

Conflicts in a Rural Land Restitution Case: Reconstructing the Elandskloof Mission Community, South Africa

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Key Words Land restitution, change management, social change models, land reform.

ABSTRACT

Research in informal settlements in South Africa has shown that conflict is inherent between groups within a settlement and between the broader community and the land administration authorities. In general, groups and sub-groups continually form, reform and dissolve within informal settlements. Moreover, the internal rules that a community creates relating to land tenure tend to be manipulated by sub-groups as they compete for land, resources and power. Internal rules are not static but are subject to continual change. Similar characteristics were observed in Elandskloof, a rural land restitution case in the Western Cape province of South Africa.

This paper analyses behaviour within the Elandskloof community during attempts to reconstruct the community and resettle members of the community on the land as part of South Africa's land restitution programme, and compares Elandskloof with similar behaviour that was observed in informal settlements in South Africa. These observations provide useful guidelines for land administrators to view the interrelationships between instruments and processes that support formal property rights, these being the cadastral system and land administration system, and prevailing land tenure in both informal settlements and certain rural land restitution cases. They should facilitate understanding by an outsider of seemingly contradictory, irrational behaviour due to competition for power, land and resources within a community.

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1. INTRODUCTION

Elandskloof is a land restitution case on a pair of contiguous farms in a catchment area in the Cedarberg mountains, approximately 200 km north west of Cape Town in the Western Cape Province of South Africa. Historically, it was a Dutch Reformed Church mission settlement for nearly one hundred years, until the community was evicted in 1962. Thereafter the community members and their descendents dispersed throughout the Western Cape (Barry and Mayson 2000).

This paper analyses behaviour within the Elandskloof community during attempts to reconstruct the community and resettle members of the community on the land in terms of a social change model developed for informal settlements. The implications for external agents who are tasked with assisting in implementing land reform and restitution cases are also discussed.

This social change conceptualisation of land tenure in informal settlements provides a useful framework for land administrators to view the interrelationships between instruments and processes that support formal property rights, the cadastral system and land administration system, and prevailing *de facto* land tenure. It facilitates understanding of seemingly contradictory, irrational behaviour founded on the assumption of inherent conflict in competition for power, land and resources, and the continual changing social interrelationships resulting there from.

The social change model developed by Fourie (1993), which was informed by research of informal settlements and its usefulness for management of change, is first described. This is followed by a description of the history of the Elandskloof community. Thereafter the applicability of the social change model to the Elandskloof case is analysed.

2. SOCIAL CHANGE MODEL

Drawing on Comaroff's (1982) dialectical approach to the analysis of local systems and on the observation of a Zulu settlement in the Durban functional region, Fourie (1993) developed a social change model for observing and analysing the social dynamics of informal settlements. Davies (1998) in researching an urban Xhosa-speaking community observed similar phenomena that support Fourie's thesis in a settlement in East London in the Eastern Cape. The first author, Barry (1999), observed similar patterns of behaviour in informal settlements in Cape Town.

The main features of the social change model are 1) the dialectical approach (which assumes that conflict or structural tension is inherent in a social system); 2) the ongoing processes of

fission and integration; and 3) transactional behaviour. Each of these features, as they have been observed in the context of informal settlements, is now described in more detail.

The dialectical approach holds that there is internal competition and inter-dependence between various power levels and sub-groups within a community. Competition is manifested in struggles for land, resources and power. In informal settlements, tension between sub-groups develops as a result of local dynamics and factors external to the community such as urbanisation patterns, local authority policies and local authority interventions (Fourie 1993, Davies 1998). Hence reference is made to the internal dialectic as the structural tension between groups within the community involved in fission and integration (Fourie 1993, Davies 1998). The external dialectic is seen as the tension between external factors and the internal dialectic within the community (Fourie 1993, Davies 1998, Davies and Fourie 1998).

