

Prologue

Beginnings

Kwapitela

JULY 1981, A CLEAR, cold day in the southern Drakensberg. I am standing on a hill near the Sani Pass, photographing old Bedford trucks that are rumbling in clouds of dust through the winter-yellow grass in the valley below me. The trucks are loaded with sheets of tin, window frames, furniture, and wrapped, huddled figures. (It is very cold.) From a distance they are small, incongruous impositions on the magnificent landscape of mountain and sky. An observer would have to get close to identify the GG number plates that provide the clue to their purpose – that explain why those trucks felt so large and threatening to me in the calm of the afternoon.

They were ‘Government Garage’ vehicles, on official Government Garage business of those vivid, fearful years. They were shifting a small settlement called Kwapitela, folded into a valley in the flanks of the mountains near Himeville, to a bare hillside called Compensation, some 50 km away. Compensation was a resettlement area, destined for incorporation into KwaZulu, the bantustan that had been designated the official homeland of all Zulu-speaking South Africans under the apartheid government’s grand plan of ethnic balkanisation. Kwapitela was one of an estimated 334 African-owned¹ properties scattered across the province of Natal, which the apartheid government had declared ‘black spots’ – black spots on a white map, falling outside the patchwork of land set aside for African occupation as ‘native reserves’ by a white Parliament in 1913 and again in 1936.² As such, the settlement was a

challenge to the state's bantustan policy that had started to take shape in the 1950s; it had, therefore, to be 'eliminated'. This was the term used by the Chief Bantu Commissioner for Natal in 1969, referring specifically to Kwapitela: 'Owing to its situation, the abovementioned property is a black spot which in terms of Departmental policy will have to be eliminated in due course.'³

In the early 1980s the Surplus People Project (SPP), with which I worked, estimated that 109 of these communities, along with a further 14 church-owned 'black spots', had been eliminated by then in Natal, most of them since the early 1960s – 123 black-owned properties expropriated by the white state, 105 000 black people wiped off its white map. According to our calculations at the time, a further 195 such communities were under threat of resettlement in the province; in the early 1980s the programme of black spot removals was not yet halfway to completion in Natal. Nationally the figures for those affected by this aspect of apartheid policy were then around 614 000 people moved and over 400 000 people under threat of being moved. We estimated that some 3.5 million black South Africans had been uprooted from their homes and relocated in furtherance of various aspects of the apartheid agenda between 1960 and 1982; this number did not include the many millions of African people affected by influx control policies in the cities and betterment planning in the reserves.⁴

In 1981 I was working for a small non-profit organisation in Pietermaritzburg called AFRA (the Association for Rural Advancement). AFRA had been set up in late 1979 as a committee of volunteers composed mainly of former members of the disbanded Liberal Party, under the wry, rooted leadership of Peter Brown.⁵ Its primary purpose then was to expose the population relocation policies being implemented across the province of Natal. The initial impetus came from concern at the plight of scores of farm workers and labour tenants who were being evicted from white-owned farms in the Weenen district of the province in a seemingly never-ending saga of dispossession and disempowerment. I was drawn into this activism in 1979 while working as a volunteer on a rural development project at the epicentre of those convulsions – CAP (Church Agricultural Projects) or Mdukatshani, straddling the boundary between white Natal and black KwaZulu on the banks of the Thukela River, near Weenen – and was employed as AFRA's first staff member in May 1980.⁶

While over the years AFRA came to enjoy some notable successes in its work with communities threatened with removal, in 1980–1 the people of Kwapitela were suspicious of outside offers of support to contest their pending relocation. Outwardly they appeared resigned to their fate. In the words of one community member: ‘We did not like to go away because we were born here; it was only that we heard that the government wanted it and we submitted to that.’⁷ So when the removal finally happened, our task, as we saw it in AFRA, became simply to document the event – to turn the uprooting of that isolated, fearful group of 69 households into a report and a series of images that could be used to attack the policies of dispossession more widely, both in South Africa and abroad.

