Access to and affordability of land in South Africa: The challenge of land reform in the 1990s

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HSRC Co-operative Programme: Affordable Material Provision
Series editor: Ina Snyman, HSRC
Human Sciences Research Council
Pretoria
1994

ASS/BBS — 51

The Co-operative Research Programme: Affordable Material Provision is situated within the Group: Social Dynamics of the Human Sciences Research Council, and is managed by a committee of experts drawn from the public and private sectors in South Africa.

The emphasis in the programme is on discovering affordable alternatives in the main fields of social policy — income maintenance, health, human settlement, employment, development and social welfare. In this report the focus is more specifically on access to and more economic use of land.

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ISBN 0-7969-1644-6

Published and printed by:
HSRC Publishers
134 Pretorius Street
Pretoria
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EKSERP

Die navorsing waarop hierdie verslag gebaseer is het eerstens bestaan uit besoeke aan informele nedersettings, natuurreservate, die ambassades van buurstate, sowel as individue wat op daardie stadium met grondsake te doen gehad het of as kenners beskou is.

Verder is dokumentasie oor grondsake bestudeer, veral wetgewing en ander beleidsdokumente, asook dosyne koerantberigte en artikels in vakkundige tydskrifte.

Die klem van hierdie navorsing val op beter toegang tot grond vir dakloses en grondloses, die meer ekonomiese gebruik van grond, en die hantering van eise met betrekking tot die herstel van eiendomsreg aan swart groepe van wie sodanige regte na bewering vervreem is tydens die herstrukturering van die Suid-Afrikaanse samelewing gedurende die apartheidsera.

ABSTRACT

The research on which this report is based consisted in the first place of visits to informal settlements, nature reserves, the embassies of neighbouring countries, and individuals who, at the time dealt with land matters or who were considered experts in the field.

In addition, documentation on land matters was studied, in particular legislation and other policy documents, as well as dozens of newspaper and journal articles.

The emphasis in this research is on better access to land for the homeless and landless, more economic use of land, and ways of dealing with demands for the return of property rights to black groups allegedly deprived of these rights during the restructuring of South African society during the apartheid era.

PREFACE

This is a comprehensive work on land issues undertaken by a number of researchers at the Human Sciences Research Council. Without a shadow of doubt, it brings the reader to the conclusion that land reform is one of the crucial factors underlying the future stability and peace in the new South Africa. This is even more so in respect of urban areas.

Although most of the contributions in this report are based on the position before the April 1994 elections, the facts on which the recommendations are based are just as relevant now as they were before the elections took place. The question is, however, what is the Government of National Unity going to do to address these issues and what has it already done up to the end of October 1994.

Apart from the general policies as set out in the Reconstruction and Development Programme and the resultant White Paper, a number of the major issues previously identified as well as some new ones have already received attention by way of:

- the Restitution of Land Rights Bill, 1994, which has already passed the committee stage in parliament;
- the Development Facilitation Bill, which has been published for comments and is to be enacted during 1995;
- the concept of pilot programmes in terms of the RDP.

However, it must be emphasised that even the best legislation can only be effective if it is accepted at a grassroots level, if there are enough persons available to ensure its successful implementation, and if it is the desire of everyone involved that such a process should work.

Previously, claims for the restoration of ownership of disputed land were dealt with by the Commission on Land Allocation in terms of the provisions of Section 91 of the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991). However, these measures were found to be inadequate, *inter alia* because no provision was made for the payment of compensation and because the procedure did not offer a judicial alternative.

Consequently, a more effective form of legislation was required and has materialised in the form of the Restitution of Land Rights Bill. This Bill has emanated from a comprehensive investigation by the Legal Resources Centre in co-operation with the Department of Land Affairs, the National Land Commission and the Centre for Applied Legal Studies at the University of the Witwatersrand and has been drafted in accordance with Section 121(1) of the interim Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993). The main objective of the Restitution of Land Rights Bill is to provide for the restitution of land rights of which persons or communities were dispossessed under, or for the purpose of furthering the objectives of, racially based discriminatory legislation.

In order to ensure that the procedures provided for in the Bill comply with the requirements of transparency and unbiased participation, the Bill provides that the commission shall mainly function independently, but will receive the necessary support from national and regional structures and will have built-in financial controls.

Furthermore, although the interim constitution does not expressly provide for the establishment of a land claims court, this option was found not only to be feasible, but also necessary and desirable so that claims can be dealt with effectively without the delays associated with normal court procedures. Therefore, in terms of a land claims court, the Bill provides for:

- a limited period of three years within which to register claims for restitution;
- the establishment of an independent Commission on Restitution of Land Rights with regional offices to investigate and mediate claims;
- the establishment of a land claims court with jurisdiction to determine restitution of such rights and the compensation payable;
- the compilation of a register of public land to facilitate the work of the commission and the land claims court.

The immediate creation of uniform norms and standards for the development of land on a national level is very necessary. In reaction to the impasse in land development the Government of National Unity initiated enabling legislation by way of the Development Facilitation Bill. This was an attempt to steer a course between the many uncertainties engendered by the general policy vacuum, the need to shape the future of participative government and the imperative for speedy delivery.

The objectives of the Development Facilitation Bill are twofold. On the one hand, there is the short-term goal to facilitate and speed up the development of land by rationalising the institutional as well as technical processes necessary to expedite the release of land for occupation and development. The medium and longer-term goals, on the other hand, are to consolidate the processes of development planning, policy making and executive functions (implementation of policies and plans). It will thus provide public sector decision-makers with a powerful tool to guide the process.

By following the above guidelines it is anticipated that, *inter alia*:

- a set of national norms and standards will be established through principles for land development;
- much of the past legacy of apartheid, in particular distorted spacial patterns, will be corrected;
- a balance between urban and rural funding for land will be pursued.

The initial phases of the land redistribution programme are being developed through a Pilot Land Reform Programme that will be implemented over the next two years in each province of South Africa, and expanded as progress is achieved. At present, this programme is largely funded by the RDP Fund, to which donor contributions are also being sought. In due course, the expansion of the pilot programme will be funded through the line budget of the Department of Land Affairs.

The RDP Fund has made resources available to a series of Rural Presidential Lead Projects. The selection of these projects has in part been determined by the extent to which they are able to reorientate government expenditure and operation to meet the goals of the RDP, as well as to promote the broader establishment of appropriate institutions and processes for development within South Africa. Thus, the strong focus in the Pilot Land Reform Programme on developing an institutional infrastructure that can contribute to the development of strong rural local government, as well as on building community capacity to manage development processes, is an important reason for the substantial support the Pilot Land Reform Programme has received from the fund.

In closing it should be remembered that the Reconstruction and Development Programme identifies land reform as **the central and driving force of a rural development programme**. It also identifies

the three key elements of a land reform programme: restitution of land to victims of forced removal; redistribution of land to landless people; and tenure reform that would provide security of tenure to all South Africans.

From the preceding paragraphs it can be gleaned that certain measures have already been taken, but much more will have to be done. In the light of the above, this report provides a number of pointers contextualised within the necessary background information as to how this can be achieved.

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November 1994

RESEARCH NOTES

In undertaking the research for this report the emphasis was on trying to find out what was happening at a grassroots level concerning land issues. An attempt was also made to ascertain the extent of the lack of access by certain sections of the population to land while at the same time trying to assess policy in order to make relevant and meaningful inputs in terms of future recommendations. To this end a number of field trips and interviews were conducted with various people in policy-making positions. Literature on the topic from a wide range of different sources was collected and consulted.

Dr Anthony Minnaar undertook several field trips to Natal, Western Transvaal (Goedgevonden) and to squatter/informal settlement areas in Durban (Cato Ridge), Pietermaritzburg (Happy Valley) and Johannesburg (Zevenfontein, Phola Park and Orange Farm), as well as to the Dukuduku Forest and the prospective St Lucia dune mining area in Zululand. Among those interviewed the most important in terms of information were Mrs Creina Alcock and Rauri Alcock (CAPFarm Trust, Weenen) — an interview from which a request to Mr Alcock to assess the land developments in the Msinga/Weenen district materialised; Mr Richard Clacey of AFRA; Mrs Cathy Pitout of the Natal Provincial Administration Planning Department and Mr Paul Camp (resident ecologist of Richards Bay Minerals (RBM)). Information was also obtained in discussions with Mrs Barbara Manning (Border Rural Land Association) and Mr Leon Louw (Free Market Foundation). This was supplemented by information from the newspaper and journal file database of the Centre for Conflict Analysis and official government documentation on land (*inter alia* the *White Paper on Land Reform* of 1991).

Mrs Cathy Payze, in analysing the land policies of the various political parties, relied on policy documents supplied by the various headquarters of the political parties themselves (ANC, NP and IFP (Tvl)). These were supplemented by interviews with a number of officials, in particular Mr Ziba Jiyane and Ms Nicolette Brits of the IFP. Information was also obtained by visiting Glynn Davies (Urban Policy Unit, DBSA); Legal Resources Centre, Johannesburg; the Land and Agricultural Policy Centre (Centre for Applied Legal Studies, WITS) and the IFP Information Centre, Durban.

Miss Suzi Torres' section was based on a close assessment of the legal aspects concerning land ownership and use was made of official and other documents in this regard.

Mr Trevor Keith visited the Bostwana, Namibia, Swaziland and Zimbabwe embassies where he was assisted with documentation by some of the embassy information officers concerning land reform policies in these countries. He also made contact with government departments responsible for land affairs in some of these countries — sometimes without obtaining any information.

Mr Sam Pretorius, accompanied by Mr Keith, made a field trip to the KaNgwane area and interviewed members of the KaNgwane Parks Board (KPB) as well as some local residents. Mr K. Lane (KPB) supplied the most useful information concerning, amongst others, the Mthethomusha Reserve and the social upliftment programmes which he initiated in the region. Unfortunately a meeting with the local chief presiding over this reserve was cancelled at the last moment. The researchers were also requested not to approach any of the people residing in the reserve on their own since the situation at that stage was deemed to be too "politically sensitive". However, a trip into the more settled areas was undertaken, albeit without the translator promised by the chief, in order to personally observe to what extent Mr Lane's initiatives had in fact been implemented in the community adjacent to the reserve. A number of permaculture gardens were found and the researchers spoke to various people in these more "urban" areas.

In February 1994 a workshop was held at the HSRC in order to present the preliminary and draft papers to members of the committee and other interested parties. The papers were subsequently finalised and incorporated in the final report together with a number of the comments made by workshop participants (in particular the written comments by Mr John Knoetze).

EXECUTIVE SUMMARY

The first chapter is written by **Catharine Payze** and focuses on the land policies of some of the major political parties in South Africa. It concentrates on how these policies attempt to deal with such issues as redistribution, the ownership of land, the economics of agriculture and a future land claims court. In dealing with possible policy solutions Payze highlights the following: the free-market system; regulated land ownership; a land claims court; and the expropriation and confiscation option. Payze emphasises that the free-market option is fraught with drawbacks, the foremost being that very few blacks have the financial wherewithal to compete on an equal footing with whites. Payze feels that a better option would be some form of regulated land ownership whereby the amount of land owned by one person should be limited according to the productive capacity of the land; furthermore, that speculative land holdings be prohibited and home ownership be limited to one residence. Payze also discusses the subject of a land claims court at some length. Important here would be the criteria whereby claims are weighted so that no one group is favoured above another. Among these criteria would be legal title deeds; ancestral ownership rights such as birthright and length of occupancy; productive usage, security of tenure and protection of investment whether by labour or money. However, Payze makes the important point that a land claims court would be unable to address landlessness or the redistribution of land. These two issues would need to be addressed, possibly through expropriation, confiscation and a resettlement programme. The issue of compensation that is either "just" and market related, minimal, only for improvements and structures, or even none at all, will also have to be addressed in a land reform programme.

In Chapter 2 **Suzi Torres** shifts the focus to the legal aspects of land tenure, specifically the various forms of black tenure. The question posed here is how to address the opposing claims of historical inheritance and legal right. Torres also deals with property and ownership rights. This is followed by a discussion of the general restrictions applying to land tenure in black areas as well as an exposition of the problems engendered by the clash between Western (white) concepts of individual land tenure and black communal tenure rights. A final section deals with land rights, *inter alia* possession, birthright, freedom of property (access to ownership), and the confiscation and expropriation of land from blacks with the aid of specific legislation. The last also ties up to the registration of title deeds and how this system has impacted on dispossessed communities trying to reclaim their land.

In Chapter 3 **Anthony Minnaar** discusses the economic and political pitfalls of an arbitrary redistribution of land. The repealing of much of the legislation controlling land engendered a number of problems and drawbacks specifically surrounding the acquisition of white farming land by black farmers. Furthermore, the repeal of restrictive land ownership legislation also raised the issues of ensuring the rights to buy land as opposed to giving people the ability (means) to buy land, as well as encouraging its productive use. A further point raised here is that the 13,7% of the land reserved by the land acts for black use and ownership should in fact be protected in the future from being subjected to strict market forces because the repeal of the land acts might well endanger existing tenure rights of those presently occupying this reserved land. There is also a discussion in this chapter of rural land tenure problems — particularly the issue that one of the most pressing prerequisites for rural land reform should be a review of the legal rights of chiefs specifically pertaining to their control of land allocation and the granting of occupation rights. One way of protecting communal land rights would be the vesting of land allocation rights in a democratically elected village/ward committee. Within such communal communities individual rights to a residential plot would also need to be protected so that a resident would be able to sell such a plot but communal land (for grazing or cultivation) would not be allowed to be alienated.

Minnaar further attempts to deal with the vexing problem of the economic viability of rural communities and whether they would be able to afford to buy back any of their confiscated ancestral land. Of importance here is the fact that the credibility of a land reform programme will inevitably rest on the extent to which it is seen to be an honest and fair attempt to redress the historical wrongs of apartheid, as well as improving rural black access to land and resources, specifically on the level of affordability. In other words, disadvantaged communities should be provided with funding without at the same time making it beyond their means to utilise such funding for the purchase of land (for example through burdensome repayments). Furthermore, in solving the land problem, the allied issues of the legal rights of black farm tenants and the improvement of working conditions for farm workers would also need to be addressed.

Minnaar also addresses the restoration of land to communities dispossessed through forced removals and here he deals *inter alia* with the problems communities will have in proving their claims (without title deeds) to ancestral land in a court of law. The actions of dispossessed communities in the face

of the government's intransigence to deal with the issue of restoration are also touched upon. This is followed by a discussion of the workings and shortcomings of the Advisory Commission on Land Allocations and the difficulties faced by this commission in dealing with land claims where there have been attempts to pre-empt these by selling off state land. In a short section on evictions the problem of the eviction of farm labourers and tenant farmers is dealt with as part of the current prospect of land reform and redistribution resulting in white farmers' consequent efforts to remove anyone from their land who might have a historical claim by way of long occupation. Recent efforts by the government and other parties to address the issues of restoration and restitution are also briefly reviewed *inter alia* the World Bank report on land reform, the Provision of Certain Land for Resettlement Act, No. 113 of 1993, the Interim Bill of Rights, the ANC's Reconstruction and Development Programme, the Community Land Conference and the Agricultural Policy document.

In Chapter 4 **Sam Pretorius** approaches the land issue from a somewhat new and different perspective, namely that of conserving areas while simultaneously providing surrounding communities access to such protected areas. This approach could well provide the communities involved with many of their basic needs while also offering them a stake in protecting and conserving nature. This approach is illustrated through a discussion of the KaNgwane principle whereby equitable resource allocation between local communities and conservators is being practised. This principle is postulated by Pretorius as a practical and workable land use solution for other communities in a similar position to the Mthethomusha tribe of KaNgwane.

In Chapter 5 Pretorius and Minnaar examine the dynamics of land in urban areas with specific reference to the position and attitudes of "squatters" regarding access to scarce land, and the effect of unilateral land occupation by squatters in urban areas. The implication here is that some sort of onus and responsibility is perceived to be on the authorities to make land available to those who have none.

In Chapter 6 **Trevor Keith** reviews some of the land reform policies of countries in the Southern African region and postulates a number of possible lessons that might be relevant for South Africa. He touches on a number of points, *inter alia* women's rights concerning land ownership, the expropriation of land, and the interrelated problems of rural development, overpopulation and

urbanisation. Some of the suggestions emerging from this section revolve around the careful assessment of the impact and cost of land policies, the consultation with those directly affected and the re-evaluation of the concept of commercial farming. In essence Keith makes the point that there is a need for comprehensive and coherent policy-making which should be preceded by detailed planning. Furthermore, any land reform programmes should be implemented systematically. In addition, Keith emphasises that it is important not to raise unrealistic expectations with regard to the "returning of land" to dispossessed communities.

In a final chapter Torres and Minnaar also suggest possible solutions for future land distribution policies. Certain of the solutions postulated include not only the reform of the land tenure system but also the encouraging of economically viable farming units for blacks. It then concludes with a list of goals for a future land policy in South Africa.

There are also two appendices. Appendix A gives some detail on the White Paper on land reform while Appendix B contains a number of case studies having a bearing on some of the issues discussed in the various chapters. In particular, the case study of the Msinga/Weenen districts by **Rauri Alcock** deals more fully with the effects of evictions and attempts to resolve this problem. Alcock also outlines a possible solution through the implementation of regulated land use in different forms. This integrated approach (initiated by the CAPFarm Trust) offers an alternative sustainable development solution. Other case studies address issues such as dispossession, eviction, restoration, restitution and conservation. Cases of individual communities including the Mfengu, Magopa, Machaviestad, Goedgevonden, Majeng, Cremin, Ezakheni and Dukuduku Forest communities are described.

1

LAND AND POLITICS: POLICY VIEWPOINTS

Catharine Payze

Introduction

This chapter will focus on redistribution as an essential aspect of assessing South African policy viewpoints on land. The above focus is motivated by the current situation in South Africa within its historical context.

It is generally accepted that about 10% of the South African population currently owns more than 80% of the 122 million hectares of land in use in South Africa (Claassens, 1991:10; Platzky & Walker, 1985). In order to gain an understanding of this unequal distribution of land among the population in South Africa, several factors need to be highlighted.

Firstly, the economic situation needs to be examined. The relationship between land and the economy is influenced by the fact that land is finite. Hence, it has to be taken from someone before it can be allocated to someone else. The government obtained land from blacks in various ways which do not adhere to generally agreed upon market principles (Claassens, 1991:6). In the first instance, the land acts of 1913 and 1936 and the Group Areas Act undermined the willing buyer/willing seller principle since they were designed to turn both the control and ownership of land in South Africa over to whites. Other discriminatory laws were also applied, such as the Native Administration Act, the Prevention of Illegal Squatting Act, the Expropriation Act and the Pass Laws (PAC, 1992:4).

The economic situation also encompasses the fact that blacks generally cannot afford property at market related prices. This means that the prospect of a willing buyer/willing seller principle will continue to exclude most blacks from land ownership.

Secondly, the white agricultural system needs to be explained more fully. According to Claassens (1991:7) the system of white agriculture cannot be said to be a "free market" or a rational economic

system since it is built on subsidies, monopolies and price controls — in effect a suspension of rational economic principles to the advantage of the white and powerful.

White farms can be subdivided into several categories. These include a variety of owners, such as individuals, companies, the state, and co-operatives, as well as various forms of agriculture, such as cattle or game farming. White-owned farms range in size from 1 276 hectares to 5 511 hectares. By the end of 1992 there were 65 170 agricultural "landowners", of whom 61 596 were white while the agricultural sector at the same time employed 1 354 624 persons, 80% of whom were African. However, of the land being used for agricultural purposes only 13,5% is high potential arable land (other agricultural land, as found in parts of the northern Cape and the Karoo is used as pastureland). Furthermore, only 13 per cent of the economically active population work on the land. The agricultural sector, export earnings included, contributed only 5,5 per cent to the country's Gross Domestic Product (GDP). This figure would appear to play down the importance of the agricultural sector to the national economy but only because the tertiary sector of the economy accounts for up to 70% of agricultural production activities such as meat processing, canning, milling and refining (PAC, 1992:5-6).

Compared to the above, the situation among black landowners differs markedly. In the homelands the agricultural sector is in a precarious state with the average size of a land holding 1,5 hectares per household (a household being deemed to comprise of a family of six persons). The minimum plot of land required for household subsistence — after accounting for factors such as soil fertility, the availability of inputs, and labour — is 5 hectares per household. However, market-oriented smallholder production is viable only when carried out on at least 15 hectares (PAC, 1992:6).

According to the PAC (1992:6):

> [T]*he total number of households in the bantustans is currently around 2 898 000. About one-third of these households have no land ... Agriculture accounted for 47 per cent of bantustan gross domestic product in 1960, and by 1970 it had declined to 25 per cent. Today agricultural production accounts for a mere 10 per cent of household earnings.*
>
> *While 12 per cent of the land area in the bantustans is considered arable, these areas produce only 6 per cent of the gross value of agricultural production, little of which reaches commercial markets.*

Ownership of land is another issue which needs to be examined. Bearing in mind that ownership of land frequently reverted into white hands as a direct result of apartheid legislation, title deeds cannot be seen as the only legitimate or recognisable form of ownership.

According to the Surplus People's Project, 3,5 million people were forcibly removed between 1960 and 1983 (Platzky & Walker, 1985: 372). For these people, the issue remains that they once owned land, with or without a title deed or as beneficiaries of a trust. In the homelands the white-controlled government applied various systems such as quitrent, "permission to occupy" and trusts. Hence blacks could never obtain full title. In the townships, under the system of 99-year leasehold, many blacks had more than paid for the cost and interest of buying their homes, yet they were still not allowed to own them beyond a 99-year lease period (Claassens; 1991:8).

The issue of labour tenants also needs to be considered. These people base their claim to ownership on the fact that the land originally belonged to their ancestors and that they have occupied and farmed it for generations (Claassens; 1991:9).

Possible policy solutions

The free-market system

In view of the above historical context, a free-market system cannot be seen as an adequate solution for addressing the issue of redistribution of land. Firstly, whites currently hold deeds which were not obtained within the parameters of a proper free-market system. Although this system ensures that white owners are compensated according to market-related prices, the fact that many of the original owners were forcibly removed, often without any compensation whatsoever, remains unaddressed. Secondly, very few blacks can afford to participate in a free-market system. They will, therefore, remain excluded from access to land. Furthermore, those without title deeds will also be excluded from the free-market process, although they might have legitimate claims to certain pieces of land. Thus it seems that this option is not only inadequate, but will also keep most of the land under the control of the white minority.

Regulated land ownership

The principle underlying regulated land ownership concerns the perception that land cannot be dealt with in the same way as other property. Claassens (1991:12) quotes Churchill as follows:

> [L]*and, which is a necessity of human existence, which is the original source of all wealth, which is strictly limited in extent, which is fixed in geographical position — land, I say, differs from all other forms of property, and the immemorial customs of nearly every modern state have placed the tenure, transfer and obligations of land, in a wholly different category from other classes of property. Nothing is more amusing than to watch the efforts of* [the land] *monopolists to prove that other forms of property and increment are similar in all respects to land and the unearned increment of land.*

According to Claassens (1991:13) a system of regulated land ownership could include criteria such as:

- Ownership of land be limited to areas which are occupied and productively used.
- The amount of land owned by one person be limited relative to the regional productive capacity of the land.
- Speculative holding of land be prohibited.
- Ownership be subject to proper care of the soil and acceptable treatment of the people living on the land.
- Home ownership be limited to one residence.

Although this system will address the issue of redistribution adequately, the question remains as to who will decide on the criteria used, and in whose interest such criteria will be formulated.

Land claims court

A land claims court will establish procedures whereby conflicting claims may be evaluated or adjudicated. However, Claassens (1991) points out that the criteria by which claims are weighted, should not favour one group above another. She uses the example of whites being favoured by title deeds, while blacks are favoured by original ancestral ownership rights. Furthermore it is also important to remember that similar values underlie most claims. These could include: [b]*irthright, length of occupancy, productive usage, security of tenure and protection of investments whether by labour or money* (Claassens, 1991:9).

A land claims court could legitimately award ownership or joint ownership and provide for the division of land. As yet no official time frame for the duration of a land claims court exists although it would appear that there are plans for it to exist only for a period of five years of which some portion of the time will be devoted to the submission of claims, and the rest to adjudication. Nevertheless, a land claims court would not be able to address the issue of landlessness or the need for redistribution of land (Claassens, 1991:10). Hence these will have to be dealt with according to a system such as that of regulated land ownership.

Expropriation and confiscation

These options involve the principle of taking land from existing owners with or without just (market-related) compensation, and then awarding it to others. In the first case current owners will have access to legal structures whereby they may bargain for a fair deal, and in the second case not. These options might be functional, for example, in situations where labour tenants/farmers have worked on farms for years while the owners have had a minimal interest. However, this option is not favoured by many owners and is currently a major point of debate between white farmers and parties in support of such measures (Anon., 1994).

In light of the above, the following is an assessment of the policies of some of the main political groupings in South Africa in terms of their strengths and shortcomings in addressing the issue of redistribution of land in South Africa.

The policies of the various groupings

The Pan Africanist Congress of Azania (PAC)

According to the discussion document of the PAC on land, land reform can be defined as follows:

> [L]*and reform is conceptualized by the PAC as a process led by the people through their organized structures, with backing by the state, whose aim is primarily to effect the redistribution of land assets from those holding and utilising them in a colonial and exploitative context to the majority of the African people who need the land for habitation and to earn a decent livelihood* (PAC, 1992:8).

The PAC has the following to say concerning the free-market system:

> [T]*he PAC emphatically rejects the view which holds that freehold title to land should be protected and that land should be made available only in situations where current*

owners are willing to sell it. The preservation of freehold title to land under the existing system, even if the state may be in a position to impose high land taxes, is essentially a pro-status quo position which leaves no scope for the meaningful transformation and resolution of the situation of the dispossessed African majority. Its effect is as limited as repealing discriminatory legislation on land (PAC, 1992:8).

Concerning the principle of redistribution by means of expropriation, they state:

> [T]*he basic principle behind the socialisation of the land and other economic resources is the elimination of the present colonially-determined distribution and utilization of the land. This can be achieved only through the expropriation of the land held by the settlers and the redistribution of the land to its rightful owners — the indigenous African people. Expropriation should then be followed by clear policy initiatives, and the redistribution of the land to the African rural population should then proceed under clearly-enunciated legal terms and conditions* (PAC, 1992:9).

The discussion document also indicates the PAC's view on compensation:

> [T]*he basic position of the PAC with regard to compensation is that, in principle, there will be no compensation, being as it is that this land was obtained through colonial conquest, and therefore its "ownership" has no legitimacy. However, on moral grounds the PAC is prepared to pay compensation to those whose landholdings, or portions thereof, will be expropriated. Such compensation will, however, be limited to developments on the land (e.g. physical structures, dams, fencing, silos, trees planted etc). No compensation will be paid for the land itself. The final decision with regard to the amount to be paid as compensation will be the responsibility of the state* (PAC, 1992:13).

Although this view adequately addresses the issue of redistribution, it does not deal with the fact that many current owners have paid for their land and will, therefore, suffer substantial financial losses. The PAC also does not deal with issues such as loss of income, services and buildings by those who were forcibly removed, a possible time frame for the redistribution process or claims by blacks who were dispossessed either by other blacks or for reasons not resulting from apartheid. Furthermore, an examination of the economic impact of the redistribution process on a national level is lacking.

The African National Congress (ANC)

According to the land manifesto of the ANC a land policy should have certain goals which include:

> [T]*o redress the injustices caused by apartheid's policy of forced removals by restoring land and where this is not possible by making reparations through a just legal process.*
>
> *To address demands and grievances around land redistribution by the creation of a land*

court through which competing claims to land can be heard and resolved. Such a claims process must be based on a set of just criteria including productive use, traditional access, claims on the basis of birthright, title deeds, tenancy and usufruct rights (right to benefits from use and duty to maintain) historical dispossession and need.

To ensure that the diversity of tenure forms existing in our country is recognised and protected (ANC, n.d.:2).

The ANC generally seems to have a developmental approach to the land issue. Within this context, they employ various of the aforementioned policy options. As quoted above, they call for a land claims court to address the issue of conflicting claims. Furthermore, they also call for some form of regulated land ownership and expropriation with just compensation as can be seen from the following:

[T]*he present distribution of land must be fundamentally changed so that landlessness and land hunger can be redressed.*

The objective of a programme to redistribute agricultural land shall be to enable people to use the land more productively and in so doing to alleviate hunger and poverty.

The state must play a key role in the acquisition and allocation of land. The state must have the power to acquire land in a variety of ways: expropriation with just compensation, purchase, grants of state land, taxes on land and other mechanisms can be used to ensure this.

Decisions on land allocation should be informed by consultation with local communities, using criteria that ensure that women and the very poor are given equal access to land and resources.

While poor quality land may be the easiest to acquire, productive land must also be made available for redistribution.

Any rights to land that our people have need to be recognised in the context of a set of duties that landholders have. These include respect for the human rights of people living on the land, productive use and the protection of land as a natural asset.

A diversity of forms of tenure and ownership must be recognised and protected. Inherent land rights presently existing in our country must be made explicit. This must include rights such as birthright which are not based on documentation of any kind. Individual freehold ownership, collective and communal forms should also be able to coexist (ANC, n.d.:3).

Although this policy seems to combine a variety of the policy options outlined at the beginning of this chapter, it is vague on many issues. These include (as in the case of the PAC) issues such as loss of income, services and buildings by those who were forcibly removed, a possible time frame for the

redistribution process or claims by blacks who were dispossessed by other blacks or for other reasons not resulting from apartheid. The economic impact of the redistribution process on a national level is also lacking. Finally the ANC does not state who would be responsible for the implementation of regulations at a grassroots level within the system of regulated land ownership. However, this organisation does manage to combine a variety of options which, if properly executed, could treat all fairly and justly during the redistribution process.

The Inkatha Freedom Party (IFP)

The IFP sees addressing the problems surrounding the land issue as twofold. Firstly, the desire for the dispossessed to have land has to be addressed. Secondly, the utilisation by all South Africans of the land to its maximum efficiency so that it will provide enough food for everyone has to be realised (Interview: Jiyane, 1993). As in the case of other groupings, the IFP also supports more than one of the policies stated at the beginning of this chapter. The first of these is the free-market system. In a newspaper interview with Joe Matthews the following transpired:

> [A]*ccording to Matthews, the general principle of the IFP in regard to land acquisition is in favour of a willing seller and a willing buyer. He said that with this principle operating people would be able to acquire land with their own money* (Anon., 1993).

The problems concerning this policy, especially the fact that it will not allow for the transfer of land to the majority, have already been indicated. The IFP also believes in expropriation with just (market-related) compensation, for example in the case of absentee farmers:

> [M]*atthews argues against the use of huge tracts of unoccupied land as a "Naweek Plek" where a farmer goes from Pretoria "to spend a weekend on his farm." The IFP believes this practice should stop and that such land should be given to the actual farmers who happen to be the labourers ... However, Matthews also says that "we in the IFP do not believe in expropriation unless fair compensation is paid and the land (is) made available (for) landless people in the area."* (Anon., 1993).

It is also the view of the IFP that bankrupt farms should be sequestrated and the land subdivided in order to allow black farmers access to land for smaller scale farming. Furthermore, according to the IFP, disputes concerning land should be handled in a court of law. However, this does not necessarily have to be a future land claims court, since the IFP is already contesting some cases of forced removal in court. Rather, this practice is a commitment to opposing current injustices via the existing system, which, according to the IFP, will allow the problems concerning the land issue to be

addressed without destroying the economy (Interview: Jiyane, 1993). As with the previous political groupings, several issues remain unexplained or ineffectively addressed. Besides those mentioned under the PAC and ANC, it has to be borne in mind that the free-market system is ineffective in the redistribution process and that working within an oppressive system (such as the apartheid regime) is often bound to keep it intact rather that change it.

