

Re-Constructing Rights to Land From Discourse to Entitlement

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PREFACE

This essay is submitted to Noragric in partial fulfilment of the PhD Course in Development Studies offered during the autumn semester 2000.

I have written the essay as part of a three month “PhD planning project” carried out under a cooperation programme between the *Centre for International Environment and Development Studies, Noragric, Agricultural University of Norway* and the *Programme for Land and Agrarian Studies, University of Western Cape, South Africa*. The cooperation project is titled *Human rights, governance and land reform in South Africa* and will enter a three-year phase 2001 – 2003.

One purpose with the essay is to develop the theory part of a PhD research proposal on *Human rights and land tenure reform in South Africa: A case study of policy, discourses and stakeholders*, dealing with the governance of commons in Namaqualand, Northern Cape Province, South Africa. The essay complements one I wrote for the course “Human rights and conflicts of norms” (Norwegian Research Council, Ethics Program), *Is land a human rights issue: approaching land reform in South Africa*, November 2000.

Chapter 1 sets the scene by giving a glimpse from Namaqualand land reform; in Chapter 2, I introduce the human rights and national policy context of the project; Chapter 3 raises a broad debate about development, values and justice, and an Aristotelian perspective on knowledge; Chapter 4 outlines entitlement and discourse theory as the major entry points to the land rights issue; in Chapter 5 I try to draw some of the lines together. Some additional information on the wider project and some figures are given in appendices.

*Ring the bells that still can ring. Forget your perfect offering.
There is a crack, a crack, in everything.
That's how the light gets in,*

that's how the light gets in.

Leonard Cohen

There is no doubt that contact with reality can be invigorating. I hope that firm and prolonged intercourse with reality, if I can manage it, will have a good effect on my character as well as my health, and perhaps even improve my writing.

J. M. Coetzee, *The Vietnam Project in Dusklands*

Acknowledgements

The Study Leave enabling me to participate in this course is financed by the Norwegian Agency for Development Cooperation (NORAD) through the Norwegian Institute of Human Rights, University of Oslo. I am thankful for the opportunity it has given me. I feel it has thrown me into an exciting process, although I have stayed a lot in the exploratory mode.

I would like to thank Sidsel Grimstad for coordinating and facilitating the PLAAS-Noragric cooperation from our side, and Tor Arve Benjaminsen and Hans Sevatdal for discussion, comments and encouragement. I really appreciate Liv Ellingsen's vigorous effort to feed me with literature and teach me a wonderful system for keeping track of it: Procite. It shows rather poorly here, but I am sure there are seeds for a more productive future. Thanks, Liv!

I am grateful to PLAAS for the opportunity to visit in October 2000 and participate in the symposium on *Contested resources: Challenges to governance of natural resources in Southern Africa*. PLAAS PhD students took time to meet me, listen to and comment on my ideas. Ben Cousins, Director, also facilitated contact with Surplus Peoples Project, who very generously took me on a brief but essential field trip to two of the communal reserves in Namaqualand.

Thanks to the Agricultural University of Norway for granting me Study Leave and to Noragric for offering the PhD course in Development Studies.

Ås, December 2000

Poul Wisborg

Map of Namaqualand, South Africa

South Africa

Some Key Concepts

This list defines some concepts that appear useful in a project on land tenure and human rights. Actual usage, academic, policy and everyday, would show a variety of understandings. I have chosen to give just one definition, except when it comes to a few very central ideas (such as 'human rights'). I have also included a few central formulations from the Constitution of the Republic of South Africa. Please see the reference list for sources.

Concept	Definition	Source
Agrarian reform	A fundamental transformation in the social and political relations which underpin systems of production, and thus involves changes in the balance of power between different classes in the countryside.	Cousins, 2000
Capability	A person's ability to achieve desired states of being; about individuals' freedom to choose from possible livings.	Shanmugaratnam, 2000, based on Sen 1993: 31)
Discourse	A truth regime or corpus of expressions related to a specific social phenomenon or practice and characterised by a homogeneity in expressions and messages.	After Adger, Benjaminsen, Brown and Svarstad (2000)
Endowment	A person's initial ownership, for instance of land or labour	Sen, 1981 ref in Leach et al, 1997
Entitlement	"The set of alternative commodity bundles that a person can command in a society using the totality of rights and opportunities that he or she faces"	Sen, 1984
Environmental entitlements	"The combined outcomes of both the environmental resource bundles that people have command over as result of their ownership, their own production or their membership of a particular group; and their ability to make effective use of those resources." "Alternative sets of utilities derived from environmental goods and services over which social actors have legitimate effective	Mearns, 1995 Leach, Mearns and Scoones, 1997

	command and which are instrumental in achieving well-being."	
Hegemony	The ability to dominate thinking and control its translation into institutional arrangements and practice.	(Hajer, 1995: 60-61, quoted in Adger et al, 2000)
Human rights	<p>Positive law view: The rights – for individuals or groups – expressed in international instruments in such a way that they have become international law.</p> <p>Universalist view A human right by definition is a universal moral right, something which all men, everywhere at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human.</p>	<p>After Bugge, 1998: 94</p> <p>Cranston, 1973: 36, quoted in Hellum, 1999</p>

Land reform	Land reform involves the redistribution of land, a consequent change in the structure of land holdings and the redefinition of the character and legal status of land rights	Cousins, 2000
Land tenure	The term under which land is held: the rights and obligations of the holder	After Bruce, 1998 (Land Tenure Center)
Land tenure reform	Legal reforms of tenure whether by the state or communities. “A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.”	Bruce, 1998 (Land Tenure Center) Constitution of the Republic of South Africa, §25, 6
Policy	A written or unwritten intent with related incentives and disincentives designed to achieve some stated societal goal	Hoon, Singh and Wanmali, 1997
Re-distribution	The attempt to redistribute land to create a more equitable structure of land holdings "The state must 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".	Constitution of the Republic of South Africa, §25, 5
Restitution	Return of, or compensation for, lost land. "A person or community disposed of property after 19 June 1913 as a result of past racially discriminatory laws or practice is entitled, to the extent provided by an act of Parliament, either to restitution of that property or to equitable redress".	Constitution of the Republic of South Africa, §25,8
Right	Proper authority or claim; the state of being justly entitled to something; something to which one has a just claim;	Oxford Advanced Dictionary of Current

	something one may do or have by law.	English See also Text box 1, page 18)
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Summary

The social re-construction of rights to land may be seen as a multilevel struggle over meaning that affects how people gain and convert rights into entitlements. This essay reviews selected literature and glimpses of field situations in Namaqualand, in order to i) place the land reform - human rights issue in a policy and development studies context, and ii) suggest two theoretical entry points: the 'environmental entitlement framework' and 'discourse theory' as framed within a political ecology of people - environment relations.

The concept of 'rights' cuts across legal, ideological, scientific and everyday usage from abstract principles, to law and actual appropriation, and current rethinking of institutional dynamics is changing the meaning of 'right' as rule, norm or practice. 'Human rights' are an influential conceptual and moral framework for national and international development efforts, reflected in policies of 'rights-based development'. To own land is not a 'human right', but rights to welfare, procedure and non-discrimination make land a diverse human rights issue. Human rights and land reform policy may gain by a theoretical and moral underpinning in social justice theory. Rawls and Sen emphasise individual capabilities and freedoms as ends and means of development, consistent with human rights, and point towards a view of property subsumed to social justice norms.

In the struggle to move beyond apartheid, South Africans are implementing and negotiating a human rights approach to development and governance. The land distribution and tenure patterns created under past colonial and national state regimes systematically violated human freedom and dignity. The Constitution of 1996 and subsequent policies launch ambitious programmes of redistribution, restitution and tenure reform. Progress is mixed, voices of impatience and concern are common, and violence is part of a tense situation. In Namaqualand, land reform includes transforming six former "Coloured Reserves" through government funded land redistribution and tenure reform (e.g. Transformation of Certain Rural Areas Act 94 of 1998).

Development Studies may be characterised as being value-based, problem-oriented and concerned with lasting change that expands human capabilities in terms that are meaningful to the participants. Drawing on Aristotle, human knowledge is classified into *techne* (applied), *episteme* (analytical and generalising) and *phronesis* (value and policy-oriented). To link different ways of learning, and upgrade those that border on *praxis* (*techne* and *phronesis*), may help us create a constructive interplay between development and research. To study human rights and land reform is to explore human values and practical-political prudence – a study in *phronesis*.

‘The environmental entitlement framework’ analyses how people turn resources into endowments, entitlements and capabilities. It emphasises diversity of stakeholders, differentiated communities and the dynamics of institutions and power relations. ‘Political ecology’ widens the perspective by using environmental history and discourse analysis to examine how perceptions and practices of ‘rightful’ use of the environment have come into being. Discourse theory may be used to analyse mediation, coherence and gaps between human rights doctrines, national policy and local perceptions. Whereas South African land reform has a long way to go ‘from discourse to entitlement’, the essay makes the theoretical step ‘from entitlement to discourse’, contending that it is necessary to ground a human rights and policy discourse in local, real-world entitlement processes. In policy and practice, moving ‘from discourse to entitlement’ is to negotiate between actors at different levels, learning, from above, how policy affects local entitlements and, from below, how legal reform and new rights can be used to improve life. Reality is an oscillation between discourse and entitlement: questions are whether and how the process empowers people, and who, and what broader patterns of development as human freedom it leads to.

Thus, under the old and emerging headings of phronesis and political ecology, ‘entitlement’ and ‘discourse’ theory may be combined to analyse the policy and practice of land reform in South Africa. It would explore how ‘rights to land’ are re-constructed in discourses and ‘struggles over meaning’ that reflect, challenge and shape local entitlement processes.

Re-constructing Rights to Land

From Discourse to Entitlement

Poul Wisborg

1. INTRODUCTION

1.1 Springputs Farm, Pella

In October 2000 I visited Springputs Farm in Pella, Namaqualand District of South Africa¹. Entering the farm by car, I saw a herd of goats around a water pump, then the large trees and a citrus orchard surrounding low, white buildings. A woman was on the front porch, ironing. We asked for the owner and sat down in the comfortable armchairs of the living room and spoke with Mr Lukas Basson, farmer and chairman of the *Meentkomite* (Commons' Committee). Mr Basson's brother also attended the discussion.

Text box 1: Springputs Farm

Some points from the discussions were:

1. Springputs Farm was the latest farm purchased by the government under a land redistribution scheme and added as "new commonage" to the land of Pella.
2. The land is owned by the Government (Department of Land Affairs), and managed by the Transitional Local Council (TLC) in co-operation with the *Meentkomite*
3. Mr Basson and four other farmers, including his brother, lease the land on one-year contracts that include the right to use the houses. The members of the five households now live on the farm.
4. Farmers graze their goats on the farm, and no longer use the "old commonage". They may, according to a management plan, keep 400 goats on the farm, and must pay 20 cents per goat per month to the TLC.

Source: Field visit, October 2000

Mr Basson thought the addition of new land to the "commonage" of Pella was quite important. He said it meant that he and his colleagues had been able to increase their herds from about fifty to about hundred goats each. He estimated that the programme had added about 40,000 ha to the 60,000 ha of the old Pella commonage; he thought the "old commonage" now had better grass cover, since some farmers used the new farms only.

¹ With Nuchie van Neel, *Surplus People Project*, a civil society organisation supporting land reform in Northern and Western Cape Provinces.

However, he also thought that one-year leases were quite inadequate for long term management; he mentioned the problem of getting capital; and he said he needed help with managing the citrus orchard, particularly the irrigation system, and grumbled about the TLC's reluctance to provide the diesel needed.

