the election next year, under the slogan of "No Land, No Vote".

At the same time, activists are pessimistic about the future, and their relations with the government and the ANC. While government officials express their hope to complete land reform by 2005, activists claim that the social movement on land will become stronger in the future, especially because of "government inaction".

The challenges and the problems concerning the land restitution and land reform process in South African demonstrate that the process is incredibly complex and fraught with dangers. Peace agreements, therefore, need to have as many details as possible tied up at the beginning. Insufficient political will combined with agreements that leave issues open for future disagreement may not only delay but set back the entire reconciliation process. The South African experience also demonstrates the danger of political compromises over basic rights such as the decision not to address pre-1913 land claims. Community participation in the decision-making process

is therefore critical to ensure that such compromises have popular support and can be sustained during implementation of the agreement.



KwaZulu-Natal region.

BADIL's full-color 2004 calendar is now available!

The calendar features photos of Palestinians visiting their lost homes in Israel; the resigning of streets in Majdal to commemorate the Palestinians who lived there until it was depopulated of Palestinians in 1948 and after; living in the shadow of the "security" wall and refugee camp life in West Bank.

Special dates in Palestinian history are listed by month and the introduction outlines the role of international law in the search for a durable solution to the Palestinian refugee issue. The calendar is in English and Arabic.

Copies of the 2004 calendar can now be ordered by contacting admin@badil.org. Cost is \$12 including postage and handling. All subscribers to BADIL's quarterly Al-Majdal will receive a copy of the calendar with the next issue of the magazine.