The National Party (NP)

The NP remains firmly committed to the principle of a free market. This is not surprising in view of the fact that their supporters own or control the vast majority of land in South Africa. Hence, their aim remains an attempt to keep the status quo in place, although they allow for a body to adjudicate rightful conflicting claims to land. Their policy document states the following key objectives:

> [T]*he private ownership of land must be protected in the Charter of Fundamental Rights.*
>
> *The Party will promote the right of access to land through a market-driven process of land reform within a willing buyer/seller market, together with the promotion of land-oriented support programmes enabling citizens to retain or acquire land.*
>
> *Equitable mechanisms must be created to meet justified land claims, resulting from past discrimination, in respect of land currently in the possession of the State. There should be restitution of land, or the offer of alternative state land, to those former owners who have valid claims.*
>
> *Expropriation of property for public use must be possible, subject to agreed compensation at market-related values. However, there must also be a right of recourse to a competent court as protection against unjust practices.*
>
> *The possession of land in terms of common-law principles must be recognised as a right. This, however, also entails conservation and the responsible and judicious use of land.*
>
> *Private ownership of property remains the cornerstone of access to and security of tenure. However, the various customary usages in respect of land and patterns of ownership such as traditional communal tenure, lease agreements, time-sharing schemes, etc., must also be respected. They form an important foundation of communal possession* (NP, 1992:26).

The NP also claims amongst its achievements that millions of hectares of land have been made available to landless people (NP, 1992). However, it is interesting to note that around 87% of all land in South Africa still remains in white hands. Furthermore, many issues are not addressed of which

the main one probably is the fact that this policy does not allow for any form of affirmative redistribution.

Conclusions

The main political groupings in South Africa have a variety of views concerning the options outlined in this chapter. Although opinions differ, it is obvious that a combination, rather than one specific option, is needed to address the issue of land redistribution effectively.

The free-market system is not a viable option in this regard, and the NP's insistence on it as the only solution clearly indicates their lack of vision for a new South Africa which is viable for everyone with regard to land.

On the other extreme, the PAC wishes to compensate current owners only for their improvements on the land and not the land itself. However, this does not address the problem of current owners having paid (although at reduced rates) for their land.

When addressing the issue, therefore, it will be necessary to devise a system which will not only combine policy options, but also treat all people in the fairest possible way. It seems that the ANC and IFP have attempted to do this in different ways, the merits of which can be debated individually. Both seem to aim at a just, fair and equitable land deal in South Africa.

The IFP believes in working within current state structures to achieve this since they believe to do so will not destroy or harm the economy. However, it is debatable whether these structures would change if they were utilised rather than challenged by the majority. Nevertheless, the way in which they combine a variety of policy options allows for the possibility of a solution to the current land problem, even though their inclusion of a free-market system remains problematic.

Finally, the ANC seems to combine options which in all probability would protect the rights of individuals, and also address the discrepancy whereby a small percentage of the population holds most of the land. Furthermore, they also address issues such as the protection of farm labourers. Their proposal to combine a land claims court with regulated land ownership could prove very useful, but

it has to be borne in mind that other options such as expropriation (for example of unused farms) could also provide alternatives for solving the land problem.

It would appear from the policies of the political groupings dealt with here that these were deliberately kept vague in the period leading up to the April 1994 elections. Perhaps this was in anticipation of the formation of a new government which, on its establishment, would be required to lay down the specifics for a new land policy. Yet it would have been useful if some of the specifics could have already been set out by the different political parties. For example, the problem of compensation for or replacement of infrastructures (including buildings, schools, services etc.) which were demolished in the process of forced removal has not been fully addressed. Basically two options exist: either infrastructures must be created at the new living place, or else they must be recreated upon a group's return to their original place of living. However, such options were not dealt with or examined in the policy documents reviewed in this chapter.

Land redistribution remains a complex issue. Although the abovementioned policies go a long way towards addressing this issue, many problems remain which will have to be more fully addressed before the process of redistribution can be successfully implemented.

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2

LAND: A QUESTION OF HISTORICAL INHERITANCE OR LEGAL RIGHT

Suzi Torres

Introduction

This chapter deals with the legal aspects of land tenure and focuses specifically on black tenure. It also explains the types of black land tenure which exist in South Africa and the homelands and some of the restrictions applying to tenure in black areas. The chapter also examines the clash between Western (white) concepts of individual land tenure and communal black tenure rights. Furthermore, it investigates possible issues surrounding land redistribution and property and ownership rights.

Origins of landlessness

The origins of landlessness can be outlined briefly in the following points:

- Conquest and annexation — colonialism established a new system of trade, including monetisation and technological change.
- Creating "reserves" and forcing people to live there through land expropriation — this created rural ghettos and overcrowding and was also a source of migratory labour.
- Traditional versus modern farming methods — many subsistence tribal communities could not compete with the advanced commercialised market economy created by the white settlers.
- Black subsistence farmers were transformed into migrant workers or agricultural labourers.

In a subsistence economy each individual looked after his own needs in terms of crops and cattle. This system was shattered by the implementation of separate areas and the expropriation of the land belonging to blacks, who were forced to become land tenants due to the ensuing scarcity of land.

Land tenure in South Africa and the TBVC states

It is possible to divide the systems of land tenure in the black areas of South Africa into three broad categories, namely individual, customary and special tenures. Over the years a number of different tenure types within these categories have also developed in South Africa.

Individual types of land tenure

Freehold tenure

Davenport and Hunt (1974:v) define freehold tenure as: [o]*wnership under individual title of the land and of any structure built upon it.* In other words an individual can obtain title to a piece of land by purchasing it. Blacks were largely excluded from exercising this option through legislation which restricted their ownership rights in certain areas.

Quitrent

Davenport and Hunt (1974:v) define quitrent as: [o]*ccupation of property for a fifteen-year term, renewable and subject to an annual rental in accordance with the quality of the land payable to the Government.*

Quitrent allows only one piece of land per family. Additional land can be inherited but only by a male heir. This type of tenure gives permanent possession of the land to the registered holder in return for a yearly payment of a nominal rent. Quitrent is a restricted property right and is granted only to persons approved by the government. Property rights on such properties are restricted, in other words, land may not be transferred, mortgaged or leased without approval, and title can be revoked if the property is used in a manner which causes soil erosion. Land is divided into residential sites, arable fields and grazing commonage. It is important to note that land held under quitrent may not be subjected to "betterment planning" and that if there are no male heirs in the family when the head of the family dies, the family loses that land. "Betterment planning" is a concept that was coined by the South African government, and referred to the resettlement of black people in areas separate from those of whites in order to initiate the policy of separate development. In certain areas betterment planning also involved the moving of poor black farmers into closer settlement villages in order to consolidate grazing lands.

Leasehold tenure

A very high percentage of African tenure in South Africa is based on leasehold tenure. This type of tenure includes urban houses rented from the state as well as "trust" tenure, 99-year lease, quitrent and ordinary payment of a rent. In most cases rent is payable to the state. Leasehold tenure is also evident in the homelands which run certain agricultural development projects known as labour tenancy or "share-cropping". In rural areas share-cropping refers to farm labourers who farm the land and are allowed to stay on the farmer's property in return for labour. Individual owners also make use of leasehold tenure, for example landlords who lease apartments or rooms.

In farming areas this type of tenure occurs where the landowners lease portions of their farmland to migrants. The rights of occupation differ between and within settlements. Occupation rights can be broadly classified as:

> [T]*he land alone is rented from the landowner, the onus being on the tenant to erect his own shack.*
>
> *The land and shack are rented from the landowner.*
>
> *The land and shack are "purchased" from the landowner. Although the perception of the purchaser is that he has "purchased" the site, in legal terms no transfer of land has taken place* (Jenkins, 1987:583-586).

In such leasehold tenure the farmer is mainly concerned with raising capital by way of mortgage rather than by cultivating and selling his crops.

Individual tenure in black areas

Individual land tenure in black areas is an ambiguous concept. Aspects of ownership and rights of ownership are, therefore, difficult to understand when studying traditional systems of black land tenure.

The European concept of individual land tenure was characteristic of the Cape and Natal provinces as they took shape in the black areas. In 1856 Governor Sir George Grey detailed a policy undermining the authority of chiefs by introducing magistrates into the districts. The chiefs earned a government salary and were treated favourably in terms of land allocation. The policy also encouraged those Africans participating in the cash economy to buy as much Crown Land as they could pay for

(Bundy, 1979). No attempt was made to introduce this form of land tenure in the Orange Free State or the Transvaal, thereby allowing only one form of land tenure for blacks, namely leasehold tenure.

Although certain black farmers had purchased land and were competitive in the market economy created by the settlers, the implementation of the Glen Grey Act of 1894, in particular, led to the establishment of separate "locations" for blacks and the confiscation of their land. The Act followed a one-man-one-lot policy, the size of one lot averaging just over ten hectares, effectively making it impossible for black farmers to compete with white farmers who had large farms, and often more than one farm. It is important here to remember that the Glen Grey Act of 1894 laid the basis for black ownership in separate areas (in other words areas designated for use by blacks only).

On their establishment, the independent homelands, that is Transkei, Bophutatswana, Venda and Ciskei (the TBVC states), also made provision for individual land tenure. In the Ciskei individual land tenure had, since the eighteenth century, followed the principles of quitrent and initially there were few restrictions, as well as unrestricted mortgaging. Furthermore, the sale of land as payment of debts was also permitted. This, of course, led to a white monopoly in land ownership owing to their superior economic position. In order to rectify this situation the government set about changing conditions to grants. This initiated a state of confusion regarding conditions under which portions of land were held. Further confusion was caused by the failure to register transfers of ownership, which stemmed from the exorbitant legal fees and transfer duty. This finally led to the breakdown of the system.

A Commission of Inquiry was established in the early 1900s in order to investigate ownership and occupation. This led to the establishment of a deeds registry office, specifically in order to register land titles in reserve areas and to waive transfer duties. It was also decided that quitrent was payable annually and that land may not be alienated, transferred or leased without prior consent of the State President (at that time the colonial prime minister). Land was also not to be used as debt settlement other than mortgage debts and debts due to the government in respect of land.

In order to counteract the effect of a white monopoly, land could only be sold to another black person. Moreover, the land could not be subdivided without the consent of the Minister of Native Affairs

(later the Minister of Bantu Administration and Development). Use of the land was limited to farming and housing and no business was permitted on the premises. This led to a lack of infrastructure. The Ciskei government also ensured that rebels would face confiscation of their land. Finally, land could be inherited only by a male member of the family. This system was much abused as evidenced by the numerous forced removals.

The system of individual land tenure in the Transkei was similar to that of the Ciskei except for a few important differences, namely land could not be sold for *any* debt while it could be confiscated (as in the Ciskei) if the owner was convicted twice for stock theft, if there was evidence of unbeneficial occupation and if quitrent had not been paid for two years. The other TBVC states followed the same principles.

There are also currently certain statutory land tenure rights in terms of which individuals hold, occupy and use land in the rural and urban black areas. These rights range from reasonably sophisticated 99-year leasehold, quitrent and deeds of grant to various forms of inferior occupation rights which were put in place during the apartheid regime. According to Kok (1989:5-6) the difference between 99-year leasehold and ownership rights are as follows:

- *leasehold rights can be registered on unsurveyed land, but ownership rights not;*
- *first grants of leasehold rights can be lodged for registration at the deeds office by the local authority at a cost of about R6, whilst first transfers of ownership rights can be lodged for registration at the deeds office by a notary at a cost of approximately R400 should the purchase price of the stand be R8 000;*
- *both leasehold and ownership are accepted as security by financial institutions for purposes of granting loans;*
- *apart from the amount payable for the right of leasehold, a nominal fee of R1 per year is payable by the leaseholder to the owner of the land, whilst with ownership only the purchase price is payable to the owner of the land;*
- *there is a 99-year time limit on leasehold rights, whilst ownership rights are perpetual; and*
- *in the event of alienation of leasehold rights, the time period of the new owner starts from scratch.*

Although leasehold rights compare more favourably with ownership rights than other forms of tenure, blacks in the townships continue to perceive it to be an inferior form of land tenure foisted onto them.

Customary types of land tenure

Communal/tribal tenure

Davenport and Hunt (1974:v) define communal tenure as follows:

> [O]*wnership of the land is vested in a community, not an individual. In the case of African tribes the chief is regarded as trustee, with power to allocate the use of the land to individual heads of families.*

Occupational rights in this system of tenure are governed by Proclamation R.188 of 1969. Land owned according to this system may be registered in a South African deeds registry in the name of either the Minister of Development Aid, the State President or chief of a tribe in trust for a community.

> [S]*ettlement usually takes place in tribal land where it abuts on or is in close proximity to a developed formal township, and where the chief and tribal authority, either for gain or increased following, allow it. The amenities of the township — schools, clinics, transport routes, etc. — are a magnet that draws the settlers. Occupational rights are at the will of the chief, with no formal rent being paid. However, there may well be dues payable to the chief or tribal authority* (Jenkins, 1987:583-586).

Communal tenure in black areas

Black concepts of communal tenure

Black tenure systems are characterised by socially ordered kinship ties and therefore property rights were determined by a person's membership of a particular, permanent kinship group. An individual had control over those means of production which were local and familial. Traditionally the African people were herdsmen and their tribal economy consisted of the accumulation of stock (mostly cattle) which affected an individual's social standing and *lobola* (the ability to pay a marriage dowry). Stock was also used for food, clothing and shields. The division of labour was determined by the gender structure of the family. Women were traditionally responsible for tillage while men and boys cared for the cattle. Men were also responsible for protecting the village or tribe from attack.

Traditional black tenure indicated that if an individual was an accepted member of a community, he/she was entitled to share in that community's land and the natural resources of that land. Land was

regarded as a benefit for the use of the whole community and thus individual tenure was not an option. Ownership of the land was vested in the authority of the chief and he theoretically had the power to divide and allocate the land among his subjects although on a practical level the chief's allocations were subject to approval by the local tribal council. However, any crops planted on individual plots belonged to that tribal member and other members had no rights to those crops. This division of power often resulted in headmen regulating the use of the land for their own interests, for example allocating land to their supporters.

According to Jones (1969:34) there were two [d]*istinct political and social units with fixed territorial limits ... namely, the chiefdom and the ward*. The chiefdom was controlled by a head (paramount) chief who had powers over local chiefs who in turn only had administrative powers. Within the chiefdom there were usually several wards which were controlled by "headmen" (*indunas*) or "subchiefs" who each had the power to allocate land within his own ward. Jones (1969:34) further states that land within a ward could be subdivided into villages or kraals. It is important to note that each ward was demarcated by natural boundaries, that is rivers, mountains, valleys, etc., and each family could cultivate their property (plot allocated to individual members for agricultural purposes) while maintaining exclusive rights to it, although the remaining area (the communal grazing land) was controlled by communal rights.

Traditional black agriculture entitled tribes to use all available arable land until those resources were exhausted, in which case they would move to another area. This is where Western and African concepts of security of tenure differ radically. Furthermore, Western concepts focused on individual tenure as an individual right, whereas African concepts focused on communal tenure where individuals, as members of a community, had participation rights, that is they could use the communal land and all the resources within its flexible boundaries. Another difference can be seen in that when a member of a black community left that community he had to ensure that his ties with that community were not severed so as not to lose his rights to use the communal land.

Another major difference between communal tenure and European tenure is that land in a communal system that has not been allocated to individual community members was regarded as belonging to the whole community and they enjoyed equal rights to it. European tenure regards individuals as

having sole rights to a piece of property, and land not purchased by individuals as belonging to the state.

Special type of land tenure

Trust tenure

Trust tenure is land held in trust for a community, that is the title is usually held by the state which also administers the land. Such tenure is characterised by bureaucratic control. There is no security of tenure for the occupiers since such land is subject to "betterment planning". Within the former homelands where land is held by the South African Development Trust (SADT) land is registered in the name of the SADT in a South African deeds registry. However, trust tenure has diminished considerably through transfers of trust land to the former homeland authorities. A small rent is payable to the SADT which follows the policy of one field per landholder. Trust tenure is not bound by inheritance and approval of transfer must be obtained from the local headman.

General restrictions applying to land tenure in black areas

Firstly, "betterment planning" entailed a system whereby any land in "Bantu" areas could be used for the development of agricultural resources and the conservation and improvement of areas under cultivation. This meant that occupiers had little say or control over the land if a programme of "betterment" was decided upon and implemented by government officials.

Secondly, the black labour force rendered it necessary that they be allocated residential sites close to urban centres. The apartheid regime, through the South African Native Trust, therefore established townships close to urban centres. These townships were generally divided into residential plots which could be leased or hired by blacks. In this way two kinds of land tenure were established in the townships, namely hire purchase units which were leased until they could be purchased and direct purchase. Legislation prohibited land within the townships from being used for any purpose other than residential, and title deeds were only allowed to be registered to one person. Further restrictions were placed on the subdivision of land, on the transfer or lease of that land to anyone other than a black person and on the selling of land to settle debts other than those related to mortgage or debt owed to the South African Native Trust. Buildings erected on the premises had to be approved by the Chief

Bantu Commissioner and he could confiscate land if it was alienated for more than 12 months. As with all areas in South Africa the state also reserved the right to all minerals on a particular property.

Other than individual land tenure and customary tenure, several other forms of tenure existed in South Africa which fundamentally operated in the same way as individual tenure, but with the important difference that no title in respect of the land was registered in the deeds registry. These forms of special land tenure included irrigation settlements which were established on certain SADT-owned land. The properties were generally smaller and were intended for intensive cultivation (for example, in Natal and Potgietersrus in the Transvaal). People living on these irrigation settlements had to pay an annual rent and were not allowed to abandon their properties for longer than one month without the consent of the local Bantu Commissioner.

Legislation concerning land tenure

South African legislation has never specifically recognised the traditional system of land tenure adopted by blacks. The laws which apply to South African land are as follows:

- the Glen Grey Act of 1894
- the Native Land Act (now officially known as the Black Land Act), No. 27 of 1913
- the Natives (Urban Areas) Act, No. 21 of 1923
- the Native Trust and Land Act (now known as the Development Trust and Land Act), No. 18 of 1936
- the Group Areas Act, No. 41 of 1950
- the Black Communities Development Act, No. 4 of 1984 (Davenport, 1990:431-440).

Past legislation indicates that the South African government had a marked disregard for the land rights of indigenous people dating back to the first settlements. Furthermore,

> [t]*he Black Land Act laid down an absolute barrier in law between black and non-black landholding, prohibiting each from "entering into any agreement or transaction for the purchase, hire or other acquisition ... of any such land (in the area allotted to the other) or of any right thereto, interest therein, or servitude thereover" [s 1(1)(a) and (b) as amended by s 50(1) of Act 18-36 and s 38(6) of Act 41-50]. Land identification as black-owned or occupied was listed in a schedule to the Act, and was referred to as scheduled areas* (Davenport, 1990:431-440).

Thus the customary system of land tenure was replaced by regulations imposed by a white government, deeming customary tenure to be invalid outside of the scheduled areas. White statutes caused confusion among black people as they were not accustomed to the white way of thinking. Regulations enforced a change of communal tenure to individual tenure in traditional African society. The focus then shifted from working for the benefit of the community to working for individual benefit. It must be remembered that black people traditionally regarded land as a means of subsistence and not as an economic entity, although there were trade relations between black communities. Many black people now had to cultivate and grow crops in order to earn wages, pay taxes and ensure their survival. The natural resources to which they had rights in the communal system no longer existed. Consequently the disappearance of the self-supporting rural community went hand in hand with the creation of an agricultural class and an urban class. Migration to urban centres caused the development and establishment of residential townships.

> [T]*he Black Land Act of 1913 and the Development Trust and Land Act of 1936, imposed severe restraints on black squatting on white owned land ... This law empowered the Minister to remove blacks from public or privately owned land, and gave local authorities the power to establish resettlement camps and villages where squatters could be concentrated* (Davenport, 1990:431-440).

The Group Areas Act further restricted the rights of black people to land. The Act prohibited blacks from owning land which was considered "white land", that is land for the exclusive use of whites.

Tied up with land legislation and expropriation is the system of deeds registration. Registration of land in South Africa goes as far back as the early eighteenth century. It began with the issuing of grants by the secretary of the political council and a Dutch East India Company (DEIC) seal finalised the sale of land. Deeds were introduced when ownership had to be transferred or mortgaged and it was only in 1828 that the Office of Registrar of Deeds was instituted (Schoeman, 1983).

The 1828 system of deeds registration had numerous shortcomings which were reflected, for example, in the failure to number the deeds in a register. It was thus impossible to index deeds as there was no chronological sequence. In addition, erven were not numbered, neither was their particular history noted in the register. This is where the problem of ownership of land arose, since many people bought land which was not numbered and registered chronologically, thus making it virtually impossible for them to reclaim their land. It was only in 1844 that a chronological record of deeds was established.

Possession — a fact or a right?

According to Fenyes (1988:575-584) three types of land rights can be specified, namely:

> [l]*eases, allocations and licenses. Leases provide rights to use and occupy land exclusively* ... [and,] *providing terms and conditions of the lease are met, apply principally to urban areas, and are transferable and inheritable. An allocation, drawing from traditional practice, is a land use right in rural areas for farming, gardening and other traditional purposes, and is also inheritable. Licenses are non-exclusive rights to specified uses of land,* [and] *cannot be transferred or inherited.*

It is said that possession is two-thirds of the law in a criminal case, but when this saying refers to land, it has a more complex and dynamic nature. The question of whether possession gives rise to a real right can be addressed by the legal interpretations of possession. "Possession", in terms of legislation, is an extension of ownership but only when land has been acquired according to the specified land laws and such land has been registered in a deeds office. The buyer legally possesses that land and no person has the authority to confiscate it without a court order. "Possession" as an attitude which a person has towards something, as in the case of tribal tenure, does therefore not feature in South African legislation.

As mentioned previously, an individual only has possession of land if it is registered in a deeds office. This implies that because many tribal lands were not registered, the people residing there were not entitled to that land. The white government implemented a system whereby all land was subject to their laws, thus enforcing white ideas on the traditional land tenure system. With the implementation of a free market and capitalist economic system, many blacks could not afford to purchase land and thus fell prey to the legal aspects of possession. This led to alienation and forced removals from their land.

However, African people claim land as their birthright which extends to ancestral rights. Furthermore, many have farmed their land productively for many years. They call it their home and claim possession rights through long occupation (even as labour tenants).

Freedom of property

> [F]*reedom of property is often said to be a basic right and when it is used in this sense it amounts to no more than the expression of a demand that society (as represented by the authority of the state) should guarantee an owner's power to deal with his thing as he may deem fit and protect him against interference by others in his exercise of this power. Yet no society can survive unless it restricts this power, and if it is true that "the great end for which men entered into society, was to secure their property" then the limitation of their freedom is the price which they must pay for their security* (Schoeman, 1983).

There thus appears to be two basic categories of rights, defined here as personal rights and real rights. Personal rights refer to claims that a specific person/persons deliver something or perform some act, or refrain from performing a certain act; for example the right of the landlord to receive rent from his tenant each month, and the right of the tenant to expect to have the rented premises in a livable condition. Real rights refer to property rights which entitle the holder of the right to prevent all persons from interfering with, or destroying his benefit, for example, ownership, registered long lease and mortgage servitudes. The nature of rights varies. For example, servitudes are regarded as minor rights, while full rights refer to full ownership. Today the right of ownership is composed of a set of rights embracing the following:

- the right to possess and occupy the land
- the right to use and enjoy it
- the right to alienate or dispose of it
- the right to modify or destroy it.

The exclusive right of ownership is a "real" right against all people, and as such it brings with it the obligation of informing the public at large of this right so that they may be aware of it and not transgress it. The legal means of informing the public is to record the right in a register, which is open to the public for inspection. Notice of ownership to a parcel of land is therefore given by means of a public register.

The South African land tenure system can be defined simply as a system whereby individuals gain rights to land and these rights are fragmented into the time, space and land usage which are described in, for example, the leasehold agreement. These rights, therefore, describe the nature of a piece of

land whether it be a dwelling unit or an agricultural unit. The state reserves the right to regulate these rights and imposes taxes and levies thereon. This gives rise to the issues of access and security to land, which are important features in land tenure. Equity of access to land rights is necessary to accommodate societal needs, namely urbanisation, conservation and farming.

According to Vink (1987:525):

> [t]*he policy of successive authorities in South Africa towards tenure in the national states has been what was perceived to be the traditional tenure by fixing it in law ... The laws which determine tenure over agricultural land in the national states are based on the Natives Land Act, No 27 of 1913, and the Native Trust and Land Act, No 18 of 1936, which divide[d] land on a racial basis in South Africa. The former Act made provision for released land, which constituted mainly land under tribal occupation in terms of traditional law or in private ownership by a tribe. The latter Act added the so-called released or "Trust" land to these scheduled areas.*

There are also proclamations which concern land tenure and these incorporate issues such as irrigation, forestry, tribal tenure and farming.

It thus appears that the legal aspects of ownership cannot be overlooked when deciding on a system for land redistribution. Legitimacy is essential for order and stability and ensures a factual process in the search for a solution to landlessness. But this "legitimacy", in the South African context includes such concepts as communal tenure rights, occupation and productive use rights, labour tenancy rights, as well as ancestral rights and birthrights, which all complicate the issue of land restoration, not only in terms of legitimacy but also in terms of emotionality.

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3

THE DYNAMICS OF LAND IN RURAL AREAS: 1990 AND ONWARDS

Anthony Minnaar

Introduction[1]

The South African land question has no easy solutions. The historical imbalances created by the 1913 and 1936 land acts are vast. At present a potentially explosive situation exists in most rural areas, but the land issue has hardly been seriously debated in influential political and economic circles. The need to meet the agricultural land requirements and the demands of the rural poor blacks is as great a problem as that of urban squatters, but it has to a certain extent been ignored or marginalised. The solutions to the dispossession and removals of the past advocated by the various political groupings are in many respects poles apart. There is also no consensus concerning the issue of future redistribution. At one end of the spectrum the Pan Africanist Congress (PAC) demands the restoration of **all** the land taken from the [b]*lack indigenous people by the white conquerors* while at the other end of the spectrum the Conservative Party insists that the status quo remains.

Initially the guiding document for the African National Congress (ANC) was the Freedom Charter (adopted in 1955) which proclaimed that [t]*he land shall be shared among those who work it*. It also called for an end to racial ownership of land, for state help to the poor and for the right to occupy land as one chose. Of course, in the case of an absentee landowner who hired someone to work his farm for him and who provided all the capital/running costs/finances, one could say that such an owner was also making "beneficial use of the land". Why then must only those who physically work the land qualify for ownership of the land? One suggestion here has been a working arrangement with the owner along the lines of worker shares in a business company. This could be a practical alternative to the demand for a direct transfer of the land to those working and occupying the land. Another possibility would be to encourage land rental which would allow black farmers to farm without incurring the heavy capital outlay of buying farms, in other words doing away with the need for actual physical ownership.

The 1988 constitutional guidelines of the ANC called for a land reform programme which would address the issues of racial ownership of land and [i]*mplementation of land reform in conformity with the principle of affirmative action* in order to accommodate the status of victims of forced removals. However, the ANC subsequently worked hard to try allay the fears, particularly of white commercial farmers, of wholesale confiscation. While reassuring those farmers who lived on and farmed their land (in other words those making beneficial use of it), the ANC reiterated its belief that it was reasonable that there should be a transfer of title deeds to those [w]*ho have for many years constructively occupied a piece of land*. This was still taken as a threat to white commercial farmers who owned multiple farms that were not adjoining or in one block. In addition, the demand for some form of affirmative action or restitution for those forcibly removed from the so-called "black spots"[2] within white designated areas, was of particular concern to white farmers who felt they had legally purchased land made available by the state through the policy of removals. Hence any attempt at the wholesale redistribution of farming land is likely to be strenuously opposed by conservative organisations like the regional agricultural/farmer union/organisations. Furthermore, there are legitimate fears that any seizure of land will lead to a massive counter revolution by right-wing forces. On the other hand it will be difficult to raise the capital to buy out white commercial farmers. However, there is land which could be used by or transferred to those who occupy it before even touching white-owned commercial farmland. This land includes tracts of SADF land, railway land, South African Development Trust (SADT) land, and mining company land where the mining companies are only interested in the mineral rights and do not put the land to any agricultural use. However, it should be remembered that SADT-controlled land falls into a somewhat different category than the other types mentioned above, mainly because much of it is already occupied by blacks.

Who owns what?

In 1990 about 77 000 white farmers (inclusive of absentee landlords) owned approximately 77 million hectares or 63 per cent of a total of 122 million hectares. Not all of the 77 million is presently being farmed. The total number of active white farmers has decreased by almost a quarter in the last two decades. Since 1990 the pressures of drought, mounting debt, rising input costs, adverse economic conditions and the lure of the cities has caused many farmers to simply abandon their farms. At present white owned farmland supports the approximately 50 000 remaining white farmers, their dependants and 1,2 million farm labourers and their dependants — a total of almost 1,5 million

persons which results in a density of one person per 51 hectares. In contrast the total area of the ten homclands is 17 million hectares or just under 14 per cent of the total, and carries a population of 14 million which results in a density of one person per 1,2 hectare. The remaining 28 million hectares or 23 per cent comprises urban and peri-urban areas (Auerbach, 1990). It would seem therefore that much of the redistribution would of necessity have to occur in the white owned farmland areas, but a general unwillingness to share has been strongly evident in white farming quarters.

In addition, redistribution of land would have to be balanced against agricultural production and the need to feed the urban population. Any future government would have to have some sort of "hands off" policy towards those white farmers who presently produce most of the agricultural output (in 1990, 590 of the approximately 60 000 white farmers produced 16 per cent of all agricultural produce while 17 700 of them produced 75 per cent, the contribution of the rest being a negligible nine per cent (Bulger, 1990)). From this it is obvious that any suggestion that involves the wholesale nationalisation of land or the possibility of forced transfer of land, will place South Africa's food production under immediate threat. The new government will also need to avoid any hint of heavy-handed expropriation after the manner of the Zimbabwean experience, or of confiscation of land without compensation, if it wants to prevent the very real danger of the withdrawal of the white farmers and of the skilled manpower attached to agriculture.

The unwillingness to contemplate the "redistribution" of white farmland was much in evidence when in November 1990 the Development Bank of Southern Africa released a plan to transfer almost eight million hectares of farmland to blacks. One aspect of the plan was that about 1 000 white-owned farms which were badly indebted to the state be expropriated and handed over to black ownership, but this suggestion raised the ire of conservative white farmers and the various regional agricultural unions. The plan envisaged that where the debt on the farm was greater than its real value, the state could offer to write off the excess debt if the farmer agreed to sell the farm to black owners (Pottinger, 1990; Brand, 1990). This was unacceptable to many white farmers who saw it as a thinly disguised attack on their rights and title to land reserved for white occupation by the two land acts of 1913 and 1936.

The land acts

The injustices and imbalances wrought by the 1913 and 1936 land acts are still much in evidence today. The intentions of these Acts included assisting the capitalisation of white farming by outlawing certain forms of labour tenancy, speeding the flow of black labour from the farms to the mines, heading off competition by small-scale black farming and ultimately securing for whites the bulk of the land (the Acts guaranteed a form of black ownership to only a little more than 13 per cent of the total land in South Africa).

At the end of September 1990 the government announced that the land acts would be repealed thus opening ownership of land to all in South Africa. It was also decided that credit facilities would be opened to allow non-discriminatory access to the Land Bank and the Agricultural Credit Board. However, Land Bank regulations allow it to advance monies to farmers only on security of a mortgage on land (in other words ownership and title required), whereas the Agricultural Credit Board only lends against the expected commercial viability of a proposed farming operation. Both these requirements would militate against any acquisition of white farming land by black farmers while completely excluding tribal or communally-owned land from obtaining financing (Southall, 1990; Chandler, 1990).

At the time of announcing its intention to repeal the land acts the government made no mention of the Group Areas Act which was still on the statute books.[3] Critics at the time quite rightly pointed out that until this Act was repealed a free market in land would not develop. By maintaining the Group Areas Act the government had a continuing legal basis for the forced resettlement of blacks from previously white proclaimed land since the notices for expropriation and removal in accordance with this Act remained in existence.[4]

Eventually the criticism and pressure to link the repeal of the land acts with the repeal of the Group Areas Act led the government to include this step in its proposed legislation contained in its 1991 *White Paper on Land Reform*. On 12 March 1991 the government finally tabled legislation which scrapped the four key apartheid laws controlling access to land — the Land Act of 1913, the Land Act of 1936, the Group Areas Act of 1966, and the Black Communities Development Act of 1984.

