The dilemmas of apologizing for apartheid: South African land restitution and the Modimolle land claim

Nancy Andrew
Ph D sociologie-démographie, Université de Paris V, René Descartes
Land and Rural Research in Southern Africa
nandrew@larrisa.eu  www@larrisa.eu

March 2006

Abstract

Land restitution, as part of South Africa’s post-1994 land reform programme, has concentrated a number of dilemmas regarding rights to land in the course of handling claims that compensate or restore land to individuals and communities who can prove they were dispossessed by apartheid policy and practices since the 1913 Land Act. The state opened a “window” for land claims for only a short period and the granting of some land rights has been done in a finite, prescribed way, more symbolic than transformational. Also, importantly, restitution operates within the highly controversial market framework of purchase and sale of land, while existing measures for expropriation, even with compensation, are avoided. The state’s dual political discourse on land directed towards its different social constituencies is indeed difficult to reconcile: the government is caught in the quandary of trying to apologize for the massive land deprivation and displacement wrought by its apartheid predecessors without seeking to really uproot the land ownership system those settler colonial regimes established.

In the context of settler colonial laws barring Africans from owning land the Modimolle community was dispossessed by the (Lutheran) Berlin Mission Society and then forcibly removed from its farms in the Northern Province (Limpopo) by the apartheid state several decades later. The community’s prolonged land claim reveals the dynamics of some of these dilemmas, notably in conflicting notions of historical truth and what constitutes a right to land, the validity of ancestral and long-term occupation vs private ownership and differing assessments of the land relations between the church and the community.

Keywords: land rights, restitution, dispossession, apartheid, church land, Berlin Mission, land ownership, land market, expropriation, conflict, Limpopo, Northern Province, South Africa
Résumé

La restitution foncière, un des trois volets du programme de réforme agraire sud-africain d’après 1994, a mis en évidence un certain nombre de dilemmes concernant l’établissement des droits à la terre dans le cadre du traitement des réclamations déposées par les individus et les communautés aptes à prouver qu’ils étaient victimes des politiques et des pratiques de l’apartheid depuis l’Acte foncier de 1913. L’État ouvrit une « fenêtre » aux réclamations foncières pendant une courte durée et l’attribution de droits à la terre se déroula de manière prescrite et limitée, affichant un caractère plus symbolique que transformationnel. Également, la restitution s’opère dans le cadre général du marché foncier – vente et achat de terre – lui-même très controversé et les expropriations même avec compensation sont évitées. En effet la conciliation des doubles, voire multiples, discours sur la terre adressés par l’État actuel à ses différentes assises sociales n’est pas évidente. Le gouvernement est confronté à la situation délicate de crédibiliser sa tentative de faire amende honorable pour les privations de terre et les déplacements à grande échelle réalisés par ses prédécesseurs sans chercher vraiment à déraciner le système foncier mis en place par les régimes colonial et d’apartheid.

Dans un contexte de colonisation de peuplement, de lois interdisant alors la propriété noire, la communauté de Modimolle fut dépossédée de ses fermes dans la Province du Nord (Limpopo) par la Société de la mission berlinoise et fut ensuite déplacée de force par l’État quelques décennies plus tard. Sa réclamation foncière, très longue à résoudre, renvoie aux problèmes d’évaluation des représentations historiques des faits -- « l’histoire de qui et selon qui ? » -- et de conceptions divergentes des droits à la terre, de l’occupation du sol ancestrale et à long terme par opposition à la propriété, ainsi qu’aux diverses appréciations des rapports sociaux entre l’église et la communauté.
The land restitution component of South Africa’s land reform programme specifically aims to make amends for land dispossession brought about by apartheid laws and practices since the 1913 Land Act. Its complex, if not impossible, task and poor performance in settling particularly rural land claims have highlighted a number of problems in the sphere of land rights: both in terms of how they are conceived under a new Constitution that safeguards the interests of existing private property owners as well as how to they can be truthfully established given often diametrically opposed versions of historical record by landowners and landless communities seeking return of their land. Examining these casts light on the politically embedded and institutional weaknesses or lack of resources. Although restitution is described as “rights-based”, claimants bear the burden of proof of dispossession and entitlement. The land claim of the Modimolle Community in Northern Province (Limpopo), followed over a ten-year period,\(^1\) illustrates the complexities of conflicting histories and interests filtered through the restitution process and the government’s dual discourse which seeks to reconcile its stated objective of repairing injustices against the black landless population with the protection of white ownership within the land system inherited from apartheid. After briefly contextualising this case with some of the broader social dilemmas and built-in political faultlines that the conspicuous inadequacy of restitution has underscored, and which create significant barriers to restoring major areas of contested rural land, this paper focuses on the particular conflict over the reconstruction of Modimolle’s history, contrasting the community version to that of the settler colonial state and the Lutheran Berlin Mission Society.\(^2\)