Today, as I work at my desk at home, one of the photographs I took that winter’s day hangs on the wall beside me. It is of a young girl of perhaps seven or eight. She stands, hands clasped behind her back, staring gravely at the camera, at me, the stranger (the white stranger) who is taking photographs of the slow, deliberate dismantling of her home all around her. She is neatly dressed in a short purple dress (large, hand-sewn stitches trace the contour of its hem), a yellow, buttoned-up jersey and brown lace-up shoes. Her long, thin legs are bare (no socks). Beside her, on a rock, lies a well-worn grinding stone. Behind her is an indistinct pile of household goods dumped on the bare, beaten earth of the yard – a plastic bucket, what looks like an upended wheelbarrow, a cooking pot with a lid. Behind that, closing off the larger view of the farm, the cracked – cracking – shell of a house.

The day before, it had been a substantial, tin-roofed building with several rooms, a covered porch, the clay-brick walls plastered and painted. Now the roof has been removed and the broken tops of the walls are bare against the sky. The front door, still fixed to the wall, is open, giving a glimpse into an empty, roofless room. If you know what to look for, you can make out a number, B1, daubed on the bottom panel of the door, beneath the small, rectangular panes of its inset window – the number that linked that house, that small girl, to a bureaucrat’s list in a government file somewhere, and prefigured this day.

To the uninformed the photo might seem to record some calamitous natural disaster – perhaps a hurricane that had ripped across the landscape and torn off the roof, or a fire.

I remember how the girl followed me at a distance as I moved around the crumbling homestead taking my pictures – a small, silent witness,

extraordinarily composed, who features in several of the photographs in the dossier AFRA subsequently put together to document the removal of Kwapitela, 2–3 July, Natal province, South Africa, 1981.

After photographing the dismantling of the houses and the loading of people and goods on to the trucks, I raced up the hill above the farm to record the official exodus from Kwapitela: to get a larger view. Thereafter my two colleagues and I followed the line of trucks to witness the offloading at the other end of the road.⁸ An AFRA publication from that time describes what we found:

At Compensation the newcomers appeared more dazed than anything else. As each family arrived, it was allocated a site with a tin latrine, the standard one-room ‘fletcraft’ – a temporary tin hut, some not even fully erected as their occupants arrived – and one or two tents. It was winter, dry and dusty and bitterly cold at night. People’s first concern was to store their belongings and secure their own shelter as best they could.⁹

The dominant sound in the new settlement was that of the trucks roaring into the camp and shifting gear as they spluttered to a halt outside the bare, allotted sites. At the start of the day I had been anxious about my own security, then relieved, also surprised, by the lack of interest that the black foreman and his black (non-Zulu-speaking) crew displayed in our small group, wandering around the farm with our cameras like displaced tourists. By the end of the day I was engulfed by a sense of appalling helplessness. Although I had previously listened to many stories of dispossession, this was my first direct encounter with the state at work in removing people – its literal tearing apart of people’s lives, brick by brick. My own, cherished memories of home and place were floundering in distress.

On that day in July 1981 it was hard to imagine the apartheid state as anything but all-powerful, relentless, driving through its vision of a white South Africa and a constellation of separate, dependent black statelets whatever the cost. It was five years after the Soweto uprisings, two years before the launch of the United Democratic Front (UDF) and four years before the unleashing of the States of Emergency of 1985 and 1986. It was the era of cautious proposals for reform within National Party circles under State President PW Botha – reforms intended to convince the world that separate could, indeed, mean equal and that

the National Party was in control. Already Piet Koornhof, the Minister of Cooperation and Development (as the former Department of Bantu Administration was called by then), had insisted that there would be no more forced removals, at least not 'as far as humanly possible'.¹⁰ And Kwapitela, the Press Liaison Officer of the Department of Cooperation and Development was to assure the media, in response to the stories that AFRA was generating, was not a forced removal: the people had moved voluntarily.¹¹

The small girl haunted me in July 1981, while I watched her watching me and later wrote my reports on what we had seen at her home. Through the medium of the photograph I took of her then, she gazes back at me still, 27 years later, as I pull and pick at words to build an account of the promise and the problems of the post-apartheid state's efforts to undo the dispossessions of the past, through its land restitution programme. If she is still alive, she would be a woman in her early 30s now, probably with children of her own. How has her life unfolded? Has the land restitution programme reached her? What might she say to me today? And, more challenging, what might I say to her?