Fission and integration are two opposing processes. Fission, being a process of individualisation and integration is a process that strengthens a group identity. This creates competition between individual and group land tenure rights (Fourie 1993, Davies 1998). Davies (1998) interprets this aspect of the theory to mean that integration gives greater importance or weight to group rights rather than individual rights. Consequently, where there is a bias toward integration, group rights prevail over individual rights. An example of this apparent contradictory tendency of fission and integration is the allocation of a secure land right for an individual's exclusive use of a particular parcel of land (fission), yet a community (-based institution) may insist on approving any person to whom this land right may be sold (integration) (Davies 1998). Interpreting Fourie's (1993) work, fission and integration also describes the process whereby a faction may sever ties with one sub-group (fission) and seek alignment with another faction within a community (integration).

Transactional behaviour, also termed entrepreneurial behaviour, in the context of informal settlement tenure analysis is about the negotiations and deals associated with land and land tenure within a community. Fourie (1993) notes that indigenous systems of land tenure evolve by adapting to unique circumstances that face people at any particular time (Fourie 1993). In this model, land tenure rules are important and required by groups at settlement level for land administration, such as land allocation and dispute resolution (Davies 1998). However, the tenure rules tend to be manipulated by sub-groups as they compete for land, resources and power. Therefore, internal rules are not static but are subject to change due to the effect of tension and conflict within the local system (internal dialectic) and between the local system and external factors (external dialectic) (Davies 1998).

Analysing Fourie's (1993) social change model, it is based on a pluralist conceptualisation of urban Nguni settlements. The model assumes that the primary objectives of land administrators and planners at a particular time may be substantially different to those generally held by the community. Moreover, the objectives of the community are not homogeneous. Firstly in the social change model there is the assumption that a settlement comprises individuals, groups and sub-groups who have conflicting interests and goals. Secondly, it there is the assumption that conflict is inherent and natural in the relationships between different individuals, groups and sub-groups within a settlement and between these entities and external forces such as the local authority or an external hostile interest group. As

different entities strive to maximise their own goals and interests in competing for power, land and resources, so the nature of the tenure rules and practices change. Rules may be established and agreed upon under the auspices of the general community, but in practice these rules are manipulated by certain groups and individuals. The model allows for continually changing group and individual emphases in land tenure. As circumstances change it is likely that the prevailing bias of the tenure system in different geographical and social sectors of a settlement may oscillate between individualisation (fission) and overriding group rights (integration).

As mentioned earlier, the above social change model was developed and tested in the context of informal settlements in South Africa in communities which were predominantly Zulu or Xhosa speaking, and hence it can be assumed that there are tribal influences in the tenure system (e.g. see Cross 1994, 1993 and Byrley and McIntosh 1994). The ensuing discussion will show that aspects of this theory may apply to rural land restitution cases, even when tribal influences are absent.

3. IMPLICATIONS FOR CHANGE AGENTS

Recognising that dialectical structures and processes, fission and integration, and transactional behaviour are the three main forces that shape the land tenure system in a particular case, an external change agent needs to devise approaches according to the dominant culture of the social organisation in a settlement. Drawing on Plant (1989) and Barry and Fourie (2002), there are three categories in which the organisational culture in a land reform case can be assigned. These are 1) democratic, 2) autocratic, and 3) anarchic.

In a democratic culture, there is a common understanding among the various role players in a settlement that the reform or change process holds major collective and individual benefits. Therefore, individuals tend to put less emphasis on personal objectives in place of group objectives. Integration and democracy are distinguishing features of the manner in which decisions are made and implemented. People who are marginalised or disadvantaged by the reform process, or excluded from the benefits of the process are not likely to have sufficient power or influence to undermine the change process.

In a democratic culture, a change agent may safely assume that agreements that are made with the community are likely to hold and not be undermined. It is possible to define a series of projects, with clearly defined deadlines and budgets, to meet the reform or restitution objectives. Moreover, it is reasonable to measure the performance of consultants and change agents against the outputs of these projects, the deadlines, and budgets.

In an autocratic culture, one individual or faction (e.g. a warlord or a gang) holds substantial power in the settlement. The dominant faction employs various methods, perhaps including violence, to coerce people outside of it to comply with their wishes. Fragmentation and autocracy are distinguishing features of decision making and implementation processes and the dominant faction applies divide and rule tactics to maintain its powerful position.

