

# Land restitution: the price of choosing money over land

Many South Africans whose families had been forcibly removed from their homes and their land and forced into homelands, townships or other areas during apartheid, saw the transition of the country to a democratic state as an opportunity for redressing past injustices. *Mokgaetji Shadung* reports on a study presented at an HSRC seminar that posed the question of whether financial compensation for the loss of land had long-term benefits.

Families who had grown accustomed to living in a diverse environment comprising different ethnic groups were uprooted and removed to areas far from their familiar surroundings and the people they used to know.

Through the Land Restitution Commission, many citizens had the option of either receiving financial compensation, or negotiating with the current owners to purchase the land they had lost.

## Why financial compensation?

A study conducted by Professor Bernadette Atuahene, assistant professor of law at Chicago-Kent Law School, entitled *Paying for the past: Addressing past property violations in South Africa*, sought to establish whether the financial compensation awarded to some of the claimants, in lieu of land, benefited them or their dependants over time.

In an effort to fast track the process of reimbursing the families of the victims who were forcibly removed, financial compensation was encouraged over land

restitution to minimise the lengthy process of bargaining for land to be returned to its original owners.

The study was based on 25 in-depth interviews with Land Restitution Commission officials and 80 in-depth interviews with claimants who received financial awards from the Gauteng and Western Cape Regional Land Claims Commissions.

Atuahene chose to focus her study on urban claimants rather than rural applicants, reasoning that the media tends to focus more on rural claimants and overlooks urban claimants when it comes to issues of land restitution.

## Perceived disadvantages of financial compensation

Atuahene, who previously worked as a judicial clerk at the Constitutional Court of South Africa, said the study showed that the Commission is moving away from the initial plan of encouraging claimants to opt for financial compensation.

'They said financial compensation was a bad idea and had no economic impact because the perception was that people wasted the money,' said Atuahene. The Commission assumed that the people lacked the financial acumen needed to capitalise on their financial gains.

However, through the interviews she conducted with those who had received compensation, she was able to ascertain that the amount of money granted to the claimants played a significant role in determining how it would be utilised.

'Many of the claimants who received a pay-out complained that the amount of money they received was too little to do anything significant,' said Atuahene. This was because, in some instances, the relatives of the families had been evicted years before and they received payments of as little as R30 000, which siblings then had to divide among themselves. This, in turn, left them with relatively small amounts hardly worth saving. Most of them opted to spend the money on improving their households.

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Many of the recipients explained that spending the money on renovating their houses was a way of honouring those relatives who had been evicted and had since died. Asked why claimants opted for the relatively modest financial compensation, many of the respondents cited a lack of interest in taking up farming as their reason for deciding against the option of acquiring land. Many were already living in their own homes and had no desire to return to the place their relatives had once called home.

Faced with the prospect of being awarded a modest amount of money and with no desire to own land, the claimants chose to spend their windfall on goods or on property improvements. This was regarded as wasteful by some of the officials interviewed during the study.

#### Difficulties of transferring land

Atuahene felt that it was important that the Commission should re-evaluate the amount of money awarded to claimants, rather than redirecting their efforts towards awarding land. This would be an effective way of dealing with the problems associated with transferring land and would produce a long-term economic benefit.

Some of the problems attributed to the difficulties of securing land from previous

owners included the continuously rising price of land, the limited capacity of the government to transfer land, and public disillusionment with the system.

#### Encouraging more constructive use of compensation

The solution, Atuahene believes, is to give people more options to channel their investments. Some of her proposals include:

- Making financial compensation more cost effective for claimants by, for example, increasing the impact of smaller financial awards. Claimants should be allowed to choose between various forms of equitable redress while being offered incentives, such as options that will produce a long-term economic benefit;
- Providing financial counselling to claimants who elect to receive financial compensation; or
- Increasing the financial awards by treating beneficial occupants on par with dispossessed owners.

However, others argued that in a country beset with problems regarding ownership of land, financial compensation was not the solution to deciding whether to choose money over land. Participants at

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the seminar argued that the focus on land restitution should be more on restoring land to claimants rather than looking for quick solutions by offering financial compensation. Since the money intended for the claimants rarely benefited the community, it was suggested that more effort should be focused on restoring land to people, thereby contributing to development, and ensuring that mechanisms were put in place to ensure sustainability of the land.

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