Commissioned

There is another photograph above my desk that provides a very different entry-point to my account of South Africa's land restitution programme. This photograph was taken in mid-February 1995, 14 years after the relocation of Kwapitela. Four men and two women in formal attire stand, arm in arm, in a curtained, corporate space, smiling at the camera. Behind them a large flag, the bright, multi-coloured flag of the new South Africa. It is the first photograph of the recently appointed Commission on Restitution of Land Rights (CRLR), the formal name for the Land Claims Commission,¹² which was appointed in early 1995 to facilitate a land restitution process in post-apartheid South Africa. Here the new Land Claims Commissioners are posing with the Minister of Land Affairs in the still very new Government of National Unity led by President Mandela and the African National Congress (ANC).

The Restitution of Land Rights Act was the first substantive piece of 'transformation' legislation passed by the nation's newly democratised legislature, in November 1994, its approval greeted by cheers and a standing ovation in Parliament. The broad parameters of the land restitution programme were formulated in the constitutional

negotiations that preceded and made possible the election of that Parliament. The interim Constitution of 1993 provided that ‘every person or community dispossessed of rights in land before the commencement of this Constitution’, as a result of racially discriminatory laws, ‘shall be entitled to claim restitution of such rights’, subject to certain limitations – most significantly, that the act of dispossession had taken place after 19 June 1913 (the date on which the infamous Natives Land Act was passed) and that those dispossessed had not received ‘just and equitable’ compensation for their land. From the political bargaining of the time, the 1993 Constitution and the Restitution Act that followed in 1994 made provision for an unwieldy tripartite institutional framework for overseeing the process to completion. At its apex stood a Land Claims Court, with the ultimate responsibility for determining the validity and, initially, until an amendment to the legislation introduced an alternative, administrative option in 1999, approving the settlement of all claims, even those where all parties were in agreement with the outcome. In uncertain hierarchy beneath the Court came the Land Claims Commission and the Department of Land Affairs (DLA). The Commission was the public face of restitution. Its role was to receive, investigate and facilitate the passage of claims to settlement, ideally through a process of negotiations involving all ‘interested parties’, including current landowners and the state. The DLA derived its involvement in part from its financial authority over the Commission (including budget determination), in part its responsibility through the Minister of Land Affairs for the larger land-reform programme of the state. Its restitution mandate was to fund, staff and resource the Commission, represent the interests of the state (against whom all claims were lodged) in the negotiations process, and manage the implementation of restitution settlements, including ‘post-settlement support’ for those receiving back their land.¹³

My 1995 photograph records the five people initially entrusted with the responsibility for launching the restitution process as a national endeavour through the Commission.¹⁴ Starting from the viewer’s left, first, Emma Mashinini, smiling quietly, in a brilliant gold-yellow, embroidered dress: church activist, trade unionist (*Strikes Have Followed Me All My Life* is the title of her autobiography),¹⁵ recruited from the brink of a financially uncertain retirement to become the new Regional Land Claims Commissioner (RLCC) for the four provinces

that had been carved out of the former Transvaal – Gauteng, North West, Mpumalanga and Northern Province (later Limpopo). Next to her stands Peter Gilingiwe Mayende, the youngest of the group, one hand thrust casually in his suit pocket: restless academic, architect of the land manifesto of the Pan Africanist Congress (PAC) for the 1994 elections, who went into exile the year Kwapitela was removed, here RLCC for the Eastern Cape and Free State. Next to him, affable, silver-haired Wallace Mgoqi: recently admitted to the Bar as an advocate, previously an attorney with the public-interest legal NGO, the Legal Resources Centre (LRC), with an informal settlement on the Cape Flats named in his honour, here the RLCC for the Western and the Northern Cape. Next to him, smiling broadly, both arms stretched expansively over the shoulders of his companions to left and right, stands the new, still youthful-looking Minister of Land Affairs: Derek Hanekom, former activist and one-time small-scale dairy farmer, who went into exile after a stint in jail and headed up the ANC's Land Desk in the early 1990s before being appointed to Mandela's Cabinet in 1994 (in part because of, not despite, his Afrikaner ancestry, many thought). To his left the tall, intense Wetsho-otsile Joe Seremane, selected to head the Commission as Chief Land Claims Commissioner (CLCC), a Black Consciousness veteran of Robben Island and activist from the South African Council of Churches, who carried within him, I was later to learn, the desperate knowledge of his brother's unresolved death during the struggle years in the ANC's Quattro prison camp in Angola.¹⁶ And finally, myself, clutching a red file and grinning at the camera – most recently, after the turbulent 1980s and a stint in the United States, an academic at the University of Natal in Durban, also the daughter of a hands-on but ultimately unsuccessful wine farmer outside Cape Town, here the new Commissioner for my adopted province of KwaZulu-Natal.

