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JOHN LANGALIBALELE DUBE MEMORIAL LECTURE

'Violence on Land, Violence Through Women's Bodies: Evoking John Langalibalele Dube's Voice in Contemporary Debates'

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Introduction

I would like to express gratitude to the College of Human Sciences at UKZN, more specifically the School of Education; the School of Religion, Philosophy and Classics that form part of the College; as well as the Dr J L Dube Institute Humanitarian and Development Praxis for the invitation to deliver the 2017 John Langalibalele Dube Memorial Lecture.

It is an honour for me to speak here tonight at my alma mater, the University of KwaZulu-Natal, the institution at which I undertook all my local higher education qualifications, namely BLIS; LLB and LLM. It was also at this glorious institution that I started my formal career, serving as a Street Law coordinator at the Centre for Socio-Legal Studies before becoming Junior Lecturer in the Public Law Department. It pleases me a great deal to continue to collaborate with the Dr J L Dube Institute, which hosted the Land Colloquium in collaboration with the College of Human Sciences here at the University of KwaZulu-Natal in February 2017. I wish to acknowledge those with whom I served on the J L Dube Institute's High-Level Research Panel on Land, led by Former Chief Justice Sandile Ngcobo.

¹ Dr Maureen Tong has worked in and published in the areas of land rights and gender for several years. She has previously served as a Member of the J L Dube Institute High Level Research Panel on Land; as the first COO at the Department of Rural Development and Land Reform; as Chief of Staff in the then Ministry for Agriculture and Land Affairs; and as Deputy Director in the Legal and Policy Unit of the Office of the Chief Land Claims Commissioner. Her PhD from the Université de Strasbourg in France, a study on the rights of the people of the Chagos Islands who were forcibly removed from their homeland to establish a military base for the United States on Diego Garcia, focuses on foreign policy; militarization; international relations; political decolonization; rights of indigenous peoples; restitution and reparations. On 1 December 2018 she was appointed as the Special Advisor to the Presidential Advisory Panel on Land and Agriculture.

I feel privileged to participate in this event, honouring the legacy of a great South African social entrepreneur; an educational and political leader whose work was underpinned by his faith.

It is significant that the Memorial Lecture is co-hosted by the School of Religion, Philosophy and Classics. Reverend John Langalibalele Dube was born on 22 February 1871 at the Inanda Mission Station where his grandmother, Dalitha MaShangase Dube was the first Christian convert. His father Reverend James Dube, was also a theologian. John Dube attended school at the Linden Mission Station ran by the American Zulu Mission. He studied theology at the Union Missionary Training Institute in Brooklyn in the United States of America (USA) and was ordained as a priest by the Congregational Church in March 1899, later returning to work as a church minister in South Africa.

Research conducted by Prof Cherif Keita from Carleton College in Minnesota has shown that Reverend William Cullen Wilcox (1850-1928) and his wife Ida Bella Wilcox (1858-1940) played a pivotal role in facilitating Dube's initial travel to the USA in 1887. Dube returned for two other visits to the USA accompanied by his wife Nokutela Mdimba Dube. From 1886 – 1887 John Dube worked as a cleaner at Oberlin College, where Reverend William Wilcox taught. Dube later enrolled as a student at Oberlin College from 1888 to 1890. His deteriorating health made him to return to South Africa before completing his studies. When he established the first African language newspaper, *Ilanga lase Natal* in 1903, Dube used the editing and publishing skills he acquired while working with Reverend Wilcox when the latter was a pastor in New York. Dube also lectured in the USA while on tour with Reverend Wilcox. The Christian faith shaped the work that Dube did, he later served as an ordained minister.

It is Important for Legacy Projects to Acknowledge the Role of Women

Honouring the legacy of John Langalibalele Dube is incomplete without also paying tribute to his first wife Nokutela Mdimba Dube. The year 2017 marks the centenary of her death on 25 January 1917 at the age of 44. It was a function of the system of patriarchy that Nokutela Mdimba Dube's significant contribution to the liberation struggle in South Africa had until recently been airbrushed out of history. Mama Nokutela Dube was an equal contributor, sometimes much more, to many of the achievements that have been recorded as the legacy of John Dube alone. It would therefore be remiss of me to honour Reverend Dr John Dube without at the same time honouring Mama Nokutela Dube. We also acknowledge his second wife, who outlived him by several years and who worked very hard to preserve his legacy for many years before her passing.

Memorializing those who have made a great contribution in our society is a worthy undertaking. It helps to ensure that future generations appreciate where we have come from as a society; develop a greater understanding of the challenges we have faced; and equips them to work towards a better future for our country. Legacy work and memorial lectures such as today's one requires that meticulous research be undertaken to unearth nuances that may not always be obvious in the study of the subject matter.