For me, as a first-time visitor, Springputs Farm gave a vivid, limited glimpse of land reform, and of rights and right-holders in a process of change. I faced it with a mix of feelings and professional questions. I had a feeling of someone having *moved in to somebody else's property*. Was this "rightful", how "rightful" was the past, and what do we mean by that? The reports about Zimbabwe farm occupations came up in my head, and I was struck by the difference: here the new residents moved in as part of a lawful scheme, and on the basis of "willing buyer/willing seller". The former owner, a 'white farmer', had moved on to settle and retire in Uppington, perhaps with a better deal and pension than he had dared hope for five years back? Were the new right-holders empowered? I saw vulnerability in the longer term, in tenure and management challenges. And how about the other community members who are in principle equal beneficiaries and right-holders? How about the relations and benefits within the households? Did Mr Basson's wife apply with him for the lease? Was goats and production more important to her than the house and a nice porch to do the ironing?

1.2 The essay

This essay springs from a mainly abstract, but "maturing", interest in human rights and land tenure reform in South Africa. It is part of a project on the old and new commons of Namaqualand and the people to whom the commons 'belong' and offer livelihoods and new opportunities - perhaps. Yet, here, Mr and Ms Basson and fellow right-holders are distant faces, distant voices. The purpose of the essay is:

- To relate the research topic to development studies and questions about development practice, theory and values
- To outline perspectives on *environmental entitlements* and *discourses*, in order to elaborate and clarify the theoretical approach of the proposed research.

2. RIGHTS, LAND AND POLICY CHANGE

2.1 Human rights and land

The ‘human rights’ discourse is an increasingly influential conceptual and moral framework for national and international development efforts (Risse et. al., 1999). A major challenge is to debate, clarify and share a workable level of consensus on a national interpretation of human rights principles and values. ‘Land’ is a fuzzy category and has an unclear status in human rights thinking, raising particular challenges to a practically oriented formulation of ‘human rights’. The 1948 *Universal Declaration of Human Rights* (UDHR) and other major instruments contain no paragraph on rights to land, so concerns about land tenure are to be derived from more general principles and rights. UDHR protects existing property whether held by individuals or groups². It also states a general right to welfare including health and adequate food³. Since property was not included in later important human rights covenants, property as a human right appears secondary to other civil-political and welfare rights⁴. However, for rural people, particularly in developing countries, access to land and land-based resources are necessary to realize the right to welfare, although this derived and context-dependent right to land is often thought to be difficult to operationalise⁵ and delimit.

Property rights are human relations with respect to valuable things (Bromley and Cernea, 1989). As institution, the concept of right is affected by current rethinking of institutional dynamics and uncertainty (Berry, 1993; Mehta et al., 1999; Peters, 2000). The concept cuts across legal, ideological, scientific and everyday uses, and is applied at different levels from abstract principles, to legal statements and actual appropriation. In text boxes 2 and 3 I show two ways of beginning to analyse ‘rights’.

² “Everyone has the right to own property alone as well as in association with others” (§ 17,1) and “No one shall be arbitrarily deprived of his property” (§ 17,2).

³ “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services” (§ 26).

⁴ However, rights of protection and procedure apply to land ownership and governance (non-discrimination, right to information, due process etc. (Wisborg, 2000).

⁵ The *Bathurst Declaration 1999* calls for “a commitment on the part of the international community and governments to halve the number of people around the world who do not have effective access to secure property rights in land by the Year 2010”.

Text box 2: Rights as normative relations

1	H	a holder of right (also labelled bearer, possessor)
2	Is entitled to	a type of right: <i>claim</i> or <i>freedom</i> or <i>authority</i> or <i>immunity</i>
3	G	a <i>good</i> (advantage, benefit)
4	Against A	an <i>addressee</i> (holder of the correlative burden)
5	in virtue of S	the legal sources or moral foundations of the right.

Source: © Tore Lindholm, from Alan Gewirth, 1982

Text box 2 suggests the way in which a ‘right’ is a *relation* between a *right-bearer* and an *addressee*; *about* something; and with some *source* or *moral-political foundation*. Rights are normative *relations*, but they are not (full) *relationships*. That is, formal and informal claims may be used by actors in relationships of a wider, more complex nature (marriage is perhaps illustrative). In Namaqualand, land rights are aspects of changing relationships between individuals and households, households and communities; and communities and local government, to mention some. In practice, each of these steps may be subject to contest. One of the ways power works, also when it comes to ‘human rights’, is by narrowing the groups of right-holders, disputing the types of rights and goods in question, clouding addressee commitment or questioning sources of moral justification.

The same dynamics applies to rights as conceived at different levels (Text box 3). Such a hierarchy should not be seen as a ‘trickle down’ or a centrally controlled process, but a preliminary overview of levels in a dynamic field of rights formulation and realisation.

Whilst conventional approaches focused on one singular ‘rule of law’ to deal with an uncertain world, new approaches argue that plural and overlapping legal arrangements may offer more effective routes to negotiation

Text box 3: Levels of rights

<p>The realm of right and wrong: A moral universe</p> <p>1. Right (as opposed to wrong/unjust)</p> <p>The realm of discourse:</p> <p>Statements/communicated rights (<i>de jure</i>)</p> <p>2. Human rights (international law)</p> <p>3. Constitutional rights</p> <p>4. Legal rights</p> <p>5. Other formal rights (contracts etc.)</p> <p>6. Non-formal rights (verbal)</p> <p>The realm of the achieved: <i>de facto</i></p> <p>7. Entitlement and appropriation</p>
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outcomes and compromises in an uncertain world (Mehta et. al., 1999: 6).

This kind of process is painstakingly documented by Hellum (1998, 2000) in her studies of plural law and marriage in Zimbabwe. Customary and other law is not a fixed system, but is being re-interpreted in court cases where new national legislation is experimentally applied to specific events. *Human rights and land*, as an issue, spans global doctrine and every day life on and off the land, and requires a “...*multi-sited approach....based on understandings of the precise relationships and processes operating within and across, local, national and international arenas*” (Mehta et al., 1999: 39).

2.2 ‘Rights-based development’

Linking human rights concerns with development efforts is a recent policy trend although with roots in the processes of formulating the human rights instruments⁶. South Africa is politically and intellectually in the forefront of exploring and implementing human rights based development. Norwegian authorities place some emphasis on the human rights/development interface (NORAD, 1999)⁷. Yet, aspects of the “Western” human rights and democratisation rhetoric have been strongly criticised by some African leaders (e.g. OAU summit, Cairo, 1999). Human rights have been perceived and challenged as paternalistic and lofty prescriptions that do not address economic and social development challenges, or even come in the place of commitments to maintain international development efforts. Rights-based development is therefore both concerned with merging trends in development thinking and about developing perspectives shared by North and South. At a higher level, it is a way to examine and perhaps re-establish the value-basis of “development” in response to radical critiques of the ambiguities, costs and failures of actual development both in the North and in the South (Sachs, 1992; Escobar, 1995). Rights-based development thus involves development rhetoric, real re-orientation of policy, and academic inquiry. Cousins (2000) discusses whether it is possible to legislate land rights and design administrative systems for the “*complex, variable and fluid*” land holding systems of many African communities. Land tenure reform has perhaps had limited impact in the past exactly because control and access is the outcome of other processes on other arenas (Cousins, 2000, referring to Berry, 1993). In Cousins’ view,

⁶ Including *UN Convention on Economic, social and cultural rights, 1966*; *UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979* (CEDAW); *African Charter on Human and People’s Rights*.

⁷ That was in 1999. I have just been told by a colleague that “rights-based development” has fallen from grace in NORAD, linked to the preceding change of Government.

”...this suggests that land access and control are the outcomes of social processes, negotiations, and conflict resolution, and thus that the institutions to mediate these processes, rather than legal redefinition of rights, should be the focus of intervention.” (Cousins, 1997).

The dependence on context and real-world processes is true for human rights in general, but becomes particularly evident with land reform as a case of rights-based development. The interface of ‘human rights’ and ‘land’ is diverse and between them lie an array of policy debates and decisions about meanings, goals and strategies: it must go beyond a legalist approach and understand and affect the ways people live and make a living.

2.3 South African policy change

The *African National Congress Freedom Charter* (1955) strongly argued the need to reform the agrarian structure of apartheid (quoted in Turner and Ibsen, 2000). The *Constitution of the Republic of South Africa, 1996*, through its *Bill of Rights* (Appendix 1), enshrines international human rights principles, and goes beyond them in establishing rights to land and the environment. The major constitutional obligations are *land restitution*, *land redistribution* and *land tenure reform* (ref. Keywords, v-vi). The *White Paper on Land Policy 1997* followed up the obligations and laid down further principles, including i) recognising land-rights of individuals and groups living on land that is nominally state-owned; ii) recognising that land-rights are vested in people, rather than institutions such as tribal or other local authorities; and iii) establishing that in cases of group tenure, basic individual rights of members must be respected, including democratic decision-making and gender equality. Linked to a number of factors, land tenure reform has been delayed, and the ensuing *Land Rights Bill* essentially put on ice by the Minister of Agriculture, Thoko Didiza, who took office in mid-1999. Land reform is widely debated in the press, with some sharp exchanges of opinion among stakeholders⁸. It is subject to internal and external pressures, not least after violent farm occupations in Zimbabwe. Violence, fears and threats are part of the reality (Text box 4)⁹.

⁸ See *Daily Mail and Guardian*, <http://www.mg.co.za/mg/>, where search on ‘land reform’ gives more than a 1,000 matches of articles, letters to the editor etc. Ben Cousins: *Zim Crisis: Our wake up call*, DMG, 05.05.2000 being one important input.

⁹ Beukes, Hans: “Apartheid – som støpt i betong” (*Apartheid – as if moulded in concrete*), Aftenposten, 23.11.2000.

Land reform is a broad process of policy, law, discourse and practical implementation, and reflects the dynamics and complexity of the 'human agency' that it grows from and is intended to affect. Historical experience indicates that radical re-construction of land rights is difficult, often short-lived or, in its effects, undermined by other processes (Scott, 1998; Sevatdal, pers. comm.). The most effective, penetrating and long-lasting structural changes have been those produced by colonialist and imperialist expansion, and have been pursued with scrupulous persistence

Text box 4: "Improve markmanship, farmers urged"

"A SOUTH African farmers' union has urged its members to improve their markmanship to counter continuing attacks by criminals. "We are encouraging farmers unequivocally to behave as if a national state of emergency is in place," the Transvaal Agricultural Union said in a statement. Latest statistics show that 88 South African farmers were killed in 586 attacks between January and August, with another 288 people wounded. The union said it had urged farmers' groups to organise meetings on self-protection and hold sessions to improve proficiency with their weapons. "There appears to be a lack of will on the part of the government to look after the safety of farmers," it added. "Farmers' first responsibility is to stay alive, and to protect their families and dependents."

Source: Daily Mail and Guardian, 23.11.2000

and backed by an extreme dominance of power. Variation in land, eco-climatic zones, culture and tenure create enormously complex realities and interactive processes. Turning the land reform discourse – or rhetoric – of human rights, policy and law into real world entitlements is to transform human relations deeply embedded in socio-economic structures and histories of meaning.

2.4 Land reform in Namaqualand

Namaqualand is one of six districts in Northern Cape Province. It covers an area of about 48,000 km² and has a population of about 77,000, of which a majority (81%) are 'coloured' people of *Khoisan* descent (Rohde, Benjaminsen and Hoffman, 2000). Six "Coloured Rural Reserves" make up about twenty seven percent of the area, or 1.2 million hectares. About 400 commercial farmers, almost exclusively 'white', own about half the land at an average farm size of 11,650 ha, while more than four times as many 'coloured' households (about 1,750) use the communal land. "Women in Namaqualand are severely marginalized in terms of land tenure" as they gain rights mainly through marriage, realising them through their husband or in widowhood (Archer, 1993: 20).