**Restitution – genuine rights to land or dispensing symbolically with the past?**

Restitution is metaphorically considered a symbol, a partial apology for apartheid. Yet it has become widely apparent that land rights in a country partitioned by colonialism cannot be addressed only symbolically. The restitution policy cannot treat the wound of dispossession through palliative measures, much less heal it.

Instead of an open-ended, thoroughgoing process aimed at truly “making amends” to a population broadly dispossessed, restitution is limited and finite by conception. It aims to establish “closure” of the painful chapter of apartheid history (Hanekom 1998) and to discourage debate and social struggle over who should have rights to land and on what basis, such as that which erupted throughout society in the 1990s challenging policies. A major aspect of this critical backlash against restitution’s limitations was the problematic narrowing of eligibility to accommodate only a very finite pool of potential beneficiaries since the majority of the rural population was dispossessed by laws or

---

\(^1\) This case was selected for doctoral research on restitution within the theme of rural land conflict in South Africa and Zimbabwe since the introduction of land reform (Andrew 2005) in part because it appeared to have a chance of succeeding.

\(^2\) Berliner Missions Gesellschaft
practices stemming from the settler colonial social order, including those laws that removed people more gradually from the land by undermining their livelihoods. In addition, Africans lost land rights well before the 1913 cut-off date, as discriminatory land practices were already in effect before they were systematised by the Land Acts 1913 and 1936. (Husy 1995:15-16) The heavily legal procedure tends to individualise a social problem.

By limiting the time period for applications (3 years, extended by six months), many people either were not sufficiently aware of their right to apply or were not able to constitute a dossier and establish evidence in time. According to Land Claims Commissioner Gwanya, less than 10% of the (perhaps scantily) estimated 6 million eligible Africans applied for restitution by the December 1998 deadline. (AFP 2005) The difficult application procedures built in social bias against those whom restitution ostensibly targeted: rather than facilitating the process for poor and rural claimants - most often filing as family groups or communities and often dispersed by apartheid removals - it tended to favour urbanised, educated individual applicants with resources and some avenues of access to legal assistance, although this was somewhat attenuated by land sector NGO involvement.

Restitution tries to apply a modern concept of equality before the law towards fundamentally adversarial parties in a situation of extreme inequality in landholding (“let’s play fair on a very unfair playing field”): landowners, mostly organised and with ample income to challenge rural claims, are tremendously advantaged by having the land already in their possession, backed up by formal Roman-Dutch colonial law and records; landless black claimants must rely on the collective experience of the people removed to reconstruct proof they were victims of apartheid, organise themselves into a cohesive unit and find the resources to participate in a lengthy, cumbersome, highly legalistic process in unfamiliar and quasi inaccessible territory for the rural poor. Additionally, because the process is ambiguous with many holes, conferring a great deal of political latitude to the Land Claims Court, many people have been refused or channelled towards the redistribution programme, requiring them to buy land.