However, in repealing the land acts the government in fact failed to address the "apartheid legacy" having taken no cognisance of the fact that on its own, a free market in land would not lead to any significant upliftment of the rural or landless poor. This was precisely the group which most needed assistance since they had no money to buy land. By repealing the land acts and the Group Areas Act, apartheid land legislation was effectively removed. However, it was one thing to ensure the rights to buy the land but quite another thing to give people the ability to buy land and use it productively. Structural poverty would prevail, and one of the solutions to rural poverty would be to encourage massive urbanisation of blacks whereby the population and development pressures on rural land would be substantially relieved.

Furthermore, it was a moot point whether the repeal of the land acts would encourage a wave of sustainable agricultural initiative and output. As it is, large segments of white commercial agriculture are facing mounting debt and continue to rely heavily on government subsidy to survive. In addition, few would-be black farmers have the capital to invest in the purchase of farm land — let alone in the inputs needed to produce for the market.

At the time of repeal the National Land Committee (NLC) and other land reform activists felt that simply repealing the land acts would work to the disadvantage of blacks; that instituting a free market in land would not ensure a sufficient or acceptable level of land redistribution. In fact, a free market in land may well exacerbate the position in rural areas unless the 13,7 per cent of land which was reserved by the land acts for black ownership is protected from the operation of strict market forces. This presupposes that some form of state intervention and land reform will be necessary. Most of the rural land reserved for black use under the land acts in the former homelands is effectively state land and the repeal of the land acts implied that this land could well be commercialised. Hence the repeal might well endanger the existing tenure rights of those occupying the land.

Finally, at the time of the repeal of the land acts the government refused to give a categorical undertaking that people dispossessed of land under coercive resettlement schemes would be given the first option to acquire land which became available.

Rural land tenure problems

The multiple types of land tenure in South Africa is one of the most vexing problems facing land reform. This multiplicity is largely a legacy of the two land acts of 1913 and 1936.

The perception of ownership of land in the former homelands is in fact misleading. Most of the farming land is under SADT control. In other words this trust land is held by either the central government or a homeland government, "for the benefit of black people". Furthermore, the titles to much of the tribe-owned land are in the hands of the chiefs or government ministers (many of them chiefs themselves). Hence the majority of homeland residents are tenants. In other words, those living on tribe-owned land do not have title to it, that is any piece of paper confirming their rights to the land. Homeland leaders, government ministers and officials, and chiefs control access to this land. It is they who give permission to occupy the land or grant quitrent rights. However, the chiefs and other officials still have the power to evict without giving proper reasons. In addition, if the homeland governments via government ministers and chiefs choose to sell the land the tenants would not have the means to purchase it and this would inevitably lead to a fresh cycle of dispossession unless existing occupational rights be converted into some form of permanent title.

Tribal land ownership prevents individuals from obtaining freehold title to land. This has been one of the reasons why properly settled urban communities have not emerged in the homelands near cities which are close to or abut on communal tribal land. Either doing away with communal tribal ownership or substantially revising the system would inevitably entail a sacrifice of some powers on the part of chiefs (*amakhosi*) and headmen (*indunas*), something they would strenuously oppose since it would undercut their powers of patronage and control over those living in the areas that they administer. This has led, particularly on the fringes of Durban, to the abuse of communal tribal ownership either by chiefs or "strongmen" (so-called "warlords") who exploited the situation for their own political and economic gain (see Minnaar, 1992a & 1992b for more detail).

Furthermore, there have recently been strong calls from members (chiefs) of the Congress of Traditional Leaders in South Africa (CONTRALESA) for additional land to be allocated to the control of chiefs and headmen. This would in effect further entrench traditional controls over land allocations and the economic base which accompanies such control. (These fears seemed to have been confirmed

with the passing of the controversial Ingonyama Trust Land Act in KwaZulu just prior to the April 1994 elections.)[5]

Obviously one of the prerequisites for land reform in South Africa will be the urgent review of the legal rights of chieftainship, specifically the chiefs' control of land allocation and the granting of occupation rights. A first step should be the formalising and official confirmation of occupiers' rights to the land in communal tribal areas. A further way of ensuring the protection of land rights of those who occupy former homeland areas would be to acknowledge the right of communities to democratically elect their own leaders and representatives. In addition, the control over communal land and allocations to individuals within the community could be vested in an elected village/ward land committee. Major decisions concerning the use of communal land could also be made by an assembly of the whole community. Within such communities there is also a need for individuals to be given freehold title to a residential plot where a shelter can be erected. A resident would then be able to sell such a plot with the consent of the community, but communal land for grazing or cultivation would not be allowed to be alienated.

Rural communities: economically viable?

Over the last two decades there has been increasing rural depopulation particularly in the reduction of white farmers whose numbers have decreased by almost 40% (from approximately 85 000 in the 1960s to 50 000 in the 1990s). Instead of allowing blacks to buy these vacant farms, the government has extended financial incentives and support subsidies to keep white farmers on the land. By allowing blacks to buy these farms the government would have hastened the re-establishment of collective communities like Magopa, Goedgevonden, Machaviestad and Matiwane's Kop (see the section on case studies for more detail). These settlements were farms bought or occupied by blacks before the 1913 Land Act. For almost three-quarters of a century these and similar settlements were viable, stable and flourishing settlements before the communities were forcibly removed because they had been identified as unwanted "black spots".

While assuring white farmers that their title deeds are safe, the government will also need to reassure black occupiers that their rights to land occupied by them for many years is just as protected even if they do not have written title deeds or official documents proving their ownership. Besides title deeds,

land claims will need to take birthright, long occupation, productive use of the land and inheritance into consideration.

Removing the apartheid laws without any substantive attempt to redress the legacy left by those apartheid laws will not bring about any structural change to the existing inequitable distribution of land ownership and agricultural production. The credibility of any land reform programme will inevitably rest on the extent to which it is seen to be an honest and fair attempt to redress the historical wrongs of apartheid, as well as improving rural black access to land and resources specifically on the level of affordability, in other words providing them with funding without at the same time making it beyond their means to utilise such funding for the purchase of land (for example, by imposing burdensome repayments).

In September 1990 the Urban Foundation called on the government to launch a massive programme of rural development. The plan envisaged settlement schemes and support programmes to give black farmers a viable new start in agriculture. However, the financing of such land reform was problematic and the Urban Foundation recommended that initial funds be raised in the private capital market (Anon., 1990b).

In an effort to redress some of the inequalities in black rural areas, the government announced the Rural Development Bill in March 1991. This Bill contained a scheme to settle black small farmers on some of the 1,25 million hectares of existing "black" land in "white" South Africa. The aim was to give black farmers equal access to official agricultural financing schemes while also envisaging new measures for making additional finances available to small farmers. The Bill also made provision for the National Rural Development Corporation and for the communal use of land for agricultural settlement. However, there was a catch. Most of the 1,25 million hectares of "black" land outside of the homelands was already controlled by the SADT and earmarked for incorporation into the homelands. Of this land, more than half was already occupied and used by tribal communities and individual blacks, or contained black townships. Of the rest, 254 000 hectares had already been set aside for settlement schemes while 220 000 hectares was being let to white farmers. So, in fact, it was only those parts of the 254 000 and the 220 000 hectares set aside for settlement schemes as outlined in the Rural Development Bill that were available. Furthermore, the settlement farms would be

allocated on probationary lease for not longer than three years. If, at the end of this period, the farmer was found suitable, the lease would be extended for not longer than 15 years. During the second period of lease the farmer would be given the option of buying the land at a price to be determined by regulation. The Bill would also override the existing legal restrictions on tribes and whole communities of acquiring farmland. In other words, it would allow black communities to enter the agricultural land market and buy land for farming and residential purposes (Anon., 1991a). The question of how and by whom the finance for purchasing land would be raised was, however, avoided.

The White Paper on Land Reform

At the same time as it tabled the Rural Development Bill, the government published its *White Paper on Land Reform* (see Appendix A for more detail). The White Paper was subjected to severe criticism for its refusal to address the question of the restoration of land to those people dispossessed by apartheid laws. It also explicitly ruled out the possibility of any redistribution of agricultural land. The White Paper quite specifically states that:

> [t]*he Government is of the opinion that a programme for the restoration of land to individuals and communities who were forced to give up their land on account of past policies or other historical reasons would not be feasible.*

Instead, the White Paper left any correction of the imbalances specifically to "market forces". This openly dashed the expectations of those communities hoping for some form of restitution.

Given the long history of dispossession and forced removals, the sorting out of claims through the judicial process will be a highly complex and difficult task. Those dispossessed of their land in urban areas through the Group Areas Act of 1950 will be slightly better off than their rural counterparts in that, in most cases, those possessing urban property have some form of title deed and therefore a chance of proving their ownership in a court of law. For the rural dispossessed it might well be fair to establish a special court to sift through all the claims. In March 1991 the ANC released a document that outlined suggestions for a land claims court whose task would be to [l]*isten to people's history* (black and white) about their claim for land. The court was to have certain guidelines to judge [w]*ho has the best claim to a piece of land.* These guidelines would not only look at title deeds but also consider inheritance, forced relocations, historical claims, ancestral grave sites and present occupation

rights. The ANC further felt that the guidelines should have a basis in law so that if, in the course of their hearings, patent wrongdoing were exposed, the option of criminal prosecution should be available (Anon., 1991c).

The key proposals of the *White Paper on Land Reform* included the scrapping of racial prohibitions on the acquisition of land; improving tenure rights to land; conferring ownership of land on tribes and communities; cutting red tape for the survey and registration of land; support programmes for small-scale farmers; and opening farming land to occupation by all. Instead of restoring land to those dispossessed of it, the government planned to make small and medium-sized farms available to black farmers at low cost. In addition, the government would provide black farmers with access to credit, extension and training facilities to enable them to compete as commercial farmers. As a first step the government intended to give title to black farmers occupying the 254 000 hectares of SADT land as well as to give black farmers title to another 220 000 hectares being leased by the SADT to white farmers at that stage. The government assumed that once these black farmers had titles they would be able to get loans from agricultural credit boards and the Land Bank. Those in a better financial position would then also be able to get loans from commercial banks. It was, however, acknowledged by the then Minister for Agriculture and Development Aid, Jacob de Villiers, that the 474 000 hectares of SADT land earmarked for this scheme was [f]*ar too little* and that [w]*e will have to buy other land*. To be able to do this the government would need the financial support of the private sector and foreign agencies and governments (Robertson & Holtzhausen, 1991).

These moves were not construed by critics of the White Paper as being "affirmative action" in any way, but government officials maintained that settling black farmers on land on favourable terms could well constitute some form of affirmative action (Fabricius, 1991). The critics pointed out that much of the SADT land was already occupied by black squatters and that all that was being proposed was the formalisation of the existing position by giving the squatters title to the land they already occupied. There was therefore no question of any real redistribution taking place.

While failing to address the issue of the restoration of land to dispossessed communities, the government did try to address the question of title in the White Paper. Subsequently the Upgrading of Land Tenure Rights Bill aimed at automatically converting thousands of existing leasehold and deed

rights to full ownership (freehold) in already proclaimed black townships. The Bill would also make it possible for tribal land being held in trust by the government to be transferred to tribal ownership (Anon., 1991d).

The restoration of land to dispossessed communities

Prior to 1990 and the reform initiatives announced by President De Klerk on 2 February 1990, many black communities who were forcibly removed or threatened by removal had no recourse to any mechanisms to oppose their removal from these areas. However, in June 1990, utilising the content and intent of many of President De Klerk's reformist statements, representatives from six communities[6] in Natal who were still under threat of removal or had already been forcibly removed from their land, formally asked the government for an official reprieve and the return of the land they once owned. Apart from demanding that all expropriated land be restored, these communities also requested that compensation be paid to those whose land had been taken away, that is for loss of earnings and other losses associated with removal (demolition of houses, forced sale of livestock at low prices, etc.). Their memorandum also called for the written withdrawal of land expropriation notices and the restoration of title deeds and mineral rights to their owners, or appropriate compensation where this could not be done (Anon., 1990a; Anon., 1990d).

Most of these communities had bought up farms under freehold tenure in the late 19th or early 20th centuries as members of black Christian syndicates. Acquired before the 1913 Land Act, and surrounded by white farms, they had been under threat of removal for more than 30 years. These communities represented a flourishing peasantry, using modern agricultural technology to produce for the market. However, through a programme of underdevelopment by successive colonial governments, post-union segregation and apartheid policies, they were deprived of credit, extension services, clean water, roads, schools and other social services (Anon., 1990a; Anon., 1990d). Furthermore, since 1985 the government had used far more subtle measures to force people off land scheduled for white development. Besides continuing to use expropriation notices and promises of alternative land, other strategies used included the suspension of public transport, the refusal to renew trading licences and a general neglect through underdevelopment. This led to removal by default, that is people were forced by economic circumstances to seek work elsewhere. The drought of the late 1980s and early 1990s increased this drift away from land.

The move by these six communities was the start of a campaign by a number of rural communities, who were either under threat of expropriation or had already been forcibly removed, to force the government to restore the land or their rights to the land to them.

Unilateral re-occupation of ancestral land

Some communities, convinced that they had tried all means to get their land back, simply decided to openly return to their ancestral land (as was the case with the Magopa community near Ventersdorp in the Western Transvaal). Often the return to ancestral land led to confrontation, sometimes violent and bitter, with the authorities. In some cases the authorities were backed by local white farmers (as occurred at Machaviestad near Potchefstroom where the community refused to budge, had trespassing charges brought against them and were eventually forcibly evicted (see Case Study III(i & ii) for more details on both Magopa and Machaviestad). In many cases the rallying cry of such dispossessed communities for restoration was that "our forefathers' graves are our title deeds".

Soon after the publication in March 1991 of the government's *White Paper on Land Reform*, representatives from 13[7] black communities from all over South Africa which had been forcibly removed from their land, came together for a two-day meeting at Hekpoort, west of Johannesburg, to plan strategies for the re-occupation of their land. Some of the communities had already taken action: At Magopa, a large section of the community had already returned and were in the process of negotiating with the government with a view to legalising their re-occupation; at Roosboom in Natal 45 families — part of a community of 125 families — had also returned and were awaiting the outcome of their negotiations; and at Machaviestad (Matlaong) a small-scale re-occupation had ended in trespassing charges being brought against the returnees. In the light of the fact that the government's White Paper had ruled out the restoration of land to the victims of forced removals many of the communities affected went ahead with organising plans for re-occupations (Collinge, 1991a). In a number of cases of such unilateral re-occupation the affected communities used the fact that the occupied land "holds the tombs of our forefathers" as justification for their actions.

Two weeks after the meeting one of the participating communities, Goedgevonden near Ventersdorp, put their plan into action and unilaterally re-occupied their ancestral land. For this community this action represented an act of desperation in the face of repeated attempts to negotiate the matter with

the government (see Case Study III(iii) for more detail). The Goedgevonden case in particular focused attention on mechanisms for restoration which resulted in the government establishing a commission to advise it on ways of addressing land restoration.

The establishment and workings of the Advisory Commission on Land Allocation

Faced with the determination of communities to repossess their land and severe criticism of their apparent refusal in the White Paper to consider restoration, the government agreed in May 1991 to establish the Advisory Commission on Land Allocation (ACLA) to consider the restoration of rural land to those who had lost it through apartheid laws and forced removals. This acceptance in principle to at least consider compensation marked a reversal of the stance taken in the White Paper. The reversal also broke the deadlock in parliament between opposition parties and the government which had been holding up the processing of the five land reform bills which accompanied the White Paper. However, ACLA's brief was merely to advise the government on ways of restoring the land to those dispossessed communities. It would not be directly involved in land distribution. Furthermore, ACLA's terms of reference were confined only to rural land and not urban land: and only land already owned by the state or which could "reasonably" be acquired for restoration purposes would be available. In addition, ACLA was restricted to hearing applications relating to state-owned land which had been acquired under apartheid laws and, more importantly, which [h]*as not yet been developed or allocated for a specific purpose*. This last restriction was to be used effectively by the authorities to block claims (see Case Study III(iv) for details on the Majeng land sale). Clearly, the government had softened its position on restoration but only where restitution was feasible, that is where this did not entail dispossessing someone else (Anon., 1991e; Collinge, 1991b; *Weekly Mail* reporters, 1992).

Reaction from white farmers to this policy change by the government was entirely predictable. At a Transvaal Agricultural Union (TAU) organised farmers' conference in Pretoria in May a motion was passed that called the scrapping of the land acts a [d]*eclaration of war* against farmers. A group calling itself *Aksie Eie Grond* (Action Own Land) called for protests during which the government's *White Paper on Land Reform* would be [s]*ymbolically burnt*. The aim of these farmers and similar groups was to pressurise the government into calling a white referendum on the issue of land reform (Brand, 1991; Linscott, 1991).

Concern at the government's pace of land reform did not only emanate from white farmers. Later in the year (October 1991) representatives of 19 farming communities from all over South Africa accused the government of dragging its feet in discussions over the return of confiscated land and seriously questioned the government's commitment to real land reform (Anon., 1991f). Several communities in Natal also voiced their concern about the perceived powerlessness of ACLA.[8] In November 1991 the government was condemned by the Hlubi tribe for the proposed sale of the farm De Hoek in the Estcourt district of Natal. More specifically the tribe maintained that the proposed sale was a strategy to pre empt attempts by the community to negotiate their land claim concerning the farm with the government. The Hlubi community's demand that the government suspend the impending sale was also backed by other Natal communities[9] who made a public call in December 1991 for an end to the sale of land which [c]*onstitutes the basis of a well defined land claim.* Such a moratorium was endorsed by the Natal-based Association for Rural Advancement (AFRA) which called for the suspension of [t]*he sale of public and state land until such time as contending rights to this land have been settled by a properly constituted land claims mechanism* (Anon., 1991g; Quinlan, 1991). In addition, while backing the land sale moratorium, the ANC called for the establishment of a proper land claims court to adjudicate on contested land claims (SAPA, 1991).

The proposed sale by public auction of the state farms to which the Hlubi had laid claim was temporarily halted by the Hlubi objections and the attention drawn to the sale. The state again tried to go ahead with the sale in February 1992. However, acting on the recommendation of the chairman of ACLA, Justice van Reenen,[10] the then Minister of Land Affairs, Jacob de Villiers, instructed that this sale be frozen. A month later Justice van Reenen also called for a freeze on the sale of all land to which there were claims. Various state departments had identified about one million hectares — a total of 140 pieces of land ranging from as little as two to as much as 1 000 hectares — which were to be submitted to ACLA for evaluation as to whether they should be sold or restored to previous owners. This land represented roughly a third of the approximately three million hectares specified as state owned — although by a number of different departments — which fell into the category of disputed land. The magnitude of the dispute on land obviously complicated the task of sifting through the contending claims. ACLA would have to sort through all the deeds, some dating back many years. The situation was also complicated by the fact that people were occupying parts of this land without any formal title deeds but considered the land as theirs by virtue of long occupation and use. Further

complications in this regard had arisen through the arrival of squatters on some of the contested land (Barkhuizen, 1992).

Of far more concern to those communities trying to have their land claims reviewed by ACLA was Justice van Reenen's claim that it appeared that the state was in actual fact accelerating the sale of state-owned land to private owners in terms of the government's privatisation policy (Barkhuizen, 1992). This meant that land was being removed from the ACLA review process although there were already claims against some of this land. (During 1992 this happened to land claimed by the community of Majeng near Barkly West in the Northern Cape. See Case Study III(iv) for details.) At the time about 30 black communities were involved in land disputes with the government. In addition, the government was accused of selling off state land in order to move title to the properties beyond the reach of the dispossessed.

These land sales were occurring despite a public promise in May 1990 by the then Minister of Agriculture, Kraai van Niekerk, that agricultural land seized by the government in terms of apartheid's consolidation policies would not be sold, as well as a pledge by the Minister of Regional Government and Land Affairs, Jacob de Villiers, that black communities forced off their land by past policies would be given a chance to put their case to ACLA. In June 1992 Minister de Villiers reiterated his pledge and added that land would only be sold after ACLA's advice on any specific piece of land had been considered (Pottinger, 1992).

The arbitrary sale of disputed state-owned land refocussed attention on the issue of a land court. The government still remained opposed to the establishment of such a court but the ANC reiterated its stance that if they came to power such a land tribunal would be set up in order to encourage negotiated settlements, with a fixed cut-off date regarding the length of occupation which would be taken into account for the restitution of expropriated land. These land sales also refocused attention on the government's commitment to land reform and restitution. There were accusations that the authorities were moving behind the scenes to block any restitution to dispossessed communities. Representatives of 38 such communities sent an ultimatum directly to President De Klerk, warning him that the government would have to act decisively on their land claims or face a resumption of the re-occupation campaign of 1991 (which had been temporarily suspended pending the outcome of their

negotiations with the government). The National Land Committee also urged President De Klerk to declare a moratorium on any further sale of public land, including land allocated to the homelands. (*Weekly Mail* reporters, 1992). These actions, seen in the light of the government's reluctance to examine any land claims regarding dispossession and forced removal, as well as their strong support for the protection of all property rights, made it doubly difficult for dispossessed communities to have any confidence in the return of their land.

Since 1990 a worrying factor to activist organisations and other concerned groupings regarding land reform has not only been the response of the state but also the pre-emptive and often transparent strategies by some landowners to protect their ownership against future confiscation and redistribution of land.

Many organisations, lawyers and researchers consistently called for a moratorium on the sale of state land but without much success. One particular aspect that worried concerned individuals was the announcement in August 1992 of the planned transfer of state land to homeland governments.[11] Given the actual form of title and tenure of communal tribal land existing in the homeland this was indeed a move of grave concern. It meant that control of this additional land would be in the hands of homeland government structures and not the actual communities occupying it. It was also interpreted as a subtle form of incorporation of land into the homelands, something the *White Paper on Land Reform* had expressly stated would no longer occur. It was also feared that control of this land by the homeland governments would merely mean its use and disposal as a form of patronage and a way of obtaining the support of communities for unpopular homeland governments. Furthermore, this move was seen as an attempt by the government to pre-empt any new rural-development policy by a future government. These transfers would make it more difficult to recover land lost to black communities under the apartheid laws (Cullinan, 1992; Bulbring, 1992; Diver, 1992).

Besides these transfers of land to the homelands and the sale of state farms, there was also an increase in the sale of urban properties. In Cape Town it was discovered that the House of Representatives Community Development Board over a period of one year had sold off 1 759 properties. Most of these had been acquired by the government from owners forced to sell because of the Group Areas Act. Many victims of Group Areas removals were also not aware that they could reclaim their land.

A further complication was that ACLA, set up to deal with the claims by those dispossessed of their land by the Group Areas Act, was restricted to dealing only with state land. Once such land had been sold to private buyers it was unable to deal with the issue of restitution (Cullinan, 1992:12).

In the latter half of 1993, in a confidential report to the State President, ACLA recommended that:

> [o]*wnership be restored to former landowners who are able to prove their ownership on the date of expropriation* [but that] *the commission is of the opinion that state-owned land should not be disposed of without payment* (Randall, 1993c).

At the same time the World Bank issued their own recommendations regarding land reform and the thorny issue of land redistribution.

World Bank Report on land reform

A World Bank report entitled *Options for Land Reform and Rural Restructuring* by Hans Binswanger and Klaus Deininger recommended that the "poor" be given government grants and land bank loans to buy commercial farmland from "willing sellers". They also specifically advised against any form of direct government intervention — either through expropriation or purchase — to take over commercial farmland to resettle small farmers. In addition, they held that while there should be a judicial settlement of claims to specific plots by groups evicted from their land by the South African government's policy of removing people from "black spots", current landowners be compensated at market-related rates. However, the general claim for restitution arising from past policies would need to be handled by a market-assisted land reform process. In other words, the poor were to be given grants to help them buy land from the commercial sector. An allied recommendation was that the government needed to repeal all "distortions" which favoured the commercial farmer in the form of tax breaks, land bank credit, the agricultural marketing board system and access to technology and services. The report argued that these distortions had made large tracts of commercial farming land appear more productive than they actually were. By removing the distortions the value of such commercial land would be drastically reduced thus making it affordable to new small-scale farmers.

However, the World Bank report warned that if the hopes held out by land reform were not met, there would probably be an increase in rural land invasions — at first unco-ordinated and sporadic, concentrating firstly on land in Natal, and secondly on other land closest to the former homelands.

The report feared that if the land hunger in rural areas was not quickly met, it would only be a matter of time before a well-disciplined rural movement would be organised which would be capable of co-ordinated insurrection and terrorism in the struggle to gain access to land (Binswanger & Deininger, 1993: 2ff).

The Provision of Certain Land for Resettlement Act, No. 113 of 1993

In July 1993 the government, in an effort to deal with some of the dispossessed communities' demands for the restitution of their historical land, and to satisfy the growing public expression of land hunger, as well as to defuse increasing threats by some rural communities of forcibly occupying white-owned farms, passed one of nine new laws concerning land, The Provision of Certain Land for Resettlement Act, No. 113 of 1993. The Act made funds available for landless people to buy and develop rural land. Unfortunately the Act proposed free-market principles for solving a land issue without addressing the reasons why certain groups of people were landless in the first place.

The Act made provision for an application to government for funding to buy land. If the application was approved landless purchasers would be responsible for 20 % of the price and the remaining 80% would be paid directly by the government to the seller thus creating the myth of a willing seller/willing buyer within a free and open land market. What the Act in fact did was to provide the opportunity for a number of farmers to get rid of their farms at market value and have the price guaranteed — this in a commercial farm market which had seen a dearth of buyers with many farmers unable to get rid of farms at almost any price.

Furthermore, the Act provided for [e]*very breadwinner* [to be] *subsidized to a maximum amount of R7 500 for obtaining land and rudimentary services*. The aim of the Act was to provide government funding for the repurchasing of dispossessed land and to encourage such communities to take up this option. However, one of the problems is that, on the basis of current market value of commercial farming land in Natal at R500 to R600 per hectare, and with an average stocking rate of five hectares per large livestock unit, the size of land able to be purchased by each member of a community would only give each family three cattle. This number is not an economic unit (official estimates of the number of cattle as an economic unit for a black family range from 11 to 16 cattle) and if such communities accept the offer of R7 500 per family, it would only perpetuate the cycle of rural black

poverty. Furthermore, to be economically viable, these black families would have to overstock and therefore overgraze the land, inevitably leading to further degradation of the land and increased soil erosion damage. Efforts to restore land were further complicated by the acceptance of the Interim Bill of Rights.

The Interim Bill of Rights

In mid-November 1993 the Negotiating Council at Kempton Park accepted that people dispossessed of land in terms of discriminatory laws would be entitled to claim restitution (return to their land) or compensation (Lautenbach, 1993). This was to be enshrined as a fundamental right in the Interim Bill of Rights, along with a separate clause providing for property rights. However, 19 June 1913 (promulgation of the 1913 Land Act) was accepted by the negotiators as the cut off point for land claims. This meant that no claims pre-dating the cut-off point would be considered. Although resolving to a certain degree the tensions between the NP's position of insisting that property rights and security of existing tenure be recognised and the ANC's demand that the dispossessed be acknowledged and, where appropriate, be compensated for their loss, the clause was in itself too vague to be a solution to the very real practical problems facing land reform in South Africa. In terms of the agreement those dispossessed of their land [s]*hall be entitled to claim restitution in a court of law*, however, no guidelines were given in the agreement as to the functioning of a possible land claims court in deciding on the disputes between present owners and those dispossessed.

Besides the issue of dispossessed communities returning to the land by incorporating guarantees concerning the protection of individual property rights, the issue of due compensation to those presently occupying disputed land was left in abeyance. The clause on land restitution left for the new government such questions as whether to pay compensation at present land/market values (it only mentioned that compensation for expropriation would be [j]*ust and equitable*), to refund the original purchase price plus compensation for improvements or whether any compensation should be paid at all. If compensation was to be paid, the new government would be faced with the vexing problem as to who would foot the bill. Furthermore, what if present owners resisted attempts to return land to previous occupiers? (An unwillingness to sell in line with the "willing seller/willing buyer" principle.) In addition, no guidelines were laid down as to the general principles of the policy of redistribution since this was in effect a separate problem to that of returning land to dispossessed communities.

Finally, nothing was said about the rights to the land of long-term farm labour tenants and sharecroppers, many of whom had worked a piece of land for generations making beneficial use, albeit for subsistence farming, of the land they occupied, but had no rights to any written title or even security by way of lengthy occupation. In reaction to the negotiated agreement on the land clause in the Interim Bill of Rights more than eighty dispossessed rural communities, through a series of protests organised by the "Back to the Land Campaign", rejected the property rights and compensation clauses outright (Randall, 1993b).

Restored communities

By the end of 1993 ACLA, since its establishment in 1991, had heard 42 cases. Of the 23 cases on which it made recommendations, 11 involved claims from communities forcibly removed from their land. However, the Commission only recommended that six of these have their land returned (Randall, 1993c). The first of these communities to have their land restored were the communities of Roosboom near Ladysmith and Charlestown (near Volksrust) in Natal in December 1993. The residents of Roosboom, however, soon found that getting back the land was only the first step. In the process of removing them in 1976 the government had destroyed all infrastructure — buildings, roads, schools and even water taps. Furthermore, after restoring their land to them the government insisted the community pay back all the "compensation"[12] they had received at the time of their removal. Soon after their re-occupation the Roosboom residents found that they themselves had to act against other illegal occupants — residents of Ezakheni township trying to flee the violence in this township, as well as labour tenants evicted from nearby farms who came looking for a home. Then there were the original tenants. At the time of the eviction Roosboom was a freehold community with 500 landholders and several thousand tenants. The title deeds had been passed on informally making it difficult to determine who owned what land. Initially, after their return, the Roosboom landowners were divided amongst themselves as to whether the tenants should be allowed to return at all. There were also divisions between landholders and tenants over how to utilise the land. In order to reach consensus as a community, the Roosboom residents set about trying to formalise a constitution in order to regularise the activities of the community. Some tenants wanted access to grazing lands while the women wanted more community gardens. The challenge for Roosboom became one of reconciling the different land needs within the community itself and of planning proper land use (Waldman, 1993).

Besides these two communities, only two other communities regained their expropriated land before the April 1994 elections. The first was the Riemvasmaak community of the Northern Cape who were informed by the Department of Land Affairs on 1 February 1994 that their land rights would be restored to them and they could return to 50 000 hectares of the original 70 000 hectares they had occupied before being removed (Smith, 1994). The second was the Mfengu community (see Case Study II for more detail) of the Tsitsikamma in the Eastern Cape. At the end of March the government agreed to pay R35 million to the Mfengu Trust which would buy back 19 farms from white farmers (SAPA, 1994b).

The first communities to avail themselves of the provisions of The Provision of Certain Land for Resettlement Act, No. 113 of 1993 were the communities of Cornfields and Tembalihle in the Weenen and Estcourt districts of Natal. After months of negotiations these two communities were, in principle, granted a government grant of R4,4 million (80% of the agreed purchase price of R5,5 million[13]) to help them buy agricultural land. This was in part due to the establishment by white farmers of a huge biosphere reserve in the Estcourt, Colenso and Weenen districts. These black communities feared being denied access to the biosphere, not only as workseekers but also for the collection of firewood, grass for thatch and other plants and resources, as well as having their claims to land within the biosphere negated by its establishment. However, farmers in the area agreed to sell eleven farms totalling 8 531 hectares to supplement the 842 hectares already held by the two communities. The purchased area was to be used for communal grazing, access to water and for firewood and thatching grass (King, 1993).

Pre-election developments concerning land

ANC's Reconstruction & Development Plan (RDP)

The ANC's RDP (released in mid-January 1994) called for a target of at least 30% of agricultural land to be redistributed within five years of a land reform programme being implemented by a new government (World Bank estimates put the cost of such a redistribution at R17,5 billion spread over the five years, money which would have to be borrowed by a new government). This was to be done *inter alia* through strengthening property rights of already occupied land, market and non-market mechanisms and using vacant state land. The RDP also stated that those who had been dispossessed of their land through [d]*iscriminatory legislation* since 1913 would have their land restored through

a land claims court. Furthermore, the central aim of a land reform programme, according to the RDP, was employment creation and to increase rural incomes. The SAAU reacted almost immediately saying that the redistribution of 30 % of agricultural land — a transfer of 25 million hectares — was unrealistic and would prove to be totally disruptive of agricultural production (SAPA, 1994a; Steyn & Maysom, 1994).