I have had the privilege of being associated with the establishment of the Thabo Mbeki Presidential Library; which does not focus only on President Thabo Mbeki but uses his life and times to tell the much bigger story of the history of the African liberation struggle from colonialism, apartheid and oppression. That history is strongly intertwined with the history of the African National Congress (ANC), the oldest liberation movement in Africa, whose predecessor is the South African Native National Congress (SANNC), which was formed on 8 January 1912. Reverend Dr John Langalibalele Dube served as the Founding President of the SANNC. Mrs Nokutela Mdimma Dube is hardly ever mentioned in relation to the formation of the SAANC.

While she may not have formally held membership of the SAANC because women were not yet allowed to be admitted into full membership of the organization, Nokutela Dube played an important role at the inaugural meeting of 8 January 1912. For example, she trained the choir that performed *Nkosi Sikelel'iAfrica*, composed by Enoch Sontonga. The SANNC adopted the hymn *Nkosi Sikelel'iAfrica* as the official anthem of the SANNC at the end of that historic meeting of 8 January 1912. The ANC adopted it as its national anthem and it was subsequently adopted by other liberation movements in Africa.

Nokutela Mdimma Dube – Her Manner was Grace itself

When she died in 1917, Mama Dube was buried in an unmarked grave in Brixton, Johannesburg which was simply as recorded CK9763, the letter CK denoting that she was a Christina Kaffir, as was the government practice at the time of her death. Her grave was only identified in 2011 and a tombstone erected in her honour in 2013 after the dedicated research work undertaken by Prof Cherif Keita of Carleton University in Minnesota. Mama Dube was posthumously awarded the Order of Baobab in Gold in April 2017.

As pointed out by Prof Cheryl Potgieter at the Land Summit in February 2017, part of the reason that Nokutela Dube remained unacknowledged for almost a century is because she did not

have children and because she had left her husband after he bore a child out of wedlock with a student at the Ohlange Institute, an educational institution they both established and at which she taught. The requirement that women should bear children before they can be recognized as ‘complete women’ meant that Reverend John Dube was forgiven for bearing a child with another woman while he was married to Nokutela Dube. This was despite the fact that he was an ordained church minister who eschewed the practices of his ‘heathren’ fellow Africans who were non-convents to Christianity. The situation presented a clash between culture and religion. Patriarchy led to Reverend Dube being excused for his behaviour while his wife was, ‘excommunicated’ for leaving him as a result of his conduct. This was notwithstanding the fact that his conduct was inconsistent with the values of the Christian religion.

Who was Nokutela Mdimba Dube?

Mama Nokutela Mdimba Dube was born in 1873 and studied at Inanda Seminary. She was working as a teacher when she met and married John Dube at Inanda church in 1894. She was therefore already a professional woman when she met her husband, a rare occurrence in those days. Her achievements were way ahead of the time: she was a singer; a seamstress; an educator; a published author; a founder and builder of institutions and international partnerships. She was also a fund raiser who travelled the world in the late 19th century when very few among the privileged white men and women at the time could achieve such a feat. She studied music and home economics in the United States of America.

In 1911, Mama Nokutela Dube co-authored with her husband a Zulu Song Book titled *Amagama Abantu*, which is regarded as a landmark in the development of Zulu choral music. To his credit, John Dube acknowledged her contribution for the music in the book. Apart from popularizing *Nkosi Sikelel’iAfrica*, her singing talent helped to raise funds for the Ohlange Institute - she sang in the United States as part of the joint fund-raising campaign with her husband. She was instrumental in shaping the curriculum at Ohlange Institute and was part of the faculty.

Ironically, while she remained ‘invisible’ in South African history for more than a century, Nokutela Dube was acknowledged in the press in the United States of America. For example, in 1899 she appeared in an article of the *New York Sun* entitled, “Ideas of a Zulu Woman: Customs of the Savage State which she prefers to Civilization.” That article says many American reporters were curious to meet an educated Zulu woman who spoke English fluently. They were especially surprised that she “has ideas about American civilization,” which she compared

rather unfavourably to African civilization, pointing out that she preferred to return to Africa. Cherif Keita quotes Nokutela Dube in the article as saying:

“I will tell you why we are here... We do not want to teach [our people] all your civilization, only enough to better their condition, not to make them unnatural or unhappy. The Zulus are not dull. They are intelligent, but they do not know how to do things for themselves. They think it is only white men who can make houses and cities. The women attend to the business and they do all the labor. They dig the ground and plant the crops, build the huts for storing them, and do all the heavy work.”

It must have indeed confounded the American newspaper reporters that the ‘savage’ Nokutela Dube, as they called her, would prefer to return to Africa. She was a novelty to them; she represented something exotic. In those days Africa was to an average westerner, an unknown and mysterious place, perceived to be the dark continent. It is interesting to note that many westerners still hold that view. Those of us who believe in the renaissance of the African continent hold the view however that Africa may yet claim the 21st century.

Mama Nokutela Dube was proud of her heritage; she was very proud of where she came from and understood that she was in the United States of America only for the purposes of leveraging support for her and her husband’s vision for their community and the continent. She believed that Africa could claim her place amongst the community of nations.