Thus restitution’s “finiteness” is not just a matter of tabulating disbursements or hectares restored as Department of Land Affairs (DLA) reports might indicate, or even one of desired expediency. It is highly politically charged in content: it represents the government’s general approach to considering political reconciliation and the “payment of social debt” a closed affair in the sphere of land rights. As Gwanya recently urged, “we have to put restitution to rest”. (IRIN 2006, Interviews Norfolk, Mngxitama, Kariuki 1999)

*Market logic prevails over new land rights*

Restitution has also been reproached for its sidelining of social needs and land demand, common refrains of ANC populist discourse, and the policy’s orientation in which instead “Everything is the result of negotiation and putting a monetary value on the land”, as one restitution commission
officer remarked. (Boldovino 1997) South African restitution policy is not in fact based on the public transfer of land from one social group who holds it unjustly and in unfair proportions to restore it to the victims of apartheid. Instead it is the state purchase of land at market prices, or a compromise between several valuations. Its market-level financial compensations\(^3\) reinforce the socio-economic position of white landowners already dominant in the rural economy, many of whom paid little or nothing for land generations ago, or “inherited” it through various colonial associates, such as the Church, which used its position as mission station to become landowner in the Modimolle example. Restitution’s hefty pay-outs also immobilise available land reform financial resources overwhelmingly for purchase rather than resettlement and development, often leaving communities in a difficult position to access sufficient capital to launch either farming or non-farming activities on the land. Like land reform as a whole, restitution is fully inscribed in the neoliberal logic of the market that is the bedrock of post 1994 South Africa, notwithstanding the many “pro-people” narratives that facilitated the political transition to black rule. In the Modimolle land claim, considerable state funds went to compensate previous owners of the farms, yet the community was immediately pressured to lease land to some of them out of fear of falling into debt and losing everything they had fought so hard for, while trying to accumulate the means to carry out the business plan required of them. (Interviews Chotia 2004, 2005)

Government recourse to expropriation, whose classic definition was modified in the long-disputed but ill-resolved property clause of the Constitution to include “fair” compensation, has been avoided at almost any social cost, although the excruciating delays provoked a decision to set a six-month limit for negotiations in restitution cases before moving in that direction.\(^4\) The possibility of expropriating the remaining few farmers resisting settlement (for a higher price) in the Modimolle claim – now in its twelfth year – is under discussion. (Interview Tshabangu 2005)

The government’s contradictory discourse towards its different social constituencies seeks to both assure commercial farmers that they will not be deprived of land while (temporarily) promising restitution to the large rural black population expressing significant anger over its land deprivation.\(^5\) White farmers have tried to overrule expropriation in advance in South Africa by threatening a backlash against the government and raising the spectre of Zimbabwe’s fast-track reform.\(^6\) On the other side of the spectrum, a continuing theme of critics of market-led policies that do not challenge the property system has been the need to abolish the property clause altogether legally limiting the

---

\(^3\) Many farmers have sought evaluators who inflate prices, then repeatedly stalled in court to avoid settlement. (CRLR 2003a)

\(^4\) Expropriation has been used in a handful of cases and always with market-level compensation. Gwanya announced plans to begin (compensated) expropriation after March 2006 of those farmers refusing to settle, in order to speed-up restitution.

\(^5\) Then Minister of Land Affairs Hanekom stated at the 1995 National Land Policy Conference, “It was not the intention of government to take land away from people, but rather to create a climate where land could be made available to those without it...” (DLA 1995b)

\(^6\) Zimbabwe’s programme expropriated the majority of white large-scale farmers and compensated only capital improvements, but not the land itself, inviting Western governments to contribute to a fund for that purpose.
government’s hand, which would re-open public debate over the objectives of land reform. This profound conflict is not likely to disappear soon: the ANC is trying to steer a reform vessel, sometimes reluctantly, through choppy neoliberal waters and yet maintain political confidence of the black population. Although some sections of South African ruling circles, black and white, regularly express what is undoubtedly genuine aversion towards the “skewed” property system, in reality policies flow from broader economic and political imperatives that shaped the South African transition in general. The ANC promises to rectify the effects of the apartheid land division while evading the central question of actually breaking up the old land system upon which current (and past) social relations depend, reproducing, even without formal apartheid laws, many of the injustices the ANC has pledged to eliminate. By the same token, its starting point is not to restructure the agrarian economy to benefit the dispossessed and disadvantaged rural African majority that is subordinated to these property relations.