Community Land Conference

In mid-February 1994 750 delegates from 356 localities representing hundreds of deprived rural communities came together in Bloemfontein in an unprecedented national gathering. At the end of this Community Land Conference the delegates categorically rejected the limited land reform provisions contained in the interim constitution. They also threatened widespread land occupations unless their more extensive demands for land redistribution were met. Furthermore, the delegates demanded that in the lead up to the April elections, mass evictions of labour tenants and farmworkers be halted (Anon., 1994). These demands were contained in a Land Charter which in most cases went further than any policy guidelines of any of the major parties taking part in the forthcoming election. Amongst these was the demand for some form of land tax; that while white farmers would be compensated for reclaimed land, this should not necessarily be at market-related values; and that farmers should not be allowed to own more than one farm (Merton, 1994). In reaction to these demands the Orange Free State Agricultural Union (OFSAU) predicted that wholesale occupation of land would occur after the April election. According to the OFSAU president, Dr Pieter Gous,

> [t]*he masses were being deliberately incited to make land demands, which would give the new government the excuse for large-scale redistribution of land, regardless of so-called constitutional restrictions...* (SAPA, 1994a)

Although such alarmist predictions were not realised in the period immediately after the April elections, they were symptomatic of the fears and perceptions of white landowners. The sentiments contained in the Land Charter were also instrumental in further lowering the morale of white farmers and in some cases led to landowners increasing the pace of evictions of labour tenants and farm workers in the pre-election period.

Evictions of farm labour tenants

The eviction of farm labourers and tenant farmers (sharecroppers) had long been a problem related to the forced removals from "black spots". The labour-tenant system, long established, especially in Natal, allowed African people a degree of residential security. Labour tenants earned the right to live on white-owned farmland by working for the landlord for six months of the year, sometimes for a nominal wage. In addition, they might be allowed to keep a certain number of cattle and goats on the farm and grow some crops. This meant that the farmer had a ready supply of cheap labour since he not only employed the head of the household, but often also his tenant's children without payment or at low rates. However, in 1969 the government, in an attempt to modernise the agricultural labour market, tried to end the labour-tenant system by limiting the number of families allowed to live on one farm to five. In some districts of Natal this change in the system resulted in mass evictions, sometimes accompanied by the bulldozing or burning of the huts of those tenants resisting eviction. This was particularly the case in those districts where many farms were owned by absentee landlords who used these farms chiefly as labour reserves for commercial farms owned elsewhere in Natal. Some families were evicted because their sons refused to work on the white owner's commercial farm or were away working on the Reef. Other evictions were the result of *inter alia* white farmers switching from crop and cattle farming to game farming or forestry. White farmers were also squeezing black communities off the land by claiming that the black community's cattle were overgrazing the land. Although such evictions were supposed to have been stopped with the repeal on 1 July 1986 of 26(1)(b) of the Native Trust and Land Act of 1936 in terms of Section 17 of the Abolition of Influx Control Act, evictions had still continued, often under the guise of the Prevention of Illegal Squatting Act, as a result of a change in ownership or formal dismissal from employment of a farm labour tenant by a farm-owner. In the latter case a farmer needed only to give a three months' notice to legally evict black families who might have worked the same land their predecessors had in the time of King Shaka.

In September 1990 investigations by various organisations found that scores of evictions continued to occur in Northern Natal. It was also found that most of the displacements appeared to have been done legally in accordance with the statutory three months' notice. The problem, particularly in Northern Natal, seemed to be that vestiges of the tenancy system (which was no longer legally sanctioned by the state) still remained in existence. Most black tenant labourers worked for low wages with the heart

of their remuneration still coming from grazing and ploughing rights on white farms. If these black tenants were evicted or if there was a change-over by a farmer to forestry or game farming, the ex-tenants were left without any capital or resources to start over elsewhere or even to purchase other land. Those who owned any livestock were frequently forced to sell their cattle or goats at rock-bottom prices in preparation for their move to a crowded resettlement camp that had no grazing land (Vegh, 1990).

According to the Association for Rural Advancement (AFRA) more than 300 000 labour tenants have been evicted in Natal from the land on which their ancestors were born. In the Weenen district alone three emergency camps had to be established to accommodate evictees from the white farms in the district. These emergency camps had no grazing land, which forced those evicted to give up their livestock (Anon., 1990c).

Evictions remained a big factor in the lives of black farm workers and tenant farmers and little could be done legally to prevent such evictions if the correct legal notice period was followed by a farmer. While evictions were a practical expression of white fears of future land reform policies, these fears were further exacerbated by the stance on land taken by the PAC in their election campaign.

The PAC and its election campaign

The PAC made the land issue the cornerstone of its efforts to win election support. Furthermore, the PAC had also publicly threatened that if the land was not returned to those dispossessed of it, the PAC might well have to return to the armed struggle in order to ensure that "the land" be returned to the African people. The PAC's election manifesto also promised that all private land sales would be abolished once the land had been restored. The manifesto rejected any protection of freehold title or the acquisition of land on a willing buyer/willing seller basis. In other words there would be no compensation to land owners for expropriated land (Kemp, 1994a & 1994b) nor would it [b]*uy back land from those who stole it but would simply take it back through legal expropriation* (Dennehy, 1994). Central to the PAC land policy was also the concept of "One family, one plot", to be realised by dividing commercial farms into subsistence plots in line with their declared philosophy of the inalienable right of the "people" to land. According to the PAC the state would take over the land and it would then be allocated to the "curatorship" of the public (Pressly, 1994).

In contrast to the PAC's stated future land policies if it won the elections the ANC's president, Nelson Mandela, had gone to considerable lengths to allay the fears of white landowners and had categorically denied that the ANC would seize privately owned land for distribution after the elections (SAPA-AFP, 1994).

However, these attempts by the ANC to mollify white landowners led fourteen representatives, chosen by the delegates at the Community Land Conference, to hold a meeting in late March with Mr Mandela. The delegation informed him that it was time the ANC started to look beyond the fears of white farmers and take cognisance of the very real fears of the dispossessed communities that their landlessness would not be solved or addressed by a future government. In their meeting with Mr Mandela the rural delegates stated that they found it unacceptable that the ANC accepted that only state land would be redistributed (World Bank figures at the time showed that only 320 000 hectares of arable, unoccupied state land was available for redistribution). They demanded that additional categories be considered for redistribution: unused land owned by forestry companies; land belonging to absentee landlords, and land owned by commercial farmers who were in debt to the state. In a later meeting with the Transitional Executive Council (TEC) the delegates urged the TEC to take control of all land issues and order an immediate halt to the transfer of all state land. In particular they objected to the Department of Regional and Land Affairs implementing its own programmes unilaterally (Collinge, 1994; Molusi, 1994).

Post-election developments

On 4 May 1994 the ANC unveiled its land reform proposals as part of its Agricultural Policy document. In this document a Land Rights Restitution Act was proposed which would require claims to be lodged within three years with a land claims commission, which would investigate them and try to negotiate and mediate settlements. A land claims court would also be established which would then ratify any settlements reached, as well as judge disputed or complex cases. It was hoped by the ANC that the proposed Act would not only lead to constructive settlements but also thwart and discourage landowners from evicting claimants and selling their land in an effort to pre-empt claims (SAPA, 1994c).

This last point was crucial in the light of what had occurred in the lead up to the election when the National Land Committee (NLC) had reported widespread evictions from farms, mainly due to the fears of white farmers about a future land reform programme. The eviction problem was especially serious in the Eastern Transvaal and Northern Natal where entire families, totalling thousands of people received eviction orders (Harvey & Van den Heuvel, 1994). Those affected were not those dispossessed communities but all types of farm workers from labour tenants and purely waged employees to seasonal or casual farm labour — large numbers of whom were also keen to make claim to rural land for farming purposes.

On 11 May 1994 the NLC gave a briefing to the media on [t]*he high expectations of landless communities* and warned the new government that if it [the government] did [n]*othing tangible soon, we* [landless communities] *will resort to our back-to-land tactics of invading the land* (Jankowitz, 1994). This stance again raised fears of wholesale illegal land invasions and occupation of white farms by rural landseekers.

In addition, the other important policy point of the new agricultural policy was the focus on individual small-scale farmers (as opposed to communal farmers) to drive rural development and economic upliftment. However, there appeared to be consensus between the ANC, the NP and organised white agriculture that simply allocating land to small farmers would not be a solution unless any such redistribution was linked to training small-scale farmers to utilise the land efficiently. In terms of capital collateral for financing development investment, the new Minister of Agriculture, Kraai van Niekerk, made statements which seemed to indicate that loans could be granted to individuals without the necessary capital collateral, that is the concept of "human collateral", the using of an individuals' personal guarantee coupled to a willingness to undergo training and acceptance of technical advice. One problem concerning small land allotments was that allocating them would require substantial changes to the Sub-Division of Land Act of 1970, which had previously prohibited white farmers from selling off portions of their land.

The Agricultural Policy document also identified the purchase by the government of land from (mainly white) commercial farmers, especially those who were totally indebted to the state. It was estimated that at least 200 white farmers were expected to be sequestrated in 1994 which would make at least

200 000 hectares available for this purpose (Maker, 1994). There were, however, concerns that this state intervention would artificially inflate land values and distort the market in farming land. There were other problems associated with encouraging and developing small scale farmers, namely that technological advances encourage bigger agricultural units (agri-business). Size and scale of commercial farming has direct implications for efficiencies and costs which is in line with worldwide trends towards "high-tech" farming. The trend in agri-business is also to contract out certain operations which could possibly provide individual black farmers the opportunity to at least work the land while not actually owning it. A further problem that would face small-scale farmers would be the lack of marketing assistance especially in a situation where many of the agricultural marketing boards are either being phased out or privatised. The General Agreement on Trade Tariffs (GATT) agreements will also ensure that high tariff barriers, guaranteed high prices and single-channel marketing systems will no longer be in place to protect South African farmers as in the past. Obviously it will remain extremely difficult for small-scale black farmers to survive. Many will survive purely on the basis that they have access to cheap labour (usually family members).

Establishing viable black farming units

In the search for solutions to the land problem as well as the problem of sustaining productivity levels in the agricultural sector a number of innovative alternatives to present farming systems could well be tried.

One solution that has been put forward (by the NLC) is that labour tenants and farm labourers reach agreements with the white owners/farmers of the land on which they reside in order to "co-exist" with them.[14] Such "co-existence" could entail the workers entering into business arrangements with owners whereby they would either be given or buy (with loans provided by the Land Bank) shares (in lieu of actual title to land claimed) and accept co-responsibility for profit, loss and equity in existing white-owned farms. This would obviate any sub-division of land and support large farm units, assist them to become more competitive, as well as saving the government the vast costs of new resettlement programmes (Payne, 1994).

Furthermore, redressing the imbalances in agriculture could well be done without destroying existing property rights. Small farmers on the land could be established by modifying existing tenure systems in the following way:

- **Group farming** — comprising individual ownership of small farms with each farmer responsible for farming his own land but grouped together so that operations could be co-ordinated;
- **Communal farming** — individual property rights would still apply, but each property would have access to communal grazing lands;
- **Individual large-scale farming** — there would be nothing to prevent those who have sufficient resources from acquiring larger commercial farms, and
- **Corporate farms** — very large operations might be acquired by companies or syndicates with black shareholders.

Other measures to increase the ability of historically disadvantaged communities to improve the productivity of the land they occupy and assist them in raising capital to invest in improvements could include the following:

- allowing the use of communal lands and livestock as collateral,
- providing financial loans on the basis of future production, and
- forming credit unions and establishing rotating credit funds whereby farmers on communal land are assisted on a step-by-step basis.

However, all the above measures need to take into account the fact that most of South Africa's agricultural land is not suited to intensive agriculture which can sustain a family on a small agricultural plot. What we have in South Africa is mostly barren highveld, drought-ravaged Karoo lands or bushveld where scarcity of water is the defining factor. Smallholdings are unlikely to be successful and will definitely not succeed without sustained and ongoing support on a scale much larger than that which has hitherto been extended to existing large-scale white-owned farming operations. Exceptions to this are the successful small cane-grower scheme in Natal's coastal lands (for more detail see Minnaar, 1990) and the irrigated plots in the Eastern Transvaal lowveld region, both of which could set an example.

ENDNOTES:

1. This chapter is based on fieldtrips to various areas in South Africa where land problems were identified. A number of interviews and informal discussions were held with individuals which were used to identify the main issues. A thematic formulation of these was then done in consultation with the other contributors to this report. This information was then supplemented with personal observations in the field and an analysis of a number of policy documents. Finally, a wide range of newspaper and journal articles were consulted in an attempt to add any new dimensions not yet found in the data.

2. When the National Party came to power in 1948 it embarked on a policy of removing black freehold communities from the so-called "black spots" (that is black communities living within areas designated as land for the exclusive use of whites). According to an investigation by the Surplus People Project, between 1960 and 1983 an estimated 3,5 million people were either forcibly removed by government decree from these "black spots" or labour tenants evicted from white-owned farms, and resettled onto densely populated and agriculturally poor land in the homelands or TBVC states. Because many of the homelands could no longer provide for the subsistence needs of the inhabitants, many of those removed or evicted were regrouped into non-agricultural villages which in effect functioned as labour dormitories for decentralised industry. With the increasing concentration of larger and larger numbers of people in rapidly shrinking reserves, an alarming ecological crisis began to emerge. The government responded by drastically reducing livestock and limiting access to grazing land as well as dividing the land into residential, cultivation and grazing areas. This further impoverished the inhabitants of the homeland rural areas.

3. Broadly this Act defined race zones and entrenched white ownership rights throughout South Africa. It also provided legal barriers to any non-white intrusion.

4. By 1982 it was estimated that 103 black freehold areas had been forcibly evicted. But after increasing resistance from the communities under threat of removal and national and international pressure, the government announced the suspension of forced removals. However, the suspension left about 160 000 people (in an estimated 183 areas) who had already had expropriation notices served on them, uncertain of their future and whether they would still be removed.

5. The Ingonyama Trust Act was legally signed into law by the then state president, F.W. de Klerk, a scant few days before the April 1994 elections. The Act set out a proposed transferral of all tribal/communal land in KwaZulu/Natal to the Ingonyama Trust of which the Zulu king, King Zwelethini was the sole trustee. At the time there were accusations that this was a payoff for the IFP's participation in the elections but of greater concern were the implications for rural land development. There were fears that such control would negatively impact on the democratisation of rural local government, block access to communal tribal land and bedevil the operations of a future land claims court. It was also claimed that the transfer contravened pre-election agreements that placed a moratorium on the disposal of state land. However, the effect of this land transfer was to exempt KwaZulu tribal land from the provision in the interim constitution that all self-governing territories' land was to become the property of the central government. Furthermore, this transfer also seemed to be in direct conflict with the Abolition of Racially Based Land Measures Act, No. 108 of 1991 which clearly stated in Section 105 that any law in a self-governing territory that restricts the acquisition and utilisation of land on the grounds of race or ethnicity was invalid (since it reserved certain trust lands for the exclusive use of members of the Zulu tribe in KwaZulu). The whole issue was sidestepped by the new government who promptly appointed a commission to review the transfer and make recommendations. One of the underlying issues would obviously be the whole question of the control of trust lands through the communal tribal tenure system of chieftaincy.

The committee appointed to review the Trust eventually reported to the cabinet on 15 June 1994 and unanimously recommended that the Ingonyama Trust Act be retained but that some technical changes be made to ensure that unwarranted interference or manipulation of tribal land be avoided. This decision was not unexpected since, in submissions to the committee, it became clear that the goals for establishing the Trust had been to ensure that land occupied or owned by tribes in Natal would continue to vest with them when the new interim constitution became effective. The intention was then clearly to create mechanisms which would preserve tribal interests in the land rather than giving the Trust the powers of government (AFRA, 1994c:9-10).

6. The six communities involved were Matiwane's Kop (a small black freehold area about 25 kilometres north of Ladysmith, Natal), Steincoalspruit, Stoffelton-Stepmore, Roosboom, Tembalihle and Cornfields. The Matiwane's Kop, Steincoalspruit and Roosboom communities had their land expropriated between 1975 and 1980, but the communities at Matiwane's Kop and Steincoalspruit in fact refused to move. In 1976 almost 400 people owning freehold land in the Roosboom area not far from eZakheni near Ladysmith were evicted. Eventually a total of 7 353 people were forcefully removed from Roosboom. Although the government announced that ownership rights would be restored to Matiwane's Kop and Steincoalspruit, no title deeds or mineral rights were restored. Roosboom owners had their hopes dashed when in October 1990 the government announced that land would not be restored to those communities where the landowners had already been removed, that is where they were no longer in physical possession of their land. While Cornfields and Tembalihle were reprieved from removal, these communities also demanded some form of affirmative action to those affected by the government's removal policy. This would particularly apply to Cornfields which for a period of three years prior to 1990 had received no government aid in because of the landowners' refusal to move (Anon., 1990a & 1990d).

7. The 13 communities were those of Charlestown, Roosboom and Cremin in Natal; Majeng and Bejalakgomo in the Northern Cape; the Mfengu and Macleantown communities in the Eastern Cape; and the Barolong, Doornkop, Kaffirskraal, Goedgevonden, Magopa and Bakubung communities in the Transvaal. However, together these communities represented only 50 000 of the estimated 600 000 people who suffered from "black spot" removals (Collinge, 1991a).

8. Representatives of these committees also called for ACLA to make its findings public; that ACLA be accessible to communities by hearing evidence near their areas; and that ACLA should accept submissions from duly elected community representatives (Quinlan, 1991).

9. Communities in Weenen, Cremin, Baynesfield, Roosboom, KwaBhekumthetho, Koenigsberg, Alcockspruit, Amahlubi, Charlestown, Nazareth and Vaalkop (Quinlan, 1991).

10. Mr Justice van Reenen had been appointed to chair the newly formed land committee (ACLA) in November 1991.

11. At the time (1992) the transfer would involve large tracts of state land to the governments of Lebowa (380 000 hectares) and QwaQwa (52 000 hectares) while land was also earmarked for transfer to KwaZulu (600 000 hectares), KaNgwane and KwaNdebele (168 000 hectares) (Bulbring, 1992; Diver, 1992). Transfers of state land to tribal authorities and chiefs in former homelands remained a controversial matter. In April 1994 the former Lebowa government of Chief Minister Nelson Ramodike set aside an unauthorised amount of R6 million in state funds taken from the drought relief programme and placed these funds into a Lebowa Farmers Title to Land Trust. This Trust was formed on 7 April 1994 and registered in the Pretoria Supreme Court on 11 April with transfers taking place almost immediately afterwards. However, Ramodike was a trustee of this Trust which position gave him and his former deposed colleagues the capacity to control land allocation in Lebowa. In September 1994 it

was revealed that at the time of the April 1994 elections title to approximately 30% of trust land in the former Lebowa homeland had already been transferred to the control of local tribal authorities and chiefs. A further 30% was due to be transferred on 6 October 1994 in terms of certificates of transferral (section 239) issued by the Department of Public Works. However, the central government cancelled the certificates authorising the transfers on the basis that the transfers were a breach of the government moratorium on the disposal of state land declared on 1 July 1994. Subsequently the central government ordered two separate investigations into the completed transfers of approximately 400 Lebowa farms (Anon., 1994b & 1994c).

12. Charlestown landowners received R250 and R350 each when they were forcibly removed while the people of Roosboom got a total of R360 000 plus an alternate piece of land in extent 964 hectares when they were expelled from their land. Both communities were informed when they got their land back that they would have to repay these amounts if they wished to get their title deeds (Randall, 1993a). Most communities in similar positions to Roosboom and Charlestown felt that they should not have to repay any of the compensation received at the time of their dispossession (little as it was) but that they should in fact receive compensation for all the suffering they had undergone as a result of such forced removal. Furthermore, that if they got their land back, these communities had to start all over again and rebuild what was destroyed or had been totally neglected. Those communities which had been compensated with other land generally received inferior land agriculturally. In addition they were not compensated for the long-term productive value of what they had lost.

13. Each family was to pay between R322 to R469 as a down payment (5% deposit) for the land and the rest (15% of the loan) to be repaid in annual instalments of between R193 and R289 over the next five years (King, 1993). However, it was only in May 1994 that the Cornfields and Tembalihle land agreement was eventually finalised whereby the government agreed to subsidise the purchase price of farmland by these two communities. This was a significant first since it signalled that black people would be allowed to own commercial farmland. For the 422 families of Cornfields and the 267 at Tembalihle the purchased farmland was [a]*n area where we can farm, we can plough, grow thatch grass and get firewood* (Gibson, 1994).

In June 1994 another groundbreaking agreement concerning land transfers was signed between owners and labour tenants in northern Natal. Mondi Forest, the owners of the Mooibank farm near Louwsburg in the Vryheid district of northern Natal, legally transferred about 260 hectares of the farm to the labour tenants (16 families) who had resisted all attempts by previous landowners to evict them. The Mooibank community would "pay" for the land by growing one crop of trees for Mondi on one 25 hectare section of the transferred land. The rest of the land to be used for other crops and other uses by these families (Khumalo, 1994; AFRA, 1994a:3-4).

Both these land agreements represented significant changes to land ownership and utilisation and pointed the way for future developments along similar lines.

14. Along these lines some large forestry companies in Natal are already making use of a form of "contract farming" whereby small individual growers in rural areas enter into a contract with a company to grow trees. In return the company provides the capital investment to get the plantation started (that is the individual grower has no need of any capital outlay) and pays the labour costs of the grower, who maintains the crop. At the end, the grower must sell his crop to the company, who harvests and transports the wood to its nearest mill. The grower is paid a "bonus" consisting of the market value of the timber minus the company costs for labour and transportation. Such schemes, although giving the small grower no choice in the sale of his timber, in other words he has to sell it to the company's mill, ensure that individual growers receive a guaranteed income while at the same time assisting agricultural development in rural areas. In the communal tribal areas where most of these schemes have been

implemented the idea is to get communities to commit between 500 to 1 000 hectares of land to forestry in partnership with a company. Such plantations would then be under communal ownership and be run as a co-operative (AFRA, 1994:5-6).

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4

CONSERVATION AND RESOURCE ALLOCATION: PARKS AND PEOPLE

Sam Pretorius

Introduction

When attempting to write anything on the environment in South Africa, or Africa for that matter, the first thing that one realises is that there are at least three distinct groups involved. Normally there is an "elitist" group concerned with conserving the environment (Department of Environment Affairs (DEA), 1993:4); the poor who need natural resources and whose basic concern is for earth, fire and water (Wilson & Ramphele, 1989:33); and a capitalist group which exploits both the environment and the poor. The environmentalists wage a "green war" against both the capitalists and the poor since both are perceived to be harming the environment. However, it is sometimes forgotten that [e]*ven though the rural poor outnumber the rich, the use of water and other resources by the rich and industries far outweigh those used by the poor* (Klugman, 1992).

In turn the capitalists see restrictions on production based on conservation concerns as essentially restricting economic growth, while the poor continue to struggle to survive under the pressures generated by both the capitalists and the environmentalists.

Many aspects concerning conservation may (and must) be considered. The aim in this chapter, though, is to concentrate on the relation between conservation areas/organisations and surrounding black communities in terms of the grassroots politics involved. The discussion on these matters will largely be based upon a preliminary case study[1] done in the Mzinti Reserve and its surroundings, which is close to the Mahushe Shongwe Reserve (part of the KaNgwane Parks Corporation, see map on p. 74). A literature study was also undertaken in order to broaden the scope of the discussion.

The main aim then is to assess and possibly reconcile the demands of the conservation areas/organisations and local communities in order to put enough on the negotiation table to start meaningful deliberation on the subject. In establishing priorities, in view of the basic demands of the groups involved, it should be clear that man is first of all dependent upon nature. Nature therefore

is important, but sustaining human life should be the main priority. This line of thinking will thus be employed with the aid of the concept of sustainable development as propounded by the Rio Declaration (UN Chronicle, 1992:66-67).

A human needs approach

Thus far, the discussion has centred around provision of the basic needs in the rural communities as a way of bringing environmentalists and potential restituted landowners together. The basic assumption is therefore that, because the parks are protected areas, they can supply the communities in their vicinity with the surplus of basic resources generated by the careful administration of the park's environment.

This idea can be carried even further by the implementation of the concept "sustainable use", as is implemented through the [C]*linton administration's effort to save threatened species and serve economic interests at the same time* (Anon., 1993b). Sustainable use entails more than just ecotourism whereby local communities can benefit by participating in the "management" of the park, or becoming tourist attractions themselves. It means that:

> [k]*illing crocodiles for their skins, impala for their meat and lions for hunting trophies ... is a more directly sustainable utilization of resources; so is killing elephants for their ivory.* [And] *if Africans were allowed to kill 1 to 2 percent of the elephant population* [R. Bonner] *suggests, it could generate substantial revenues to help relieve human suffering in the continent* (Anon., 1993b).

Statements such as these will no doubt upset those environmentalists who have visions of mass slaughters of wildlife and of elephant steaks being sold in open markets. That is not the idea; the aim should still be the harvesting of surplus resources by the hunting market to the benefit of surrounding black communities. Ecotourism can still provide income for the upkeep of the parks. Prior to the ban placed upon the sale of elephant products, the National Parks Board [e]*arned R5,5 million from the sale of ivory and R1 million from the sale of other elephant products* (DEA, 1992:143). This makes the culling of elephants a major source of potential income that can be utilised for the benefit of needy black communities, instead of just being [u]*tilized for conservation projects* (DEA, 1992:143). Especially since the Kruger National Park already makes [s]*everal million rands a year* (Anon., 1993c) without counting the subsidies it receives from the government. It should further also be stressed that:

> [t]*he sustainable use doctrine requires levels of management available only in southern Africa; it is not yet practical in central Africa where half the elephants live and where much of the ivory has been coming from* (Anon., 1993c).

This is due to the obvious problem of "over-utilisation" or just plain poaching, which is of course still a problem. A possible solution to this problem is community involvement in preventing poaching. Such a solution has been adopted by a few organisations with considerable success, such as the [v]*illage scout programme* (Anon., 1993a) of the Administrative Management Design (ADMADE) in Zambia and a few other private enterprises. But what are the general attitudes of black people in South Africa towards nature conservation and the management of game in parks?

Attitudes of black youths and leaders towards the environment

A study by Van Aswegen and Van der Merwe (in Bornman, 1992) provides very useful information concerning two mobile and attitude-forming groups, namely black youths and leaders. They found that:

> [a]*lthough the investigation showed that blacks respected nature, this respect should be considered from a black man's perspective. He believes that man belongs to a higher order than animals, plants or the soil, and therefore the satisfaction of man's basic needs is the first priority. This implies that the conservation of nature is subordinate to the fulfilment of man's needs* (Van Aswegen & Van der Merwe in Bornman, 1992:126).

This attitude was also reflected in the Five Freedoms Forum Seminar held in Natal in June 1992. Talks on the issue of land rights and redistribution revealed that [w]*hile some delegates felt that game reserves and similar land should be conserved for heritage, others considered people more important than game* (Anon., 1992a).

The problem at this stage is the conflict between short-term and long-term needs. In the short term, the fertile open land in game reserves and parks and the much-needed resources that they possess, can meet the life-source needs of a substantial number of families. But in the long term the exploitation of these areas will culminate in the loss of vast areas of our environmental heritage, as well as a depletion of food stuffs and potential sources of income available to these communities.

A possible (and viable) option is the idea propounded by the Rio Declaration on the environment, namely "sustainable development" (UN Chronicle, 1992:66-67). The ANC underwrites this option,

by saying that [t]*o avoid famine, political land reform must go hand-in-hand with steps to save the soil* (Anon., 1991a). Bomile Jack of the ANC's Environmental Task Group defines "sustainable development" as follows: [S]*ustainable development means progress which meets the needs of people without compromising the ability of future generations to meet their needs* (Klugman, 1992).

The fact that people were evicted from land which now forms part of conservation areas cannot be denied. In addition the more practical problem that almost all the conservation areas are very desirable, in terms of the resources for people desperately in need of them, cannot be overlooked either. By reasoning that those areas should be protected for whatever valid reasons, you only return to the question: Which is the most important, the environment or the people? The first principle of the Rio Declaration states that [h]*uman beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature* (UN Chronicle, 1992:66).

This statement actually has more bearing on rural than on urban communities, since rural people in most cases interact more closely with nature and utilise raw materials for daily use more often than urban people do. Therefore the general attitude of rural blacks concerning conservation cannot be brushed off arbitrarily as invalid. Their reflections regarding nature should be taken into serious consideration, even more so due to the current political process and the prospects of land redistribution.

Attitudes of certain environmental programmes toward blacks

The fresh approach towards rural black communities by a few exceptional environmental programmes shows an understanding of the basic needs of rural blacks. The Natal Parks Board director, Dr Hughes, had the following to say about rural communities: [P]*rotected areas have got to convey their direct benefits to people, and especially those without representation* (Stewardson, 1992).

These benefits need not be elaborate, but must be useful and practical in terms of what the people of the region can utilise for their personal consumption or possible economic benefits. Along these lines Bornman (1992) says that: [n]*ature conservation actions should increasingly be aimed at the needs of blacks* (1992:131). A simple example of such a need is fuel for cooking, washing and providing heat.

Such a very elementary need is a far greater problem than most people who have access to electricity may realise.

> [I]*t is with something of a shock that one discovers that fire, or the fuel that feeds it, can no longer be guaranteed [even in South Africa]; that for millions of people around the world poverty means increasing difficulty in obtaining the basic[s] necessary for cooking, heating and lighting* (Wilson & Ramphele, 1989:43).

Certain areas are more affected than others, for instance [f]*irewood demand in certain parts of KwaZulu is overtaking the natural growth of trees* (CSIR, 1992:114). Everyone in South Africa is familiar with the image of black women carrying firewood on their heads. It has become a symbol of Africa. But it is also a symbol of poverty, a witness to a way of life which is very much dependent upon nature and the assurance that natural resources are sustained. Among the black communities included in the research done by Bornman (1992) the [f]*ulfilment of man's immediate basic needs were given a higher priority than considerations such as nature conservation and the possible draining of resources* (1992:128), while [h]*unger and lack of money proved to be the most important reasons for hunting* (1992:129). If this is taken into account, the provision during 1991 by the Natal Parks Board of 600 tons of thatch grass, 600 tons of firewood, 500 tons of reed, and 200 tons of ncena grass to local communities, free of charge (Stewardson, 1992), can be seen as a considerable contribution.

Caldwell (1992) takes up the point about conservation and utilisation of natural resources but adds the dimension of culling game by stating that: [p]*eople who have been displaced by government-owned game reserves* [should be allowed] *to enjoy an economic benefit from animals* (1992:125). But how is this to be done in an orderly and controllable manner? Perhaps we can learn from the conservation strategies of a few of our neighbours. In Zambia, for example, the ADMADE village scout programme for game management, started during 1987, integrates the supplying of the communities' needs with conservation and has already had 489 people graduate from training. The Zambian ADMADE programme has enabled the people who live in the game management areas (GMAs) to share in the profits from wildlife-based tourism and commercial safari hunting with [A]*bout a third of the revenue from these activities goes to finance schools, clinics, housing and so forth in these communities* (Anon., 1993a). Such communities thus have a direct interest in the protection of the game and their habitat.

Currently the Kenya Wildlife Services (KWS) is running a similar project, which is even more people-orientated in that the KWS shoots elephants that kill people or damage crops (Mwero, 1992:21). This kind of attitude may seem to be harsh at first, but by killing the elephants the KWS establishes rapport with the local community. In the event of a crisis generated by the fact that the community lives within the boundaries of the game reserve, KWS officials are responsible for killing aggressive elephants, instead of locals taking the matter into their own hands (Mwero, 1992:21). This ensures that wildlife is protected on a greater scale. Killing rogue animals that endanger the lives of people is a small price to pay for establishing and renewing the credibility of nature conservation officials and justifying the existence of game parks.

Perhaps the most successful story, and one which is much closer to home, is that of the Mthethomusha, a tribe in KaNgwane where more than 20% of the land is devoted to conservation.

> [H]*owever, the standard of living is low, and unemployment and population growth are very high. All of these factors are major constraints on social upliftment and reduce the likelihood of achieving sustainable development. In spite of all these difficulties, a blend of conservation and up-market tourism has been developed to great effect by the KaNgwane Parks Corporation as a utilization strategy, especially in areas with low agricultural potential. A national park has been created on tribal land with the full participation of residents, who own the park and share in the revenue it generates* (Caldwell, 1992:142).