Text box 5: Land use in Namaqualand

Land use	Percent
Commercial farmland	53 %
Communal land	27 %
State land	8 %
Mining company land	7 %
Conservation areas	5 %
Total (48,000 km ²)	100 %

Source: Rohde, Benjaminsen and Hoffman, 2000

The Namaqualand reserves were created as per ‘*Tickets of Occupation*’ or ‘*Certificates of Reservation*’ issued in the 19th and early 20th century, further defined (and limited) in the *Mission Stations and Communal Reserves Act* in 1909, and made part of the legalistic apartheid structure through the *Coloured*

Rural Areas Act of 1963, amended as per *Act 9*, 1987. Legal reform is expressed in the *Transformation of Certain Rural Areas Act 94* of 1998, although the implementation of this law has been pending local government elections on 5 December 2000 (Appendix 2).

3. DEVELOPMENT, DEVELOPMENT STUDIES AND VALUES

3.1 Development

The idea of ‘development’ is perhaps the most central idea of the 20th century. It has historical roots in economic, political and intellectual changes of the preceding centuries, particularly industrialisation and urbanisation; global penetration and transformation; the great political revolutions in France, the United States and the smaller emerging national states of Europe; the Russian revolution and creation of the USSR; and the gradual evolution of “welfare states” in many countries. Socio-economic changes were reviewed in a range of contrasting interpretations: Adam Smith saw the enterprising individual as the key to the ‘wealth of nations’. Karl Marx analysed capitalist transformation of Europe; German historians contributed to romanticist notions about the ‘unfolding’ of the inner potential and ideas of different peoples and communities. Yet it was in the 20th century that the idea of development became translated into institutional arrangements and practice, perhaps thereby achieving a status of ‘discursive domination’ (Hajer, 1995: 60-61). Esteva (1992) sees the magic moment as the inaugural speech of President Truman in January 1949, in which he launched a non-exploitative ‘program of development’ to make scientific and industrial advances available to the ‘underdeveloped areas’. ‘Development’ is an ambiguous and contested term. For Estevo (1992: 6-7) it is part and parcel of American hegemony. Terje Tvedt (1990) has analysed it as a more complex, but certainly

problematic and grossly simplifying way of ordering the world, particularly those others who are ‘un- or under-developed’.

Shanmugaratnam (2000) suggests that we distinguish between development as ideal and as real world process, or ‘intentional’ and ‘immanent’ development (Following Cowen and Shenton, 1996). Intentional development draws upon development as ideal and “*implies subjective action through policy to achieve a desired result*”. Immanent development is “*an objective process driven from an inner logic or dynamic*”. Marx’ theory of the capitalist transformation of Europe analyses a process of immanent development, while his elaboration of the consequences for ‘intentional development’ is rudimentary. Yet the psychological and political step from one to the other is a short, as demonstrated in the 20th century experiments with communist transformation. In the grand capitalist, technocratic and communist developmental schemes, prescriptions and policy followed from perceptions of real-world development, as means to speed up or spread the process. The distinction between development as ideal (and policy) and real world process (of non-intentional change) is therefore analytical; in the cultural and intellectual history of development paradigms they often stand or fall together. It allows us to see ‘intentional development’ as relevant, even though it is not part of a great transformation or dominant trend. In stead, as Cowen and Shenton point out, ‘intentional development’ may have more localised and limited objectives; it may even aim to compensate for destructive consequences of ‘immanent change’, such as the environmental and social damage cause by rapid urbanisation and pauperisation in mid nineteenth century Europe (Shanmugaratnam, 2000: 2). Given this perspective, the ideal of development may survive the experience of failures. For the most radical critics of development, the ideal is utterly compromised by decades of uneven or negative impact on people and environments. For the defenders, it is possible to support development without a sense of being on the side of the victorious trends and forces.

A few references to policy documents indicate what development had come to mean towards the end of the second millennium. The annual *Human Development Report* claims that it has, “...consistently defined the basic objective of development as enlarging people’s choices. At the heart of this concept are three essential components:

- *Equality of opportunity for all people in society*
- *Sustainability of such opportunities from one generation to the next*
- *Empowerment of people so that they participate in - and benefit from – development processes” (UNDP, 1995: 1)*

In less abstract terms, the essential human choices are to be able to have “a long and healthy life, to acquire knowledge and to have access to resources needed for a decent standard of living”. In addition come important political, cultural and creative freedoms and rights:

“Human development thus has two sides. One is the formation of human capital – such as improved health, knowledge and skills. The other is the use people make of their acquired capabilities – for productive purposes, for leisure, or for being active in cultural, social and political affairs” (UNDP, 1995: 11).

Also from the mid-1990s, the ‘Norwegian Commission on North-South and Aid Policies’ gives an example that intentional and immanent development was defined together, moving from principle (ideal), to definition of what development is to statement of goals and objectives (NOU, 1995: 25). The Commission based its arguments on the principle that, *“..everyone has a right to a decent life and living conditions which enable them to cope with the challenges of everyday life, and which gives individuals and groups the freedom of action and security to create an existence with meaning, security, community and creativity...it understands development to be a positive process of social change which safeguards the most basic needs and rights for all, while at the same time creating new opportunities for further improvement in living conditions and quality of life of ordinary people.”*

On the basis of this understanding,

“the Commission recommends that the overall goal of Norwegian South policy should be to contribute towards greater human welfare and development, with due consideration for the sustainable management of natural resources” and with the following “primary objectives”:

- *To alleviate poverty and contribute towards lasting improvements in living conditions and quality of life, thereby promoting greater social and economic justice at national, regional and global levels;*

- *To reduce the causes of war and conflicts, and to contribute towards peaceful solutions and democratic development;*
- *To promote responsible management and utilisation of the Earth's environment and natural resources” (NOU, 1995: 25).*

James Wolfensohn, President of the World Bank, claims that “*the 20th century saw great progress in reducing poverty and improving well-being*” and that we enter a new millennium “*with a better understanding of development*” (World Bank, 2000: v-vi). Regarding developing countries he cites as indicators of development an increase in life expectancy of twenty years over the past four decades; a reduction of the infant mortality by more than half; an increase in primary school enrolment by 13 % over two decades; and a doubling of average incomes between 1965 and 1998. The main lesson in our ‘improved understanding’ is that, “*the traditional elements of strategies to foster growth – macroeconomic stability and market-friendly reforms*” must be combined with “*more emphasis on laying the institutional and social foundations for the development process and on managing vulnerability and encouraging participation to ensure inclusive growth*” (World Bank, 2000: vi).

Based on a “Comprehensive Development Framework”, the World Bank recommends action in three major areas:

- “Promoting opportunity. *Expanding economic opportunity for poor people by stimulating overall growth and by building up their assets (such as land and education)...*
- Facilitating empowerment. *Making state institutions more accountable and responsive to poor people, strengthening the participation of poor people in political processes and local decision making, and removing the social barriers that result from distinctions of gender, ethnicity, race, religion and social status.*
- Enhancing security. *Reducing poor people's vulnerability to ill health, economic shocks, crop failure, policy induced dislocations, natural disasters, and violence, as well as helping them cope with adverse shocks when they occur....”*

These formulations, one from a public, national commission and two from important multi-lateral development agencies, illustrate the moral and policy context of development studies. They show that for powerful institutions and many people the idea of

development survived the onslaught of real economic and environmental change the 20th century and the 'lost decade' of the nineteen-nineties. They also illustrate that a concept of development much broader than 'economic growth' has been institutionalised at a high level. Conceptions of 'rights' are central in all, and even if superficial they attempt to link the individual right-holder and macro-level policy and change. That feature matches the emergence of development studies to include a broad range of social and cultural issues, including representation, participation, ethics, democratisation and critical and 'anti-development' perspectives (Corbridge, 1995: ix).

3.2. Values and definitions

As outlined above, development is a normative concept, often with positive connotations. When seen as negative, as in the re-interpretations by Escobar (1995) and Sachs (1992), it is still an Archimedean point for value-orientation:

Today, the lighthouse shows cracks and is starting to crumble. The idea of development stands like a ruin in the intellectual landscape. Delusion and disappointment, failures and crimes have been the steady companions of development and they tell a common story. It did not work" (Sachs, 1992: 1).

The value-load may be seen to create a problem for research (Kjersti Larsen, Introduction to PhD course in Development Studies, September 2000). It may tie development studies to the contested 20th century social engineering projects critiqued by Escobar and Sachs. It may also be perceived to make development studies stand out as 'more value-based' in a negative sense of being determined by rapidly shifting fads in development strategy and jargon (refer footnote 7). Also, specifying the normative contents of development and development studies will carry ideological markers linking it with one or more of the disciplines in the field. Although rooted in biological metaphors of 'growth' and 'development', social sciences, particularly economics, have tended to lay claims to development studies (Berg, PhD Lecture, September 2000). This problem is significant in the context of a professional struggle over meanings and resources: debates about interdisciplinarity often appear to boil down to a question about who is in and who is out, who is central and who is in an ancillary role. In that context the definition of development may become a diplomatic exercise in academic inclusion. To problematise the concept of development and consciously avoid limiting definitions is one way to

escape from narrowing down the object, aim and ‘approved’ participants in development studies:

"...we unravel some of the problems of development, indicating the diversity, rather than any particular definition of what development is.....the concepts of 'development' and ongoing development processes need to be both historically and politically contextualised and examined with reference to different theoretical traditions.."
(Noragric PhD Programme in Development Studies, 2000).

Defining 'development' is also a 'struggle over meaning' (Peters, 2000) and it may not be meaningful to define it at all without contextualising and rooting it: where, when, for whom, by whom. By rooting the definition one addresses the critique that highlights negative impacts of development projects and structural changes on people (Barth, 1997; Shiva 1988; Sachs, 1992). Since the definition of terms is an exercise in 'fanciful abstraction', I quote Barth's admonition:

To have something of value to say on the consequences of economic changes [development] for ordinary lives we cannot adopt an economicist [development theoretical] perspective that would estrange us from those lives in their complex particulars (Barth, 1997).

Drawing primarily on Sen (1988 and 1999)¹⁰, I posit possible formulations of ‘development’, both with explicit and less explicit value-connotations (Text box 6).

Text box 6: Development

1. "Neutral" – thin
Development is social change.
2. "Neutral" (but not quite) – a bit thicker
Development is lasting changes in combined and interlocking social, economic, cultural, technological and ecological processes and structures.
3. "Normative" – concise (Sen, 1999)
Development is freedom.
4. "Normative" – a little elaborated (Sen, 1988 and 2000, my "combination")
Development is social change that leads to an expansion of human capabilities and freedom.
5. "Normative – rooted"
Development is social change that the people involved regard as an improvement in their lives, conditions and outlooks with respect to things, freedom, welfare or any other quality they choose as yardstick.

I suggest that development has to do with "lasting" change, to distinguish it from more or

less stochastic natural or social fluctuations. This still reflects the 'modernizing ideology' and linear thinking of development theory criticised by Sachs, who refers to the many cases where development actually 'came and went' in the form of short-lived and unsuccessful projects. The attempt in point 5 at 'rooting' the definition raises the questions: who are involved and how to secure that those affected are heard? It partly takes us to more localised groups and micro-processes, partly back to major social changes (democratisation) that are typical of grand development theory. Therefore, we need value-guidance that relates both to the micro-level of real people and the higher-level freedoms and enabling conditions (refer the policy statements in 3.1 and the call for more research across levels, Mehta et al, 1999: 7, 39). Sen is particularly concerned about this breadth and correspondence (Shanmugaratnam, 2000). He argues that development must have a value-orientation, and that we should be explicit about it (Sen, 1988). I agree, for development studies unavoidably draw moral relevance from their object and context of human suffering, survival and progress. As an axiomatic outcome of the debate and critique of positivist ideals of science human inquiry cannot be value-free (Kuhn, 1968), nor can social change. I suggest characterising, rather than defining, development studies as,

1. *Value-based and problem-, opportunity- and solution-oriented;*
2. *Aimed at contributing to development as a growth in human freedom and capabilities;*
3. *Concerned with lasting change in interlocking social, economic, cultural, technological and ecological processes and structures, and*
4. *Specifically and particularly committed to the rights and development perceptions of the people involved in or affected by the practice, object or context of research.*

While values guide or influence all human inquiry, a study of *human rights* takes values as its subject matter. Human rights analysis and policy face what Sen (1988) has called problems of “*value-heterogeneity*” and “*value-endogeneity*” referring to, respectively:

- Different people accept different valuation-functions, and
- Development alters the valuation functions of the people involved (Sen, 1988: 20).