**The Modimolle case – whose land, whose history?**

The Modimolle community was dispossessed by the Lutheran Berlin Mission Society and forcibly removed to Bophuthatswana in 1965 by the apartheid government. Nearly every aspect of the story is disputed in some way by the different parties involved, from who arrived first in the mid-19th century, to the terms and conditions of forced removal of the community over a hundred years later, to the pivotal nature of the land relations binding the mission and the community, central to the conception of rights.

The difficulty and uncertainty of the restitution process, as well as its limits, can be seen clearly in the Modimolle community land claim, which despite its sinuous trajectory, was (mostly) successful more than ten years after it was launched. In light of the state’s conflicting streams of political and legal discourse on land restitution examined above, the discussion here focuses on the construction of a “true” history of Modimolle’s dispossession from the angle of the complicity between the colonial institutions of the Church and State. Two primary aspects of this are considered: firstly the opposing views of acquiring and possessing the land and secondly, the evaluation of the production relations on the land between the community and the mission station established there. Both of these are closely linked to the respective social identities of the community and missionaries, but are also loaded with more overtly political and ideological reasoning, such as the religious constructs of the Lutheran Church and the prevailing white supremacy of settler colonialism.

Modimolle (meaning ‘the spirit has eaten’) is a mountain laden with myths among the local North Sotho, North Ndebele, Tsonga and Venda which suggest that bādimō, or ancestral spirits, inhabit the mountain and, along with creatures with a taste for human flesh, are to be blamed for children disappearing from the area. (de Beer 1996:6) The community of Modimolle is named after
this mountain between Nylstroom and Naboomspruit\(^7\) and the ruins of its church and school are still standing on the nearby Middelfontein farm, along with a sizeable graveyard where the community's ancestors are buried. Under the apartheid government the community launched a first land claim, but it was ignored. In 1994 they filed a new claim under the Restitution Act for land on and around the Middelfontein farm, including its sub-divisions, and the adjacent farms Zandfontein, Groenvalei, Grootfontein and Naauwpooort, bordering on the river Mogalakwena, totalling some 12,455 hectares.

Filing a restitution claim hinges on justifying a right to land, based on occupation by members of an immediate family, or by earlier generations of the family and on historical or recent evidence that the claimants or their ancestors were dispossessed by apartheid. They must also establish the stability and prosperity of the community’s life before removal, reconstruct the events surrounding forced removal and detail previous efforts to retrieve their land, future plans for use of the land, and arguments for its restoration. Developing oral and written evidence from amongst members led by the elders therefore became a central part of Modimolle’s early community meetings and follow-up to the claim. For the purposes of this study, research and interviews were conducted to compare this history to the reports and archives of the Restitution Commission, the DLA and land sector NGOs including, early deeds, files of the Berlin Mission Society and colonial government records.

Acquiring farms under conditions of prohibition of African property-holding: the community, the mission, the colonial state

Examining these primary but disparate sources (colonial documents, the church Synod reports between 1921 and 1950, the community's own record) reveals similarities in the history of the land at Modimolle as well as obvious inconsistencies over early occupation of the area, what “permitted” or defined access to land at that time, connected to the importance of ancestral roots as opposed to private rights conferred by a racially-based legal system, and especially the independence or lack of, of the African peasantry--all inscribed in vastly different social identities and cultural points of refer-

\(^7\) Although Modimolle corresponds to the mountain’s name and to the area around Middelfontein, the nearby town of Nylstroom has been renamed Modimolle. Naboomspruit is changed to Mookgophong.
Farms claimed by the Modimolle Community

Source: Modimolle Archives
Berlin to get permission and funds to set up a proper missionary station. In the meantime he asked the community to contribute to pay for it.

At that time there were around 350 families, who each were required to pay 12 head of cattle (valued about £5 per head) to the Reverend to purchase the farms around Middelfontein that he wanted for the mission communities. According to Modimolle descendants, most of these farms in the Nylstroom area were consolidated into one title deed in 1925 in the Berlin Mission Society's name, after Koboldt's death, without their families' “capital” having been refunded, although promised. One farm, Groenvalei, bought during that same period but which Koboldt had left in his own name, was handed down to his heirs. (CRLR 1906) Some residents attending a Modimolle community meeting in 1996 recounted their grandfathers' memories that the church “took the cattle and bought part of the land, ‘lost’ the old papers and never returned with any new ones”. They claimed the community produced its own food, reared cattle, lived in a “typical missionary style” and paid one-third of their harvest to support the Lutheran missionaries, had a common language which was Northern Sotho, and had no chief.