The Mthethomusha retain ownership of the land, share in the profits on a 50:50 basis, get 50% of all animals culled each year and have access to the reserve for thatch grass, firewood and medicinal plants, within the management framework of the reserve (Caldwell, 1992:142).

The need to know

The key issue is community involvement for the Bornman investigation

> [.].. *revealed a positive attitude among blacks towards legislation and restrictions regarding the use of nature. They insisted, however, that such legislation had to be fair and reasonable, that people had to be informed of it and that the community should be allowed to have a say in the stipulation and laying down of the legislation* (Van Aswegen & Van der Merwe in Bornman, 1992:127).

The implementation of rules and regulations based on this premise should thus be successful, since the rules are not decided upon unilaterally, and the parties involved can make common cause of

utilisation and conservation. Where such a process is not implemented, attempts at conservation could be utterly futile. A very good example of this is the failure of the government reforestation project in Zimbabwe. The Zimbabwe Institute of Religious Research and Ecological Conservation (ZIRRCON), on the other hand, has a success rate of 60% with their reforestation project. There is no "secret" involved here, except that ZIRRCON consult the local communities, chiefs and spirit mediums concerning suitable sites and use criteria other than the purely ecological for establishing the "suitability" and "desirability" of planting trees (Anon., 1992d:30).

This approach could well prove to be invaluable for the successful management of a game park or ecologically conserved area, where land is shared with black residents. Coupled with consensuality concerning practical issues, training and education about the environment is of vital importance. R. Goetz, director of the Wilderness Leadership School, has the following to say about schools and the environment:

> [W]*ith all the pressure on land use today it is crucial that the school perform an educative function. This means teaching people who have never seen the wilderness how important it is to conserve our natural environment as well as teaching them essential life skills* (Anon., 1991b).

Teaching people essential life skills along with conservation methods actually ties in very closely with the idea of sustainable development, since development entails utilisation of resources in such a manner as to enhance living standards. Insufficient knowledge concerning the means of production, concentrating here specifically on land, would most probably result in a process far removed from sustainable use of resources. Especially seeing that the resources we are concerned with here are natural and fairly easily renewable if it is used wisely. But, it must also be stressed that: [l]*and is not, as some economists have maintained, indestructible. And when it is destroyed those who have nowhere else to live have nothing to sustain them* (Wilson & Ramphele, 1989:36).

Caring, trust and utilisation

With the focus on sustainability, areas must be assessed in terms of the natural resources that they can provide the rural community with. An open mind must be adopted concerning [a]*rid areas such as the Kruger National Park* [which] *have a poor track record of sustainable livestock production under conventional farming systems* (Anon., 1993d). Areas such as these must be assessed in terms of the

possibility they hold for resource utilisation by means of environmental research as discussed in the white paper of the Department of Environmental Affairs (1993:18). Such reports concerning the state of the environment must be compiled regularly and form part of the sustainable development of South Africa. Ideas such as [c]*onverting unsustainable livestock farming in marginal areas to wildlife and conservation uses* (Anon., 1993d), although perhaps contrary to the traditional use of land by black communities, may result in quite a substantial income for them.[2] Conservation organisations must also be willing to invest in the community, in terms of social programmes extending further than education, which is aimed only at sensitising people to the needs of their environment. As R.K. Pachauri, director of New Delhi's Tata Energy Research Institute says: [A] *person who is worrying about his next meal is not going to listen to lectures on protecting the environment* (Elmer-Dewitt, 1992:24). Not only is poverty a very real problem, but there is also the question of trust. The apartheid system in many cases fostered animosity and bitterness between conservation organisations and the black community. People like the Bakubung saw half of their land being incorporated into the Pilanesberg Game Reserve without receiving any compensation (Anon., 1992b); the traditional land of the Topnaars, a subtribe of the Nama people, [w]*as declared part of the Namib-Naukluft National Park in the 1960s* (Anon., 1991b); while the informal settlers in the Dukuduku State Forest, despite all the publicity concerning their plight to date still have nowhere to stay. Promises of alternative land have not materialised (Anon., 1991b; 1992b & 1992c). During the 1950s and 1960s, 5 000 people were forcefully removed from the eastern shores at St Lucia Lake (CSIR, 1993:430, 437, 578), while two applications for resettlement to traditional land in the mining lease area have already been received (CSIR, Summary Report, 1993:9). This further complicates the problem at St Lucia concerning the use of land, since three different parties have an interest in virtually the same piece of land, Richards Bay Minerals want to mine it, the environmentalists want to conserve it and the black communities want their land back.

In the past these communities and many others like them were excluded from participating in decision-making processes that greatly influenced their lives in a negative manner. Obviously this cannot continue, given the present spirit of democratic government and commitment to transparent decision making. The land that was taken away from them was given to organisations designed to protect the natural habitat, without taking into consideration that it was first and foremost of all "home" to these people. The Rio Declaration has the following to say about communities such as these:

> [I]*ndigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and enable their effective participation in the achievement of sustainable development* (UN Chronicle, 1992:67).

The Mzinti principle

Returning conservation areas to their previous land owners together with the problems and benefits it brings, is an important issue, but there are many conservation areas that are not established on land obtained by disowning and removing its original occupants. These conservation areas could be a very valuable resource to their surrounding communities. Again the question of "environment" versus "community" is raised. Should valuable land be kept away from people that are in desperate need of its resources, or should the environment be placed above human need?

There could be a viable solution if one moves away from a strict preservationist approach to a trade-off between community life and biodiversity, according to Mr K. Lane of the KaNgwane Parks Corporation (KPC) (Lane, 1993). Although the Mthethomusha park is a source of income to the tribe who lives in it, it only benefits about 200 families. There are many people outside the park in dire need of the most basic necessities. The KPC is faced with the problem that people [d]*o not see the spin-offs* (Lane, 1993) of having conservation areas. Although up-market tourism does form a part of the utilisation of the area, the people in, and neighbouring, the reserves want to see tourists buying in their shops, and using their products (Lane, 1993), but this is not happening. The Mzinti reserve south of Hectorspruit in the Eastern Transvaal is a very good example of this problem. Visitors to the reserve would not easily go into the surrounding areas owing to the lack of infrastructure and the distances involved.

As with most other conservation areas, the issue of utilising the park for grazing purposes has also been raised by the Mthethomusha people. The KPC maintains that the conservation area cannot be used for grazing, but [t]*he people don't believe it* (Lane, 1993). Because of this attitude the KPC decided to [m]*ake the resources* [the park] *valuable to the neighbours* (Lane, 1993) in other ways. The KPC built an education centre right next to the reserve in close proximity to the people. They also built a creche for the community and provided extra schooling, showed educational videos and taught crafts for men and women. The KPC built offices for the *indunas* of the area which [t]*he young*

people also use for dances ("Irene", 1993). At the time of the research visit there was a constant flow of people to and from this centre and about 40 children were watching a video.

A very important part of this programme is to teach the community the principles of "permaculture". Permaculture is a way of cultivating crops successfully in arid and undeveloped areas. Through teaching permaculture KPC personnel are providing the people of the community with knowledge of nature, free of charge, while helping them to move towards sustainable development. However, the KPC officials [h]*ave come here with ideas that are different* (Lane, 1993). This makes it difficult for the impoverished community to accept them. Nevertheless, although this project is to date (October 1993) only a year old, its influence is evident in quite a number of gardens in the vicinity.

The KPC is moving closer to the community instead of only concentrating on tourism and other visitors. They are showing the people how they can benefit from a conservation area in their vicinity in more than the traditional ways. By using a broader and bolder approach the KPC is trying to conserve nature and provide social upliftment for the people of the region.

KwaZulu

Recently much emphasis has been placed on ecotourism in KwaZulu. However, here the official policy differs slightly from that which is normally encountered when talking about ecotourism. The attitude adopted towards conservation and black communities by the KwaZulu Bureau of Natural Resources (KZBNR) is very similar to the "Mzinti principle". Graeme Pollock of the KZBNR explained their stance as follows:

> [E]*cotourism should be based on a sound environmental and cultural ethic and this can only be achieved by involving the local community in all aspects of nature-based tourism and must be compatible with the primary objective of a protected conservation area* (Rodney, 1994:6-7).

A fine example of how a community can become involved in ecotourism is a project, initiated by the community bordering the Ndumo Game Park in northern KwaZulu, to build a caravan site of 500 hectares close to the park. The caravan site will provide more affordable accommodation for visitors to the park, which will in turn generate extra revenue for this community. The Natal Parks Board has also shown the children of the local Mnqobokazi Secondary School that the board not only cares for

the environment, but has an interest in the children's education by constructing decent classrooms for them.

At the Phinda Game Reserve the need for conservationists to make the reserve valuable to the surrounding community is well illustrated by the story of Zibane Maziboko. Zibane was caught poaching in the game reserve and was sentenced by the local tribal court to pay a cow in recompense for the nyala he had killed. He could not pay the fine and was therefore sentenced to three months employment without pay at Phinda. He was put onto the task of making bricks. After finishing his sentence he continued working for Phinda but also expanded the brickmaking operation. Currently he employs about seven casual workers and has received his first private contract (Rodney, 1994).

At Phinda a charcoal manufacturing operation in partnership with 15 people of the local community has also been set up. The locals use the invader vegetation that they clear in the reserve and sell the charcoal to markets in the local and urban areas (Rodney, 1994).

Projects such as these demonstrate to local communities that the existence of a conservation area in their vicinity does not necessarily deprive them of resources, but can actually benefit the community as a whole. In this way the community experiences socio-economic upliftment, while at the same time contributing to the conservation of the environment.

Conclusion

South Africa has poignant problems concerning rural areas, but perhaps the most pressing is the demand for sustainable development. In areas where "modernisation" and "the green revolution" mean nothing, people are faced with the immediate problem of merely surviving. Conservation areas, instead of just providing sightseeing for tourists, must also address the plight of the rural black communities surrounding them. Black communities, seeking resettlement, must be allowed to negotiate so that their needs are met in such a way that [p]*rogress which meets the needs of people without compromising the ability of future generations to meet their needs* (Klugman, 1992) is accomplished.

ENDNOTES:

1. The research design in brief: A qualitative method was used which consisted of "free-attitude interviews" (Meulenberg-Buskens, 1991) with personnel of the KaNgwane Parks Corporation and members of the Mzinti community. Members of the community were asked to tell us about living close to the reserve, and personnel of the KaNgwane Parks Corporation were asked to tell us about the reserve and the community surrounding it. An interview was arranged with the chief of the Mzinti area, but this was cancelled by the chief on the morning of our arrival. This impacted further on the study, since the chief was to supply us with an interpreter, the absence of which seriously hampered our communication with the community. The aim of the study was to determine the relation (if any) between the Mzinti reserve/KaNgwane Parks Corporation and the surrounding community.

2. It is interesting to note that the Kruger National Park is deemed unsustainable by the Wildlife Society while the Richtersveld (South Africa's latest national park (DEA, 1992:143)), which [i]*ncorporates the only true desert in South Africa* is used for grazing (HNRE report, 1992:6).

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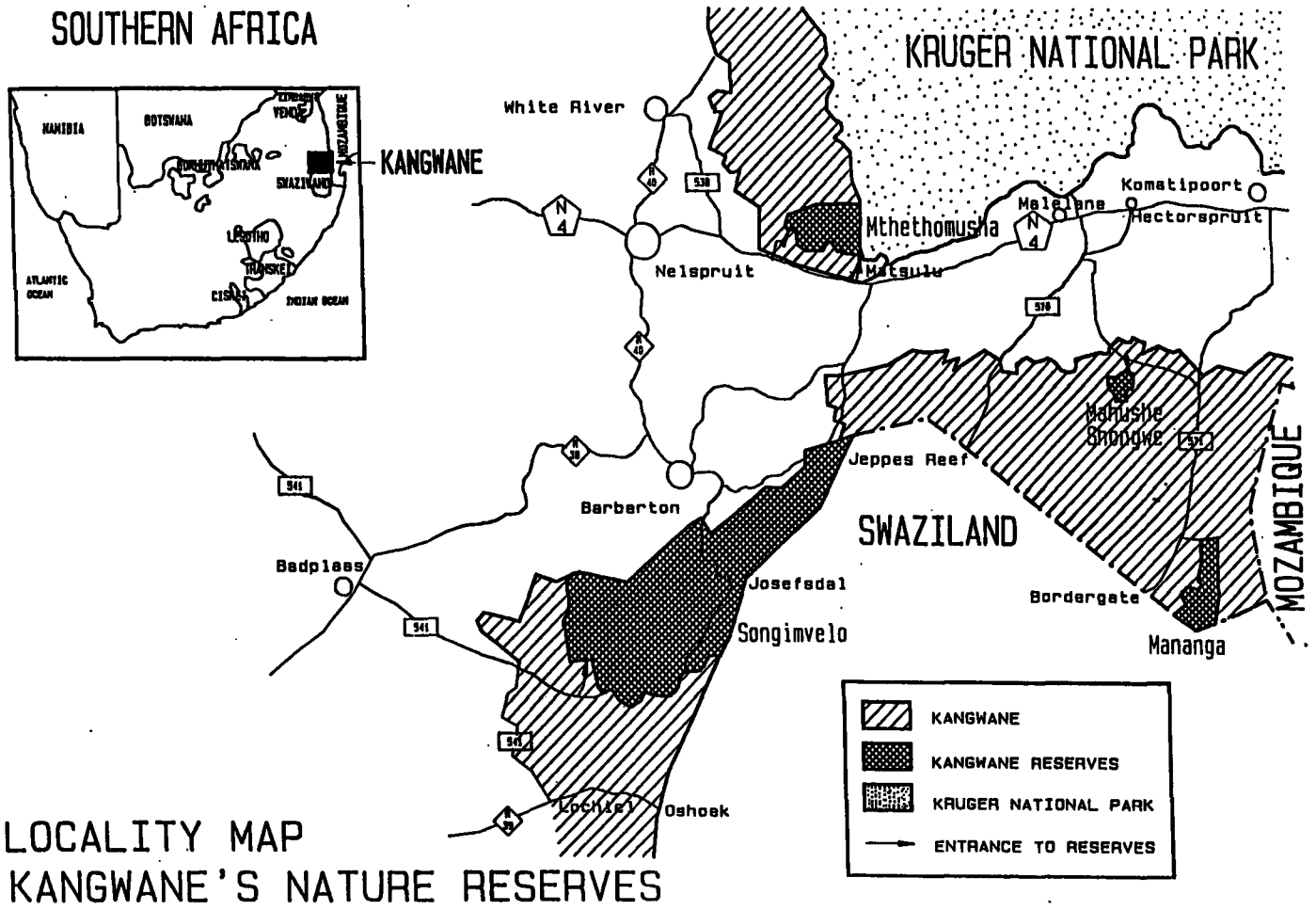
SOUTHERN AFRICA
NAMIBIA
BOTSWANA
ZIMBABWE
MOZAMBIQUE
SWAZILAND
LESOTHO
ATLANTIC OCEAN
INDIAN OCEAN
KANGWANE
KRUGER NATIONAL PARK
White River
Nelspruit
Mthethomusha
Matsulu
Malelane
Komatipoort
Hectorspruit
Barberton
Badplaas
Jeppes Reef
Josefsdal
Songimvelo
Mahushe
Bordergate
Mananga
Oshoek
KANGWANE
KANGWANE RESERVES
KRUGER NATIONAL PARK
ENTRANCE TO RESERVES
LOCALITY MAP
KANGWANE'S NATURE RESERVES

5

SQUATTERS* AND THE URBAN DYNAMICS OF LAND[1]

Sam Pretorius & Anthony Minnaar

> ***It's no use, baas. Boesman's done it again. Bring your bulldozer tomorrow and push it over!*** **(Athol Fugard, *Boesman and Lena.* 1973:40).**

Introduction

It is estimated that by the year 2010, a mere 16 years from now, 85% of the South African population [w]*ill be living in the country's metropolitan areas* (Lunsche, 1992). According to the World Bank, currently [m]*ore than 50 percent of the 5-million blacks in* [South African] *urban areas live in backyard shacks or squatter settlements* (Lunsche, 1992). This figure has also been placed at seven million (Mills & Armstrong, 1993:21). It is in the light of such figures that the plight of homeless people in urban areas should be considered. The dynamics of the urban housing problem will be discussed[1] briefly by looking at the concerns voiced by the various parties involved. The various responses by squatters, governmental and local authorities, the police and local residents will be used to give an indication of the issues involved. The primary focus will, however, be placed on the squatters. During a recent conference on urbanisation a participant had the following to say about the provision of affordable housing:

> [a]*ffordable housing is really a code word ...* [the government] *do not want affordable housing. They want to address a narrow segment of the housing market that had not been well served by the private market ... They do not want to address truly affordable housing for the poor* (Van Huyck in Harris, 1992:113).

In the light of rapid urbanisation a solution to the housing problem has to be sought. The stance that will be taken in this chapter is that perhaps the most workable solution for both short-term and

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* When the term "squatters" is used in this chapter, it refers to the residents of "free-standing" informal settlements. The terms "squatter" or "squatter camp" are frequently seen as derogatory, but since the residents of these settlements use these terms to describe themselves and their settlements, the terms will be applied here.

long-term needs is to refrain from constantly destroying shacks or from trying to build [f]*ancy houses* (Mlambo in Davie, 1991) and to seek a more workable solution.

Ownership rights in homeland townships

One of the first more recent attempts by the government to provide urban residential land to blacks took place in 1986. In February of that year obtaining rights of ownership in homeland townships was made easier. The new regulations, among a number of improvements on the old system, facilitated the granting of home loans to residents of homeland townships. Under the new 1986 regulations, the residents were also able to have the right to own more than one site for either residential, professional or commercial purposes. Furthermore, a homeland township home-owner obtained the right under these new regulations to sell his property to any competent person without the previous compulsory authorisation from the township manager. In addition, the cancellation of a deed of grant at the death of an owner was abolished so as to enable the deceased's next of kin to inherit or dispose of the property (Streek, 1986). These regulations went some way towards "normalising" the property situation in black townships. However, these (1986) regulations did not address the land position in the rural areas of homelands or make additional land available for black townships in the white urban areas.

Providing sufficient affordable land in urban areas

According to the then director general of the Transvaal Provincial Administration (TPA), Len Dekker, more than 50% of future urbanisation, will be in the form of informal settlements (*Sunday Times*, 8 August 1993:9). Proclaiming such "informal settlement" areas has become central to official policy concerning the provision of additional urban land to homeless people in the cities.

In order to declare informal settlements, the government and the provincial authorities made use of the Prevention of Illegal Squatting Amendment Act of 1988. Using Section 6(a) of this act the authorities could designate an area for "controlled squatting".[2] By doing this the government could firstly avoid enforcing strict municipal building regulations and the expense of providing serviced plots. In most cases a water stand pipe with a tap served up to 30 families. No sewerage was provided since each household was responsible for digging its own pit toilet according to specifications supplied by the authorities. There was also no electricity. Secondly, while each squatter could have title to his

piece of land, his only obligation was to erect a reasonable form of shelter within a specified period of time. Most occupiers could therefore afford the low purchasing and maintenance price of a plot (Mtshelwane, 1989:22).

With proper planning people could be legally settled on erven/residential plots with limited services in towns and the establishment of informal communities could be successfully achieved. Examples of successful settlement in the PWV region over the last few years have included Orange Farm (south of Johannesburg), Ivory Park (near Midrand), Zonkisizwe (on the East Rand) and Doornkop. The development of such informal towns/settlements gave the homeless and the poor, amongst others, the opportunity to own a small piece of land on which to live permanently. As their financial situation improves they are able to upgrade the informal structures they originally erected.

Another measure to accommodate permanent land rights for blacks in urban areas were the provisions of the Upgrading of Land Tenure Rights Bill of 1991. The main objective of the Bill was the conversion of lower-order land tenure rights into full ownership as soon as possible and to integrate them with normal deeds registry practices. However, serious problems concerning title deeds cropped up in black townships which complicated the procedures. The sites for which these rights were granted were often not properly surveyed or indicated on an approved general plan. Under the Leasehold Act of 1988 (Act No. 81 of 1988) (the act regulating these envisaged changes) ownership could not be registered in respect of unsurveyed sites. In addition, less formal towns and settlements did not always meet the requirements for township establishment. However, regardless of these problems the government pushed ahead with its plans to upgrade tenure title in black townships. On 28 June 1993 some 918 individuals in Soweto and Katlehong were granted rights to 99-year leasehold in terms of the conversion of certain rights under the Leasehold Act of 1988. It was hoped that such changes would promote the creation of a new property market. At the time the government planned to convert more than 300 000 registered leasehold rights and deeds of grant to full ownership. To encourage conversion, plans were also mooted to either waive or substantially reduce deed registration fees (*Citizen*, 28 June 1993:31-38).

The squatters

There were a number of other alternatives to making land affordable to the poor — one being "spontaneous" squatting. In the Orange Free State squatters "consciously" occupied a piece of vacant land in 1990 [a]*s part of the repossession of the land* (Malebo in Collinge, 1990: 278). This "re-occupied" piece of land is now called Freedom Square. Instead of evicting these people on the grounds of their illegal occupation, the Orange Free State Provincial Authority (OFSPA), decided to improve their living conditions. The OFSPA met with the Mangaung Civic Association (MCA) in order to [i]*mprove the physical plan of Freedom Square and grade the roads* (Collinge, 1990:278). The OFSPA also facilitated a transfer of land to the local authority in order to make the settlement permanent.

This kind of attitude offers a possible solution for a housing crisis so big that: [3]*30 000 homes will have to be built each year over the next decade. This is tantamount to a new city every year* (Mills & Armstrong, 1993:21). The World Bank has also put forward a solution to the lack of accommodation for the poor, [t]*hrough densification and concentration of settlements around urban centres* (Lunsche, 1992). The World Bank bases the above suggestion on the fact that at the time of their survey [a]*bout 40 percent of the land within a 10 km radius of city centres was vacant* (Lunsche, 1992), mainly the result of the low densities in certain areas due to the enforced segregation of the different racial groups.

However, the above option (of utilising vacant inner-city land) certainly did not appear to be an acceptable solution to the problem by the government if a remark by the then Minister of Planning and Provincial Affairs, Hernus Kriel, was anything to go by. He said there would [b]*e no more informal housing around our cities* [the government was identifying land where] *people can go and live with rudimentary services* (Contreras, 1991).

The main obstacle to helping homeless people seemed for the most part to be malign apathy on the side of the government. The homeless did not need miracles, they just needed a place to stay. During 1988 the private sector provided 35 000 black families with the opportunity of owning a house. However, 60 to 70 per cent of these families would never be able to afford one of these houses. One

of the ways in which people tried to resolve their housing crisis on their own, was by erecting their own informal settlements, usually referred to as "squatter" or "shack" settlements.

The squatters represent a class in our society for which not even the apartheid township system had a place. Crankshaw (1993), on the basis of six surveys, found that squatters were people with mostly an urban rather than a rural background. A document issued by the Ministry of Local Government and National Housing (MLGNH) confirmed this:

> [T]*he period after 1986 is characterised by the presence of larger numbers of people in the cities and large numbers of people having immigrated to the cities from the TBVC countries and self-governing territories. Investigations, however, revealed that with few exceptions, as in the case of the Cape, there is a large intra-urban movement of people and that the majority of the people now "visible" were already living in the areas several years prior to 1986* (MLGNH, 1991:3).

These findings attest to the speculation in certain quarters concerning the origin of the squatter problem. This speculation was often the basis on which decisions concerning the lives of squatters were made. A Durban city councillor, for instance, contended:

> [W]*e can blame this flood of squatters into our city on the Government's scrapping of influx control before it had made contingency plans for accommodating the thousands they knew would pour in ... unless something is done soon to curb the influx, we're going to have a massive Third World slum on our hands* (Cooper, 1991).

Being a squatter[3]

In a capitalist society people are seen to be deviant if they occupy land without having legally purchased it. However,

> [i]*f the conditions in the society are such that it is impossible for many to reach the institutionalized goals* [to obtain **land**] *only by the prescribed and legitimized means, then there is pressure to deviate from the norms* (Endleman, 1990:23. (Bold added for emphasis)).

Deviance is relevant in respect of the people we call "squatters". People do not necessarily one day wake up and say "I think I will become a squatter today". Their circumstances, created by far greater social forces than themselves, force them to take such a course. They might be called "victims", but they are not. They have begun fighting back and taking a stand for their rights as squatters. Although they have been labelled by society, which has created a common identity for them, they are in fact

saying, "Yes, we are squatters, but we are also people like you". Along these lines Goffman says that our [s]*ense of being a person can come from being drawn into a wider social unit; our sense of selfhood can rise through the little ways we resist the pull* (Wallace & Wolf, 1991:275).

The following remarks by children are indicative of how they see themselves as "squatters":

> *You see, my friend, we kids who live in the camps don't like to fully associate with the community. We feel dirty and scared that we'll be scorned* (Sizwe in Brothwick, 1990).
>
> *People in squatter camps are people too. Kids, especially girls, need more time to improve their standard of living. They want other girls to understand their living conditions. It is not so easy to find a nice boyfriend if you live in a shack* (Tom in Brothwick, 1990).

These children have a sense of being different from the township people. They are, in fact, in a state referred to by social scientists as "anomie"[4] They know what a "house" should look like, but they do not have such houses; they know what it is to be "clean", but they do not feel "clean"; they know about social relations, but people do not want to associate with them. Their view of themselves, formed by their shanty-town surroundings, is that of being inferior. However, through this realisation they are "resisting the pull" and trying to create for themselves a better sense of selfhood. They do not want to get "drawn into [the squatting] ... social unit". In the impermanent surroundings in which they live, these children somehow have to construct their lives. Perhaps the hopes of a former child-squatter, Simon Dube, best depict the hopes and possible future of these children when he says that [I] *read and write only in my mind ... But I want my children to do better so that no-one will pull their houses down one day* (Graham, 1991).

The resources available to squatters are very limited and, in many cases, the mere availability of running water is a luxury. Mandela Village in Mamelodi near Pretoria, for instance, only has [a] *few communal taps* (Gunene, 1991), which serve more than 2 000 families. Another squatter said: [T]*here is also the problem of water. Although there are hundreds of us here we only get water from one tap which we can only use during certain hours as it belongs to the school* (Nxumalo in Mgwaba, 1991). One woman summed up the universal plight of the squatter as follows: [T]*he problem is one, the water, two, we are not knowing when we must go* [be evicted] (Malindi in Beckett, 1991).

Legally illegal

In capitalist society private ownership of property is considered to be very important. However, in order to buy property one needs to generate capital and if one is restricted in one's potential for attaining capital, those in control of property may give you some, but when land is the property in question they normally choose where you go (this practice is known more commonly as "relocation"). If the property you have been given is situated in a location which restricts your rate of capital accumulation, you are once again in a situation where you cannot obtain private property which suits your needs.

Since the various state organs have for a number of years been extremely tardy in providing affordable sites in sufficient numbers to accommodate the large numbers of homeless and landless urban people, many of these people have resorted to the arbitrary occupation of any open piece of land, whether state owned or privately owned. The non-availability of land is a big concern to these people. Many are desperate and plead for assistance [W]*e do not have the money for bond repayments and it is our wish that the town council should build homes that we can rent and possibly buy over a period of years* (Rosiline Makena in Gunene, 1991). Many squatters ask merely to be allowed to occupy pieces of land so that they do not need to relocate so much and constantly wonder whether their shacks are going to be demolished the next day or not. One new squatter in a newly occupied informal settlement, seeing their shelters being arbitrarily demolished asked [W]*hy can't we pay to stay somewhere temporarily until we find a permanent, legal location? In the meantime, we have nowhere else to go* (Jacob in Olswang, 1990).

This situation was complicated by the attitude of the authorities to illegal squatting. The official line was put by the former Deputy Minister of Law and Order, Johan Scheepers, when he said:

> [I] *want to emphasize that no one has the right to occupy another person's property, and that any trespasser on land, without the permission of the owner, will be prosecuted in terms of the Trespass Act of 1959 ... The public and landowners must note that the police will not physically break down structures and remove squatters, as they do not have the legal right to do this ... It is important that this* [notifying the police of illegal squatting] *is done without delay and that one does not wait until the problem becomes unmanageable in terms of the numbers of people and structures* (Hlahla, 1991).

Government officials and residents of areas neighbouring squatter settlements worried about the effect that indiscriminate squatting would have on property values. This was the major concern of the residents of Noordhoek (north-west of Randburg) in opposing the Zevenfontein squatters. The local residents were unable to do much about the squatters since they were squatting "legally" (the owner of Zevenfontein rented out pieces of land to them). Hence the thrust of their protests concentrated on the kind of structures (corrugated iron shacks) which the "legal" squatters were erecting. The residents' argument for the removal of these squatters centred around the fact that the squatters' presence and poor structures would lower the value of the residents' properties and houses. It was felt that [y]*ou cannot expect someone to purchase land if squatters are on it* (government official in Angamuthi, 1991) or to sell your own house if there were squatters nearby.

Furthermore,

> [s]*quatting* [is] *in nobody's interest. This is particularly true when one gets a warlord and where squatters have no rights whatsoever.* [The warlords] *charge exorbitant fees for worthless title deeds, and can be evicted at a moment's notice. If we develop the area properly homeowners will not only have security of tenure, but also a say in how the area should be developed* (Seneque, town planner and member of Cato Manor Development Forum in Cooper, 1991).

The authorities seemed to be closed to any innovation or flexibility concerning the levels of development since:

> [i]*n terms of the regulations we instruct the owners of land on which shacks have been built that plans must be submitted or the structures removed ... We are certainly not turning a blind eye to shack developments. We are not allowed to, in terms of the building regulations* (Van der Walt, chief architect of Durban, Anon., 1991a).

However, both Seneque and Van der Walt's sentiments go to the crux of the matter, namely that urban land always seems to be in a state of "being developed", but only for higher-income groups. Furthermore "development" implies building regulations and substantial structures which have to be erected in certain time periods. Many squatters plead that they be allowed legal title to any small piece of land. By way of services all they ask for is a water pipe and tap and possibly an electricity point (preferably to be paid for by means of one of the new card meters). In return most squatters soon start erecting more permanent structures than just corrugated iron shacks.

The criminalisation of squatting is also a problem. Along these lines Endleman (1990) says that [c]*riminal, law-violating activities, especially in the property realm, are an expectable form of deviance when a society creates a disjuncture between cultural goals and availability of legitimate means to achieve such goals* (1990:24).

In August 1990 the then Minister of Law and Order, Adriaan Vlok said: [E]*radicate this evil ... Squatting has become a new method to violate people's rights to their own property* (Collinge, 1990:278). This "illegitimacy" immediately makes these people "different". Consequently they are targeted for special attention, or to put it more mildly, they are made to conform to the general norms. Being a squatter also immediately labels a person as belonging to a certain "grouping". In South Africa being "different" frequently means that you are perceived as belonging to a different political grouping. For these and other reasons attacks on squatter settlements by other groupings are not uncommon.

Being illegitimate by default also means that those who protect law-abiding citizens are not likely to protect you. The squatters therefore are not likely to view the police in a very positive light. A woman who had built a hut bordering on Happy Valley (near Pietermaritzburg) said that they were harassed so much that [w]*e are now on first name terms* (Kaunda, 1992) with the policemen. According to Lieutenant-General Mulder van Wyk, SAP, [t]*he South African Police is committed to protecting the rights of all the people of South Africa. This principle applies equally to property rights, whether they be of individuals, private organisations or the State institutions* (Anon., 1991c).

The irony is that it is quite universally accepted that everyone has a right to property (see Schoeman, 1983), but the police can only protect those who already have property. For the SAP [d]*o not demolish or assist in demolishing any shacks. They, however, have a duty to protect any person or persons legally entitled to demolish such shacks* (Col Reynolds, SAP in Angamuthu, 1991). This does not mean that all laws concerning the ownership of private property and the rights that go with ownership should be removed, but rather that the authorities have the responsibility to at least make land available to those who have none. However, for as long as [i]*t is one of our aims to eliminate open pieces of ground, which belong to the council, as an attraction to squatters* (Smith in Uys, 1991), the government will turn squatters into trespassers.