Critics may claim that the values and perceptions proposed and 'pushed' as human rights

¹⁰ Refer also Shanmugaratnam (2000), who gives more elaborate interpretations and definitions.

are the outcome of specific histories (Tvedt, 1990). Sen finds that there are

“complex philosophical issues involved in judging changed conditions, when those changes bring about alterations in the values attached to these conditions” (Sen, 1988: 22).

In line with old traditions in ethics and political economy dating back to Aristotle, he sees valuations as having a measure of objectivity. There are three fundamental ideas in his suggestion about how to tackle valuation problems in development theory:

1. Distinguish between means and ends, and focus on the functionings of human well-being¹¹
2. Regard processes as means, not ends¹²
3. Recognize the dual role of ‘values’: “Values are not just instruments, but also views about what should and should not be promoted” (Sen, 1988: 23).

As a guidance for and instrument in development, human rights are characterised by ‘value-endogeneity’: they are both a product of and a yardstick of the direction of development, represent both ‘foundational’ values and ‘tools for change’¹³. To Sen, one trivializes the concept of development if one neglects *“the foundational role of value in favor of an instrumental view”* (Sen, 1988).

3.3 Perceptions of justice

While mainly beyond the scope of the essay, one needs a *theory of justice* to interpret human rights and rights-based development¹⁴. Rawls’ theory of *justice as fairness* focuses on a correspondence between social institutions and inviolable freedoms of the individual. He formulates the central place of ‘property’ in a just society, here in the “the property-owning democracy”:

¹¹ “Insofar as development is concerned with the achievement of a better life, the focus of development analysis has to include the nature of the life that people succeed in living... People value their ability to do certain things and to achieve certain types of beings (such as being well nourished, being free from avoidable morbidity, being able to move about as desired, and so on).

¹² “As far as the living standards of the people are concerned, there is no escape from focusing on achievements, and processes come into all this mainly as means to and antecedents of those achievements, rather than being independently valuable in this context” (17).

¹³ May be further elaborated into *five human rights ‘functions’, the five i’s*: idea (foundational value); indicator (gauge); instrument (tool for change), implementation (process) and impact (expansion of capabilities).

¹⁴ Not as a position from which ‘good and bad’ human rights tenets policies can be singled out, but because a ‘theory of justice’ is necessary to ‘see’ the phenomena at all. Similarly, the current South African debate on land reform seems to reflect a groping for a shared, forward-looking theory of justice, expressed, e.g., in a strategy of rural development.

*“...the background institutions of property-owning democracy, with its system of (workably) competitive markets, tries to disperse the ownership of wealth and capital, and thus to prevent a small part of society from controlling the economy and political life itself. Property-owning democracy avoids this, not by redistributing income to those with less at the end of each period, so to speak, but rather by ensuring the wide-spread ownership of productive assets, and human capital (educated abilities and trained skills) at the beginning of each period; all this against a background of equal basic liberties and fair equality of opportunity. The idea is not simply to assist those who lose out through accident or misfortune (although this must be done), but instead to put all citizens in a position to manage their own affairs and to take part in social cooperation on a footing of mutual respect under appropriately equal conditions (Rawls, 1990, Preface for the revised edition, *A Theory of Justice*).*

Rawls contrasts the ideal types of ‘property-owning democracy’ with ‘welfare state’ (a society that places the emphasis on social services, social security and redistribution of income but, in his perception, less on fair equality of wealth and opportunity). It also contrasts with a “liberal socialist regime”, but:

“...justice as fairness leaves open the question whether its principles are best realized by some form of property-owning democracy or by a liberal socialist regime...As a political conception, then, justice as fairness includes no natural right of private property in the means of production (although it does include a right to personal property as necessary for citizen’s independence and integrity), nor a natural right to worker-owned and-managed firms. It offers in stead a conception of justice in the light of which, given the particular circumstances of a country, those questions can be reasonably decided” (Rawls, 1990: xv –xvi, emphasis added)

Thus, property is central, but an instrument rather than an end, in Rawls’ perception of social justice. This appears to conform with the view of property expressed in human rights instruments (2.1). I also find Sen’s perspective on development as freedom (refer Text box 6) to be a well-conceived position, relevant for both founding and questioning human rights ideas:

Expansion of freedom is viewed...both as the primary end and as the principal means of

development. Development consists of the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency. The removal of substantial unfreedoms...is constitutive of development. However...the intrinsic importance of human freedom as the preeminent objective of development is strongly supplemented by the instrumental effectiveness of freedoms of particular kinds to promote freedoms of other kinds. The linkages between different types of freedoms are empirical and causal, rather than constitutional and compositional. For example, there is strong evidence that economic and political freedoms help to reinforce one another..." (Sen, 1999: xii)

Sen's perspective underpins the theoretical perspectives in Chapter 4. The environmental entitlement approach builds on his view of expanding human capabilities as an end. Discursive practice, whether phrased as 'struggles over meaning' or more mundanely as public debate, is one of the post-apartheid political freedoms as well as an important means in the land reform process¹⁵.

3.4 Values, practice and knowledge

Drawing upon Aristotle's typology of knowledge and intellectual virtues, Bent Flyvbjerg claims that a reflective study and discussion of human goals, values and interests is a precondition for cultural, economic and political development in all societies; and that the development of a '*rationality of values*' ("*værdirationalitet*") is needed to complement a scientific and technical rationality (Flyvbjerg, 1991)¹⁶. However, in the European project of modernity since the Enlightenment, a technical-analytical rationality has dominated science and society – to the extent of becoming equated with the concept of rationality itself, a concept excluding human values. The study of links between *values, knowledge and praxis* has been neglected within a simplistic perception of science as a deliverer of value free tools, concealing how technology changes human values and how science is a source of ideology and worldviews (refer Weber's "*disenchantment of the world*" and the debate about mechanistic science and ecological crisis, e.g. Shiva, 1988). Flyvbjerg gives an overview of three different modes of learning, *techne, episteme* and *phronesis* (Textbox

¹⁵ Mr Basson in Pella said that the 'new' right to speak (about land) was as important as the new land and grazing opportunities acquired.

¹⁶ Titled, in translation, *Rationality and power. The science of the concrete*, Flyvbjerg, 1991

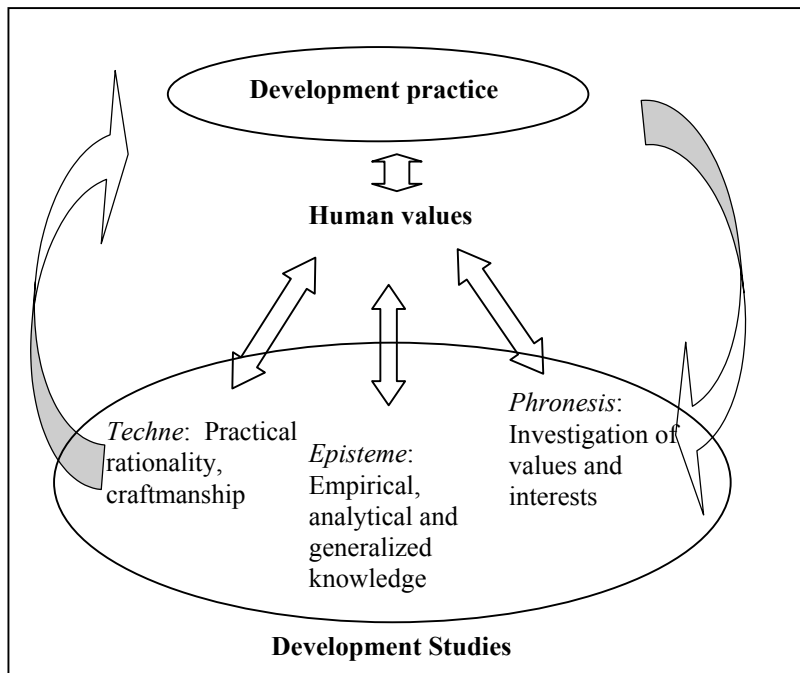
7).

Text box 7: Episteme, techne and phronesis

Intellectual virtue	Characteristics (Flyvbjerg)	Quote
Episteme	Scientific knowledge. Universal, invariable, context-independent. Based on a generalizing, analytic rationality. Original concept today known from the concepts “epistemology” and “epistemic”. About production of invariable knowledge.	“What science [episteme] is...will be clear from the following argument. We all assume that what we know cannot be otherwise...Therefore the object of scientific knowledge <u>is</u> of necessity. Therefore it is eternal...Induction introduces us to first principles and universals, while deduction starts from universals.”
Techne	Craft/art. Pragmatic, variable and context-dependent. Oriented towards production. Based on a practical rationality of means. The original concept known today through the words “technique” and “technology”., About production of things.	“.. building is an art [techne], and is essentially a reasoned productive state....Art is a productive state that is truly reasoned. Every art is concerned with bringing something into being, and the practice of an art is the study of how to bring into being something that is capable of being or not being....For it is not with things that are or come to be of necessity that art is concerned nor with natural objects (for these have their origin in themselves)...Art operates in the sphere of the variable”
Phronesis	Ethics. The analysis of values and interests with a view to praxis. Pragmatic, variable, context dependent. Oriented towards action. Original concept has no contemporary analogy: disappeared from our language. About the production of policy and human relations and values.	“Prudence [phronesis] is not concerned with universals only; it must also take cognisance of particulars, because it is concerned with conduct, and conduct has its sphere in particular circumstances. That is why some people who do not possess theoretical knowledge are more effective in action (especially if they are experienced) than others who do possess it....”

Source: Flyvbjerg, 1991: Table 4.1., 73, quoting Aristotle: *The Nichomachean Ethics*, Penguin, Hamondsworth, 1976

Figure 1: Development: practice, values and intellectual virtues



Aristotle's distinction between types of knowledge suggests a way of throwing light on the status of values or norms in 'development studies'. Both development research and development practice build on, refer to or contradict human values. Interpreting science as *different interrelated ways of knowing* may make the value-base and value-links clearer and more explicit. Figure 1 illustrates a conception of knowledge that includes *techne* and *phronesis* (practical-political competence) as the interface of science and practice. It is not the case that values affect science only through *phronesis* and that science affects values and praxis merely through *techne*. All three domains of inquiry are value-based and contribute to practice. What distinguishes *phronesis* is that it aims to observe and reflect upon the link between values, knowledge and praxis. At the same time it is related to values in non-reflective ways: it is not a master discourse of human inquiry¹⁷. The analysis may serve a study of 'human rights and land' by:

- *De-constructing 'development studies'*, portraying knowledge as intellectual, technical and moral capability shaping and shaped by development practice
- *Identifying the study as a 'progressive phronesis'*, a stepwise, pragmatic exploration of

¹⁷ In my version. For Aristotle it was: "for the possession of the single version of prudence [phronesis] will carry with it the possession of them all [all the intellectual virtues]" (The Nichomachean Ethics, 1143b33 ff, (Flyvbjerg, 1991, Vol. I, 76)

values in discourse, practice and human relations¹⁸, rather than an *episteme* study concerned with theories of explanation and prediction, more characteristic of natural science¹⁹.