After encountering and interacting with her a few more times, *The LA Times* edition of 13 January 1899, came to the following conclusion about Mama Nokutela Dube:

“Nokutela is young with blazing black eyes, smooth brown skin and handsome regular features. She speaks English with a deliberation that is charming and in the softest voice in the world. Her manner is grace itself.”

Her tombstone, erected in 2013, is inscribed with these words: ‘her manner is grace itself.’ The symbolic violence visited upon Nokutela Dube - being excommunicated; being buried in an unmarked grave; and being forgotten until about 2011 – was because she was a woman who did not follow the ‘script’ that women are expected to follow. She was a trailblazer; her ideas were way ahead of her time. It must have taken a lot of courage for Nokutela Dube to take a strong stance against racism and gender discrimination in the late 1800s and early 1900s. Her courage is in line with the motto of the International Women’s Day on 8 March 2017: ‘Be Bold For Change.’ It implores those who seek to make a difference with regard to gender relations, to be bold in the steps that they take. The struggle for gender equality indeed requires boldness.

Reflecting on what happened to the legacy of Nokutela Dube; it is my hope that the Thabo Mbeki Presidential Library, once the digitization of its records has been completed; properly collated and arranged in a user-friendly manner, will showcase Mrs Zanele Mbeki's contribution to our society in a meaningful manner. It is my hope that her legacy will not suffer the same fate as that of Nokutela Dube.

John Langalibalele Dube, the Industrialist, Political Leader and Educational Leader

Reverend Dr John Dube was associated with the formation of the National Native Convention in July 1900; which was also the year in which the First Pan African Congress took place on 23 – 25 July 1900 in London. The Pan African Congress was organized by the lawyer from Trinidad and Tobago, Henry Sylvester Williams. After the Congress in 1900, Henry Sylvester Williams chose South Africa as his new home and became the first black African lawyer called to the Bar - the professional body for advocates - at the Cape Colony in 1903.

Those who delivered papers at that First Pan African Congress in 1900 include W E B Du Bois; George James Christian; John E. Quinlan; Anna H Jones and Anna J Cooper. It is important to mention the names of the last two speakers because the participation of women at the Congress is often ignored, airbrushed out of history.

John Dube greatly admired Booker T Washington's ideas about industrial education and self-sufficiency as prerequisites for African Americans' liberation. This profoundly influenced Dube to establish the Zulu Christian Industrial Institute in 1900, which was renamed the Ohlange Institute in 1903 and still operates today as the Ohlange High School. Dube and Washington were inspired by the 'learning and labour' motto of Oberlin College where Dube's benefactor, Reverend William Cullen Wilcox (1850-1928) taught. This approach encouraged providing Africans and African Americans with formal education coupled with industrial education.

'Mafukuzela' as John Dube came to be known, worked tirelessly to ensure the success of the Ohlange Institute. Like Booker T Washington; Dube was not averse to rolling up his sleeves and get physically involved in building the structures of his new school. Ohlange Institute became an iconic institution – it produced the likes of the first black African recipient of the Nobel Peace Prize, Chief Albert Luthuli, and the former Deputy President of South Africa and current Executive Director of UN Women, Dr Phumzile Mlambo- Ngcuka. This speaks to Dube's vision and durability of his initiatives. He was a published author and established a newspaper and

developed a printing press – in the 1880s! It is perhaps an indictment on subsequent African generations that we have not emulated Dube’s life and examples. How many independent and respected black African-owned newspaper exist today?

The Ohlange Institute was modelled along very similar lines to those of the Tuskegee Normal School for Coloured Teachers established by Booker T Washington in Alabama in the United States on 4 July 1881 and later renamed Tuskegee Institute; it currently operates as the Tuskegee University. Both Dube and Washington were able to leverage the considerable wealth of their American friends and associates to fund their ambitious projects of building institutions aimed at improving the lot of their communities.

Zulu Industrial Improvement Company helped Africans buy land

Dube established the Zulu Industrial Improvement Company in 1910 as a shareholding company that gave the African Christian community called “*amakholwa*” the economic power to purchase land and acquire title deeds that protected them from dispossession by then colonists and later the apartheid government.

Reverend William Wilcox and his wife Ida Bella Wilcox used their influence to assist Dube and his followers to purchase two farms, Cornfields and Thembelihle and to hold title deeds, which was rare in those days. The Cornfields and Thembelihle communities were able to use these title deeds to resist the forcible removals that were implemented as part of the Group Areas Act aimed at social reengineering on a grand scale. The community still own hold those title deeds until today, yet another example of the durability of Dube’s ideas.

The *amakholwa* communities, who rose to prominence during the John and Nokutela Dube era continue to operate outside of the traditional leadership system. They continue to resist being brought within the purview of the Traditional Leadership and Governance Framework Act 41 of 2003 that established the Commission on Traditional Leadership Disputes and Claims, whose task is to restore the lineage of traditional leadership. This task implies the end of the *amakholwa* system of leadership and the de-establishment of their communities and to bring them under jurisdiction of traditional leaders in the areas where the land is situated.