We had just given our first press conference and it had gone relatively well. I remember the Minister (whom I had met for the first time that morning) asking me, smiling, as we walked into the auditorium, whether I was nervous. Of course, I had replied. But the assembled journalists had been friendly enough – for them this was a routine event, a soft 'new South Africa' feature for the middle pages, not a heavy news story to be probed and interrogated on the front page. Then, as now, land reform for most urban-based commentators was a set of worthy-sounding

conventions about justice and delivering indistinct rural communities from an essentially abstract poverty, by giving them the opportunity for what was also, in effect, an abstraction: ‘working the land’. As I study the photo now, I recall the jumble of feelings I experienced as the photographer chivvied us into position and urged us to smile, to present our best public faces to each other and the world. Relief that the press conference was over mingled with astonishment and pride that I was there, in the unfamiliar gloss of that elevated ministerial office off Plein Street, in Cape Town, my unsteady emotions kept firmly under control by my determination to project an impression of friendly competence to my new colleagues.

The restitution of land rights will set South Africa on ‘the real road to reconciliation and reconstruction’, Minister Hanekom had claimed in a statement released earlier to the assembled journalists. He elaborated on this theme in a speech he delivered a couple of weeks later, on the occasion of the first working session of the Commission at its head office in Arcadia, Pretoria, on 6 March 1995:

We are convinced that this new process will mark a fundamental shift from the past, and will bring about a fair and rapid redress of the past wrongs and injustices in an effective manner. A strong foundation has been laid in terms of the Act, which is thorough and very detailed; yet enabling, particularly by promoting the empowerment of claimants, the independent investigation of facts, the reaching of settlements through mediation and the overriding concern for equity, fairness and justice.

The responsibility to translate into reality the noble and glorious principles and provisions of the Act rests, to a great extent, with you members of the Commission. We shall soon discover from your work how appropriate and functional the historic law is going to be in changing for the better the lives of dispossessed people and bringing about certainty and stability in property relations in this country.

You have a tall order in front of you. Three years from now the Commission will be rounding off its operation and we pray that its mission would have been successfully accomplished. We have put a high premium on the restitution process and especially on the Commission. What then do we expect from this process?

The restitution of land rights is but one aspect of the Government of National Unity’s land reform programme. It occupies a significant place

in the hearts and minds of the victims of forced removals, land owners and the public at large. It is so for diverse and even conflicting reasons. Our task nevertheless remains that of ensuring that past injustices are redressed effectively and speedily. This part of our programme deals with a limited amount of land, has limited time duration, and addresses the grievances of categories of people defined by legislation.¹⁷

With hindsight Hanekom's comments on the challenges facing the Commission were – with the notable exception of the time frames – remarkably insightful. (The three-year time frame was in fact qualified later that year in the DLA's 'Draft Land Policy Principles', which envisaged a five-year period for finalising claims and a ten-year period for implementation of court orders.)¹⁸ In the rest of his speech he warned us about 'illegitimate claims that will clog the system' as well as about the difficulties of 'striking the right balance between the rights of the individual and that of the community' and determining when restoration of land was feasible within the parameters of the legislation. He also cautioned us about the management of the future relationship between the Commission and the DLA: 'The line that is drawn between [the DLA] supporting the process and turning the Commission into administrative state machinery may become a bone of contention.'

At the time, however, we were little concerned with institutional matters. Our minds were focused on the major issues of principle. In March 1995, not yet a year after the epoch-marking elections of 1994, redress, reconciliation and reconstruction formed a grand and sturdy triad. Three years into the future seemed a long time. While none of the smiling, arm-linked Commissioners in my photograph were so naïve as to imagine that the work that lay ahead would be easy, yet we were confident that we knew what was required of us. Our responsibilities were clear. In the words of Emma Mashinini, when I interviewed her in 2002 after we had both left the Commission, 'I saw the task for myself and for ourselves as getting the land back to the people.'¹⁹



KwaZulu-Natal