Archives included only a few documents from the Berlin Mission Society. However a BMS Synod report from 1927 affirmed that 477 adults and 538 children made up the congregations in and around Modimolle. The report focuses primarily on the shrinking size of the membership (and thus dues) and the rampant sin among the farm populations, especially home-brew drinking, rather than to whom the land around Modimolle belonged. It does however mention the sale of one of the farms in 1925, without stating to whom, a result of which 25 families moved away. The report explains that,

“15 to 20 years ago Modimolle had large subsidiary stations, formed by living and working together. The country was not yet inhabited by so many Whites. If the Natives gathering on a farm honestly and punctually paid the agreed lease fee of ten shillings to 2 £ per annum per family then they could live and plough where they pleased.”

The Reverend Neitz authoring the report regrets that he cannot gather the scattered once-converted Christians in the area because blacks “cannot agree with the farm owners about labour or payment” (and many it seems were lost to its main rival, the Church of the Bapedi, an African break-away church from the Lutherans). The report refers to white ownership (“Germans, Boers and Englishmen”) of these farmlands in the area, leased to black peasants.

Colonial memoranda, including the Sub Native Commissioner's report describes the people on the mission station as mainly descendants of slaves and as belonging to “most native tribes of South Africa”, and specifies Dutch as the language spoken in the home. Government documents reflect the dominant Afrikaner view that the “Natives” did not precede the Trekkers fleeing the restrictions of the Cape Colony, but only accompanied them as slaves, descendants of slaves, or apprentices, called oorlams. This is central to the reasoning that land never belonged to or, in extreme arguments, that it
was not even occupied by indigenous South Africans before the arrival of the Boers in the Highveld. It has been widely documented that the “land grab” in what became the Transvaal, following fierce conflicts with the Ndebele in the Western part, took the form of Boers carving out farms on the edge of African chiefdoms with their permission, often with Africans already living on the land, and later setting up an administrative apparatus to give themselves title or other “allocation” of that land. (Platsky & Walker 1985:73-74)

A DLA restitution report states that Modimolle properties had originally been part of land “allocated or granted” by the South African Republic to white farmers who then sold them, including to Reverend Kobolt. (DLA 1995a:7) It is useful to recall that the self-proclaimed South African Republic declared all land that hadn't been allocated or surveyed to be “government” land north of the Vaal River in 1858-1860, and all Africans living on it to be “squatters”, and began to let out farms to burgs as “loan farms” to support the SAR government. The only time during which Africans could buy land in that area was during a short period after 1905 when the Transvaal Supreme Court overturned the total exclusion on black private ownership, until the 1913 Land Act once again made it illegal. (SPP 1983:347)

Debating the sale of Zandfontein farm to Modimolle residents

Three memoranda of the Sub Native Commissioner's office at Nylstroom dated from February to May 1921 describe a block of four farms owned by the Berlin Mission Society, inhabited by 1078 persons farming 350 acres (based on the 1918 census) and report the debate over the sale of the farm Zandfontein to Middelfontein Natives. Pointing to the fact that it is the church that needed to sell land at that time to meet its expenses as well as its willingness to sell to Natives, the Commissioner urges “Europeans to consider the particular history of these Mission Natives from a broad-minded point of view.” While he argues that “Mission (Christianised) Natives” ought to be allowed to continue to live on their farm by buying it since most were born on mission land and can raise the money, he worries that “it would be contrary to the spirit and intention of the Natives Land Act to allow private ownership of land by Natives…” and that it already is provoking strong opposition from white farmers' agricultural union in the area, especially if “outside Natives” in the area joined in the purchase. If that occurred, he concludes, “it would be to make the Natives Land Act a dead letter in so far as this district is concerned, as there would be no valid objection against any other owner of land in that part selling farms to Natives”.