Given the fierce resistance to the Traditional Courts Bill and Communal Land Rights Act (CLARA), which was later declared unconstitutional by the Constitutional Court, it is not surprising that the *amakholwa* communities would prefer to opt out of the system of traditional leadership on communal land. It would be interesting to know what John Dube

would have thought about CLARA and the Traditional Courts Bill, given his notion about religion and tradition on the one hand and his passion for developing Africa self-sufficiency through acquisition of land in freehold title on the other. It is not surprising that the Thembelihle and Cornfields communities continue to resist any attempt to incorporate them under CLARA or the Ingonyama Trust Land Act.

While Dube formed part of the delegation to the United Kingdom to petition against the colonial administration's land policy, he did not support the Bambatha Rebellion of 1906. His approach was based on his anxiety that the Rebellion would provide an excuse to the colonialists to grab more land from Africans. Dube was later removed as President of the SAANC because of his perceived soft stance on segregation and racism. However, he continued to support African struggles through his newspaper, *Ilanga la se Natali*, which was published in several African languages before being published exclusively in isiZulu. Like Nokutela, John Dube was way ahead of his time in terms of his ideas and initiatives.

Rights of indigenous people to self-determination; return of land; and territory

The African liberation struggle, which John and Nokutela Dube were part of, was essentially a struggle against colonialism. It was a struggle the indigenous African people waged for the return of their land, territories and restoration of African identity and dignity.

Colonial expansion in Africa was achieved through conquest and settlement of the land of the indigenous people. The concept of *terra nullius* – meaning land belonging to no one – was used to conquer the land of the indigenous population if it was not yet settled by a colonial power. In 1975 the International Court of Justice (ICJ) rejected the concept of *terra nullius* in the case of *Western Sahara* on the grounds that it was racist. This concept is no longer part of our customary international law; however, its legacy remains.

The Organization of African Unity (OAU), founded in 1963 was established primarily to ensure the end of colonialism and to assist non-self-governing African peoples and States to attain self-determination. The African Union replaced the OAU in 2001. While most of African States have now attained political independence; including Namibian independence from South Africa in 1990 and South African independence from white minority rule in 1994; both Namibia and South Africa are yet to implement significant land reform programmes.

Less than 10% of land has been delivered in terms of the land reform programme in South Africa. The land in both countries is still held largely by the white minority. True self – determination by the indigenous population in Namibia and South Africa means that ownership of land and natural resources should be held by the indigenous majority population. The self-sufficiency that Dube espoused has not yet been attained.

South Africa could use the concept of aboriginal title or treaty rights as done in Canada, Australia and New Zealand or to recognize claims by indigenous people for land and natural resources in their territories which they had lost as a result of the application of the concept of *terra nullius*. Aboriginal title recognizes the ‘title’ that indigenous communities have held to land since ‘time immemorial.’

The landmark Australian case of *Mabo v Queensland (no 2)* [1992] 175 CLR 1 (Australia) has since discredited this concept of *terra nullius* as a legal fiction based on racist attitudes towards the rights of aboriginal people and their legal system of land tenure. This case has since been followed in other jurisdictions, for example in the Canadian case of *Delgamuukw v British Columbia* [1997] 153 DLR [4th] 193 (Canada). The concept of aboriginal title in Canada and Australia recognises that indigenous people have title to land and natural resources that remains intact until expressly extinguished by the State.

Coming closer to home, the Supreme Court of Appeal (SCA) decided in the case of *Richtersveld Community and Others v Alexkor Ltd and Another* 2003 (6) BCLR 583 (SCA) that denial of the land rights of the Richtersveld Community, who had been in exclusive possession of their land prior to its annexation by the British Crown in 1847 was unlawful. This was because the annexation of Richtersveld was based on the racist concept of *terra nullius*, which regarded the Richtersveld community as uncivilised. The Richtersveld community was comprised mainly of the Khoi and Nama people

The Supreme Court found that when diamonds were discovered in the area during the 1920's the State had ignored the Richtersveld community's rights, regarding their land as Crown or state land. The State had dispossessed the community of their rights in the land. This culminated in the grant of full ownership of the land to Alexkor Ltd, a 100% state-owned diamond company. The Constitutional Court case of *Alexkor Ltd and Another v Richtersveld Community* 2004 (5) SA 460 (CC) supported the decision of the Supreme Court. It said that the Richtersveld community had practised an indigenous system of land tenure through which they had held land in the area. They therefore had title to the land for which they could claims restitution.