- *Identifying land reform as practical phronesis* based on the unity of politics and political science as stressed by Aristotle, who used the concept about different levels, household, community and state²⁰. Politics and policy is more directly related to the reality and analysis of human values and interests than to generalising science.
- *Suggesting types of knowledge that are needed for land reform performance, including a de-contextualised, epistemic theory, for example about land tenure security and human economic behaviour²¹; agronomic, hydrological or organisational knowledge (techne) about how to do something with land; and the value-analysis, phronesis, which attempts to show links between values, strategies, impact and other knowledges (techne and episteme).*

We need to appreciate different aspects of human knowledge, and upgrade those (*techne* and *phronesis*) that border on praxis and are the means for *episteme* to become relevant. Before disciplinarity, it was easier to maintain a focus on how we approach and act on the world, over and above how we compartementalise the world. Inter- or post-disciplinary learning develops around problems, opportunities and solutions. When keeping in mind Aristotle's suggestions, we may appreciate different disciplinary contributions to the broad range of human inquiry and a constructive interplay between development studies and development.

4. THEORETICAL ENTRY POINTS

4.1 Assumptions and thesis

People are both at the delivering and receiving end of land reform. Whether the bureaucrat

¹⁸ With implications for methodology, refer guidelines suggested by Flyvbjerg, 1991: Vol. I 82 – 88.

¹⁹ Flyvbjerg discusses *episteme* and *phronesis* in relation to strengths and weaknesses of social and natural sciences. Postulating a dichotomy could further contribute to the malaise of disciplinary divides in development studies. Aristotle's perspective pre-dates, and indirectly bridges, the divide.

²⁰ "Political science and prudence [*phronesis*] are the same state of mind....Prudence concerning the state has two aspects: one which is controlling and directive, is legislative science; the other.....deals with particular circumstances....this latter is practical and deliberative" (The Nichomachean Ethics, 1141b8-1141b27, quoted after Flyvbjerg, Vol. I, 75)

tries to govern the farmer, or the farmer tries to reach the bureaucrat, human agency is the complex matter they try to affect. To understand the '*fate of human rights*' one must know something about what people say, think and do,

- Claiming and utilising land for a variety of purposes (praxis)
- Making decisions within a range of local institutions (institutional development)
- Negotiating, commenting on and resisting policy (policy discourses)
- Producing and using knowledge within different fields (discourse).

In and around the Namaqualand commons there are local stakeholders, with stronger or weaker interest in the land. They include local government representatives, livestock herders (differentiated according to herd size), community-level organisations, nature conservation organisations, private farmers etc. A classification of stakeholders is tentative and must go hand in hand with recording interests, perceptions, resource use, sources of power etc. (Brown, 1998). I assume that the ways people perceive rights, land and entitlements reveal and determine the implementation and impact of human or other legal rights. *The thesis of the project is that the social re-construction of rights to land is a multilevel struggle over meaning and that competing and 'powered' views, explicit and implicit, affect the conversion of 'rights' into expanded 'entitlements'.*

4.2 Environmental entitlements

The 'environmental entitlements framework' (Leach, Mearns, and Scoones, 1997) analyses the dynamic relationship between differentiated stakeholders and environments (Figure 2 on page 49). It is based on Sen's analysis of how people are, or are not, able to turn endowments (such as ownership to land) into entitlements (effective command, such as for food production) and capabilities, and may offer a way to address Ben Cousins' (1997) questions:

“How do legally defined rights to resources become effective command over those resources? What are the limits to social change through legal reform?”

The environmental entitlements framework reflects dynamic ecologies and differentiated local resource users interacting with a wider political economy: all assumptions that

²¹ Which may be hard to come by, however (Sjaastad, 1998).

appear relevant in the case of land reform in Namaqualand²². It maps complex, multi-level institutions²³ that affect the processes through which people transform resources to capabilities. With its 'tolerance' of dynamics, multiple levels and complexity, I suggest it can be used in a narrower analysis of '*rights in discourses*' and the way they reflect or shape entitlement processes. I draw upon a tradition from common property theory (institutions as rules), but do not regard 'right as rule' as something static; on the contrary its meaning is contested and negotiated between levels, and draws upon a context of daily life and meaning (Mehta et al., 1999). 'Right' may include statutory law and effective market demand (as stressed by Sen), but a careful analysis must be open for several ways of justifying claims:

"Since there are many ways of gaining access to and control over resources beyond the market, such as kin networks, and many ways of legitimating such access and control outside the statutory legal system, including customary law, social conventions and norms, it seems appropriate to extend the entitlements framework to the whole range of socially sanctioned as well as formal-legal institutional mechanisms for gaining access and control (Leach et al., 1997: 16).

While I choose a narrower focus, this warns against overlooking unexpected and non-explicit local idioms for speaking about and justifying claims (related to residence, life history, kin relations, and "good stories"). 'Rights' are determined by a range of material, economic and cultural factors, including the human and financial resources for keeping records of rights. Although I suggest analysing them through local discourses, rights have their context, object and impact in praxis: resource mobilisation and appropriation in an entitlement process.

Implementing land use plans, investments and maintenance are big problems due to lack of support, farmers in Namaqualand said (Wisborg, Field notes, October 2000). It reduced the value of newly acquired land and lead to conflict between the right-holders and the local councils. Rights' only open spaces, provide 'rooms for manoeuvre'. People had taken important steps to expand their 'rights' and were keen to turn them into production increases. However, it appeared to be an unresolved challenge for people and supporting

²² And supported by case studies, including that of Thembela Kepe on the Wild Coast of South Africa.

agencies to move ahead of the dilemma of poor versus rich, everyone's livelihood security versus individual enterprise. This appeared to be linked to a lack of a development strategy behind the land acquisitions and the persistent constraint on productive land resources.

The 'entitlements framework' asks questions about 'rights' with greater precision and awareness of dynamics than merely a formulation of substantive rights²⁴. An example of steps in an entitlements process was mentioned in the new Namaqualand commons, where our brief meetings focused on the right to graze animals on new land. In the case of Pella, the grazing resource available appeared to be significantly expanded. In principle, households had equal rights to the new resources, expressed (and over-communicated?) in the emphasis on everyone's right to apply for permission to use new land. Household heads (?) apply to the *Meentkomite*, indicating how many animals they wish to graze in the new commons, for which they pay 0.2 Rand per goat per month (Pella). Yet, one leader in Leliefontein indicated that (poorer) people do not see an advantage of paying for grazing in the new commons, and do not see that it may be a longer-term strategy to increase herd size. If leases give some of the richer farmers access to significantly expanded grazing resources, it may be a basis for them to increase future herd size. Households with few livestock may risk losing in the longer term because an increasing number of livestock enter the open-for-all old commonage (Wisborg, Field notes, 2000).

The "community endowment" ('ownership' of more land) is turned into individual effective, but temporary, entitlement (actual grazing and production). The step is mediated by a bureaucratic procedure, undoubtedly with its own judgements attached. Entitlement patterns vary between stakeholder groups, such as leaseholders versus others. The entitlement process 'splits out', from common, to group to household and individual; the entitlement steps of different groups are linked, may change over time and are part of processes of social differentiation.

There are other informal and practical limitations on the real entitlement of new rights. A farmer in Leliefontein talked about "fraud deals" in connection with the purchase of new

²³ In the meaning of 'regularised pattern of behaviour'.

²⁴ Although they are complex enough, since communal land rights in Namaqualand involve: residential rights, grazing rights, sowing rights, irrigation rights and business rights (Archer, 1993)

farms; he claimed that the prices paid were above market prices, and that only one of four farms was “viable”. Farmers mentioned that availability of water is a crucial quality of any land; in some cases, linked to lack of information and transparency, communities had taken over farms where the water infrastructure was destroyed. Local people had still not accessed the two farms (De Riet I and II) purchased in Leliefontein in 1999 at all, because both the road there and the pumps were destroyed. However, they had now made a step forward by getting more active in the prospecting and purchase process. The links between land, water and infrastructure affect the old commons too. In Leliefontein, Mr Titus said that only about 60,000 of the 192,000 ha old commons were actually used for grazing (primarily due to lack of water). This has strong implications for its role in human livelihoods and for the environmental impact of human use, and, presumably, the need for special areas to conserve biodiversity (Wisborg, Field Notes, 2000).

New legislation in South Africa formally separates land ownership from water ownership (National Water Act, Act 36 of 1998). All water belongs to the state, and use is in principle subject to application and temporary lease; apparently the Act does not deal specifically with water in communal areas (Dirk Versfeld, Department of Water Affairs, pers. comm.). Anyhow, it is here not a formal definition of use rights that determines outcome, but resource scarcity and lack of technology and capital to create effective command. One may then argue that the legal/discursive perspective on the entitlement process is of limited relevance, as compared to a materialist-technological. Yet, taking one step back, the issue is still wrapped in a discourse of rights. For example, to support conservation of the rich and unique biodiversity in Namaqualand, a livestock researcher quoted the argument that limited, *and as a strategy limiting*, access to water is the main factor in protecting vegetation cover from the impact of grazing (Jan Raats, pers. comm.). Here, the suggested “measure” is one of not assisting a certain step from endowment to entitlement. In a ‘struggle over meaning’ it challenges not a ‘right’, but the ‘rightfulness’ of the entitlement process (only the entitlement pattern of keeping livestock, because the argument could be that ‘conservation’ is equally profitable for locals). At the level of ‘truth regime’, this way of seeing rights may be part of an eco-centric, nature conservation discourse²⁵. At the level of ‘human rights’ and rights-based development it illustrates the

²⁵ World Wide Fund for Nature is active in Namaqualand and perhaps a threat to land redistribution because they have resources to buy white farms and set them aside as wilderness areas (pers. comm., local activist). In that case the thrust

distinction between ‘protection’ and ‘provision’ when it comes to the duty on the part of states or other actors:

“Some human rights represent basic limitations on the legislator. Their purpose is to protect the individual against abuse of power by the state (or the minority against the majority). They limit the state’s freedom of action. Other human rights oblige the state to take certain actions, to provide certain services to meet certain human needs and aspirations. This distinction between “protection” and “provision” corresponds roughly to the distinction between civil and political rights on the one hand, and the economic, social and cultural on the other..[]The civil and political rights are, generally, easier to ensure and enforce through strictly legal means than the economic, social and cultural rights” (Bugge, 1998).

This gives a glimpse of the great, or disturbing, human rights chain of being. Rights and perceptions of rights (to land) may be pursued across several levels, from ‘human rights’ to policy to the interaction-based construction of rights and meanings in local practice. To understand the entitlement process, one must work ‘upwards’ from the local to the policy level, assessing the input people have given, or could give, to policy, and the relevance of emerging land reform instruments and perspectives. Carefully recorded variations in the understanding of rights may show how rights to land are bundled together; how they are linked to the sense of belonging to a community and being attached to a place; and how these grounded and interwoven meanings affect the process of realising rights. Water and land are but one example of the system links that determine meaningful realisation of rights to land. Because of the multiple natures of livelihoods and land functions, there are many such links that require articulation of individual, household or group rights. It becomes a question what general, formal rights give a *sufficient* framework for self-evolved, rooted, meaningful and workable rights.

Thus, the environmental entitlements framework for understanding institutional dynamics of environmental change reflects important features of the human rights - land reform interface:

- *Theoretical base* in Sen's vision of development as growth in capabilities and freedom

is made at the level of endowment, in order not to rely on the weak effective command of farmers who may have different priorities.

by people transforming resources to endowments and entitlements under enabling conditions of freedom and rights

- *Dynamics* of entitlement processes in heterogeneous communities and ecological settings, where people continuously utilise, maintain and create resources and affect the wider environment.
- *Scale* of political economy hierarchy within which people formulate and negotiate rights
- *Context and determinants* in a broad set of institutional factors, of which I will focus on discourses of rights, although the context of social interests, power and practice must inform the interpretation.