Colonial government archives do not include a report on this sale being refused. But from examining deed transactions and a list of properties held by the Mission Society, it is evident that the Zandfontein property was not sold (or sold again) to the Modimolle residents, but rather was subdivided into portions, title to which was transferred to several white farmers, including the Sub
Native Commissioner himself and his wife! Sales of other portions of the farms by the BMS followed – Platannafontein and Nauwpoort were consolidated and sold in 1955 to a white farmer. (CRLR 1997)

The mission station continued to function on the remaining portions of the land and the black peasant community continued to support it with their harvest. Significantly, community elders interviewed said the delegation sent to negotiate ownership was told by the missionaries not to reveal that they had already paid for the land with their cattle, since this was illegal at the time, and rather to ask for the right to purchase the farm Zandfontein which the BMS was selling. (Sethusha 1999)

The oral history from Modimolle people reflects a more fluid view of settlement as well as the continuity of a stable community with an assumption of right to occupy, whereas the BMS report, focusing mainly on the moral and spiritual state of its followers and their material support of the mission, is written from the standpoint of landowner. Colonial government documents are the primary source recording transactions between whites within that legal framework, which indeed do not necessarily constitute “proof” of private possession, but do serve as clear references to official state exclusion of African land ownership based purely on race.

Despite the close link between white supremacy and zealous attempts to impose Christianity on the indigenous people that were ideological features of the political economy of settler colonialism, these colonial records naturally do not capture the internal dynamics between the church and the community. A government researcher working on the Modimolle case noted in 1997 that because there was no contract between the mission and the people and their relationship was on a family to family basis with obedience to church elders playing a strong role, it cannot be said that the community legally belonged to the mission. (Interview Motibe)

Social relations of production on the land

Accounts also vary about how the land was occupied and used by the Modimolle residents and the mission in this period, but it seems after numerous subdivisions of the properties (and thus sales by the BMS) that most of the people continued to live on and farm the land. Some areas were suitable for grazing, others for cultivation and habitation. Most lived on the Middelfontein farm, two-thirds of which was agricultural land, where the station was centred, with its church, three school buildings, a parsonage and three outbuildings, and Zandfontein was also particularly apt for farming, with lots of water. (DLA 1995a:2)

“I was born there 74 years ago at Modimolle and my education was earned through farm products… It was very fertile land, with three dams and irrigation; now it's reverted to forest. Each family had plenty of pasture, but today not one-tenth of the land is...

---

8 According to colonial and apartheid deeds records the Union Government itself expropriated at least of two portions of Middelfontein in 1919, another one in 1948 due to “legislation” and without compensation, and in 1929 bought a portion of the same Zandfontein farm, eight years after the Modimolle residents asked for the right to own it. These were most likely connected to the construction of public roads or the railway system.
cultivated. We grew wheat, peanuts, maize, we got ‘rich’ there, we sold 30 bags of grain and produce by the ox wagon-full.” (Sethusha 1997 and 1999)

Relations on the land were characterised mainly as peasant production with a form of sharecropping (supporting the mission with a part of the harvest rather than an outright exchange for land), yet not surprisingly they are described somewhat differently by the community and the state and church. At some point (the year is disputed) the harvest share was supplemented by an annual leasing fee of up to 2£. The 1995 government report, presumably but not explicitly citing a BMS financial report in 1919, states that the African male peasants (and some widows) paid “land rent”, shoprent and grazing fees. Before 1911, the report says 1/5 of the crop from lands under irrigation was payable to the Mission, then this was changed to 50c per bag of wheat harvested; after 1921 they also had to pay 10 shillings a year for ploughland about 12 by 100 metres is size.9 (DLA 1995a:3-4) Thus in line with its recognition of white-only ownership, the settler colonial state considered the relations on the mission station a rent tenancy while the community insists on its ownership through occupation and support of the land as well as the independence of its peasant farmers sustaining the mission and its church, school and clinic with part of the harvest instead of rent:

“We were a community of independent farmers; we gave part of the crop to the church and had to work the land of the church as well. We grew lots of produce and took it by oxcart to sell at markets in Nylstroom, Pretoria, Warmbaths and Naboomspruit. Watermelons we grew were named after the place.…” (Chotia 1997)