The force of the law has a powerful impact on the lives of squatters: [T]*hey arrived, armed with crowbars, hammers and electric saws and stripped my shack apart. I feel so helpless after losing everything and have nowhere to go* (Mthembu in Anon., 1991b). The demolition of illegal shacks was justified by the authorities in terms of the law: [W]*e have been humanitarian enough to give these people advance warning although there is nothing in terms of the Prevention of Illegal Squatting Act that provides for us to warn them first* (government official in Angamuthu., 1991). However, even in the face of the inevitability of having their shacks demolished, many squatters show a surprising resilience: [B]*ut tonight, we will build our shacks again — this time with plastic* (Mthembu in Grange, 1990). Such sentiments obviously raise the question whether existing laws should not also be reviewed and possibly revised in an effort to deal more constructively with the problem of urban squatting and the attendant problem of the unavailability of affordable land for the poor and the homeless.

Squatters are also under pressure from non official quarters. Residents from areas neighbouring squatter settlements express opinions which vary from grudging acceptance to indifference to rejection. But generally their views are negative. One resident asked: [W]*hy should they come here when there is so much space in their areas* (Anon. in Mathlane, 1991), which illustrates the misconceptions concerning squatters. Inherently the assumption is that because the residents in this area have got an open space (big enough to draw squatters) there would be similar spaces elsewhere. Settling on "this piece" of land then becomes "illogical" and "unfair". For this reason it is of utmost importance that the general public should know why people start squatting in a certain area.

Squatters are also subject to other forces, besides the official ones or resentful well-established neighbours, which control their lives. They are often helpless to resist these influences. For instance:

> [I]*n recently occupied Tamboville squatter camp, next to Chiawelo, there are self-appointed administrators who are allocating "sites" to erect your "upanji"* [shack]. *They ask for your ANC membership card. If you do not have one, they bluntly compel you to register to get one. If you refuse, they will not allocate a "site" to you. In some cases they go to the extent of forcing you to agree that you will support the ANC and sympathise with them. This practice has now extended to the high schools. Teachers and students alike are intimidated into becoming members of the ANC or to support the cause of the "Charterists"* (Vikus, 1991).

The powerlessness and helplessness of many squatters is well illustrated in the following:

> [W]*e had no choice to go anywhere but here, and with my children I built this shack out of the bush. Then other people like us came, people with nowhere to go. Our children are sick. Our people have no jobs, but before we lived in hope that things would get better. Ten years ago we were told that if we all joined Inkatha we would have a better chance of Ulundi solving our problems. So, we all joined, but it made no difference. Then in 1983 another person from Inkatha told us that if we all paid R39 we would have a community centre built where we could learn skills like sewing and knitting. We paid, and still nothing was done* (Anon., 1990).

Fortunatcly, in certain official quarters a greater awareness of the problem and an element of willingness to deal innovatively and creatively with the problem have emerged. According to the Transvaal MEC for Physical Planning, Mr Mavuso,

> [w]*hen we discuss development with the councils of the northern suburbs, I ask them a simple question. Do you ever wonder what distance and how long people who work in your suburbs have to travel to report in time to make your tea or coffee in the morning? They never ask ... You have to choose between affordable commuter transport and an influx of squatters ... As far as they [*local authorities] *were concerned that was something to be done by central government, which was ultimately responsible for apartheid ... The new law now says the formerly lily-white local authorities are responsible for balanced development in their areas* (Anon., 1993a).

Furthermore, according to the TPA's Director of Town and Regional Planning for the Witwatersrand, Mr Waanders,

> [i]*t's an exciting time from a planning point of view. Previous policies left little flexibility. Now interested parties are looking at the whole question of urbanisation and debating options. They are also looking at the relationship between housing and transport, and the relationship between housing and the economic development of a region* (Anon., 1993b).

Hopefully such views will filter down to the grassroots level and be implemented in order to improve the lot of squatters.

Squatting and locality

The choice of a "site" for squatting seems to be born purely from a sense of practicality. For the same reason it is frequently just not logical for these squatters to relocate to another area.

> [W]*e would be worse off if we agree to go to that place. There are no schools, clinics or transport. It is far from our workplaces in town and transport is expensive* (Mchunu in Mofokeng, 1992).
>
> *We are staying here because we work on North Coast Road and we cannot afford to stay too far away from work* (Lizzy Mhlongo in Angamuthu, 1991).
>
> *This area is near my place of work. Most of us do not have money for transport so we walk there* (Nxumalo in Mgwaba, 1991).
>
> *We came here because of the violence in our townships and we have lived here peacefully now they say we must get out. But we have no homes to go to* (Mavis Shandu in Angamuthu, 1991).

One of the main reasons for settling on a certain piece of land seems to go hand in hand with one of the most basic considerations in a city environment, namely the cost of living. In a city where there is no barter system or subsistence farming, people from the lowest income groups need to be as close as possible to their work-places. If they cannot afford transport they are stranded. Fears have been voiced by whites in residential areas that squatters will take over their houses. However, unless it is done as some sort of organised political action by a splinter group, such action is unlikely to occur in the future. Most squatters are far more concerned with survival than mass political action. Many of them have fled from violent areas in order to avoid confrontation. They want a permanent place (location) to live in and not necessarily permanent structures. However, the locality for squatting is not only determined by purely economic considerations. A case in point would be a woman like Emily Dlamini, who, uncertain about the future and concerned for her family, just wanted to be near her children:

> [I] *fled from Inanda because there was violence in the area and everything I owned was destroyed in the fighting ... I could not stay in Inanda after my husband was killed. I was afraid for the safety of my family ... At first I lived at Durban station but I missed my family very much. I came here to build a shack so I could live with my children, but it was demolished by people who said they were acting for the company that owned the area ... I no longer know what to do. Life is meaningless for me* (Dlamini in Mgwaba, 1991).

Another woman explained why she left the place where she previously lived:

> [T]*he place was dirty and I feared I would get sick. People threw rubbish anywhere. They did not worry about dumping their dirt in front of someone's door. Here everybody is decent and looks after her yard* (Mokoena in Mathlane, 1991).

Squatting and where squatters locate themselves is also no longer a "racial issue". It has become a class struggle as squatters who tried to move into certain established areas of Soweto found out:

> [W]*here do these people expect us to go? We used to be chased by whites who refused to let us live near them, but now its our own people who are trying to drive us away. There is nowhere my family can go. I will stay here until I can afford to rent a decent house* (Radebe in Seepe, 1993).

The rise of an "African elite" (see Dreyer, 1989) whose trajectory veers towards that of Westerners and therefore displays the same attitude towards squatting, has placed the "squatting debate" firmly on a class basis. For this reason squatting will in the future have to be addressed on the premise of class differences and not only racial segregation. The scrapping of apartheid laws actually did not have such a big influence. Rather, squatting is a sign of "modernisation" (see Abercrombie et al, 1988:158-159). The squatters represent one of the lowest classes in society. Many of them do not have jobs, or are involved in the informal trading sector. Their interests can therefore not be voiced by a union. They do not own land; they are illegal occupants of land in the eyes of the law, therefore they have very little chance of being represented by anybody from the legal profession. They are estranged from traditional leaders and therefore do not have any cultural representation (see Sefulo in Gunene, 1991).

To many squatters it appears that politicians are only interested in them when they can be used as political pawns or for votes. Exactly which political party shows the most interest in you is most likely determined by the location of your shack. By erecting a shack near a white residential area, either the NP, DP or CP is likely to show interest first. If the shack is erected near a township, chances are that you will be contacted by sympathisers of either the ANC or IFP. It is also mainly out of this concept of "alignment" that "warlordism" evolved. For instance, "they" might:

> [a]*sk you for your ANC membership card. If you do not have one, they bluntly compel you to register to get one. If you refuse, they will not allocate a "site" to you. In some cases they go to the extent of forcing you to agree that you will support the ANC and sympathise with them* (Vikus, 1991).

Or someone might knock on your door

> [a]*nd ask if you are an Inkatha member. If you say "no" they tell you to join and write down your address. It costs R60 and then R5 a month after that to join Inkatha. If you refuse ... well, many of those who are now dead are the ones who would not join* (Mokoena in Stansfield, 1990).

Homes, houses and shacks

A remark made by a squatter in Durban expresses the persistence of people trying to make a living, no matter what the odds: [D]*urban is my home, they can pull down my house as many times as they want to but I will always live here where I was born* (Anon. in Spence, 1990). Unable to call any particular shack "home" (for which is it, the one built yesterday, last week, last month?), the spatial conception of "home" becomes extended to include a more permanent environment, the city. It is from here that the squatters cannot be removed. The city offers security, a job, schools, clinics and water. But, here too, there is fear. Often driven away by fear from violent townships, they once again have to live with fear in the squatter camps. But now, most of their fears centre around being removed from their homes, even though it is just a shack. This is how one woman described the demolition of her shack:

> [T]*hey started demolishing our shacks without uttering a word. And one official said to me as I came out that he was making a special window for me as he continued braking* [sic] *my boards. I decided not to say a word but continued to cry as my shack was being demolished* (Anon. in Peace Action, 1993).

This kind of emotional violence towards the squatters forms part of their everyday life as they constantly live in fear of their homes being demolished. Perhaps the demolition of this woman's shack has provided her with a "special window" — it has shown her the indifference of the powerful. Moreover, how many times can you see your home being demolished before you lose faith, before you say: [l]*ife is meaningless for me* (Dlamini in Mgwaba, 1991).

One might be tempted to ask, "But why build shacks?", why build such hideous structures to live in? The answer is very simple and is implied in [i]*f only we could get jobs and be allowed to live in the area we could be in a position to build formal houses* (Zulu in Mgwaba, 1991). Constantly being in fear that your house or shack might be pulled down and demolished certainly does not provide the necessary incentive to make it as attractive and comfortable as possible or even more "permanent".

Affordability, accessibility and the government

In this chapter "affordability" has come to mean the ability to pay in monetary terms for a piece of land or you and your family paying the price of being squatters. The financial cost of living in a squatter area is often very high. In addition, as a squatter, you might be scorned and harassed. This

might nevertheless constitute a far smaller price than living in townships ridden with violence and conflict. Social violence[5] in the squatter camps at least does not kill physically, although the scars it leaves on children might never really heal.

Accessability implies that your work-place is within walking distance from your home and the nearest water tap is within easy reach. For the reasons mentioned, affordable and accessible land should be made available, in order to provide squatters with security, which in turn will lead to the establishment of a more stable community. When the question of monetary affordability is raised, it is clear that the term seems to be inapplicable to some squatters. The words of an Allied/Grinaker Properties spokesman concerning a squatter settlement aptly illustrate the warped concept of providing housing that developers sometime hold:

> [T]*he land was purchased for housing development purposes and with the squatters staying on these premises illegally it is impeding development and slowing down the process of alleviating the chronic housing shortage* (Anon., 1991d).

The government has, however, come a long way from statements such as: [t]*hose people are illegal squatters and we are required in terms of the law to remove them* (Bohmer in Angamuthu, 1991). An article, published in the *Daily News* and commenting on the De Loor Commission on Housing, said that the commission had accepted the fact that [s]*ecurity of tenure on space* was the most important initial goal towards the provision of housing. De Loor himself said that: [o]*ur main ambition is to offer a practical formula for a new housing policy that will win consensus with everyone involved* (Chester, 1992). Whether the commission's suggestions will be accepted, remains to be seen. It is interesting to note though that the Transvaal MEC for Physical Planning and Development, Mr Mavuso, remarked in May 1993 that: [i]*f you take away a man's responsibility for providing shelter for his family, you take away his credibility. You dehumanise him* (Anon., 1993a). This remark reflected an attitude of genuine concern for homeless people.

As the urban squatter problem has burgeoned over the last few years a change of attitude seems to be evolving, especially within official government circles, and squatting might soon not even be seen as being deviant. Whether this change of attitude will be translated into effective solutions concerning the widespread squatting on any available piece of open land in most of the larger urban centres of South Africa remains to be seen.

POSTSCRIPT

Land invasions

The issue of landlessness in the urban areas came sharply into political relief during March 1994 when homeless residents of informal settlements staged invasions of newly built low income houses in Cato Manor in Durban and Tafelsig in Cape Town. In the post-election period the land invasions came not from rural landless people but from homeless squatters from the informal settlements surrounding Johannesburg. These land invasions were dealt with by the Johannesburg City Council through the demolition of shacks and shelters and the forced removal of the illegal squatters. One result of the land invasions was to focus attention on the provision of additional urban land for houses.

The Johannesburg land invasion during June 1994 raised a number of contentious issues, not only for urban developers but also for politicians. The fact that the forced removal of illegal squatters from land in the southern areas of Johannesburg by the Johannesburg City Council, while legal, occurred in the middle of winter which considerably raised the sympathy levels for the squatters. Furthermore, a number of important principles were at play which also highlighted the political dimensions of the issue. The PWV premier, Tokyo Sexwale, had to be publically seen as supporting the squatters against the "arbitrary" and "insensitive" actions of the Johannesburg City Council since there was supposed to be a moratorium in place on the forced removal of squatters and the demolition of their shacks. The Johannesburg City Council, in the form of Ian Davidson, chairman of the Management Committee, had conversely to be seen as upholding property owner's rights while also resisting the indiscriminate and uncontrolled actions and, at times, the provocative stance of squatters, who unilaterally occupied vacant land that had already been earmarked for future development of low-cost housing. The officials of the Johannesburg City Council feared that if such land invasions were allowed to continue it would signal the start of an anarchic situation concerning land development and the unilateral occupation of vacant land.

The land in question had been earmarked for development but was occupied by a handful of squatters in early 1994. The City Council tried negotiations and when these failed resorted to court action. The latter had merely resulted in an injunction with the proviso that the council provide alternative housing for any squatters removed. The council then allotted these squatters a piece of land for "controlled" squatting. This was interpreted by other squatters that illegal squatting would ensure them of acquiring

housing that much quicker, that is a way of "queue-jumping". This then led to the wave of land invasions in June which occurred outside of the designated "controlled squatting" area. The later squatters refused to move and were then forcibly removed and had their temporary shelters demolished by the Johannesburg City Council in mid-June.

Although the PWV Provincial Government was against any land invasions, they also opposed any forced removals rather putting their faith in negotiations, a moratorium on further land invasions and the provision of alternative land for squatting. The land invasion in Johannesburg speeded up the provision of land but also led to numerous organised and well-planned acts of land invasion whereby squatters deliberately chose high-profile or strategic pieces of land for occupation.

The same problem occurred in Cato Manor near Durban when squatters illegally occupied newly completed houses and refused to move out. Although the central government condemned such actions, nothing was done to remove them since the government continued to respect the moratorium on evictions and forced removals. However, as squatters continued to occupy not only houses but also vacant land in the Cato Manor area, the government was eventually forced to threaten the squatters with changes to the squatting law. The squatters had in the meantime obtained a Supreme Court interdict to stop the premier of Natal, Dr Frank Mdlalose, and the Durban City Council, from evicting them from the Cato Manor land. The squatters had moved onto the land in early August just when the council was about to start a fast-track low-cost housing project.

The Minister of Housing, Joe Slovo, eventually gave permission for the demolition of 400 shacks in the Cato Manor area so that the project could continue. Although the minister maintained this was not a reversal of the general moratorium on removals, it was felt that the illegal squatting in the area was prejudicing those people who were on the waiting list for the houses that would be built by the project. This demolition was an effort to discourage such land invasions by "informal developers" trying to push ahead of those legally waiting for houses or even exploiting other squatters by "selling" them a title to a piece of land.

Informal squatting and illegal land invasions will in the near future remain the main stumbling blocks to the rapid provision of low-cost housing. A mere moratorium on forced removals will not solve the

issue. At stake here is the identification and provision of suitable land for settlement and the rapid provision of affordable housing in an orderly manner.

In October 1994, in an effort to address the shortage of affordable land for low-cost housing and speed up the process of making land available, the government gazetted a Development Facilitation Bill. The Bill also provided for the setting up of tribunals to resolve conflicts over the development of open land as well as laying down procedures for the subdivision, servicing and zoning of land. Currently it was taking from a year to 18 months for an application to develop a site to be approved by local and provincial authorities, all at great expense to developers. The Bill was described as a "fast track" to cut through the myriad and complex provincial and local laws (Matthewson, 1994). In addition, the establishment of a National Housing Corporation, to administer and promote the mobilisation of housing credit, was under consideration by the government in order to speed up the low-cost housing programme as outlined in the RDP.

ENDNOTES:

1. **About the data**
   It is not usual for data gathering in research to be focused as much on newspaper articles as this study is; however, we feel that it is in congruence with the shift towards the postmodern, as noted by Denzin (1989:139). For this age [i]*s an age in which problematic experiences are given meaning in the media* and therefore [i]*nterpretive interactionism in the postmodern period is committed to understanding how this historical moment universalizes itself in the lives of interacting individuals* (Denzin, 1989:139). The choice we therefore exercised to make use of the mass media as a source of data might be bold (and dangerous) but, we are confident that it is also an efficient and fast way of obtaining preliminary information about specific instances in the "social reality" (which is a nondescript term in postmodernism) as perceived by others. The data was obtained from numerous articles in several newspapers and magazines dating from 1990 to 1994 which dealt with the issue of squatting. The data was compiled by including, as far as was possible, all articles on squatting in the following newspapers, magazines and journals: *AFRA News, Cape Times, City Press, Daily News, Democracy in Action, Eastern Province Herald, Imvo, Land Update, MPD News, Natal Witness, Natal Witness Echo, New Ground, New Nation, New Scientist, Newsweek, Peace Action, Pretoria News, Reality, SA Outlook, Sowetan, Star, Sunday Nation, Sunday Star, Sunday Times, Sunday Tribune, Track Two, Weekly Mail & Guardian,* and *Work in Progress* (incorporating *Reconstruct*). This search produced well over a hundred articles which were broadly categorised concerning issues raised, and from these categories examples were chosen which are presented in the text.

   In addition, some of the analysis is also based on personal observation, impressions gained and perceptions obtained from visits by the researchers to a number of informal settlements *inter alia* Cato Manor (Durban); Happy Valley (Pietermaritzburg); Dukuduku Forest (Zululand); Zevenfontein (Noordhoek); Phola Park (Thokoza); and Orange Farm (south of Johannesburg).

2. An example of a "controlled squatting" site was the Orange Farm squatter settlement 65 kilometres south of Johannesburg where the first "legal" squatters arrived in October 1988. The 20 square metre sites cost only R500. Those unable to afford the full cost had to pay a monthly rental of R47. Everyone however had to pay a service charge of R37 a month. One of the problems of Orange Farm however was the fact that many of those moving out to the settlement were much further away from their places of work than before and the cost of transport for the additional distance to work had to be added to their budgets (Mtshelwane, 1989:22).

3. The following statements made by squatter residents is an attempt at reflecting the views of the squatters. They are by no means a complete list of their views, but merely gives us an idea who these "squatters" are.

4. A simple working definition of "anomie" will be used here by saying that it is knowing the social rules but being kept from participating fully in the social world.

5. We have used the term "social violence" here to refer to all forms of violence other than inflicting physical, bodily harm. The term therefore covers discrimination, labelling, Weber's "life chances" (the limiting thereof, see Abercrombie et al., 1988:138) and Bourdieu's "symbolic violence" (Bourdieu, 1977:190-197).

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6

LESSONS FROM SOUTHERN AFRICA

Trevor Keith

[A] *theme which has been central in Southern African race relations is the struggle for possession and use of land* (Denoon 1972:128).

Southern Africa and its land policies

The aim in this chapter is not merely to provide summaries of the land policies of Southern African countries, but rather to list the similarities in land policies between those countries neighbouring South Africa (pre-independence) and the current South Africa. Furthermore, some of the lessons concerning the post-independence reforms in neighbouring countries from which South Africa can learn, will be presented. These lessons should not be regarded as blueprints for future changes to South Africa's land policies since one has to bear in mind that there are differences in population growth, urbanisation patterns, availability of arable land, wealth and infrastructure, to mention just a few.

Moreover, no country in the world has only one encompassing policy which takes care of all aspects of life. Nor do policies on land, or any other policy for that matter, endeavour to be all-encompassing and a solution to all problems. It is of the utmost importance to view policies on whatever matter as interlinked, dependent on or affected (directly or indirectly) by other policies. For example, population control programmes and rural development programmes, and the adverse impact which they might have on urbanisation are directly linked to the availability of, the access to, and the affordability of land. Furthermore, any formulation or reform of policy should carefully take cognisance of the impact or complications that the policy or its amendment might have on other policies and should ensure the adjustment of such policies accordingly. This calls for co-operation, constant debate and intensified efforts by different boards, commissions of inquiry, public and/or private organisations involved in the formulation of comprehensive policies which are not exclusive and autonomous.

Zimbabwe and South Africa

According to Skweyiya (1990) the following are prominent similarities between Zimbabwe and South Africa:

- Two parallel and separate systems of agriculture — the commercial and subsistence — with the white commercial farming sector highly efficient, well organised and a key role player in the national economy.
- Unequal access to agricultural land in both quality and quantity between white and African applicants.
- Unequal access to infrastructural facilities and agricultural services.

Most of the above aspects are found in all African countries which have a history of colonialism. Furthermore, in Zimbabwe and South Africa there was:

- A strict division between land occupation by whites and by Africans, accompanied by an imbalance in land ownership and possession (Bekker, 1991; Cloete, 1992; Davenport, 1990; Urban Foundation, 1993).
- Inequality in the allocation of agricultural land — white farmers were provided with large tracts of fertile land while most African farm lands were small, overpopulated and situated in non-arable areas[1] (Davenport, 1990; Skweyiya, 1990; Urban Foundation, 1993).
- Unequal provision of support services, in other words economic support favoured white farmers and was usually enforced by several statutory measures (Davenport, 1990; Skweyiya, 1990; Urban Foundation, 1993).
- Urbanisation and the resultant problem of informal urban settlement (Bekker, 1991). Associated with this is rural underdevelopment and the influence it has on the rate of urbanisation.
- Low status and inferior role of women concerning access to and the possession/ownership of land.

Other similarities between Zimbabwe and South Africa are land scarcity, landlessness and the accompanying land hunger, overpopulation and low productivity in the subsistence sector as opposed to underutilisation of land in the commercial sector.

What can be learnt from Zimbabwe?

- The costs of settlement and/or resettlement are enormously high although costs can be minimised if land is expropriated without compensation; high costs are also associated not only with the acquisition of land but also with the provision of infrastructure. This in turn forces governments to rely on foreign economic assistance which often comes with a number of preconditions, for instance Zimbabwe's Lancaster House Agreement which provided funding for the purchase of land on a "willing buyer/ willing seller" principle. This agreement is seen as one of the main issues which delayed the implementation of land reform policies in Zimbabwe and, in effect, restricted the new Zimbabwean government's efforts to "return" the land to the people (Davenport, 1990; Urban Foundation, 1993).
- It is important to include an urbanisation policy to complement a rural and resettlement policy in a national development programme.
- The implementation of reform should be administered at a local level. Local governments should be well equipped and capable of managing the implementation process.
- The involvement of the local and regional communities and effective community participation are important in order to maximise participatory planning and minimise resistance (Cloete, 1992).
- There are extraneous variables such as droughts and economic recessions which could delay an implementation programme. The effect of delays in the implementation of land reform is unknown in most countries. Any country embarking on drastic land reform should be aware of factors which could delay implementation and should devise strategies to cope with possible delays. One of these measures is to refrain from creating any unrealistic expectations concerning land redistribution or settlement or any other aspect of land reform.
- Large-scale commercial farming can make a big contribution to the national economy. Large-scale resettlement could cause irreparable

damage to the commercial farming sector and disrupt an efficient farming community.

- The success or failure of land expropriation should be evaluated. Land grabbing is not new to South Africa and the consequences thereof are well known. The case of the Mfengu tribe in the Eastern Cape is an example (see Case Study II). Zimbabwe has also been expropriating land from commercial farmers since 1990 but is under severe criticism from within the country as well as from abroad.
- There is productive potential in small-scale family-based systems (Cloete, 1992; Fair, 1991; Skweyiya, 1990; Urban Foundation, 1993) .

Namibia and South Africa

Namibia's land policies could in many aspects be considered to have been an extension of South African land policies. The most prominent common characteristics between Namibia and South Africa are that the largest part of usable land is owned by the whites (only a small sector of the Namibian population) and the fact that private commercial farming was developed with substantial financial assistance from the government.

What can be learnt from Namibia?

There are a number of overlapping issues with Zimbabwe, and once again the prominent similarities are listed below:

- Women should have the right to own land, and be assisted via affirmative action programmes, education, training and other supportive measures.
- The concept of commercial farming should be re-evaluated. Namibia called for the extension of this concept to include factors such as the number of people who benefit from the land, apart from mere economic and marketable production.
- Effective and democratic forms of local government involved in addressing problems pertaining to communal farming are important, for example the control of the right to allocate communal tribal land.

Botswana, Lesotho and Swaziland

These countries have been independent far longer than the other Southern African countries, and have had the opportunity to evaluate, correct and revise most of their policies since independence. Most of the changes there took place along democratic lines and accordingly have largely escaped criticism. However, there are a number of issues in these countries which have gained attention, for example the land corruption scandal in Botswana (1992) where tribal land — which could not be legally sold or bought — was traded. This scandal involved senior cabinet ministers and officials of the Department of Agriculture. Not only did this breach the law but it questioned the government's credibility and that of [t]*he region's showpiece of democracy* (Anon., 1992:42).

Furthermore, progress and development also exacerbated problems pertaining to land. The Lesotho Highlands Water Project came under fire from several quarters, including the law courts. It seemed that Lesotho could not escape the thorny issues of compensation, resettlement and the "sacrifice" of a large piece of land against the background of Lesotho's subsistence farmers who were cultivating plots of land on average not larger than 1,7 hectares (Bekker, 1992). Most subsistence farmers in Africa find it almost impossible to sustain themselves on such small pieces of land which usually also receive low rainfall and have poor soil types (a combination of conditions generally found in the non-commercial or subsistence farming sectors).

Some lessons from Botswana

- The importance of consultation with land owners and land users cannot be overemphasised. The views of people who are directly affected by policy reforms must be heard and their needs should be incorporated in the changes (Mathuba, 1992).
- [U]*nnecessary radical land tenure changes which are not pursued in coordination with other changes in the economy may result in economic, political and social problems which may be difficult to handle* (Mathuba, 1992:32).
- There is a need for comprehensive research preceding any policy implementation. Research findings could provide the government of the day with the opportunity to test assumptions, and assess the possible cost

implications and the future complications of proposed reforms and the implementation thereof (Mathuba, 1992).

Apart from "political inequalities" several other inequalities have a bearing on the relation between people and land. One notable example, especially in Southern Africa, is women's right to ownership of land, particularly in traditional communities.

It would appear that the right of access to land is fought alongside the struggle for women's rights in general. Nevertheless, several issues come to the fore in land policies which claim not to differentiate but indeed do differentiate when it comes to "access" to land. Not only does the following example point to some factors which "exclude" women from owning land but it also points to the interlinked nature of different policies.

The Botswana experience

According to the *Report on the review of the Tribal Land Act, land policies and related issues* (September 1989), state land in Botswana is allocated by land boards to [b]*oth men and women,* and this allocation is made [r]*egardless of whether one is married or not* (Mathuba, 1989:34). On the basis of this policy women have access to and every right to own land. However, when women have to register the plots of land they cannot do so for the simple reason that women married in community of property or those married out of community but not having excluded the marital power of the husband have problems because [t]*hey can not in law register land rights in their* [own] *name* (Mathuba, 1989:34). The latter phrase excludes these women from owning land or the opportunity to develop land since they now cannot obtain loans, as financial institutions insist that borrowers register their leases with the Registrar of Deeds. The Deeds Registry Act, Section 18, states that a woman has to disclose her marital status (married, not married, widowed, etc.), and, if married, to state the name of her husband. Furthermore, irrespective whether married in or out of community of property the husband has to assist the wife in executing any deeds registered in the deeds registry.

These laws create several problems for women in Botswana, who in most cases represent the majority who work the land. These problems have been listed as follows:

a) *women have to go through unnecessary hardship and suffering: some have had their family's property sold without their knowledge*

b) *denying families where the wife is the breadwinner the opportunity to develop and own property. Because the land is not registered in her name, she can not use it as security to obtain loans from financial institutions. This delays development*

c) *... this law discriminates against them* [women] *and it is meant to perpetuate* [the] *economic dependence of women on men as the latter can own any immovable property* (Mathuba, 1989:35).

Recommendations have been made for the revision of the Botswanian Marriage Acts, the Married Persons Act and the Deeds Registry Act (Mathuba, 1989). Over and above the "legal problems" women face regarding access to land, they are also prevented by other difficulties from acquiring land in their own right. Examples of only two of these shortcomings are the following: Firstly, they cannot compete in the purchase for freehold land, since many are poor and cannot produce the required security or collateral demanded by financial institutions. Secondly, women rarely inherit land from their parents (Mathuba, 1993; Quanta, 1987).

The Botswana experience points to the interrelated nature of a number of issues such as marital rights and registration of deeds which indirectly impacted on land issues. The Marriage Act as well as the Deeds Registry Act need to be amended to deal with problems such as access to and affordablity of land for women.

Land reform: the politics and economics of land

Land is perceived to be the [v]*ery element of human survival, the quintessence of life itself* (Skweyiya, 1990:1). Moreover, the access to land is considered to be a basic human right:

> [b]*ecause of land's unique and pervasive nature and the role it plays in the lives of South Africans, it should not only be treated as an asset or a factor of production, but ... also as a potential instrument of accumulation and concentration of wealth, and as a primary cause to social injustice* (Skweyiya, 1990:1).

The value and significance of land as well as the many functions it has within society are raised by several authors (Urban Foundation (UF), 1993; Kajoba, 1993; & Skweyiya, 1990), and are viewed as important aspects of political, economic and social life. Both Kajoba (1993) and Skweyiya (1990)

argue that land is viewed as a store of value, a basic form of wealth, and the basis for all wealth. Furthermore, land is viewed as the basis of social status, and a source of social influence.

The above is significant to the relation between people and land with regard to the sometimes direct but mostly indirect impact of land related issues, such as access to and affordability of land, equality in ownership rights, and land ownership as a basic human right regarding the social well-being of people. This becomes even more important when considering what bearing politics and the power it holds have on the relation between people and land.

Access to and affordability of land are sometimes cornerstones of the economic sector, in particular the growth and potential of the economic sector. This is most evident throughout Southern Africa where colonial rulers and later governments prevented Africans from farming on an economic basis, which in effect excluded them from competing with white commercial farmers, and thus from being a factor in the national economy. This was by and large accomplished by discriminatory legislation restricting African farmers to less productive agricultural areas; by promoting subsistence farming in these areas; and by failing to provide financial aid and other support services.

One aspect of land policy is land reform (which is a very complex and politically charged issue). Land reform is usually seen as the process in which institutions amend, change or enforce current land policies. Since reform deals mostly with the conceptualisation of changes to known land policies it is often met with diverse attitudes.

Land reform is usually high up on the list of political campaigning issues, at the centre of heated debates or resistance from all role players and first on the agenda after political transition. Many people see land as the basis of all political power. For example, governments have the power to expropriate land, dispossess people from their land, or exclude sectors of the population from significant economic participation through denying them access to land. Southern Africa has seen many liberation struggles where land has been at the core of these struggles (Urban Foundation, 1993). For instance, the Rhodesian Bush War of the 1970s and 1980s had land hunger as its main motivating force. In the event of change in government a new government is usually under enormous pressure from the people to "return their land".

Some concluding remarks

A number of issues concerning land reform and land policies appear to be unresolved. These are:

- Expropriation
- Compensation
- Redistribution
- Resettlement
- Urbanisation
- Rural development
- Environment, namely basic human rights

These are all issues which need to be resolved not only by working or technical committees but also through open and public debate.

A number of the "lessons to be learnt" from other countries appear to be vague and very broad, even impractical. Nevertheless, they need to be considered even if it is only to contextualise a departure point for negotiations, public debate or practical implementation.

The following lessons are at issue here:

- Comprehensive policy making should be preceded by detailed planning.
- The formulation and implementation of land reform programmes have to be systematic.
- [T]*he key lesson for South Africa is the need for carefully conceptualized and coherent land reform policies, and rural development programmes, based on good research. Policy makers must be clear about their goals* (Urban Foundation, 1993:8).
- It should be realised that only a small portion of the claims can be satisfied in the short term. There is a need to formulate a comprehensive long-term strategy to address "land hunger".