4.3 A political ecology of discourses

'*Political ecology*' is an interdisciplinary and evolving field exploring society-nature relations and drawing upon political economy, ecology, post-structural social science and environmental history among others (Blaikie and Brookefield, 1987; Peet and Watts, 1996; Benjaminsen, 1998 and 1999; Hasler, 1998). Political ecology refers to:

"the process whereby different hierarchical levels of vested interests at global, national, provincial and local levels determine the management of ecological resources" (Hasler, 1998: 11). [and] *"..new directions...(which)...attempt to engage political ecology with ideas and concepts derived from post-structuralism and discourse theory....political economy, the power-knowledge field and critical approaches to ecological science itself"* (Peet and Watts, 1996: 13).

Political ecology has emerged alongside with and stresses many of the same features as a dynamic entitlement approach: heterogeneity of communities and resources; historical contest and change; non-equilibrium ecology and power. It spans eclectic approaches and methods with more rigid post-structuralist positions; a degree of methodological pluralism may be fruitful in grappling with the unique transformation processes of post-apartheid land reform. Relevant features of political ecology are that it:

- Elaborates the concern about histories of environment, community and policy, with a stronger emphasis on the contested evolution of meanings
- Emphasises the context of spatial and power hierarchies, important both for understanding the apartheid construction of race and space that lead to the creation of

the coloured reserves (Boonzaier et. al., 1996), and for theorising power in the present policy process

- Can be combined with discourse analysis (Peet and Watts, 1996, Adger, Benjaminsen, Brown and Svarstad, 2000), focusing on how discursive practice enters local entitlement processes
- Includes value-oriented inquiries concerned with ‘social justice’ and the ‘emancipatory potential’ of critical analysis (Peet and Watts, 1996).

Discourse may be defined as “*a truth regime related to a specific social phenomenon or practice*” and characterised by “*homogeneity in expressions and messages*” (after Adger et al., 2000). Discourses may involve narratives, i.e. stories with actors, plot, chronological order and a set of dominant roles (heroes, villains and victims) that represent a moral outlook. Also important are metaphors; scenarios of past and future; and participants’ use of keywords, such as ‘rights’, ‘ownership’, ‘poverty’, ‘environment’, ‘degradation’ and ‘sustainability’. Discourse analysis involves both the *expressions*; the *actors* producing and transforming discourses; and *policy influence and social impact* of discourses (after Benjaminsen, Lecture, October 2000). Where to make the ‘analytical cut’ (what is the discourse, how many?) is an empirical question, where the defining characteristic is the homogeneity of messages and expressive means (Adger et al., 2000). To my experience, it is often also guided by the concern of the analyst to deliver a good story and make some sense of the myriad of statements and claims made by various actors. The human rights and land reform interface may be conceptualised as a ‘*knowledge field*’ with two major levels (see also Figure 4 on page 50):

- The level of (national) policy formulation, where the main issue is how the human rights tenets and narrative influence and is used by actors
- The local level where the negotiated meaning of rights interfaces with entitlement practice.

At the ‘higher’ level, discourse analysis may have goals and an approach comparable to Lakshman Yapa’s study of poverty in international academic and policy discourse:

“Although the experience of hunger and malnutrition is immediately material, “poverty” exists in a discursive materialist formation where ideas, matter, discourse, and power are intertwined in ways that virtually defy dissection...Discourse theory can help us understand why poverty cannot

be alleviated within the epistemology of conventional social science” (Yapa, 1996, 707-708).

Discourse theory may be an inroad to seeing and deconstructing ‘formations’ with respect to land rights, but I do not make grand assumptions about why ‘inequitable land ownership can or cannot be alleviated within the epistemology of conventional human rights’. I also find the extreme postmodernist position inadequate for including the ‘real action’ of discourse and entitlements. More approachable questions are how the two levels are connected with respect to specific issues. One is whether a level or discourse has ‘hegemony’, defined as the ability to dominate thinking and control its translation into institutional arrangements and practice, or a weaker form of ‘discursive domination’ (Hajer, 1995: 60-61, quoted in Adger et al., 2000). Another question is how versions from below enter and affect the policy discourse. Thirdly, whether the vaguely termed ‘knowledge field’ may be conceptualised as one discourse or truth regime around the social practice of re-constructing land rights? Or whether the national level human rights – land policy nexus is so tight and self-contained that it constitutes a discourse of its own, shielded from the (myriad of) local perceptions, claims and stories? Or whether distinct discourses cut across the levels and create cross-level allies and lines of confrontation?

Roe’s (1991) reflection on development narratives stresses the persistence of grand, blueprint type of stories and programmatic patterns for development policy and practice:

Rural development is a genuinely uncertain activity, and one of the principal ways practitioners, bureaucrats and policy makers articulate and make sense of this uncertainty is to tell stories or scenarios that simplify the ambiguity. Indeed, the pressure to generate narratives about development is directly proportional to the ambiguity decision makers experience over the development process. The more uncertain things seem at micro-level, the greater the tendency to see the scale of uncertainty at the macro-level to be so enormous as to require broad explanatory narratives that can be operationalised into standard approaches with widespread application” (Roe, 1991: 288).

‘Land reformers’ in South Africa certainly need good narratives and comfortably structuring discourses, given the complexity of the issue, the number of actors the heat of the debate and the amount of information they are surrounded by!! On the other hand, in spite of Roe’s scepticism, the alternative of a ‘learning process approach’ to development should not a priori be ruled out: implementers – particularly farmers, local government

officials, land registration officers and civil organisations - have to confront a specific, hands-on experience daily and bring parts of that experience into a shared discourse. Stressing actor-orientation and the premise that knowledge is negotiated and transformed in interaction, Arce and Long (1992) explore human, institutional and cultural interfaces:

“Interface conveys the idea of some kind of face-to-face encounter between individuals with differing interests, resources and power. Studies of interface encounters aim to bring out the types of discontinuities that exist and the dynamic and emergent character of the struggles and interaction that take place, showing how actors’ goals, perceptions, values, interests and relationships are enforced or reshaped by this process..[...] although the methodology of interface studies focus upon specific social interactional processes, the analysis should situate these within broader institutional and power fields” (Arce and Long, 1992: 214).

Discourse analysis can only meaningfully address the human rights – land interface with a basic awareness about the dynamic exchange between people in specific positions that reflect structure (though people cannot be reduced to their positions, and positions not to their levels). People struggle over meanings and thereby mediate between the human rights doctrine, the constitution, the law text, the advice of the extension agent, the title brief and the capability of a farmer to produce on her newly acquired land. Discourse theory is a tool for analysing mediation, coherence and gaps between human rights doctrines, national policy and local perceptions. In the ‘sorting out’ efforts one should avoid projecting neatly ordered discourses:

Knowledge is constructive in the sense that it is the result of a great number of decisions and selective incorporations of previous ideas, beliefs and images, but at the same time destructive of other possible frames of conceptualisation and understanding. Thus it is not an accumulation of facts but involves ways of construing the world. Nor is knowledge ever fully unified or integrated in terms of an underlying cultural logic or system of classification. Rather it is fragmentary, partial and provisional in nature and people work with a multiplicity of understandings, beliefs and commitments” (Arce and Long, 1992: 213-4, emphasis added).

Brief discussions with Namaqualand farmers indicated that there are shared discourses

across the levels, i.e. similar ideological dividing lines locally and centrally²⁶. A communal versus individual management debate polarized the local understanding of resource management and ownership. Mr Titus in Rooiefontein was a strong proponent of individualised management, and a former owner of an ‘economic unit’, a programme he praised in strong terms. He feared that people would continue using ‘the old system’ (by which he meant communal management and ‘free access’). He commented that to manage the resources, “you first have to manage the people” (that being the difficult part). Mr Titus said that the new farms are pedagogical tools, ways to ‘teach people’ about individualised management and talked about ‘putting people on the new farms’, rotating them from year to year, to make them used to the ‘new rules’. Another farmer and leader said that the majority view is that it “should be like in the past”. Respondents repeatedly stressed nature and resource conservation (*grund bewahren, velt bewahren*), for example when discussing the objectives of the ‘Meentkomite’. Debate about joint ownership and management has been polarised around the issue of conservation, a major argument for the ‘economic units’. Both defenders and critics of communal management are likely to stress sustainability arguments, perhaps particularly to an outsider. A discourse of sustainable resource management affected by private ranching models and conventional equilibrium ecological theory seemed to underlie the arguments (Wisborg, Field notes, 2000). The views and arguments appear to mirror the public debate following the 1999 change in political leadership and stressing the objective of supporting ‘*emerging black commercial farmers*’. This, according to critics, could be at the risk of the livelihood concerns of the rural majority. The proponents of either view take a certain look at *who* the local right-holder is, perhaps linked to contrasting narratives of heroic entrepreneurs or heroic small-holder *bricoleurs*. Maybe the ideological positions are part of separate discourses, perhaps an ‘economic development discourse’ unite the two. Wherever the analytical cut is made, it is humans who use discourses to think and act, rather than the opposite. In a comment on the post-structuralist trend in social science, Barth raises a voice of concern about distant viewpoints and analyses:

“..some speak of people as ‘authors’ of their own conduct or ‘authors’ of their own history; and in many connections, actions as contest between parties is displaced to a metalevel as ‘narrative’ or ‘discourse’. There seems to be a pervasive fear of engaging

²⁶ My evidence is scant and basically refers to the few discussions mentioned and the public debate (e.g. in Daily Mail and Guardian throughout 2000 (<http://www.mg.co.za/mg/>))

with those aspects of life in which people confront each other and interests clash, so that – in the current distanced, mood of anthropological writing – the scene of those former fishermen now picking over the fish skeletons might all to readily be characterised as 'ironic', rather than tragic and a call to action (Barth, 1997: 239).

'Human rights' can only be analysed at a distance, and it would be naïve to believe in some direct, non-contested, non-negotiated translation of human rights into action. *And it is as such negotiated mediations between 'rights', entitlements and outcomes that discourses are part of human reality.* A farmer in Namaqualand may refer to his property in 'old' idioms about his rights as *burger* in a communal reserve, or a recent idiom of citizenship in the 'New South Africa'. But, 'rights' are ingredients in real human relationships, and within their frame, sometimes contradicting them, things happen: crop and livestock farming; encroachment and murder; eradication of biodiversity. 'Entitlement' and 'disentitlement' happen in that sphere. It is the objective of a 'land reform discourse' to reach and transform 'entitlement practice', but it does not create it, because people using, and/or owning, land create the reality of tenure, not words and documents. It is not possible to envisage policy isolated from hidden and public discourses. In policy and practice, the move "from discourse to entitlement" is an ongoing process, negotiated by actors at different levels. They have the opportunity to become increasingly aware of each other: from 'above', learn how the policy discourse and changes affect local entitlements and livelihoods; from 'below', discover how legal reform and new rights can be used to expand entitlements and improve life. Reality is an oscillation between discourse and entitlement: the question is if it empowers people, and who, and what broader patterns of development as human freedom it leads to (Sen, 1999).