The elders today say their fathers were abruptly charged fees and taxes in 1948, provoking a rebellion. They refused to pay and through a lawyer took the Berlin Mission to court, objecting to giving money to the mission rather than to a community fund. But as one resident related the story, “Pretoria (the magistrate) refused our demand to record the details and history, saying instead, ‘no, you are Christians, go settle it at home’”. (Interview Sethusha 1999, Modimolle 1996) More than respecting their faith, this important fragment of oral evidence implies the court verbally gave the church license to adjust its relations of exploitation with Modimolle residents, in line with the generalised social engineering of that period, one goal of which was the further subordination of remaining black peasant families.

The community’s original claim states in writing that they ploughed the land and gave one-third of the harvest to the Lutheran missionaries in lieu of taxes. The claim’s annexures, however, introduce the argument of occupation of the land as labour tenants. Undoubtedly this represented an

9 The 1927 Synod report mentioned above laments the decrease in church attendance implying the changes took place later: “The opinion, voiced from many quarters, that the increase of Platzahgabe [literally, location fees] and the introduction of fees for grazing should have been the cause for people withdrawing from the Word of God, the Sacrament and other activity in the congregation, is devoid of all truth and it merely indicates how little the speakers understand the soul of a man of colour. The people of Modimolle could not, or could hardly, have become less “church-minded” than they already were. It is a sombre picture that I am about to present: Saturdays, Sundays and Mondays were weekly recurring days of beer drinking bouts and of meetings in which family matters, controversies and political questions were discussed…and the young people were left to their own…and fell into sin…hardly a girl had not fallen.”

Colloque international “Les frontières de la question foncière – At the frontier of land issues”, Montpellier, 2006
additional strategy to prove their right to the farms, in line with the provision in the land reform programme covering labour tenancy,\textsuperscript{10} but also most likely corresponded to the changing production relations on the farms, although this is not entirely clear from the various accounts. The 1921 Sub Native Commissioner's memorandum states that the peasants provided no labour to the mission. However the church sold several portions of the land to private individuals and its congregation may have entered into labour tenancy type of arrangements on those properties in addition to the sharecropping arrangements with the church.

Although black peasants were declared squatters by the 1936 Development Trust and Land Act, in 1957 a special proclamation suspended the license fee for Africans living on land used by mission societies or other religious bodies. But this did not last long: two years later, Modimolle was targeted for removal from “white” into “Bantu” areas. While the government maintains that their departure was consensual, the community insists they resisted, holding out until 1965, although some elders were influenced by the missionaries - who said and did nothing against the forced displacement of their congregation to Bophuthatswana - to comply. During a visit to Syferkeuil in 2005, an elder explained, “We lost most of our cattle. This place was as empty as the glass on this table; the government trucks just dumped us here in the open land.” Since the late 1990s some of the rural settlement’s cement bloc houses have electricity and beyond the rutted, dirt roads – one named Modimolle – are common grazing areas and small rocky ploughing fields. The community still has no sanitation or running water. (Kutu 2005)

After many years of investigation, delays by previous owners, followed by court battles and negotiations, the Modimolle land claim was mostly settled in June 2004. A few owners are waiting for higher prices or to see if the government expropriates their portions. Several of the active elders had passed away and the long wait has forced the community to revise its plans. Many want to relocate, a group of younger men hopes to be trained in farming, while other options such as tourism are being studied. Although debts are accumulating, they say they are not bitter that the white owners have financially profited from restitution. “For us, it’s the land we wanted; now we have to take care of it.”

Conclusion

This history of this case, despite the gaps and discrepancies, illustrates the powerful and lasting impact of colonial land alienation policy in general as well as the particular way in which this served the Lutheran Church to establish and strengthen its position in South Africa.\textsuperscript{11} Whether controlling the

\textsuperscript{10} To be eligible for land rights, labour tenants had to have worked and lived on the land in question for more than ten years preceding their eviction.