The first issue that a change agent has to consider when dealing with an autocratic culture is the ethics of cooperating and negotiating with the dominant faction. Secondly, caution should be applied when devising to projects to address reform or restitution objectives. The dominant faction may enter into agreements, in the hope of achieving other objectives to those of the change agent, and at some stage manipulate the process for their benefit.

In an anarchic culture, social organisation is fragmented. Everyone participates in decision making, but there is no congruency. Decisions and agreements may be reached, but they are likely to be overturned or under mined. Leadership institutions hold little power, the legitimacy of their decisions may be challenged continually, and groups that may be marginalised by the reform process often hold sufficient power to impede it.

In anarchic situations, large projects with clearly defined objectives and outputs are unlikely to succeed. If the objectives and outputs of a particular project are not universally supported, then the project is likely to be undermined. Ideally, a series of small projects with short term goals of incrementally improving the situation should be implemented. Only when certain conditions are met by the community (e.g. leadership structures hold legitimate power to enter agreements) should funding be released for further projects.

4. ELANDSKLOOF

4.1 History

The Dutch Reformed Church bought the farm Elandskloof in 1861 in order to set up a mission station. The Elandskloof community, which originally comprised remnants of indigenous Khoi communities who lived in the Cedarberg mountains, trace their occupation of the farm and the surrounding mountains to before this time, but they lived on the mission station under the rules set down by the Church (Anderson 1993). In 1900 the state granted a further parcel of surrounding land to the Church. A restrictive clause in the title deed limited the land use to mission purposes. The community assisted in raising the funds for the surveying and transfer costs for this additional portion, and also raised funds to purchase the land through combined efforts with the church. This gave rise to a notion in the community of joint ownership of the farm between the Church and the community, albeit that the land was legally registered in the Church's name (Mayson *et al* 1998). During the apartheid era, the mission was closed, the farm sold and the community evicted in 1962 (Barry and Mayson 2000).

For approximately twenty years preceding the closure of the mission in 1961, there was pressure from individuals in neighbouring communities and from within the Church to close down the mission. From the early 1940's, a number of neighbouring farmers pressurised the Church to sell the farm. Much of this pressure was premised on racial grounds, and further pressure was exerted from 1950 onwards as a number of racially based laws such as the Group Areas Act 41/1950 were promulgated under the apartheid government (Smith and Anderson 1993, Mayson *et al* 1998). Furthermore, elements within the Church complained that the community did not pay its taxes and that the farm was an economic drain on its resources (Smith and Anderson 1993).

As a result of the manipulation of a number of laws, the rights of occupation of those living at Elandskloof as members of a mission community were extinguished in 1962. The Church successfully applied to the State to remove the restrictive clause in the title deed limiting the land use to missionary purposes, which enabled the Church to sell the land to a neighbouring farmer. Although the community had also put in a bid to buy the land, the Group Areas Act prohibited this as in the meantime the farm had been proclaimed a white group area. In response to this situation, the community left the farm *en masse* to march to parliament in Cape Town to petition the government for assistance. However, as a consequence of leaving the farm, in terms of the Group Areas Act 41/1950, it became illegal for the community to return to it except as employees of the farmer (Mayson *et al* 1998).

In 1962 the new owner, a white farmer, evicted the Elandskloof community. This followed a protracted period of negotiation with the Church, the State and the farmer. Moreover, there had been intimidation and harassment by the State and the farmer. Elandskloof leaders had been gaoled, access roads and paths to their lands had been fenced off, and many of their animals died in a fire in mysterious circumstances (Smith and Anderson 1993).

The Elandskloof community and their descendents then dispersed throughout the Western Cape province over the years. Many of the children of community members became professionals and artisans, whilst others remained in the Elandskloof proximity as agricultural workers. The desire to return remained strong, especially amongst a group whom a farmer in a valley neighbouring Elandskloof permitted to “squat” on his farm Allendale after the eviction in 1962.