While this decision was made in 2004, the Richtersveld community is yet to have mineral rights which they were granted as part of the judgement. A golden opportunity continues to be missed by the Commission on Restitution of Land Rights (Land Claims Commission) to settle pre-1913 claims. Part of the difficulty is the fact the cut-off date for submitting claims passed on 31 December 1996. Recent attempts to amend the Restitution Act to allow for pre-1913 claims came to not much when the Constitutional Court declared the Restitution Act Amendment Bill unconstitutional on account of lack of proper consultation. It is hoped that the Commission will address this matter and resubmit the Bill to parliament for approval.

Africans, Land and Spirituality

Africans attach far more significance to land than just having access to and ownership of the land. The Inter-American Court of Human Rights led the way on the rights of indigenous people through its 2001 decision in the *Mayagna Summo Community v Columbia*.

The 2010 decision of the African Commission on Human and Peoples' Rights in *Endorois Welfare Council v Kenya 276/2003* is the most significant decision of the African Commission regarding the concept of 'peoples' and peoples' right to development. The Endorois people were displaced from their ancestral land to make way for a nature reserve. They approached the African Commission for restoration of their ancestral lands. They also demanded adequate compensation from the government of Kenya for the loss of their property; the disruption of the community's pastoral way of life; violations of their right to practise their religion and culture; and a violation of their right to development. In an unprecedented decision, the African Commission recognised the Endorois community as an indigenous people of Lake Bogoria in the Rift Valley Province in Kenya who consider themselves to be a distinct people, sharing a common history; culture; and religion. The African Commission said the Endorois people should therefore benefit from provisions of the African Charter on Human and Peoples Rights that protects collective rights. These rights include access to land; ability to observe and practice their culture and religion on their land and being compensated for the loss suffered as a result of government action.

In 2007 the United Nations adopted the Declaration on the Rights of Indigenous people to self-determination and self-government. The African Commission on Human and Peoples' Rights noted the United Nations Declaration and adopted its own Document on Indigenous Populations and Communities in Africa.

Aboriginal, Native or First Nation communities in the so-called CANZUS countries, namely Canada; Australia; New Zealand and the United States continue to resist large-scale developmental projects on their lands which damage the environment and threaten their way of life. In the Americas – Canada, United States and Latin America - extreme violence was visited upon the indigenous (Indian) people to dispossess them of the territory of both the North and South America – relegating them to live in the semi- arid reserves/reservations setting aside much of the territories for Anglo- Saxon; Spaniards and Portuguese settlers.

Land Dispossession in South Africa was Violent

The implementation of the Natives Land Act 27 of 1913 resulted in the indigenous majority population in South Africa having access to only 13% of the land while the white minority reserved for itself access and ownership of 87 % of the total land mass of South Africa. The 1913 Act initially set aside only 8 % of the land to Africans, the increase to 13 % was only made after the Beaumont Commission’s recommendations and the enactment of the Natives Trust and Development Act of 1936. For political reasons, the date of 19 June 1913, the date the Natives Land Act 27 of 1913 became law, was decided as the cut off point for recognition of restitution claims and included in section 25(7) of the Constitution of the Republic of South Africa Act 108 of 1996 and the Restitution of Land Rights Act 22 of 1994.

Land dispossession in South Africa pre-dates 19 June 1913, the date on which the Natives Land Act 27 of 1913 was passed 105 years ago. The year 1652 is generally regarded by many as the appropriate point of reference regarding land dispossession in South Africa because that was when the Dutch merchants first landed at the Cape of Good Hope.

Land dispossession in South Africa was very violent. Several wars of land dispossession were led primarily by African traditional leaders, including the Bambatha Rebellion of 1906, to push back colonial expansion in South Africa. Apart from the wars of land dispossession, colonial concepts like *terra nullius* and apartheid policies such as the Group Areas Act; Bantustan Consolidation; Urban Influx Control; etc., ensured that Africans were not only dispossessed of land but were rendered unskilled and impoverished to provide cheap and abundant labour on the farms and the mines which were and remain the mainstay of the economy.

The J L Dube Institute argues that since most of land had already been dispossessed by 1913, using this date as a cut off point for recognizing restitution land claims is therefore unjust. The Executive Director of the J L Dube, Thandi Ngcobo and the historian, Prof Jabulani Maphalala who served on the High-Level Research Panel on Land, point out that research shows that

many wars of land dispossession in South Africa happened long before the passing of the Natives Land Act 27 of 1913, on which the year 1913 as a cut – off point for validity of claims is based.

The history of John and Nokutela Dube is a history of resistance against land dispossession in South Africa, which was a very violent history. The Khoikhoi and the San in the Cape Colony were the first to be dispossessed of land and taking part in wars of land dispossession. The 100-year war from 1778 – 1878 in the Eastern Cape led to Xhosas losing a large chunk of their land. The Bloemfontein Convention signed in 1854 allowed the British colonial administration to grant the whole of the then colony of the Orange Free State to the Boers, leading to the Boers driving Africans to arid and mountainous lands. The displaced Barolong and Basotho were reduced to becoming labour tenants or squatters. Africans were not allowed to buy land outside of the Native Reserves (locations) of QwaQwa and Thaba Nchu. The Orange Free State strictly enforced the Squatters Act 21 of 1895 to restrict the number of Africans on Europeans farms.