- Ambitious settlement and resettlement programmes [a]*re not lasting solutions for overpopulation problems in communal areas* (Fair, 1991:51).
- Resettlement is not just the settlement of people on a patch of land; it has financial implications, affects traditions, has ethnic undertones, impacts on already established communities and flows over into the economic, social and political spheres.
- It is important to take note of the fact that urban development and rural development are two sides of the same coin and cannot be addressed in isolation from each other. It is essential to be aware of the rate and nature of urbanisation (Black Sash, 1992; Urban Foundation, 1993).
- It is important not to raise unrealistic expectations with regard to the return of land to the people. Communication, information dissemination and public debate whereby the communities affected are involved and consulted should counteract misunderstanding, impractical demands, and prevent unnecessary unhappiness and unsatisfactory reforms.
- Fundamental questions concerning land will always remain a contentious issue, regardless of which policy is adopted.
- Politicians, policy makers, etc. must know that [t]*he demand for land can never be fully satisfied* (Urban Foundation, 1993:8).

Although land reforms are viewed to be crucial for stability and peace in a new South Africa (World Bank report) one must not lose sight of other issues such as educational, medical and welfare policies which also need restructuring in a new dispensation.

Land policies are not isolated policies which deal exclusively with land. They have a direct impact on the people who inhabit land. However, a number of other policies and development programmes have a bearing on land, and therefore impact on land policies and the success of the land reform programmes of such policies. The success of many development programmes is rooted in solving or addressing the land issue. Skweyiya (1990:196) correctly states that [l]*and is central to elements in the natural and human environment, and a crucial link in an often delicate balance.*

ENDNOTES:

1. The social implication of this is seen in the commercial success of white farmers and the poverty found amongst Africans in rural areas. with this in mind one cannot disregard the role of official policies, the statutory measures of those in power and the impact it has on the people of the land.

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7

LAND REFORM: POSSIBLE SOLUTIONS AND FUTURE GOALS

Suzi Torres & Anthony Minnaar

Possible solutions for the South African situation

The Centre for Applied Legal Studies at the University of the Witwatersrand proposed certain measures to be taken into account regarding land and property rights in South Africa, namely:

> [T]*hat land be treated as a special instance of property dealt with separately in a Bill of Rights. Various lawyers pointed out that "property" had been taken to mean physical entities such as land and housing; and intangibles such as copyrights, social security benefits and shares in a company* (Collinge, 1992).

Land, it was argued, had particular characteristics that set it apart from most other property — not least of them its finite quality and its position as an absolute necessity of life.

> [T]*hat certain forms of affirmative action be specifically related to land rights. The ANC's Albie Sachs noted that a Bill of Rights could be employed variously as an offensive and defensive weapon. Affirmative action provisions on land would make a Bill of Rights a potentially offensive weapon for the dispossessed* (Collinge, 1992).

Furthermore, the question of compensation had to be looked at anew and it should not only apply to [t]*hose whose land might be expropriated or otherwise removed under the post-apartheid regime, but also historic dispossession under apartheid* (Collinge, 1992). Compensation levels had to be determined in order to ensure land reform and to overcome financial obstacles. Compensation, at market-related prices, would mean a decline in economic growth for South Africa and a large deficit in the national budget. One only had to look at Zimbabwe to see the effects of such a proposition. The ANC suggested that [a]*n equitable balance between the public interests of those affected* (Collinge, 1992) should be established as the basis of compensation.

The new democratically negotiated constitution should be used in order to direct the land court in terms of all forms of land rights and not only freehold title. This would mean that a large number of people would have claims to land they had occupied without title. Security of tenure should be granted to them. The interim constitution also mentions a land claims court or tribunal which would protect

all concepts of ownership and the property rights of all individuals. The constitution should also direct legislation in an equitable fashion in order to facilitate urbanisation and thereby ensure sufficient housing for all South Africans.

At the time of this study those who had been dispossessed of their land under apartheid laws could be compensated only if the land was still in the state's possession. Under the legislation envisaged by the White Paper the victims could be allocated alternative state land if their original land was privately owned. The new legislation would also prevent the authorities from selling state land which could be awarded to the dispossessed.

Deputy Land Affairs Minister, Johan Scheepers, announced in a statement on 7 April 1993 that the aim of the new legislation was [t]*o overcome deficiencies in the Abolition of Racially Based Land Matters Act of 1991* (Fabricus, 1993).

The other effects of the legislation envisaged by the White Paper would be:

> [T]*o give the Advisory Commission on Land Allocation powers to compensate victims with land which belongs to the State, a Minister, an Administrator or any State institution. This measure seems to have been restricted to land held by the former SADT. To enable persons who believe the commission has not ruled correctly to take its decisions on review. To allow land obtained under Community Development Act to be given as compensation. The legislation will also stipulate that the chairman of the commission should be a judge* (Fabricus, 1993).

Scheepers had also stressed that government policy on land would still be focused on the protection of security of title and that private land should not be appropriated for compensation of the dispossessed. The new land legislation would also give the commission the power to make awards on any government owned land without referring the decision to the state president. Furthermore, the legislation would:

- Enable people to take the commission to court if it did not follow the rules.
- Investigate cases where the land was no longer owned by the state but where its original owners had been prejudiced by the application of racially based laws.

- Recommend the allocation of other state land in consultation with the minister controlling the land.
- Advise the state president about the identification and allocation of land to people who had been prejudiced by racial laws where the land was still vacant.
- Empower the state president or a responsible minister or deputy minister to refer land-related matters to the commission for investigation.

However, while it was hoped that the establishment of the Advisory Commission on Land Allocation (ACLA) in 1991 would address many of the problems of restoration, this commission failed to serve as an effective mechanism for addressing land redistribution and/or restoration. In November 1993 the Transitional Executive Council (TEC) agreed on a new draft concerning property rights. This draft included a clause stating that people who were forcibly removed or lost their rights to their land after 1913 had the right to reclaim these. Accordingly all state-owned land which was claimed would be restored to claimants and privately owned land might be bought [o]*r expropriated by the state*. Land which was expropriated by the state would be compensated at market value. Where no land could be given to claimants, the state would compensate them for their loss. The latter provisions went some way towards addressing some of the sticking points in the land claims of dispossessed communities.

On 15 November 1993 the Negotiating Council (NC) also decided that dispossessed communities, who were forcibly removed from land in terms of the 1913 Land Act, would be entitled to claim restitution. This decision would be supported as a fundamental right by inclusion in a bill of rights. The ANC and the National Party (NP) also supported this decision. Compensation would be determined by a land court and could incorporate financial or land compensation. It could also include the provision of facilities to dispossessed communities or an [o]*fficial acknowledgement and apology*. Furthermore, it was decided that a specially appointed council would be established in order to process land claims. Subsequently it was also decided that the land court could not issue an order to purchase privately owned land unless certain relevant factors were taken into account. These factors included:

> [t]*he history of dispossession, the hardship caused, the use to which the property is being put, the history of acquisition by the owner and the interests of the dispossessed. If restoration is not feasible the State can provide the claimant with alternative State-owned land, pay compensation or grant any alternative relief* (Lautenbach, 1993).

The ANC president, Mr Nelson Mandela, stated that: [w]*hile private land would not be touched in the process of redistribution, the ANC would use land under SADF control when compensating those who had lost their land rights* (Latakgomo, 1993). According to Mr Mandela the SADF controlled about 40% of the land in South Africa.

It would therefore seem that the amendments (contained in the White Paper proposals) to the 1913 and 1936 land acts and a bill of rights (included in the interim constitution) would ultimately lead to just and equitable compensation concerning the restoration of land to dispossessed communities.

In order to facilitate the resolution of land claims and the restitution of land to dispossessed communities, and to assist future redistribution of other land the Urban Foundation also proposed some policy proposals which included the following:

- Stop the arbitrary intervention in present black tenure patterns in the [former] homelands.
- Institute a re-examination of existing agricultural legislation and policies in order to ensure that the current policies do not discriminate against black and smaller farmers.
- Investigate tenants' rights legislation with a view to supplementing the existing provisions of the common law with a specific body of legislation which would protect and strengthen the rights of tenants.
- Expand small farmer-support programmes in order to ensure that national, economic, agricultural and local policies assist small farmers, wherever they are, in the production and marketing of their goods.
- Establish special agricultural areas for small-scale farming. These areas could be near existing urban or peri-urban areas, or on released SADT land, large corporately owned estates or irrigation schemes.

- Provide opportunities for non-agricultural rural development which would include access to land for residential purposes, access to infrastructure and public services and assistance to small-scale non-farming enterprises (McCarthy, Simkins & Bernstein, 1991:32-35), in other words invest in small businesses and informal sector entrepreneurship.

It would be impractical to divest land of its marketable value through nationalisation (expropriation) without compensation. However, this is a complex issue which encompasses a number of unresolved issues. 'A land valuation committee should be established in order to evaluate land according to its productivity and profitability. The Land Bank has such a system but the actual value of land is more than twice the price at which the Land Bank assesses it.

An important factor in land redistribution was the democratic elections held on 27 April 1994, which changed the shape of South Africa. The Negotiating Council at the World Trade Centre debated the issue of the division of South Africa into separate states/provinces/regions (SPRs) each with its own local government which would allocate power and functions in areas such as local government, town planning, housing etc. Laws passed by SPR governments could, however, not conflict with those passed by the central parliament.

Another point to consider is that the major demand by blacks for land may well be in urban rather than rural areas (that is for residential, not agricultural purposes). Therefore, the granting of freehold tenure in urban areas and the provision of normal mortgage bond financing would be key aspects of a future economic policy. Given the movement towards reform in centrally planned economies, it would be most inadvisable for a post-apartheid government to become preoccupied with issues such as nationalisation of enterprises and land. In Zimbabwe, for example, the policy of nationalisation graphically illustrates the effects of such a system. The main goal of the new South African government should be to raise the share of black asset ownership and ensure a free-market system.

Goals of a future land policy

Broadly the following guidelines are relevant:

- Redressing the imbalance created by apartheid in terms of land use and ownership by enabling substantial numbers of blacks to acquire land for farming or for residential purposes.
- At the same time conserving South Africa's scarce land resources and ensuring the economic production of adequate food and other agricultural commodities.
- Ensuring that existing occupation rights which people and communities have to land are protected, that is recognising the diversity of existing forms of land tenure. This would involve the halting of all arbitrary intervention in present black tenure patterns in the homelands. For example, since people were crowded into the homelands, it would be important not to unilaterally and undemocratically impose new land tenure systems in these areas which could have disastrous effects on the poor and drastically increase the rate of migration to the cities.
- Addressing the extension of rights and protection to labour tenants and farm workers living and working on farms.
- The possible passing of legislation to enforce worker participation on the large amounts of company-owned farmland.
- Implementing an effective affirmative action policy involving the restitution of land and resources to those who were forcibly removed from land they owned; and failing this that alternative land be made available or that the communities so affected be given adequate and fair compensation. However, compensation should also apply not only to those whose land might be expropriated or otherwise removed under a post-apartheid regime but also to those historically dispossessed under apartheid. Moreover, the compensation level should be determined in such a way that financial considerations do not become an insurmountable obstacle to land reform (this touches on the problem of market-related prices for expropriated white farms).

- Introducing new legal mechanisms to resolve land conflicts in rural areas, for example a rural land court, to ensure a fair judicial process accessible to the poor, capable of handing down legally binding judgements in respect of conflicting claims in relation to settlement and ownership issues arising out of South Africa's history of land expropriation, forced removals and dispossession. Obviously in the land claims from the rural poor the concept of ownership would need to be extended beyond just title. Claims based on communal ownership and security based on how long an occupier has lived on the land and the use made of the land would also have to be taken into account when considering "rights" to the land.
- Making funds available to those disadvantaged rural groups, for example farm workers/labour tenants/sharecroppers, who wish to buy land for their use but are unable to raise the finances necessary, or alternatively giving communities land grants rather than letting the government sell the land back to the people.
- Assisting those remaining on the land with advice, credit and support services to sustain growth in productivity. This would include an assessment of existing agricultural legislation and policies to ensure the removal of any racially discriminatory provisions or any other unfair barriers to the development of small-scale farmers.
- Making women's rights a priority in rural area in terms of ownership of redistributed land especially in the light of the fact that they make up 60% of the rural population and bear the brunt of the lack of services.
- Ensuring community participation which is absolutely essential.
- Coupling any land reform process with a rural reconstruction programme. The state will have to define a rural development strategy which goes beyond mere land allocation towards the development of the necessary infrastructure and the provision of the means of production.

Conclusion

South Africa is currently undergoing vibrant political change. The restlessness concerning the struggle for access to land emerged strongly when about 600 people from 25 rural communities recently came together and stated that they would reoccupy land from which they had been forcibly removed. Their demands included the unconditional return of land to victims of dispossession, the establishment of a land claims court and legal protection in terms of legislation. The agricultural areas are also a major area of contention as many farms are situated on dispossessed land. Many farm labourers and labour tenants are now demanding security of tenure.

However, the whole issue of land redistribution to dispossessed communities should not be overshadowed by the notion of a white point of view versus a black point of view. Private ownership should remain the basis of land reform, but there should be appropriate measures to assist people in gaining access to land.

The solution to our land problem does not lie in the repossession of land which is legally owned by individuals, but in the distribution of state-owned land as well as land in the hands of the SADT. However, in certain land claim cases issues such as ancestral graves on dispossessed land have to be considered. Land, the ownership of land and the control thereof have always played an important role in shaping the political, economic and social processes in South Africa as well as in determining the relationships among the different groups and communities. Productive land use is essential to benefit the present population and future generations.

The subject of land reform is high on the list of priorities of the new Government of National Unity. For this reason the World Bank funded a research effort concerning a "rural restructuring programme" to be implemented in 1995. Representatives of the ANC, PAC, government and non-governmental organisations (NGO's) will participate. Many commercial farms are inefficient and could make way for black smallholdings, ensuring that the labour tenants who have worked that land for years and know no other way of life will not be left out in the cold. At the time of this research large numbers of farmworkers were being evicted from farms. Farmers obtained the necessary court interdicts to enforce these evictions and therefore the farm workers had no legal recourse and had to leave after the necessary period of grace. It is thus crucial that a new land reform policy should also

include legislation for inclusion in the constitution to address this problem. Rural upliftment and restructuring should take place with a view to the creation of employment and the upliftment of all communities.

In implementing any land reform or embarking on any large-scale redistribution or resettlement programme it behoves a new government to carefully plan long-term strategies in order to avoid thrusting many thousands of new farmers into a situation where there might be little hope of their earning a reasonable livelihood. In addition, ownership cannot simply be dictated by the principle of a "willing buyer/willing seller". There is a need to examine the roots of all titles held by landowners. Obviously here a distinction will have to be made between those who acquired land in the full knowledge that such land resulted from the dispossession by forcible removal of the inhabitants and those who were unaware of such dispossession. Here compensation or restitution will have to be part of settling the score. A further principle in redistributing the land will be that of "unproductive versus productive". Land lying idle or being used unproductively will have to be looked at in the light of expropriating it and making it available to those who would utilise it more productively.

While assuring white farmers that their title deeds are safe, the new government will also need to reassure black occupiers that their rights to land occupied by them for many years are just as protected even if they do not have written title deeds or official documents proving their ownership. Land claims will need to take into consideration birthright, length of occupation, productive use of the land and inheritance besides title deeds.

Removing the apartheid laws without any substantive attempt to redress their legacy will not bring about any structural change to the existing inequitable distribution of land ownership and agricultural production. The credibility of any land reform programme will inevitably rest on the extent to which it is seen to be an honest and fair attempt to redress the historical wrongs of apartheid, as well as improve rural black access to land and resources specifically on the level of affordability, in other words providing them with funding to place it within their means to avail themselves of land and make use of it.

Redistribution of land on its own is not a panacea for all the ills surrounding land issues in South Africa. It is a very complex matter given the wide range of different land titles in South Africa — from urban property rights, freehold and 99-year leasehold to communal tribal ownership. It is no solution to merely open up all land to market-driven forces. The historically disadvantaged communities will remain disadvantaged in an open market situation where they have been denied access to funding and investment for many years. If land is returned or redistributed to landless communities what kind of land title will be enforced? If such communities/farmers are supposed to be viable, will they be allowed to seek farming or development loans from institutions like the Land Bank or even from commercial banks using their land as collateral? What will be the rights of future disposal of such land? Or would a peasant subsistence existence merely be perpetuated thus dooming such communities to perpetual poverty? These are only some of the questions that need to be addressed and finalised urgently.

POSTSCRIPT:

New land reform legislation tabled in parliament

At the beginning of September 1994 the new Minister of Land Affairs, Derek Hanekom, was eventually able to table a series of bills dealing with land reform. This new legislation not only made provision for the establishment of a land claims court whereby communities forcibly removed from their land by apartheid laws could seek restoration of their land or claim restitution by way of compensation, but also set out the guidelines outlining the mechanisms whereby future land reform and *inter alia* land redistribution would occur. In addition, it set up a land commission to help land claimants to document their claim. The commission would also help to settle land claims through mediation and negotiation. If the commission could not settle claims, these would then be passed on to the land claims court which would also ratify agreements reached at commission level. In addition, the land claims court would be able to order the transfer of state land and expropriation or purchase of land in private ownership. All land claims had to be lodged with the land commission within three years of the legislation becoming law.

The minister, while hoping that thirty percent of arable land would be redistributed within five years (in line with the ANC's RDP and Agricultural Policy document) was, however, quick to reassure white landowners that no expropriation would occur from unwilling owners as was the experience of

white landowners in Zimbabwe, nor would land be confiscated without market-related compensation or for political purposes. The Zimbabwean land redistribution policies do not allow for any recourse by landowners to the courts to dispute the level or rate of compensation offered by the state to an expropriated landowner. In Zimbabwe land expropriation also appears to have been used for political purposes whereby certain opponents of the government (for example Edgar Tekere and Ndabaningi Sithole) had their landholdings targeted for expropriation. Instead the minister recommended that redistribution would be achieved by a combination of allocating available state land, strengthening communities' rights to land they already occupied and by the state making finance available for would-be farmers. However, one of the dangers of funding small-scale farmers indiscriminately was that this could result in the uncontrolled flow of subsistence farmers onto once-productive land, the undermining of the notion of freehold title and the breakdown of the normal operation of a free market in land, as well as having negative effects on commercial agricultural production.

The key bill in the new land legislation was the:

- **Restitution of Land Rights Bill** which allows for a process and mechanisms to effect restitution.

The other bills deal with amendments to existing legislation and mark the formal end of apartheid land dispossession.

- **Provision of Certain Land for Settlement Amendment Bill.**
- **Land Affairs General Amendment Bill** which deals with technical amendments to several laws.
- **Physical Planning Amendment Bill** which designates regional planning to provincial premiers.
- **Land Survey Bill** which amends the Land Survey Act so that the former homelands and independent bantustans are incorporated.
- **Professional and Technical Surveyors Amendment Bill.**
- **Deeds Registries Amendment Bill.**
- **Sectional Titles Amendment Bill.**
- **Town and Regional Planners Amendment Bill.**

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APPENDICES

APPENDIX A: *WHITE PAPER ON LAND REFORM*, 1991

The *White Paper on Land Reform* incorporated strategies aimed at repealing all statutory measures regulating rights to land on a racial basis and was supported by five bills, namely:

- **The Abolition of Racially Based Land Measures Bill** in which provision was made for the repeal of all laws regulating the acquisition and exercise of rights in land according to race and for the rationalisation of other laws that directly or indirectly restricted access to such rights.
- **The Upgrading of Land Tenure Rights Bill** in which provision was made for the rationalisation of land registration systems and the upgrading of lower-order land tenure rights to full ownership.
- **Residential Environment Bill** in which provision was made for the prevention, combating and restoration of physical decline in cities and towns.
- **The Less Formal Establishment Bill** in which provision was made for the urgent provision of suitable land for the settlement of homeless people in a less formal but orderly and upgradable manner, for shortened procedures for the establishment of less formal towns, and for measures in connection with land which tribal communities intend to use for communal forms of residential settlement.
- **The Rural Development Bill** in which provision was made for the development needs of rural areas and communities and in particular those areas and communities that lagged behind, for agricultural schemes, and for measures in connection with land which tribal communities intend to use for communal forms of agriculture (White Paper, 1991).

The main objective of the land reform policy contained in the White Paper was to make rights in land accessible to all individuals irrespective of race, colour or creed. This began with the abolition of the Group Areas Act of 1966, and the land acts of 1913 and 1936 through the implementation of the Abolition of Racially Based Land Measures Bill. The abolished acts had provided the statutory framework for the policy of separate development and the forced removals of numerous communities.

The Abolition of Racially Based Land Measures Bill also prohibited the alienation of land in the controlled areas (for example black areas and SADT administered land) to a member of a population group other than that to which the owner belonged. The repeal of the discriminatory legislation did not affect the legal status of the self-governing territories, their geographical definitions and their structures of self-government. At the time this posed a problem since the self-governing territories could not just be excluded from the proposed land reform measures as contained in the White Paper.

The White Paper also provided for local government whereby legislation would open the door for communities at local level to enter into negotiations and establish joint local government structures as required. Furthermore, the White Paper made provision for the land held by the SADT to be incorporated into the TBVC states and to be used for their development and settlement requirements. Land would no longer be incorporated into these TBVC states for the purpose of forming a state, as had been the case in the past, but was to be placed under the administrative control of the appropriate authority.

In addition, the Commission for Co-operation and Development, which advised the government on the administration of black affairs, as well as the SADT, were to be terminated after the transition to a new land dispensation. Within the TBVC states and self-governing territories, restrictions in accessibility to land were to be lifted to allow for private ownership by persons of other population groups, as in the rest of the country. Here it must be remembered that land ownership in these areas was in accordance with the traditional system of communal tribal ownership.

Furthermore:

> [I]*n the normal course of events the State provides a variety of land-focused assistance programs in a rural and urban context, of which financial and other assistance with respect to settlement, housing, agriculture, commerce and industry, and the provision of infrastructure are examples...Assistance programs will have to be adjusted accordingly so that support is provided on the basis of merit alone* (White Paper, 1991).

The White Paper also postulated the hope that the redistribution of land would initiate a wealth-creating process by supporting private ownership and stimulating entrepreneurship, thereby increasing productivity. Provision was also made in the White Paper for urbanisation and the more economic

utilisation of land by promoting the establishment of informal townships and settlements and encouraging private ownership.

In terms of "tribal land tenure" the government had also decided not to interfere with the traditional system of tribal land tenure since the communities involved essentially had subsistence economies. Instead the White Paper (par. B3.3) proposed that [t]*ribes themselves must initiate the reform of the tribal land system*. It was, however, not clear how or why a single tribe would do this in any sensible and comprehensive way. The whole issue of tribal land tenure was largely avoided by the provisions contained in the White Paper. There was in fact an apparent contradiction in the approach to tribal land. While the government was not in favour of the expansion system (par. B3.2.) in paragraph B3.6 it was foreseen that tribes would acquire more land on their own account. It was moreover stated that tribal communities [a]*re in serious need of land*.

There were numerous issues which were not dealt with or resolved either by the repeal of apartheid land laws or by the government's land reform policy as expounded in the White Paper. Firstly, the government was adamant that the system of private ownership then currently in place should be maintained and in paragraph C2.5 of the White Paper it was categorically stated that a system of private ownership of land and specifically agricultural land, would be pursued.

In contrast to the then government's position, the ANC had insisted on redistribution of land in order to ensure a more equitable spread of land ownership. This was to take shape with the implementation of a land claims court where people who had been dispossessed could claim restoration. The government was then of the opinion that it was impossible to restore land which had been given up for whatever reason. In fact the White Paper unequivocally rejected the restoration of land to dispossessed communities on the basis that it had [v]*ast potential for conflict* and its implementation would be complicated because of [o]*verlapping and contradictory claims*. Furthermore, the White Paper also did not mention redistribution of land in the urban areas.

APPENDIX B: CASE STUDIES

I. EVICTIONS AND LAND HUNGER IN THE MSINGA/WEENEN DISTRICTS

Rauri Alcock

Introduction: a labour exporting district

In a newspaper article entitled: *Abolition of labour tenant system meets with opposition from Africans*, the following was said of evictions in the Weenen district:

> [A]*n ominous situation is developing in the Weenen district of Natal as a result of the evictions of hundreds of Africans from white farms, where they were formerly labour tenants. The fate of an estimated 19 000 additional Africans still lies in the balance. Between 400 and 500 people have already appeared before a special magistrate in Weenen, accused of illegal squatting, and have been given 14 days to move off farms. Only a handful of the ejected Africans can be accommodated in houses — in the distant black township of Osizweni, near Newcastle. A certain number may be sent to bare sites in the neighbouring Msinga district* (Anon., 1969).

The publication date of this front page article could have been sometime during the beginning of 1994, but it was in fact written on 3 October 1969 — 25 years ago. Weenen was different from other rural areas in South Africa that were affected by the change in legislation in 1969. Until the abolition of the labour tenant system, Weenen exported labour. In return for living on a farm, and access to grazing and fields, men, women and children could be called out to work for little or no pay, six months at a time, on plantations and farms in other districts. Most of Weenen's farms were owned by absentee landlords. In 1911 the Acting Chief Native Commissioner of Natal said of this area: [I]*f purchased by Europeans it will only be with a view of subletting to natives in the near future.*

Evictions continue

When the evictions started in the district helicopters were used for round-ups and arrests, and a special court was set up to try the flood of cases. Since 1969, more than 20 000 people have been evicted from Weenen farms. Most have moved to the neighbouring district of Msinga that was already denuded, overpopulated and constantly plagued by faction fights. Today only about 2 000 Africans have remained on the farms. The people form small pockets of labour and most of them work 12 months for about R50 a month and receive meal and tobacco rations. As the young men aspire to more, and leave home, the landowner is left without workers, and another family gets notice to move. So there is a constant trickle of evictions.

The evictions are also often irregular which causes much friction. Many evictions are intensely resented for the way they are carried out, rather than the fact that people have to move. Tenants are often given only a month to move themselves, their huts and their families and to find alternative grazing for their stock. At the month's end the stock are impounded and sometimes sold to defray expenses. The farmer, with help from the police, then pushes down the huts and burns them. To add insult to injury, the sheriff will then attach goods of worth to pay for court fees.

The present population

At present there are only scattered pockets of labour tenants, usually only the very subservient. There are also three "emergency camps" in the district. The first, Tendeni, was set up in the late 1960s and now houses an estimated 4 000 people. It has gradually evolved into a semi-urban township. Nearby are the Green Tent Town and White Tent Town, which were established about four years ago to house evicted tenants from an area called Mngwenya Valley. The two camps have remained separate because of the tribal affiliations of the residents.

Also affected by decisions on the future of Weenen farms are those people who were evicted in the early 1970s and now live in KwaZulu, on the boundaries of the Weenen district.

A district with tribal boundaries

The Weenen farms have a definite tribal character. Before the removals of 1969 the farms fell into wards under Mtembu, Mcunu, Mabaso and Mbhele chiefs. The Mtembu and Mcunu tribes, under Chief Ngoza Mvelase and Chief Simakade Mcunu, are the two biggest tribes in Natal. The undrawn map of tribal boundaries underlies the whole farming district. Although the farms are now empty land, the boundaries remain and all are still acknowledged by members of the different tribes.

Land pressure

Many, if not most of those evicted in the late 1960s to the early 1970s, were unable to take their stock with them when they were removed. They were often forced to sell their stock at prices a fifth of market value. Many white speculators became rich through buying and selling this stock.

People living on the Msinga/Weenen boundary look over the fences and show you their home and say: *Ay ! We used to live well! It even used to rain!*

In the 1970s the Weenen boundary farms along the border with KwaZulu (mostly owned by absentee landlords using them as "labour farms" but in 1975 CAPFarm Trust bought three of the boundary farms and instituted new land use policies (see section on CAPFarm)) continued to provide grazing for Msinga stockowners or evicted tenants trying to build up small herds of flocks. The future of the farms was uncertain at the time as they were arid and eroded and had limited agricultural potential for white buyers. Few of the farms were fenced. There was talk of the land being sold for KwaZulu consolidation, and a couple of farms were sold to speculators, like Louis Agliotti. The remainder stood vacant, resting. They needed the rest. According to a three-year survey on veld conditions undertaken by the Department of Agriculture, 20% of the district was irreparably damaged.

In 1980 the drought was severe and with no sign of the government buying their farms, the absentee owners began to fence their properties. They needed the land for winter grazing for their cattle. Suddenly the African cattleowners all along the Msinga/Weenen boundary had their previous grazing area reduced and they started trespassing. The drought of the 1980s marked the start of clashes over trespassing and impounding, which are still a major source of conflict in the district.

The harsher the winter, the more the pressure on white farmers' property. Cattle are let in when the owner is away and removed when he returns. If the animals are caught and sent to the Weenen pound, black stockowners regularly have to sell some of their remaining animals for money to release others. Because the laws are vague, Weenen's white landowners are able to demand exorbitant amounts for trespassing stock which is impounded; for example, release fees of more than 15% of the value of the animals have been recorded.

The Weenen Community Law Centre (CLC) office is inundated with cases challenging the legality of trespass charges. Trespass and impounding constantly cause friction and debate.

The question of resources such as firewood and thatch grass, as well as hunting, are also crucial elements of the ongoing struggle around land.

The role players

There have long been historical battles about land in the Weenen district, sometimes fought strongly, sometimes fought gently, while a variety of NGOs have wandered onto the scene, and off again. At present the role players include the different African communities, the Inkatha Freedom Party (IFP), local government, the Natal Parks Board (NPB), provincial and government planners, the local Farmers' Association, CAPFarm Trust, the Association for Rural Advancement (AFRA), the Weenen Community Law Centre (CLC), United Workers' Union of South Africa (UWUSA), local farmers and the Weenen Town Board.

The following section focuses on two areas of conflict in Weenen: the Mngwenya Valley farms and the Thukela Biosphere Park. Together they have been a focus for African fears, but after Africans began asserting their rights to land, these areas have become a focus for demands.

Mngwenya Valley

Mngwenya, for some reason, survived the full impact of the 1969-1970 removals, but in 1989 it became news when 20 families evicted from Mngwenya set up house on the roadside. They had been living on the verge for two months when the Natal Provincial Administration (NPA) and SA Police moved them in lorries 15 kilometres away to their present campsite, close to the town of Weenen. However, they refused to be integrated into the existing black location 100 metres away, as the location residents were from a different tribe and also a traditional enemy (Mngwenya being traditionally Mtembu and Mcuna territory).

The Red Cross supplied tents while the government promised to find a solution. The 20 families settled down, waiting for land where they could obtain a livelihood. Four years later there were 43 families in tents, washed by floods, baked by the sun and still waiting.

Their cause was taken up by a number of different organisations. The Mngwenya evictions were one of the reasons for the NPA Physical Planning Directorate being drawn into the affairs of the district. In January 1990 the directorate produced a 67-page report on a development strategy for Weenen.

The Thukela Biosphere Park

Early in March 1993 rumours of a new game reserve in Weenen began circulating. By June the Thukela Biosphere Park was front page news and the first of a batch of eight young elephants was on its way to Weenen from the Kruger National Park. The concept of a biosphere park involves combining agriculture and wildlife on individually owned land. Theoretically the game is managed in harmony with the people already living on the land. The idea was hailed by whites. When blacks eventually heard about the plans, they saw the park as a grave threat to any future land claims.

Weenen already had a game reserve run by the Natal Parks Board. It was created on old labour farms from which people had been evicted in 1969. Although the Natal Parks Board was not responsible for the evictions, the game reserve prevented tenants from returning to their old homes. The new biosphere park raised fears of similar action in the minds of the local Africans.

A gradually consolidating community

Although local Africans are rural people, and as such have never been organised in any structure across tribal lines, the current climate of possibility in South Africa has stimulated a demand for a solution to land issues. For the first time people are combining in an apolitical manner which transcends traditional tribal affiliations.

As pressure around land mounts, communities gather into a more and more representative structure. The process has been hastened by farmers who, seeing the changes coming, have stepped up the pace of evictions, trying to clear their farms of the taint of labour tenancy, making sure there are no people remaining on their farms to dispute their ownership.

The following is an outline of developments over the past four years:

* In 1990 Mr Val Volker, senior member of the executive council of the NPA, agreed to meet a delegation of the Weenen/Msinga black communities.

* As a result of discussions at this meeting, the NPA established the Weenen Working Group, drawn from all interest groups in the district, black as well as white.