As substantial social and political changes occurred in South Africa in the 1990’s, a claim was initially submitted to the Advisory Commission on Land Allocation (ACLA), set up in terms of the Abolition of Racially Based Land Measures Act 108/1991. However, this did not come to fruition. With the passing of the Restitution of Land Rights Act 22/1994, the Elandskloof claim was transferred to the Land Claims Commission. On 20 June 1996 a settlement was reached, and using a Community Property Association (Act 28/1996) as the juristic person in whom ownership was registered, legal ownership of the land was transferred to the Elandsklowers on 13 December 1996. Reoccupation of the land did not take place at that time, as the process had yet to be agreed upon by those claiming rights to land in Elandskloof. This has turned out to be a protracted, complex process as reoccupation had not been finalised by July 2000.

4.2 Reconstructing the Community

As a requirement for the formation of the Communal Property Association (CPA), a constitution was adopted in October 1996. In terms of the Constitution, a management committee of nine is elected for two years. The Committee is mandated to adjudicate membership of the CPA, to manage the assets of the Association, to resettle the community, to provide appropriate infrastructure, housing and other social services, and to develop agriculture and other economic opportunities (Mayson *et al* 1998).

Major factors in reconstructing the community, and therefore the Communal Property Association, more than 30 years after the original eviction have been:

- the establishment of a register of who qualifies for land rights (e.g. Who is a member of the Communal Property Association? What is the status of different family members?);
- the definition of the different rights that could be allocated (e.g. rights to a house, rights to a kitchen garden, rights to agricultural land, visitation rights);
- the creation, administration and policing of different rules and regulations for the management of the settlement;
- insufficient arable land to support more than a few families; of the total area of 3100 hectares, less than 10% is suitable for agriculture – the rest is of the farm is mountainous.

In terms of the original Elandskloof Constitution, membership was available to:

- a. those and their direct descendants who were part of the Elandskloof community who were deprived and disadvantaged and who suffered dispossession of rights in land and other assets;
- b. such other persons (non-Elandsklowers) who suffered similar dispossession and that the Committee, in its own discretion, decided could be members of the Association;
- c. those who have a blood or marriage link to those in a) or b) above;
- d. any others that a general community meeting decides can be members as a result of their contribution to the affairs of the community (Legal Resources Centre 1996:6).

Initially there were a number of membership categories:

- those who were dispossessed in 1962;
 - those who left before 1962 as a result of pressure from the Church (people who left prior to the final eviction);
 - those who left before 1962 in order to seek better working conditions;
 - those who were born there;
 - those with family links to any of the above categories
- (Mayson *et al* 1998).

The definition of who qualified to be a member of the CPA and to nature of the rights to which they were entitled became a major source of conflict. In the original ACLA submission, there were a total of 125 families on the register (Surplus People's Project 1993, Smith and Anderson 1993). However, as negotiations progressed, by January 1997 a total of 350 families had placed their names on the Elandskloof register. Clearly there was insufficient land to support even the initial group of 125 families. Moreover, as later discussion will demonstrate, the uncertainty over the status of different individuals and families was a cause of substantial tension, with the result that it was impossible to obtain consensus with respect to the processes and internal rules for reoccupying the land.

Planning and decision making was done by the committee in conjunction with planning consultants (SetPlan) and an NGO (Surplus People's Project), and alternative strategies and decisions were discussed and ratified at general meetings of Elandsklowers. Meetings of all

claimants to Elandskloof membership were held on the site at regular intervals. Many potential members travelled the 200 km from Cape Town and even further afield to attend these meetings.

At the end of 1997, after much conflict and uncertainty, the definition of who qualified for membership was narrowed down to two categories:

- those who were part of the community when they were dispossessed in 1962, and *all* their descendants;
- Those who left Elandskloof before 1962, for whatever reason, but only the people who left are entitled to membership - inheritance has to be to a single person e.g. from a father to one daughter or son, thus not all the descendants in this category can obtain membership (Community meeting minutes, 13 December 1997).