The South African Republic (the former colony/province of Transvaal) comprised the present-day Limpopo; Northwest; Gauteng and parts of Mpumalanga. The Sand River Convention signed between the British and the Boers allocated the Boers all land north of the Vaal River. Africans living on the land were declared labour tenants who had an obligation to work for the land owners for free and to pay hut tax. Law 4 of 1885 established the institution of Native Commissioners who regulated the lives of Africans regarding matters of land holding, allocation and management, labour rights, civil rights and private law. The Squatters Act 11 of 1887 prohibited Africans from buying or renting land.

In the former colony of Natal, Piet Retief led an invasion that led to the Battle of Ncome (Bloodriver) on 16 December 1838, the day is currently commemorated as the Day of Reconciliation. In 1845 the British colonial administration declared the Colony of Natal as the territory north of Thukela and Mzimvubu Rivers, which was part of the Zulu Kingdom. Africans were given 12 million acres of arid, rugged and mountainous land. Europeans were given 5 – 6 million acres of land without any payment. Martin West established the Land Boundary Commission in 1846.

The native reserves, which were placed under the administration of the Natal Native Trust in 1864, were overcrowded and not suitable for commercial agriculture. The deeds to the native reserves were first issued in 1875. The Zulu kingdom north of Thukela River continued as sovereign kingdoms under King Mpande (1840 – 1872) and King Cetshwayo (1873 – 1879). The

British colonial administration annexed the land in July 1887 under King Dinizulu kaCetshwayo (1884 – 1913) and exiled him to St Helena in 1887. It then annexed what was left of Zululand thereafter. The J L Dube uses this history to argue that for the scrapping of 19 June 1913 as a cut-off point for recognizing land claims.

Violence on Land, Violence against Women's Bodies

Violence on The Land, Violence on Our Bodies - Building an Indigenous Response to Environmental Violence, A partnership of Women's Earth Alliance and Native Youth Sexual Health Network argues that indigenous communities have long recognized the connection between people and land. It notes that this is expressed through creating stories, ceremonies, and traditional kinship and governance systems. It says many women and young people continue to stand strong against the estrangement of the land/body connection despite colonization, forced removal, and continued land dispossession's attempts to stifle or altogether sever this altogether. It notes that violence on the environment is tantamount to violence on the bodies of indigenous women because what happens to the land and the environment around indigenous people, whether good or bad, also happens to their bodies and to their communities.

Ned Blackhawk's book, *Violence over the Land: Indians and Empires in the Early American West* positions the living narrative of the American continent as not beginning with the arrival of three European ships in 1492; not with conquistadors or soldiers and missionaries; but rather as far back to a time before recorded history. The book shows how European violence and the attempts by native or 'Indian' peoples to adjust to it shaped their histories and social organizations. Some African authors have argued that pre-colonial African society treated women in a more egalitarian manner compared to the post-colonial era. This implies that the relegation of the status of African women in post-colonial African society is partly a consequence of adjusting to colonialism. The jury is still out on the probable veracity of this statement. What is clear however is that women's rights in land remain one of the most important arenas of social, economic and political contestation in post-colonial Africa.

The Constitutional democracy that was heralded in 1994 in South Africa has elevated the status of women, at least formally and in law. Several government policies and programmes are targeted at improving the status of women. Middle class women have largely benefitted from these developments. Poor rural women with whom Nokutela Dube was concerned have benefitted less from the new dispensation. Their ability to exercise rights in land continue to be

circumvented by the traditional leadership system that does not respect the rights of women. Studies have shown a correlation between women's economic status and their vulnerability to domestic violence and other forms of abuse.

The Land Reform Programme

The issue of whether to protect property rights in the Constitution was hotly debated during the drafting the 1996 Constitution for the democratic South Africa. There were serious concerns that the protection of property rights might impede the much-needed land reform programme and possibly lead to a constitutional crisis. Case studies from the United States during the President Franklin Roosevelt's New Deal policies and the 1950s land reform programme in India pointed to the possibility of a protracted battle between the legislature and the courts regarding the protection of property rights on the one hand and the need for land reform on the other.

It was therefore decided to balance the protection of property rights with giving the State the constitutional power to implement land reform in post - 1994 South Africa. Section 25, the property rights clause in the Constitution of the Republic of South Africa Act 108 of 1996, is contained in the Bill of Rights. This has elevated the right to property to a constitutionally protected human right while at the same time setting out the framework within which land and tenure reform is to take place. The State is obliged to implement land reform by:

- a) creating an enabling environment within which land redistribution can take place;
- b) granting security of tenure to individuals or communities whose tenure is insecure on account of past racially discriminatory laws or practices; and
- c) restitution of rights in land to communities or individuals who were dispossessed of rights in land as a result of past racially discriminatory laws or practices.