\textsuperscript{11} Church properties in South Africa totalled about 7% of the land in 1998, with the Lutheran Church owning approximately one-third. See Zondi & Philpott 1999.
land, resources and people attracted to its calling was motivated by “spreading the Gospel”, or by a conscious adherence to European colonial objectives and ideology, the results were the same: betrayal and dispossession of the Modimolle community. Of course final and physical dispossession was an act of force carried out by the apartheid state itself.

The community maintains it was not the church’s land to sell or to bequeath. They contend that any titles to that land which the mission had acquired were on behalf of the indigenous community and purchased with their cattle. Therefore their right to the land was established twice: once through ancestral occupation preceding the Mission Society and the *voortrekkers* by quite some time (the community insist that their forebears were already cleaning family graves in that period) and uninterrupted occupation of the land for a period of over one hundred years before their eviction in 1965, and a second time by their purchase of the land, according to the European concept of property.

The Modimolle case shows the limits of a mainly legal process handling a political problem: if today essentially the same land division with similar property relations is preserved, how are rights to be understood and whose history is valid? Multiple government narratives to different constituencies are part of the political instrumentalisation of land reform, with restitution as a leading political edge apologizing for the ravages of a system the state is not trying to uproot. This political framework does not offer a democratic solution to the socially embedded land question. It seems abundantly clear that restitution cannot “close this painful chapter of history”, nor can opponents of democratic change in this sphere easily bury the importance of this conflict in a mountain of market rationalisations and “modernity” arguments (Bernstein 2005) that cast aside the rights and aspirations of a majority which continues to be deprived of land. Those who have won access to land face enormous obstacles and the alternatives are few for those who are too “poor” for land reform, have been given no significant choice, or have already been convinced that the cards will be stacked against them in South Africa’s not-so-new agrarian economy, with white farmers still controlling 95% of commercial farmland.
SELECTED REFERENCES

Agence France Presse, 2005. S. Africa may tighten screws on white farmers on land issue, 14 April.

Andrew, Nancy, 2005. Land Reform and the social dynamics of land conflict in the South African countryside, PhD in sociology, Université de Paris V, René Descartes.


Bulletin for Contextual Theology, 1999. Church and Land, 5(3), October, School of Theology, University of Natal, Pietermaritzburg.


CRLR, 2004b. Memorandum on the Modimolle Case, Regional Land Commission of Limpopo Province, June.


CRLR, 1997. Vergoeding, list of compensations paid by the State, 17 March.

CRLR, 1921. Reports and notes from the Sub-Commissioner of Native Affairs, M. Wm. Driver, Nylstroom, 10 February and 3 May.

CRLR, 1906. Deed of Transfer Nº 9092, 20 December, Waterburg Farms.


Department of Land Affairs (DLA), 2003. Getting People Back to the Land, Media Briefing, 24 November.


DLA, 1999a. Address by Mr Derek Hanekom, MP, Minister for Agriculture and Land Affairs on the occasion of the Budget vote of the DLA, National Assembly, 4 March.


DLA, 1999d. Statement by the Minister for Agriculture and Land Affairs, Ms Thoko Didiza, Parliamentary Media Briefing, 29 June.

DLA, 1999e. Church Land Policy, Land Reform Policy Committee, DLA web site.


Modimolle Community, 2005. Meeting of the Modimolle Community Trust, November.
Modimolle, 1994b. Land Claim Réclamation filed with the Advisory Commission on Land Allocation
Modimolle, 1994c. Points to be submitted to the Advisory Commission on Land Allocation
Modimolle, 1994d. Community land claim, annexure C.


Streek, Barry, 2000. 'Give us the land or we’ll take it’, Weekly Mail & Guardian, 14 April.


**Interviews**


Ph. Denis, Department of Theology, University of Natal, Pietermaritzburg, Paris, December 1999.


Sam Kariuki, sociologist, University of Witswatersrand, Johannesburg, February 1999.

Elias Khama, DLA, fieldworker, Northern Province, February 1996.

Paul Kutu, elder of the Modimolle Community, Syferkeuil, November 2005.


S. Mhkacani – Limpopo regional Restitution Commission, December 2005


Simon Norfolk, consultant to the DLA, Pietermaritzburg (KwaZulu-Natal), March 1999.

Kafis Motibe, Restitution Commission researcher, Pretoria, July 1997.