However, even then the number of members was too large to be supported as farmers at Elandskloof. Moreover, by June 2001 membership had not been finalised and there was still uncertainty over the validity of the register.

The issue of space was addressed in that a village layout was agreed to through the process of mass meetings and set out by land surveyors in 1997. In a later agreement, some of the families intimated that they wished to return to the parts of the farm that they or their forefathers had occupied – the 58 “historical outposts”. In the interim a group of people, mostly from the Allendale settlement, had returned to Elandskloof and occupied land in part of the farm before the tenure arrangements had been finalised.

5. SOCIAL CHANGE CHARACTERISTICS

A number of characteristics of the social change model were observed in Elandskloof.

Aspects of fission and integration were evident to an extent. Groups were formed according to family ties, the geographic areas in which people lived (e.g. Allendale), class – there were agricultural workers and middle class professional people in the membership, and political affiliations. To an extent the “membership” of these groups changed over time. One small, but very vocal and powerful, group was formed on the premise of representing those who were actually evicted in 1962. This group, (for convenience referred to as the “*Lydende Party*” – *the group that suffered most*) asserted that only those who were actually evicted in 1962 qualified for membership (Mayson *et al* 1998).

Internal competition and inter-dependence between various power levels and sub-groups within the community were evident, and there was competition for land, resources and power. Major conflicts arose over membership, the legitimacy of the committee, the legitimacy of the decision-making processes, and the status of certain individuals at general meetings. Many decisions that were ratified at general meetings were challenged and ultimately certain groups chose to ignore them with the result that for practical purposes the decisions were informally overturned. For example members of the *Lydende Party* regularly challenged a number of decisions on the basis that the decisions had been supported by people who did not

fall into their narrow definition of Elandskloof membership. The relationship between the *Lydende Party* and other broader groupings of Elandsklowers was complex and was further complicated by family feuds. The *Lydende Party* vehemently opposed the committee chairperson partly as a consequence to longstanding family feuds. Discussions regarding the eligibility for membership often revolved not around the merits of different positions but rather who was putting forward a particular position. Most Elandsklowers are genealogically linked, but limiting whom was eligible to be an Elandsklower means that some family members were excluded from Elandskloof. Furthermore, the shifting definition of an Elandsklower included and later excluded certain individuals from the register. This strained family relationships, especially those of Committee members when unpopular decisions had to be made. Moreover, some of those who were excluded in this manner had been encouraged to become members and had invested time and money in the process (Mayson *et al* 1998).

By 2002, only a small proportion of the 350 families had settled on the Elandskloof farm. Moreover, the register of members of the Elandskloof community and their rights had not been established and the committee still struggled to arrive at decisions that were regarded as legitimate.

Transactional behaviour occurred in that tenure rules that had been generally agreed upon were manipulated by sub-groups as they competed for land, resources and power. Therefore, the rules were not static but were subject to change and as stated above some policies and strategies that had been ratified in general meetings were informally overturned. For example, a critical decision regarding the layout of the settlement area of the farm was made at a community meeting. A layout of residential parcels was planned, demarcated and surveyed at substantial expense in accordance with a decision taken at a general meeting in February 1997. Four months later, after the sites had been handed over for inspection and allocation, the validity of the decision was questioned, a general meeting disrupted and the process of delivery of Elandskloof delayed (Elandskloof community meeting minutes - 22-23 February 1997, 12 July 1997, 26 July 1997). By 2002, very few of the formally surveyed sites had been occupied, at least not in accordance with the formally demarcated boundaries. The layout had been rejected by a number of people and occupation tended to be at the 58 “historical outposts”, which did not have sufficient space for all community members. Very few members who resided outside the Elandskloof vicinity had returned to live at Elandskloof. Occupation of the land was sporadic, unplanned and based on an informal system of negotiation. One individual had fenced off approximately five hectares in disregard of agreements made at general meetings. Tenure rules were established through democratic processes from time to time, but these were often ignored and they were difficult to enforce. There were calls from a number of community members for title to be granted in individual ownership, although this was impossible.