Section 25 provides a framework for the: (a) Redistribution of Land; (b) Land Tenure Reform; (c) Restitution of Land Rights. Section 25(8) also talks about water reform.

Section 25(1) states that: 'no one may be deprived of property except by a law of general application and no law may permit arbitrary deprivation of property.' Examples of deprivation of property are zoning laws that may interfere with the way a person exercises their property rights but the property is not taken away. Compensation is usually not payable in such

situations. Section 25(2) provides for expropriation of land for public purposes or public interest, subject to the payment of compensation, ‘the amount of which and time and manner of payment of which have either been agreed by those affected or approved by a court.’

Apparently aimed at insulating the land and tenure reform legislation and policies from possible constitutional attack, section 25(4) settles this question by stating unequivocally that: “Public interest includes the nation’s commitment to land reform and reforms to bring about equitable access to South Africa’s natural resource.”

One of the most contested aspects of land reform is whether current land owners should be paid compensation for their land when it is acquired by the State for land reform purposes. Some political parties, notably the Economic Freedom Fighters (EFF) and more recently the ANC Women’s League have called for expropriation without compensation.

It is true that the cost of buying land for land reform purposes has become exorbitantly expensive. The willing buyer willing seller policy is one of the contributing factors.

Section 25 (3) regulates how compensation for expropriation is to be determined. It states:

The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interest of those affected, having regard to all relevant circumstances, including-

- (a) Current use of the property;
- (b) The history of the acquisition of the property;
- (c) The market value of the property;
- (d) The extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- (e) The purpose of the expropriation.

Section 25(5) requires the State to 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.’ The redistribution programme is implemented in pursuance of this clause.

The 1995 White Paper on Land Policy envisaged a largely market-driven approach to land reform based largely on the ‘willing-buyer and willing seller’ approach. The majority of participants at the July 2005 Land Summit rejected the ‘willing-seller and willing-buyer’ policy due to international experience that shows that the market on its own will not significantly

alter land ownership patterns in favour of equity for the targeted groups. The policy has led to the artificial increase in the price at which the State had to buy land for land reform purposes.

Problems Presented by the Willing Buyer Willing Seller Policy

Jurisprudence from the Land Claims Court and the Constitutional Court show that it is possible to expropriate land for less than market value. The issue of 'willing buyer and willing seller' is a matter of government policy and not a matter of law. It is certainly not a matter of constitutionalism. The government is currently reviewing this policy and has established the Office of the Valuer General.

The report in the *Sunday Times* on 4 August 2013 that the Minister for Rural Development and Land Reform had agreed to pay R 1 billion to the owners of the MalaMala Game Reserve for purposes of restoring it to the claimants caused outrage. This is because this could raise the value of land even higher and make the restitution programme prohibitively expensive. The establishment of the Office of the Valuer General is aimed at addressing the problems associated with the high cost of land for land reform purposes. The redistribution programme has most of the contributed 7 % of land being redistributed since 1994 against the government self-imposed target of distributing 30% of commercial agricultural land by 2014. The restitution programme has not led to much change in the land ownership patterns

The Constitutional Court case of *Du Toit v Minister of Transport* CCT 22/04 was concerned with the role of market value in determining the amount of compensation payable when applying section 25(3) of the Constitution. Mokgoro J said at paragraph 37:

'Section 25(3) indeed does not give market value a central role. Viewed in the context of our social and political history, questions of expropriation and compensation are matters of acute socio-economic concern and could not have been left to be determined solely by market forces...'

Securing Tenure of Communities Commercial and on Communal Land

A number of communities were reduced to being labour tenants after their land was dispossessed. The year 2016 marked 20 years since the enactment of the Land Reform (Labour Tenants Act) 3 of 1996, which together with the Extension of Security of Tenure Reform 62 of 1997, address the rights of individuals and communities living on farms. There has been a long delay in consolidating the new legislation that provide security of tenure to communities living on commercial farms

The Communal Land Rights Act of 2004 (CLARA) was aimed at implementing land tenure reform of some 17 million communities living on communal areas. CLARA was declared

unconstitutional by the Constitutional Court on 10 May 2010. CLARA was fiercely rejected by gender and land rights organizations because it provided traditional leaders with unfettered powers. No new legislation has yet been enacted to give effect to section 25(8) of the Constitution which requires that the State should pass laws to ensure security of tenure for communities living on communal land. The Agenda Feminist Media Launch and the Women and Land Dialogue of 9 September 2013 heard that with the delay on finalizing CLARA led to access to land in rural areas depending on unmediated local power relations. Sizani Ngubane of the Rural Women's Network shared several stories that showed the vulnerability of women on traditional and communal land. Rural women are still expected to access rights in land through male relatives. Single women are accorded little or no legal status by most traditional leaders and structures.