5. CONCLUDING REMARKS

“And the practice of an art is the study of how to bring into being something that is capable of being or not being. For it is not with things that are or come to be of necessity that art is concerned nor with natural objects (for these have their origin in themselves). Art operates in the sphere of the variable.” (Aristotle, Nichomachean Ethics)

Human rights, rights-based development and South African land reform are based on claims that ‘*human rights*’ can be foundational values and tools for development through links in the ‘great chain of being’ from international human rights instruments to national policies of *protection* and *provision* and the empowerment of the right-bearers, men and women, as ‘agents of development’. So, perhaps ‘rights-based development’ justifies inquiry of the scale and complexity that I have indicated. Yet, it was a goal of the essay, and a concern of my supervisors (!), to *narrow down the scope and clarify the analytical argument of the proposed study*. I therefore sum up by stating how the essay has contributed to articulating a focus and argument:

1. *Entitlement dynamics*. The main empirical focus is on stakeholders in and around a communal land resource in Namaqualand and their efforts to expand entitlements and capabilities based on those resources.
2. *‘Rights’ and meanings as determinant*. The guiding idea is that ‘rights’ and contested meanings of rights reflect, challenge and shape local entitlement dynamics.
3. *Context*. Local discursive practice – using and negotiating knowledge about land use and governance - is the main context for interpretation.
4. *Scaling up*. To place local rights and entitlement processes within higher level policy and discourse involves:
 - Documenting and analysing central tenets of relevant new legislation
 - Reviewing the policy debate (1999 – 2000) on economic strategy, equity and entrepreneurship as reflection of human rights perceptions and concerns about what constitutes a right-holder
 - Analysing the dialectics between the findings and selected articles (equality, gender, property) of the constitution and international human rights instruments.
5. *Theory of social justice*. While entitlement and discourse theory are the ‘operational’ theories of the project, an analysis of human rights ideas presupposes a theory of justice

(sub-chapter 0). Powerful ideas are Sen's emphasis on development as freedom through expanding entitlements and capabilities, and Rawls' formulation of the important, yet primarily instrumental, role of property within a conception of *justice as fairness* (equality of opportunity and basic human freedoms).

South Africa has adopted a constitution that is based on human rights principles of equality and non-discrimination, and that promises to compensate past injustice and secure future equitable access to the country's vast natural resources. This has engendered a rich, multifaceted and confusing policy debate, reform and new legislation. To my innocent eyes it appears fast, serious, competent and highly ambitious in the context of limited resources and a socio-economic structure '*moulded in concrete*'. Pace and impact is debated, as it should be. Many have listed sensible things that could and should be done in order to increase impact: expand and keep cadastral registers for communally held land; invest in extension and training; make credit more available; study environmental and livelihood impact of reform experiments. In my small glimpse of one on-the-ground situation, some land had been distributed and some people had gained something. Yet, the link between policy, development discourse and human entitlement seemed contested and weak. The local conflict about whether to move ahead through individualisation or continued communal ownership and management reflects past experiences, academic debates and a controversy at the national level. My thesis is that to move from *discourse* [human rights and policy] to *entitlement* [human concerns and practice], one needs to:

- Start with an awareness of the formal and informal factors that affect how people turn resources into capabilities and welfare
- Consider how 'rights' in political, legal, academic and local discourses affect the different steps of the entitlement process
- Recognizing socio-ecological variability and the limited role of 'rights', emphasise reform that 'opens spaces' for self-organising and enterprise development
- Continue the debate about how to translate contested 'rights' into locally and socially targeted rural development strategies – and the international, government and civil sector programmes of *protection* and *provision* they require.

The local context, empirical material and methodology have yet to be set out, but I believe it is fruitful to pursue the human rights – land reform issue further by bringing together

entitlement and discourse analysis. Theories of social justice represent a framework of ideas. Rawls' view matches the notion of land as a *human rights issue*, rather than a *human right* (Wisborg, 2000). Both Sen and Rawls provide a theoretical and moral grounding for human rights as a legal system. Although this may be an 'academic' concern, there is a close link between *justification* and *operationalisation* of a human rights perspective (Lindholm, 2000). Yet, based on a superficial awareness, both Rawls and Sen appear to insufficiently address micro-power relations in social differentiation and resource contest. In this way, the main theoretical and empirical analysis contrasts and complements a theory of justice perspective. One may see *human rights as a system of legal norms that is situated between theories of social justice, on the one hand, and discourse and entitlement practice, on the other. Similarly, Development Studies is a branch of human enquiry situated between theories of social justice, on the one hand, and development practice on the other.* Change in discourse and entitlement practice is development, if it increases human capabilities and freedoms. It is *rights-based development*, if (human) rights, have been effective perspectives and tools in that change. And that, again, depends on how the discourse and entitlement process mediates between rights (e.g., to non-discrimination, participation and information) and the social reality of unequal power, wealth and status. Governments have committed themselves to both *formal and real equality* (Hvidsten, 2000). In Namaqualand, the *Transformation of Certain Rural Areas Act 94 of 1998* is intended to remove the "*old apartheid restrictions and other restrictions that impede the enjoyment and use of the land*" (App. 2). 'New commonage' has been made available to the people of Pella and other communities through state-assisted re-distribution. To merely show that realisation of human or constitutional rights depend on broader development processes would be banal for anyone who has been in contact with South African land reform. An inquiry into what happened and happens has to be focussed, detailed and analytical about the steps and dynamics. The ideas about human and other rights are so important, ambiguous, ubiquitous, and politically and analytically powerful that they should not be left to believers, but should be considered in theory and practice for more reflected and effective promotion. To '*re-construct rights to land*' is not a project of simple social engineering, if there ever was one. 'Re-constructing rights to land' is not about a mechanical disassembling and re-assembling, but an ongoing, messy process of articulating, re-interpreting, negotiating and reshaping. While South African land reform still has a long way to go 'from discourse to

entitlement', this essay has made a small theoretical step 'from entitlement to discourse'. However, it is a two-way process: whether we want *to do it* or *to analyse it*, we have to move '*from discourse to entitlement*' – *and back, back and forth*. And many times, I am afraid!

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APPENDIX 1: THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

Preamble

*We, the people of South Africa,
Recognise the injustices of our past;
Honour those who suffered for justice and freedom in our land;
Respect those who have worked to build and develop our country; and
Believe that South Africa belongs to all who live in it, united in our diversity.
We therefore, through our freely elected representatives, adopt this Constitution as the
supreme law of the Republic so as to -
Heal the divisions of the past and establish a society based on democratic values,
social justice and fundamental human rights;
Lay the foundations for a democratic and open society in which government is based
on the will of the people and every citizen is equally protected by law;
Improve the quality of life of all citizens and free the potential of each person; and
Build a united and democratic South Africa able to take its rightful place as a
sovereign state in the family of nations.*

*May God protect our people.
Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.
God seën Suid-Afrika. God bless South Africa.
Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.*

Chapter 2: Bill of Rights, selected paragraphs

§ 9. Equality

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

§ 24. Environment

Everyone has the right -

- a. to an environment that is not harmful to their health or well-being; and
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
 - i. prevent pollution and ecological degradation;
 - ii. promote conservation; and
 - iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

§25 Property

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application -

- a. for a public purpose or in the public interest; and
- b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) 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 interests of those affected, having regard to all relevant circumstances, including -

- a. the current use of the property;
- b. the history of the acquisition and use 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.

(4) For the purposes of this section -

- a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
- b. property is not limited to land.

(5) The state must 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.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6).

APPENDIX 2: TRANSFORMATION OF CERTAIN RURAL AREAS ACT 94 OF 1998

“What does this Act allow us to do:

- Transfer the Act 9 land from the Minister to the people or representative structures
- Remove many of the old restrictions on the land
- Give the community opportunities to benefit from the exploitation of minerals on their land
- Bring the old Ac 9 areas in line with the rest of South Africa and repeal Act 9 of 1987 after a transition period of 18 months
- Protect the existing rights of residents by ensuring that all formal and informal rights are recognised in the tenure plan for the commonage.”

“What principles must be adhered to by the land holding entity in dealing with land which is transferred to them through this process?

If the commonage is not transferred to a private individual(s), the entity holding such land must adhere to the following principles:

- Give all residents (people who ordinarily lived in the Act 9 area at the commencement of the Act or, who are liable for rates and taxes in the area) a fair chance to participate in the decision making process regarding the administration and allocation of the land
- Not discriminate against any resident
- Give residents a fair opportunity to participate in decision making regarding access to land
- Not sell any land without the consent of the majority of residents”

“Some questions for you to think about.....

- What do you want the Transformation Act to do for you?
- How do you think the land should be held to give you the best protection of your right and also ensure productive and responsible use of the land?
- If you believe the commonage should be transferred to the local authority, what arrangements should be made to protect your rights should the local authority be amalgamated with another local authority?
- If you feel the Commonage should be transferred to a Communal Property Association how will you finance the administration? Will someone be employed?
- Should the ‘saailande²⁷’ be cut out of the commonage and transferred to individuals?
- Is it possible to manage communal land – Should we go back to the Economic Units?
- Should residents be able to trade rights?

Source: Pamphlet from Department of Land Affairs (undated, 1999 or 2000). Selected sections quoted.

²⁷ Dry land plots to which certain families have ‘traditional’ rights, but which are currently leased out by local authorities and used mainly for cultivation of dryland crops (SPP, 1999: Report on the “Saailand” Pilot Study in the Rural Areas of Namaqualand).

APPENDIX 3: OUTLINE OF PROPOSED PHD PROJECT

Title	<i>Human rights and land tenure reform in South Africa: a case study of policy, discourse and stake holders</i>
Synthesis	South Africa's acclaimed policies on citizens' rights to land, environmental sustainability and democratic governance in land management are among the most challenging areas in which the nation is moving beyond the legacy of discriminatory law and practice. This PhD project on South Africa's land tenure reform process analyses the interface between human rights, policy reform and community land tenure as an aspect of the quest for a "rights-based development". The study uses a 'political ecology' perspective on the processes of legal reform and entitlement of people in relation to land resources. It combines policy analysis with a historical and contemporary case study in a communal reserve in Namaqualand, Northern Cape Province, analysing how policy reform is interpreted, enforced or challenged by local stakeholders. The originality of the project lies in reviewing human rights positions on land and property in the South African Constitution on the basis of applying environmental entitlement and discourse theory to a concrete communal land reform case. The outcome shall contribute to the theoretical and empirical understanding of land tenure as a human rights issue. It is expected to be relevant for formulating and implementing land reform policies that bridge human rights principles with local perspectives and realities in land management.
Development problem (context)	How to increase the relevance and impact of land reform by formulating rights and legislation in a way which expands human entitlements?
Research problem	How 'rights to land' are constructed in multilevel discourses and 'struggles over meaning' and how they reflect, contradict and shape local level entitlement processes.
Project goals (institutional and human resource development)	To contribute to Norwegian and South African competence on rights-based development with respect to land, environment and natural resources 1. To develop individual research competence and skills in development studies 2. To obtain the PhD degree 3. To contribute to the institutional cooperation between Noragric and PLAAS
Research goals	<i>To contribute to the theoretical and empirical understanding of communal land tenure as a human rights issue, by documenting and analysing how people construct 'rights to land' in multilevel discourses and 'struggles over meaning', and how these struggles over meaning reflect, contest and shape local level entitlement processes.</i>
	Sub-goals: 1 Practice and local livelihoods 1.1 To contribute to the understanding of rural land entitlement and livelihood processes in the local case studied. 1.2 To assess social justice of the participation and rewards by stakeholder groups 2 National land reform policy

- 2.1 To identify policy implications of coherence and gaps in the way land rights, community tenure and development are perceived at different levels.
- 2.2 To clarify value-conflicts and value-based choices involved in operationalising land reform policy to expand human entitlements to the commons, specifically
- 2.3 To document and discuss the place of policy within a public development debate (1999-2000) equality versus commercialisation in economic development of commons

3 Human rights and rights-based development

- 3.1 To document selected aspects of the interface between human rights and land issues
- 3.2 To discuss the implications of the case study for selected human rights tenets: i) 'equality' in the context of commons; ii) 'property' in the context of land and livelihood

4 Theory

- 4.1 To explore and develop theory by integrating the 'environmental entitlement framework' with discourse theory in an applied approach.
- 4.2 To discuss the implications for social justice theory (Rawls, Sen and Jacobs)

Research questions

1. Practice and local livelihoods

- 1.1. Who are the major stakeholders in relation to the communal areas?
- 1.2. What are their I) Interests; II) Major source of power, III) Physical involvement, IV) Main views on management and governance; V) Claims on rights; VI) Main reference/basis for claims of 'rights'
- 1.3. What are the major interests and power relations that make up the context the entitlement process locally
- 1.4. What fundamental human rights views do local people express or refer to?