The situation was exacerbated by forces in the external dialectic. After elections in 1999, a new Minister of Land Affairs was appointed and there was a change in emphasis in land tenure policy. This was to the disadvantage of Elandskloof. Moreover, there were numerous changes in government institutions and personnel who were responsible for Elandskloof, with the result that promises that had been made to the Elandskloof community were not kept. Unfulfilled expectations resulted in anger and frustration in the dealings with the authorities.

Moreover, a number of Elandsklowers had become embroiled in disputes over boundaries and rights to wild flowers and herbs in the surrounding mountains.

6. CONCLUDING REMARKS

The Elandskloof case has shown that there are similar social dynamics to those of urban informal settlements in South Africa. Moreover, the culture of the situation can be categorised as anarchic as projects to address the land restitution objectives, such as the layout of a village, did not produce the desired results.

During the restitution process, the Elandskloof community has been characterised by both solidarity and schisms. The community was prepared to act in unison to gain restitution of land rights that they had lost thirty years previously. Once this goal had been achieved in principle, tensions between different groups and sub-groups surfaced. Moreover, the power and legitimacy of the CPA Committee was limited and the rules relating to membership and land tenure were not static. There was not enough land to support all the people who were interested in returning to Elandskloof, and options other than farming had to be developed over time. Consequently, formal rules and agreements were overturned and manipulated to the advantage of certain individuals and sub-groups to the extent that the formal decision making and regulatory system was substituted by a system of continually changing informal arrangements.

The case has demonstrated a number of the problems, limitations and frustrations of participatory development. When it is necessary to reconstruct a community, it is difficult to arrive at a set of clear, coherent objectives for a settlement. Seemingly unimportant issues can undermine and delay the process of resettling the community.

The lesson for land administrators, planners and others who might intervene and strive to manage the process of reconstructing such a community is that, as is often the case with informal settlements, the power of outsiders to manage and control the process may be limited. The internal dynamics of a community are likely to change continually and the process of settling people on the land is a long, complex process and the final outcome may not be what outside actors originally envisaged. The social change model of land tenure in informal settlements provides a useful framework for land administrators to understand the conflict inherent in competition for power, land and resources, and the continual changing social interrelationships in rural restitution cases such as Elandskloof, and to intervene accordingly.

Elandskloof also provides lessons for land reform policy formulation and implementation. In cases where a major social, political and economic transition such as is taking place in South Africa occurs, land restitution should take place within a clearly defined vision and set of objectives relating to what the “reformed” landscape should look like in the long term. In the case of Elandskloof, there was pressure on government to show rapid tangible results in the land restitution programme and strong pressure from the Elandskloof community to have their land restored to them as soon as possible. Hence Elandskloof was transferred to the CPA at an early stage, in spite of the anarchic culture of the situation. Ideally, eligibility for

membership and the verification thereof should have been established prior to the process of resettlement commencing. However, in the case of Elandskloof the dynamics of the fledgling democracy and the desperation of the community to regain access to the land meant that this has had to be resolved over a long time. Moreover, a hasty attempt to fit a community that has grown by two generations, and diversified in terms of class and outlook, into the original land that they lost is extremely complex and generally inadvisable. A range of options have to be made available to restitution claimants, which goes beyond only being able to claim exactly what they had lost. In general such options could include financial compensation and a variety of occupation rights (e.g. residential rights without access to agricultural land).

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ACKNOWLEDGEMENTS

This work was part of a group of projects that were partially supported by the University of Cape Town's Research Committee and South Africa's National Research Foundation.

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David Mayson (M.SocSci) works in a land reform non-governmental organisation, Surplus People Project in Cape Town. He has worked with land reform related activities for 14 years in implementing land reform with specific communities and groups, conducting research and developing policy. He currently coordinates the research and lobbying in SPP and manages the land reform implementation projects in the Hantam Karoo area, South Africa. His main interests are developing sustainable communal land tenure systems, building cooperative and collective businesses amongst small-scale farmers and seeking broader mechanisms for land reform.