The Traditional Courts Bill has also been very strongly opposed, including by the Commission on Gender Equality. The role of traditional leaders in relation to managing and/or holding land on behalf of rural communities remains one of the unresolved and contested issues in post-apartheid South Africa.

The Traditional Leadership and Governance Framework Act 41 of 2003 does not deal with the matters related to the Khoi-San community because the Khoi-San system of community leadership is not similar to the institution of traditional leadership as regulated by the Act. The Khoi-San community does not as yet have a mechanism through which to participate in formal government structures. The Department of Co-operative Governance and Traditional Affairs (COGTA) says the National Khoisan Council (NKC) is a platform through which the Khoisan community raises issues affecting them as a group of communities, including the statutory recognition of the Khoikhoi and San people.

The Traditional and Khoisan Leadership Bill was tabled in Parliament in 2015. Its objectives include to 'provide for the establishment and operation of the Commission on Traditional Leadership Disputes and Claims, and the Advisory Committee on Khoi-San Matters ...' The Bill therefore aims to recognize the Khoi and San communities, leaders and councils and establish the Advisory Committee on Khoi-San Matters.

One of the flaws identified in the Bill is that it describes 'traditional communities' as those living within a specific geographic area under a chief. This requirement has been criticized for reinforcing the homeland boundaries under the new name of traditional communities. Another criticism of the Bill is that the Khoikhoi and San communities would be excluded because they are not organized under a system of chiefs. The Bill requires the traditional community to have

a history of living as a distinct community. Here too, Khoikhoi and San communities would have difficulty because they were classified as ‘coloured’ during apartheid. The apartheid system did not recognise Khoi and San identity.

The Communal Property Association Act 28 of 1996 enables communities to form juristic persons called Communal Property Associations (CPAs) in order to hold or manage property, often being land acquired through the land reform programme. This is at odds with the view that traditional leaders hold or manage land on behalf of communities living on land under the jurisdiction of traditional leaders, thereby leading to tension between CPAs and traditional leaders. The Constitutional Court case of the *Bakgatla-Ba-Kgafela Communal Property Association v the Bakgatla-Ba-Kgafela Tribal Authority* 2015 (6) SA 32 (CC)/ 2015 ZACC 25 delivered a unanimous judgment that clarifies the rights of communities belonging to CPAs established on communal land held by traditional leaders. It also emphasises the need for proper governance; democratic control and respect for rights to equality of members of CPAs in areas controlled by traditional authorities.

The Constitutional Court said the Communal Property Association Act 28 of 1996 (CPA Act 28 of 1996) derives its force from the Constitution. Its purpose is to enable communities to form CPAs through which they may ‘acquire and possess land that belongs indivisibly to the entire community.’ [paragraph 18] This right therefore inheres in the community itself and not the traditional authority. Section 8 of the Act stipulates the requirements for registration of a permanent CPA. Section 9 in turn stipulates the five principles which each CPA must adhere to. These include democratic decision-making processes and the right to equality for all members of the CPA. The Constitution of the CPA must proscribe any form of discrimination based on ‘race, gender, sex, ethnicity or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.’ While the CPA Act 28 of 1996 and jurisprudence from the courts clearly advocate for women to have equal access to land and to become equal partners in the management of land through land holding entities like CPAs, there is very little evidence of these rights being respected in communal areas.

Conclusion

The post-1994 government had set itself a target of delivering 30% of commercial agricultural land by 2014 and settling all land claims by 2015. Both targets have not been met, less than 10% of land has been delivered as of 31 March 2017. Many complicated rural land claims remain unresolved.

John Langalibalele Dube's notion of African self-sufficiency and land ownership requires that the post-1994 government should show stronger political will to increase the pace of land reform. There is also need to ensure that beneficiaries of land reform are enabled to use the land productively and contribute to the growth of the economy. The bottlenecks that prevent delivery of land reform at a requisite pace need urgent attention. These include: scrapping the willing buyer willing seller policy; completing the restitution process by settling the outstanding rural land claims; disposing of State land to communities or emerging commercial farmers to enable them to farm productively; resolving the ambiguity regarding the role of traditional leaders in relation to land allocation; management; and holding.

Mama Nokutela Dube remains an inspiration and a role model of women's self-sufficiency and self-reliance. Women and development studies show that empowering women has a much bigger impact in society. McKinsey's Global Institute report of September 2015 has shown that advancing women's equality can add \$ 12 trillion to global economic growth. On 31 July 2017 Bloomberg recognized a recent study by Nordea Bank, the biggest bank in Scandinavia, that part of the world that consistently scores very high on human development indices, shows that companies headed by female CEOs outperform those that are not.

I hope Mama Nokutela Mdimma Dube would be proud of some of the initiatives that some of us are involved in, namely the Young Women Business Network Co-operative Finance Institution (YWBN CFI) which is aiming to become the first majority women-owned and controlled co-operative bank or mutual bank. Hopefully she would be proud of the strides made by women in academia, the corporate and public sector.

Malibongwe!

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