2. National land reform policy

- 2.1. What are the main perceptions and objectives of South African policy reform for community land tenure?
- 2.2. How is 'rights to land' formulated?
- 2.3. What are the theories/views of local entitlement dominate the policy?
- 2.4. How do these formulations draw upon/refer to human rights perspectives or instruments?
- 2.5. What moral, legal and economic assumptions do 'rights' formulations reflect?
- 2.6. How are key concepts like 'rights', 'land', 'legal reform', 'development', 'poverty', 'environment' and 'entitlement' defined and used?
- 2.7. Do different uses of key concepts reflect different discourses of development?
- 2.8. As an example of 'policy discourse', document the main (human) rights perceptions in the 1999 – 2000 debate on livelihoods/equity versus commercial farmer development.

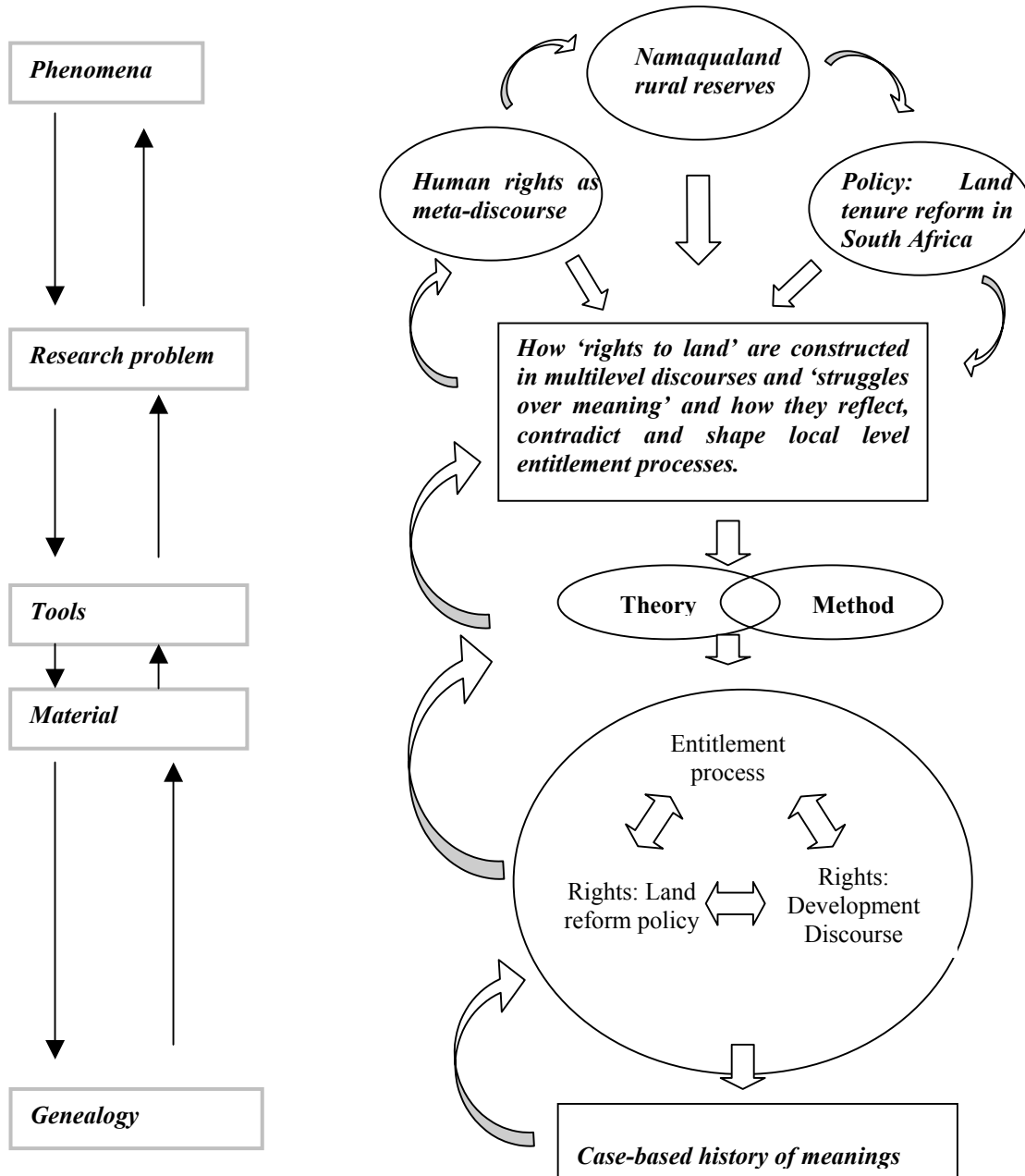
3 Human rights and rights-based development

- 3.4. What views and tenets of international human rights instruments does national policy refer to?
- 3.5. What views and tenets of international human rights instruments do other participants in the policy discourse refer to?

Research methods	<ol style="list-style-type: none">1. Literature and policy document analysis2. Case study: Local stakeholders (interests, perceptions, power and praxis) in the entitlement process3. Discourse analysis4. Archival study (local environmental history)
Human rights instruments (for reference to central tenets)	<ul style="list-style-type: none">• Universal Declaration of Human Rights, 1948• International Covenant on Civil and Political Rights, 1966• International Covenant on Economic, Social and Cultural Rights, 1966• Convention on the Elimination of all forms of Racial Discrimination, 1965• Convention on the Elimination of All Forms of Discrimination against Women, 1979• The African Charter on Human and People's Rights, 1981• The ILO Convention 169 on Indigenous people and tribal people in independent states
Policy and legal reform (main documents to investigate)	<ul style="list-style-type: none">• Certain Rural Areas Act (Act 9 of 1987)• The Constitution of the Republic of South Africa (Act 108 of 1996)• The Interim Protection of Informal Land Rights Act (Act 31 of 1996)• The Communal Property Associations Act of 1996• The White Paper on Land Tenure Reform, 1997• The Transformation of Certain Rural Areas Act 94 of 1998• The Bill of Land Rights, 1999
Study area	Namaqualand District of Northern Cape Province, South Africa
Case study	One of six communal reserves currently undergoing change as part of land redistribution and land tenure reform.
Field research: methods	<ol style="list-style-type: none">1. Random sample household interview2. Key person interviews3. Focus group participatory appraisal: resource mapping; social mapping and time line/trend analysis4. Field transects5. Oral history and life story cases6. Local archive study
Timing	April 2001 – April 2004. Stay in South Africa (Cape Town/Namaqualand): August 2001 – July 2002. Field research during repeated visits: approx.: 5 X 3 weeks.
Funding	Norwegian Research Council and Norwegian Agency of Development Cooperation
Institutional cooperation	The PhD project is a component of the cooperation between The Programme for Land and Agrarian Studies (PLAAS), School of Government, University of Western Cape, South Africa and the Agricultural University of Norway (NLH), funded by NORAD through the Institute of Human Rights, Oslo.
Supervisors	Tor Arve Benjaminsen, Senior Researcher, Noragric, NLH (main); Hans Sevattal, Professor, Department of Landscape Planning, NLH (co-supervisor)

Keywords land tenure, property, policy reform, human rights, rights-based development, political ecology, environmental history, stakeholder analysis, discourse, entitlement, common pool resources.

APPENDIX 4: FLOW-DIAGRAM OF PROPOSED PHD PROJECT



APPENDIX 5: TOWARDS A CONCEPTUAL FRAMEWORK

Figure 2: The environmental entitlements framework

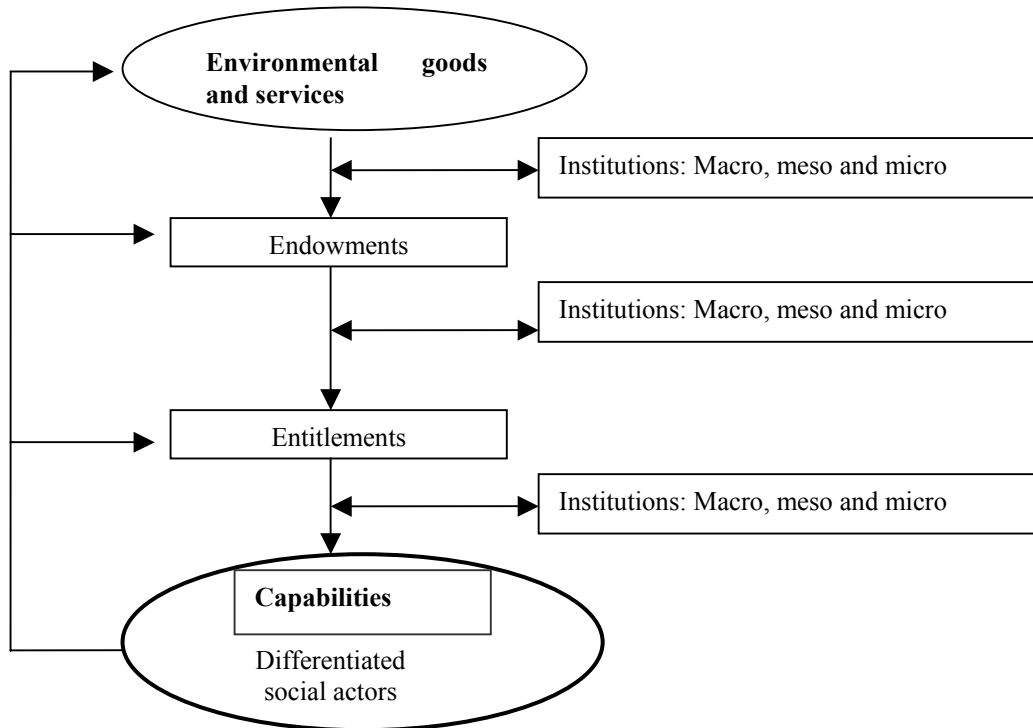
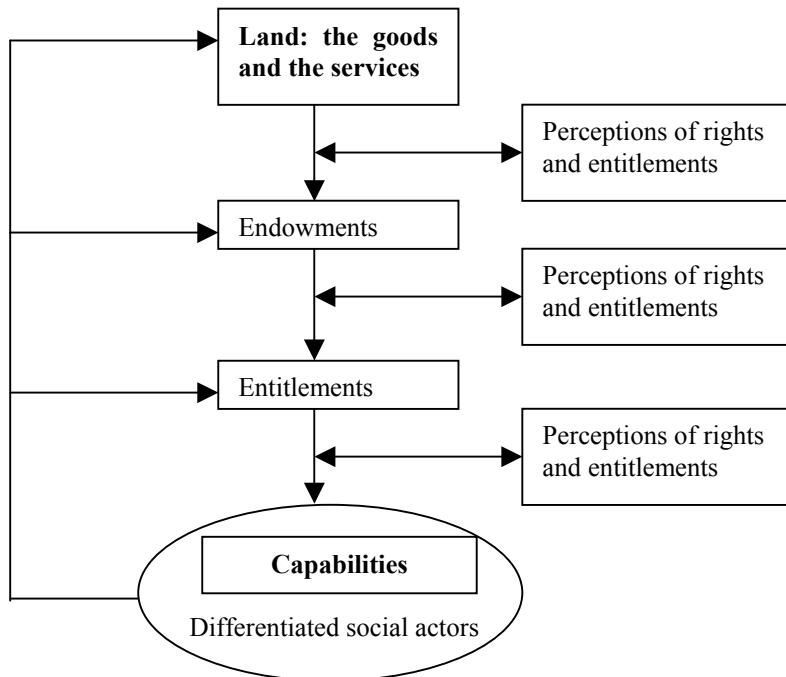


Figure 3: Land entitlements and ‘rights perceptions’ as formative institutions



Adaptation of the environmental entitlements framework (Leach, Mearns, Scoones, 1997)

Figure 4: Concept/process/links: a framework