* The first meeting, in December 1991, had the NPA, the Weenen Farmers Association, and the Weenen Town Board sitting down with representatives of Weenen's black communities, most of whom insisted on remaining anonymous. They have continued to remain anonymous, refusing to disclose either their names or place of residence in order to avoid intimidation or eviction by white landowners. They are seen, however, as thoroughly representative of the rural community of Weenen/Msinga.

* After four meetings of the Weenen Working Group the first point on the agenda, namely an additional bridge over the Bushman's River to enable whites to get to Weenen without having to drive through the black township, had yet to be finalised or dealt with.

* Subsequently a proposal for a small agricultural project to help supplement black incomes was sidelined by white farmers.

* Africans had hoped that the working group would give them a forum to raise issues such as forced evictions, or the Weenen pound and its high impoundment fines. Representatives of the Weenen Farmers Association, however, blocked any discussions on these issues by saying that nobody had any say over a farmer's relations with his workers.

* By July 1992 a stalemate had been reached. The blacks were thoroughly frustrated. Informal meetings were held between migrant workers living in Johannesburg hostels, people living permanently on the farms, and those in adjoining KwaZulu areas. The question which occupied them was: How could they get Weenen farmers to engage in meaningful discussions on their problems in Weenen?

* In November 1992 a small white contingent agreed warily to meet a nameless group of Africans to consider grounds for further discussions. Although the blacks insisted on being anonymous, they represented a wide cross section of black interests, and were a sign of a growing sense of unity and determination among the black communities of the district. (CAPFarm, CLC and NPA were also present at this meeting.) The meeting dissolved before any decisions were reached.

* A week later Weenen farmers found themselves with a labour strike on their hands. Weenen is a vegetable-growing area, dependent on casual labour, transported daily in lorries to and from KwaZulu. The two-day strike on 23-24 November 1992 left farmers with empty lorries.

* The next meeting was called by the farmers, and set for Midsummer Day 1992. Officials from the Natal Agricultural Union were present, as well as a labour relations lawyer from Johannesburg. After some heated moments, the lawyer offered to take the problems to government circles and relevant authorities. This offer was accepted — with little belief in results. A deadline for a reply was set for the end of January 1993.

* On the expiry of the deadline CAPFarm made contact with the parties involved. The consultant reported that he had had no response from the government, apart from an assurance that they would look into the matter.

* In March 1993 Weenen's black communities began to make plans for a march to present their grievances to the authorities. In order to have spokespeople to liaise with the farmers, a committee representing local communities was formed. This nameless committee approached CLC to help them with the legalities of planning the march.

* The march planned for April 1993 was eventually cancelled because of white fears.

* In May 1993 Mr Volker intervened to resolve the problems in Weenen. On behalf of the NPA he set up a general meeting, open to the community. This time the KwaZulu Minister of the Interior, Stephen Sithebe, was present. The people were advised not to march. Volker promised to come up with a solution to the Mngwenya problem within two weeks. A committee was elected to deal with developments.

* Volker met his deadline. The next meeting was attended by two Pretoria officials from the Department of Land Affairs. They explained the new Provision of Certain Land for Resettlement Act, which could provide financial backing to enable the Mngwenya people to buy back the land from which they were evicted.

* The new committee was given the task of assisting government officials in fulfilling the provisos of the act.

* By the end of 1993 there had been another three meetings. There were many problems to be sorted out. There was land available for sale, although not in a pristine condition. Some of the land already had people living on it. Neither the government nor the people had yet given their go-ahead to any land purchase.

The Provision of Certain Land for Resettlement Act, No. 113 of 1993

The problems of resettling the Mngwenya Valley farms are applicable to other parts of South Africa. With land in the offing, the Mngwenya community has divided up under different leaders. The proposed farms lie on a Mtembu/Mcunu boundary. Resettlement will have to be based on tribal affiliation.

There are no guarantees that the land will be farmed according to good farming practice. The government has offered to subsidise [e]*very breadwinner ... to a maximum amount of R7 500 for obtaining land and rudimentary services*. With a simple calculation of the current market value of land at R500 to R600 a hectare and with an average stocking rate of five hectares per livestock unit, the government offer will give each family a total of three cattle. Three cattle is not an economic unit, nor will it satisfy the rural African family's need for livestock.[1] In order to be economically viable, people will have to overstock, and therefore overgraze the land. This will inevitably lead to another KwaZulu situation of rapidly degrading land and increased soil erosion.

The biosphere park controversy

When rumours of the biosphere park were confirmed, CAPFarm queried the lack of consultation with African communities. After preliminary discussions between CAPFarm, Natal Parks Board officials, and members of the biosphere committee, a meeting was arranged in Weenen to inform the Africans of plans for the park.

The meeting took place at the end of October 1993 under the chairmanship of a neutral outsider, Peter Brown. It was a fiery meeting. The Africans made it clear that they would not support the idea and

turned down a request to establish a joint liaison committee to discuss any problems relating to the biosphere park. They said there was no point in a committee if their people were against the park.

Another strike

In December 1993 the nameless Weenen/Msinga committee sent out a notice in Zulu informing Weenen/Msinga communities that a strike was being called for the following reasons:

- People wanted to return to the land from which they had been evicted.
- They wanted to protest against the biosphere park.
- They wanted to protest against continued evictions.
- They wanted to protest against the Weenen pound.
- They wanted to protest against farm wages.

No date for the strike was mentioned. The notices were passed around by hand. The Zulu word for strike is *ukugodl'amandla* which means: [T]*ake your strength and hold it to yourself.* The notices said: [T]*hey say they have no matter with you. The buck will dig up their potatoes. The elephants on that day will be driving the tractors.* Soon after New Year notices of the date were sent out. The notices said: [I]*t would be most unfortunate if you have to hear with our bodies ...*

The strike, by coincidence, was set for 17 January 1994, the day King Zwelethini led thousands of Zulu to Pretoria to confront President F.W. de Klerk. In Weenen there was a total stayaway which lasted four days on some farms. Many blacks stayed away in sympathy with those being evicted. Many hoped that any future land deal would also give them access to land.

A new liaison committee

On 20 January 1994, the same week as the strike, farmers approached Chief Ngoza of the Mtembu for a meeting which took place at his courthouse at Tugela Estates. Members of the Weenen/Msinga committee were accompanied by a large crowd, while the Weenen police station commander attended with the farmers.

At the meeting it was agreed that a liaison committee would be set up to discuss grievances before a strike was called in future. Both the police station commander and the chief were elected to sit on this committee. The farmers present promised to rescind eviction notices already served on tenant families. One of the farmers who made the promise, however, almost immediately evicted a family living on one of the farms, bulldozing their huts.

The future

All land in Weenen/Msinga needs to be considered as a single entity since for Africans the boundaries are purely coincidental.

Issues that need to be addressed are:

- If the economy improves and unemployment is reduced, pressure on the land will be eased. An improved economy, in conjunction with education, should draw people to the cities, filtering out those who genuinely want to farm. At present the land is used to supplement lifestyles, providing people with something to fall back on in hard times.
- Assuming reduced pressure on the land, the future of KwaZulu as an agricultural area needs to be considered. The whole of KwaZulu needs to be sectioned off and sold, or, if kept as communal land, the government (local or regional) needs to provide fencing for regulated grazing camps. Reserve managers will have to be employed to implement controls.
- Changes need to be implemented with the help of white farmers, who have the experience to assist and guide.
- The government will have to look at ownership as it is perceived in people's minds. For example, even though nobody can legally own land in KwaZulu, fierce battles (faction fights) are fought around invisible boundaries. People have claims to traditional fields and hut sites, etc.
- Resettlement raises all sorts of problems. Many communities demand to be reinstated on their original sites. Although this makes them seem difficult, the future implications of demanding reinstatement have to be dealt with. Assuming that the future government will be less radical than

people desire, positive and proactive methods of dealing with the problem of land restoration have to be found.

- Mass, unplanned redistribution of land will have severe environmental implications which could lead to the further degradation of borderline regions. In many cases resettlement will turn damaged land into irreparably damaged land — reducing the land available to the next generation.

Possible alternative land use practices: the CAPFarm Trust integrated approach

On a practical level the experience of CAPFarm Trust could well provide a number of pointers to the future use of land under similar rural conditions as have been experienced on the CAPFarm Trust farms.

CAPFarm Trust arrived in the Weenen district in 1975 and owns three farms totalling 2 500 hectares. These once white-owned labour tenant farms, together with surrounding dispossessed black communities, are now in the forefront of equitable resource management.

As the debate over land rages, CAPFarm is negotiating and planning a local strategy to address claims to these farms and to establish models for future principles of land distribution and subsequent use. This approach must be seen in the context of landlessness and political change in South Africa.

Over the years CAPFarm has experimented with certain land use practices in conjunction with both resident and neighbouring black communities in an effort to address the problem of access to grazing land combined with the more efficient use of resources and garden plots.

CAPFarm's resource management approach has been multipronged. Firstly, in the 19 years since it arrived in the area CAPFarm, with the assistance and resources of AFRA and CLC, has established a local network which will form the basis of a future land claims programme in the district. Secondly, the land controlled by CAPFarm has been made available as a resource area for surrounding communities, but also has 15 resident families. CAPFarm's management policy provides a model for future sustainable land use in a communal setting.

CAPFarm shares an 11 kilometre boundary with KwaZulu and offers winter grazing to African stockowners in adjoining communities. These communities not only obtain grazing and browse for their cattle and goats, but collect firewood, grass for thatching, as well as medicinal plants. In return they fix fences, burn firebreaks, and keep cattle out in summer when the grass is growing. This system works with almost no maintenance by CAPFarm staff and the veld cover has improved dramatically during the years CAPFarm has been managing the farms. At present CAPFarm supplies grazing to more than 600 African-owned cattle while 300 men, women and children have gardens on an irrigable area bordering on the Tugela River.

The people with a direct interest in this unique land-sharing policy fall into three groups:

i) **Ncunjana**

This group comprises 15 families living on Mdukatshani (the home farm), many of whom have lived on this land for many generations. This group has access to approximately 500 hectares of the farm. CAPFarm believes that these families living on and utilising the land, taking responsibility and having a sense of ownership, will establish an example of rural land utilisation for Africans. CAPFarm, together with the local government extension officer, is planning for land utilisation and ownership centred around the identification of land for ploughing and planting and the implementation of correct water and soil conservation measures.

One of the projects related to this is the setting up of a system of fenced corridors to restrict livestock damage to the veld cover, caused by driving stock between water, kraals and grazing. The prone areas can then be focused upon in order to prevent soil erosion and damaging water run-off. This makes more land available for grazing camps, which will reduce the herding duties of the children so that they can attend school at Mdukatshani. The fencing of these corridors has been funded by a "one-off" grant from the British Embassy.

ii) **Guqa Gujini**

This second interest group are the communities directly bordering on CAPFarm land or who live geographically close to Mdukatshani. They make use of three-quarters of the farm as a resource for grazing their cattle. This group numbers between 200 and 300 families depending on the severity of seasonal conditions and the availability of grazing. These communities also

maintain the fences between their land (KwaZulu tribal/communal) and CAPFarm land, as well as the internal CAPFarm fences in the grazing camps they use. They also erect new fences when the need arises. In the latter case, CAPFarm supplies only the required fencing materials. These two community groupings also have controlled access to grass cutting, firewood and medicinal plants for herbal remedies in the protected parts of the farm. A management system for these resources is presently being designed by CAPFarm, community leaders, herbalists and the traditional hierarchy. Agreement has been reached whereby no hunting or chopping of green hardwoods is allowed. The project is used as a model by local communities who are increasingly tuning in with conservation.

iii) Amabuya

The third group consists of 40 families evicted from Mdukatshani in the 1960s by the government as a result of the change in labour tenancy laws. These families are now widely scattered in the Keate's Drift area approximately 50 kilometres from Mdukatshani. CAPFarm has brought these families and the Guqa Gujini and Ncunjana farm-user groups together to see if a land utilisation system beneficial to all three interest groups could be developed.

ENDNOTES:

1. For an economic farming unit in the Weenen area the following applies:

   According to the Commission of Inquiry into European Occupancy of Rural Areas, 1959, a white farmer in thornveld such as found in the Weenen district needs 1 700 hectares and 300 cattle to make a living.

   According to the Tomlinson Commission of Inquiry, 1955, an economic unit for a black man in the Tugela thornveld is 83 hectares and 16 cattle.

   According to the Department of Agriculture (Estcourt Extension Office) a beef cattle enterprise in the Weenen district requires a minimum of 1 500 hectares. On 20 August 1985 the local extension officer, Stuart Armour, told Weenen landowners that only 13,4% of Weenen farms comprised 1 500 hectares or more (Armour was addressing a meeting which was called to report back to landowners on the results of a three-year Veld Category Survey undertaken by the department). In other words 86,6% of the district's farms were too small to support a beef farmer. Hence the severe veld degradation.

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II. DISPOSSESSION AND RESTORATION: THE MFENGU OF TSITSIKAMMA

Suzi Torres

The history of apartheid is characterised by forced removals. The Mfengu people of the Tsitsikamma are just one of the hundreds who were alienated from their land.

The Mfengu originated from the Transkei and Ciskei. In 1835 some 16 000 made formal entry into the Cape at Governor D'Urban's bidding in order to help the colonists fight the [g]*reat Xhosa fear*. They were quick to adopt a colonial lifestyle and created a trade network which competed with the colonists. A few worked as agricultural labourers on white-owned farms. One of the earliest cases of black individual tenure is recorded amongst the Mfengu. In 1837 8 000 hectares of fertile coastal farmland was granted to the Mfengu by Queen Victoria for loyalty to the Crown during the frontier wars against the Xhosa in the early 1800s. Sections of the land were registered in the name of the Moravian Church and others in the name of the Civil Commissioner for Uitenhage. These were to be held in trust on behalf of the Mfengu community and their descendants.

In 1977 the local magistrate called a meeting of the Mfengu on one of their farms. The state president had promulgated a removal and banishment order which stated that the community was to be removed to Ciskei with the further restriction that once removed no member of the community could ever return to Tsitsikamma. This would be enforced by the South African Police (SAP) who were instructed to arrest and detain any member who did not adhere to these restrictions. Although the community launched an urgent application to the Supreme Court in Port Elizabeth to stop the execution of the state president's order, judgement was given against them. The Mfengu community was forcibly removed from their ancestral home and lost their homes, crops and livestock. Their South African citizenship was also revoked (they were forced to become Ciskeian citizens) thus making any appeals to the South African government worthless (see Moorcroft, 1991:28-80).

The Mfengu community was relocated to Elukhanyeni (*The place of light*) in Ciskei. There was no arable or fertile land for them to farm. Most were confined to small two-room shacks which were draughty and cold. Others had tents. There was no infrastructure or health and education facilities. The Mfengu were now a poor community unable to support themselves.

In terms of the 1913 Land Act a portion of certain areas was set aside for exclusive occupation by blacks. The Land Act of 1936 vested nominal ownership of this land in the hands of the South African Native Trust, now the South African Development Trust (SADT). Legally the trust was obliged to honour the original Mfengu claim to land, but because of the Land Act of 1913, government policy at the time could create "black spots" in white areas and homelands.

In 1982 the SADT — who owned the land after the Mfengu removal — advertised it for sale to white farmers. The Constitutional Amendment Bill consolidating the land from which the Mfengu had been removed was passed after an all-night sitting of Parliament in June 1982.

During this parliamentary debate the Minister of Co-operation and Development, Dr Piet Koornhof, had claimed that [b]*ecause the land had already been vested in the SADT at the time of removals, it was not necessary even to value the land which was being expropriated* (Moorcroft, 1991:28-80). This was, in fact, an incorrect assumption by the state. Ultimately the state had responded by transferring the required compensatory land not to the Ciskei, where the Mfengu had been resettled, but to the Transkei, which was a hundred kilometres further to the east (Moorcroft, 1991:28-80).

The Mfengu people decided to adopt another strategy by approaching Mr Errol Moorcroft (the Democratic Party parliamentary representative for the district of Albany). He suggested that they speak to Dr Koornhof personally. Their request for a meeting with Dr Koornhof was denied:

> ["]*Tell the Mfengu people," said Minister Koornhof, "that they are now citizens of Ciskei, and any problems which they might have must be communicated through their own authorities"* (Moorcroft, 1991:28-80).

The bill made no reference to the land being held in trust for the tribe and within six months the government had sold the land to white farmers. The new owners/farmers were restricted from selling their farms without ministerial consent for ten years. The Mfengu were paid no compensation for their land, livestock or crops. They were paid a one-off lump sum of R200 000 — an average of R429 a family — as compensation for their homes which were later demolished.

A portion of the remaining 2 000 hectares of Mfengu land was still owned by the government and another portion by the Moravian Church who held the land in trust for the tribe. The farmers could

apply for 100% loans at 8% interest. At that time, the average price being paid for the land in the area was R750 per hectare. This means that the state acquired land worth some R5,85 million from the Mfengu and sold it to whites for a sum of R1,34 million. At present-day prices, the land would be worth some R10,25 million. For the government the acquisition of assets worth R5,85 million for an outlay of R200 000 must surely represent one of the most profitable land-grabs of all time.

In 1991 Mfengu community leaders lodged papers in the South Eastern Cape Division of the Supreme Court to demand that the SADT and others return their land to them. They also demanded that the government register the title deeds to the land in the Mfengu's name. Some farmers wanted to sell their farms at enormous profits, thus prompting the Supreme Court to decree that the farms could not be sold, even after expiry of the ten-year ministerial "consent-to-sell" clause, because the white owners were not the rightful owners. A Mfengu delegation met with President F.W. De Klerk, the Deputy Minister of Education and Development, Piet Marais, and the Deputy Minister of Agriculture, Tobie Meyer, to plead their case. They received assurances from the state attorney that applications for ministerial consent to sell any of the farms would be held in abeyance until the matter was resolved. In January 1994 the government finally responded with an out-of-court settlement. They agreed to pay the nine dairy farmers in the area a sum of R36 million in compensation. The Mfengu would receive R1,9 million for relocation costs. In March 1994 the matter was finalised. It was decided that the land would be developed into a town with appropriate facilities and infrastructure before the Mfengu people were relocated. The majority of the Mfengu people were not willing to be subsistence farmers but provision would be made for those who did want to farm. They would be educated and receive training in modern and effective farming methods. The dairy farmers, who had obtained the Mfengu land from the government, accepted that the Mfengu had been treated unjustly, that the land rightfully belonged to them and that the restoration of the land to them was long overdue.

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III. REOCCUPATION, RESTORATION AND RESTITUTION

Anthony Minnaar

An old man from the Magogoane community had the following to say about negotiating in order to reoccupy land:

> [I]*f you see a beautiful woman, you cannot just marry her, you must first speak to her of love. And so with negotiations, you should open the issue as early as possible. We should sit around the table with the government and listen to each other. But the government must listen to us more, since we are the ones who have been dispossessed... We should try to relate to people as human beings even if the person has proved to be terrible in the past* (Winkler, 1992:26-27).

The above reflects not only the persistence of dispossessed communities to try to negotiate their return but also their infinite patience and willingness to follow this route in reclaiming their land.

i) Magopa: Ancestral graves as title deeds

In 1984 the entire Magopa community near Ventersdorp in the Western Transvaal was uprooted from reasonably good agricultural land and dumped 150 kilometres away at Pachsdraai, a barren settlement near Zeerust. The land from which the Magopa people were removed consisted of two farms amounting to 10 000 hectares. The first had been bought in 1911 before the 1913 Land Act and the second in 1931 when the community had collected money by selling cattle. The tribe was organised along communal lines and decisions were made by the whole community. The headman had no rights to appropriate land and resources.

By the 1980s the prosperous community boasted two schools, a clinic, many shops, a reservoir, and a thriving farming section which sold cash crops to the local agricultural cooperative. In 1983 officials from the Department of Cooperation secretly negotiated resettlement with Jacob More, the Magopa chief who had been deposed for corruption by the community in 1981. More and a few families moved to Pachsdraai. More was put in charge of land allocation and had total administrative power. The remainder of the community refused to be resettled. In June 1983 bulldozers flattened the Magopa community school and knocked down three churches. The teachers were withdrawn. The bus service to Ventersdorp was discontinued and the water pumps were also removed. In addition, pension payments to the old people were stopped. All this was an "inducement" for the community to move,

but when these measures failed the community was removed at gunpoint. On 14 February 1984 the police arrived at Magopa. They first handcuffed all the community leaders and put them into police vans. Then they started entering houses by force and pushed the occupants onto waiting trucks and buses. Those who had cattle were forced to sell them at low prices. The stone houses at Magopa were also demolished. Within a month of their 1984 forced removal to Pachsdraai the Magopa community had fled to Bethanie, the seat of the tribe's paramount chief.

The entire community became impoverished by the removal and most longed for a return to their ancestral land at Magopa. In 1985 the Magopa community won a legal appeal to return home, but the government had expropriated their land. Expropriation meant that the Magopa people were no longer the owners of the land. If they returned to Magopa, they would be trespassing. Although the government offered them alternative land, the community felt unable to accept the offer. Firstly the offered land would be incorporated into Bophuthatswana and secondly the Magopa community would not be the owners of the land but only tenants. Eventually, after the collapse of alternative plans (the Holgat Farm Project) and the successful outcome of their case in the Appeal Court, the community was more intent than ever on reclaiming their land. In 1987 the government gave them a temporary place at Onderstepoort near Sun City.

However, in 1990 the Magopa community, convinced that they had tried all means to get their land back openly, decided to simply return. They got permission for some of their old people to clean the graves of their ancestors buried at Magopa. Gradually more and more people drifted back to Magopa, without getting "permission" to return. By March 1991 more than a thousand people had returned to Magopa and were living in tin shacks scattered among the broken-down stone houses. However, the return did not represent a return to the old ways since the land had been leased to the local agricultural union for additional grazing and it was the cattle of neighbouring white farmers that grazed among the ruins and not those of the Magopa people. The Magopa people reopened negotiations with the government for the return of their land but waited for official permission to return before starting to rebuild on a more permanent basis. The community also tried legal means to win their land back (Chester, 1990; Jaffee, 1987; Anon., 1991c).

Following the legal route seemed to pay dividends for the Magopa community when in October 1992 they won their court case against the government for the return of their land. This represented the first time that the government had in fact agreed to return land to a black community dispossessed of their land. However, it was only a partial victory since the Magopa community received back only half of the land they had once owned. The returned land (the farm Zwartrand) was rocky and not suitable for crops. The government retained the part previously utilised by the community for farming. This portion (the farm Hartebeeslaagte) was still being leased to white farmers for grazing. The Magopa community planned to continue their fight to regain the remaining portion of their land by making representations to the Advisory Commission on Land Allocation (ACLA) (Griffin, 1992).

ii) Machaviestad: Return and confrontation

The strong desire to return to their ancestral land, as evinced by communities like Magopa, was in most cases so intense that inevitably they tried to return. This return would most often lead to confrontation, sometimes violent and bitter, with the authorities, who in some cases were backed by local white farmers. One such case was the community of Machaviestad (also known as Matlaong) near Potchefstroom who were removed from their land in 1971. The tribe claimed that the land had been deeded to them by the Voortrekker leader Hendrik Potgieter in the 1830s. But the historical document — *Patch Kontrak* — which could have backed their claim had since been lost. The government labelled them "squatters" because they had no title deed.

In December 1990 the community were granted permission (an annual occurrence) to visit Machaviestad to restore and tend to the graves of their ancestors for a period of four days. However, instead of leaving after the four days they decided to remain on the land at Machaviestad. Officials of the Potchefstroom Town Council soon arrived and informed the community that they had to leave immediately or face prosecution. The community refused to budge, trespassing charges were brought against them and they were forcibly evicted (Moroke, 1991).

In April 1992 a group of 75 Machaviestad community members were again arrested when they tried to occupy the land at Machaviestad. However, a new threat to the Machaviestad community's land claim occurred when a month later in May the tribe were informed by the National Parks Board (NPB) that the latter had agreed in principle with the Potchefstroom Town Council to buy the land

and turn it into a game reserve. The tribe were assured that they would be allowed to visit their ancestral graves which would be well protected and looked after by the NPB. This new plan came as a surprise to the tribe who had high hopes that the newly appointed Advisory Commission on Land Allocations (ACLA) would recommend that they be allowed back to Machaviestad. They were particularly upset that the Potchefstroom Town Council had not given them the first option to buy back their land (Dhlamini, 1992). It was such insensitivity which continued to threaten any process of land reform.

iii) Goedgevonden: Deliberate reoccupation

Two weeks after a meeting in March 1991 by dispossessed communities to discuss strategies for the reoccupation of ancestral land, one of the participating communities — Goedgevonden — put their plan into action and reoccupied their ancestral land. Packing up all their household furniture, 200 members of the community made the 200 kilometre journey from the Bophuthatswana area of Vrieschgewaagd back to the farm Goedgevonden near Ventersdorp in the Western Transvaal. The community had instructed their attorney to inform the Deputy Minister of Agriculture and Development Aid, P.G. Marais, of their return. For the community their return was an act of desperation in the face of unsuccessful attempts to negotiate the matter with the government. A year previously the then Minister of Agriculture, Kraai van Niekerk, had given the assurance that the government would keep the sale of the land in abeyance pending negotiations with the Goedgevonden community. However, no meetings were ever held and the community hoped that their reoccupation would prompt the government to start direct talks with them. At the time of their removal in 1978 the farm was owned by the SADT and the community had occupied it since 1947 (Collinge, 1991a).

A few days after their reoccupation the authorities set up a roadblock at the entrance to the farm and nobody was allowed onto the property. The reoccupation was suspended after an agreement was negotiated with the Department of Agriculture and Development Aid pending further talks with the authorities to settle the position of those already on the farm (Anon., 1991a & 1991b).

However, while further returns were suspended, the authorities went ahead with plans for the eviction of the community on counts of trespass. The case came before the Supreme Court (Transvaal) where the eviction notices were upheld. Subsequently the community made an appeal to the Appellate

Division of the Supreme Court. While the court cases were proceeding the area in which those already on the farm had set up their tin shacks was cordoned off with barbed wire by the authorities and a roadblock, only open between 8 a.m. and 6 p.m., was set up. Access to the cordoned-off area was allowed only to those residents whose names checked with a list held by the guards of the Department of Agriculture and Development Aid manning the roadblock (Rulashe, 1992).

The Goedgevonden community did not only have to contend with the obstructionist attitudes of the Department of Agriculture and Development Aid officials but also faced the resentments of local whites who considered the land as "white" land. On the night of 10/11 May 1991 the South African Police (SAP) were forced to take unprecedented action against a large group of white rightwing extremists (estimated at 1 000) who attacked the Goedgevonden returnees. The SAP had opened fire on them breaking up their attack in which fifteen shacks were demolished or vandalised and looted while a number of inhabitants were also injured (Collinge, 1991b).

Goedgevonden soon became a test case for the government since the farm was a piece of land that could be returned without depriving anyone in return, that is it was an unoccupied piece of land.[1] While the government was busy deciding what to do with the Goedgevonden land the Department of Agriculture and Development Aid refused to allow the community to plough or to rebuild their old houses. According to the Department to do so would be to create a [p]*ermanent situation* and the [s]*tatus quo* could only be maintained by forbidding any improvements to living conditions or repairs to the ruins of old homes destroyed at the time of the removal in 1978. The community felt that the government was being deliberately obstructionist in putting forward a solution on the basis of [a]*gricultural productivity*. This in effect meant that the community would first have to return to Vrieschgewaagd in Bophuthatswana, whereafter officials (who only knew white farming) would decide what kind of productive farming was viable at Goedgevonden. On the basis of their decision they would then select those most suitable to undertake such activities and allow only them to return, that is only those who would actually be working the land. This would exclude those who might live there but participate in other employment. This was totally unacceptable to the Goedgevonden community. They wanted as a first priority the return of Goedgevonden after which the productive viability would be worked out in conjunction with other off-farm activities which, together with communal agricultural methods, would allow the community to make an acceptable living (Rulashe, 1992).

iv) Majeng: Land sale to private owners

A major concern to communities trying to have their land claims reviewed by ACLA was the apparent hurried sales of state-owned land to private owners. This appeared to these communities to be a cynical attempt by the government to bypass the review process since ACLA's brief only covered dispossessed land still owned by the state. One such case was the Majeng community near Barkly West in the Northern Cape.

The Majeng community had been living in the area between the Harts and Vaal rivers since the turn of the century. Between 1969 and 1974 the families at Majeng were compelled by the government to move to Vaalboshoek, about 50 kilometres away, which was later incorporated into Bophuthatswana. In 1984 many of these families were again moved, this time to Kgomotso about 30 kilometres away from Majeng. The Majeng land was registered in the name of the government and for many years it lay fallow before being leased to neighbouring white farmers (Pottinger, 1992a).

On 17 March 1992 the Majeng community informed ACLA that they would be forwarding a claim for the land from which they had originally been removed. But in June 1992 the community were barred from cleaning the graves of their forefathers on the land and told they would be charged with trespassing. The land was being leased to white farmers and the community also then found out that the Department of Agriculture and Development Aid was in the process of selling this land to six white farmers. The Majeng community accused the government of double dealing since they had had numerous discussions with the Department of Agriculture and Development Aid regarding reinstatement of the land to them, and despite assurances from the minister that no sale of the land would take place, negotiations for its sale to white farmers had gone ahead. Understandably this community questioned the government's commitment to a fair resolution of land claims (Barkhuizen, 1992).

Agreement to sell the Majeng land to white farmers had in fact already been finalised on 31 January 1992. The land transfers had been registered only days after the Majeng people's attempt to clean their graves in June and before the former inhabitants could give evidence before ACLA. Apparently senior government officials had persuaded the Registrar of Deeds in the Kimberley office to rush through the registration (taking one day instead of the usual week) without informing him that the land

was being claimed by former black residents. The official concerned had been informed that there was a danger of squatters moving onto the land. It seems that the officials of the Department of Agriculture and Development Aid had deliberately speeded up the process of registration when they learnt that lawyers representing the Majeng community had become aware of the agreements to sell the land. The officials also waived the condition of sale that required the white farmers to consolidate their existing land with their newly acquired land before registration could be effected. Instead the officials got the farmers to sign irrevocable undertakings that they would in future consolidate their land, thus bypassing the terms of the agreement of sale and enabling immediate registration (Pottinger, 1992b).

However, the chairman of ACLA, Justice van Reenen, immediately ordered an enquiry into the sale. The sale occurred despite a public promise in May 1990 by the then Minister of Agriculture, Kraai van Niekerk, that agricultural land seized by the government in terms of apartheid's consolidation policies would not be sold, as well as a pledge by the Minister of Regional Government and Land Affairs, Jacob de Villiers, that black communities forced off their land by past policies would be given a chance to put their case to ACLA. In June 1992 Minister De Villiers reiterated his pledge and added that land would only be sold after ACLA's advice on any specific piece of land had been considered. Since March 1991 the Majeng community's name had been on the list of dispossessed communities drawn up by the National Land Committee. After the sale of the land the Majeng community made preparations to contest it in court and to have the sale set aside (Pottinger, 1992a).

In June 1992 the Majeng community brought before the Supreme Court in Kimberley an urgent interdict against the government, the Minister of Agriculture and Development Aid and the six farmers who had bought the land. In their papers lodged with the court the Majeng community argued that the transfer of the land was prejudicial to their right to have their claims considered by ACLA (Robertson, 1992).

The controversy and publicity surrounding the sale of the Majeng land led to a measure of success concerning a land sale in the Eastern Cape (Ciskei) in August 1992. The 18 000 members of the Thornhill community were forcibly removed to the Transkei but fled at the time of Transkei's independence, wanting to keep their South African citizenship, but this was lost when the Ciskei

obtained its independence. The government promised them land but they never received any and scratched out a miserable existence at Thornhill (Krige, 1992).

In mid-1992 the Thornhill community complained to ACLA about the sale of land near Queenstown which they felt was rightfully theirs. This sale was also being rushed through by officials of the Department of Public Works, but four days after the community's complaint to ACLA the auction sale of the land was stopped because ACLA laid a complaint with the government. Conversely the cancelling of the proposed sale alarmed white farmers in the area whose main objection was that commercial and communal farming could not coexist side by side (Krige, 1992).

v) Cremin: A case of "unlawful" expropriation?

With the Majeng case being contested in court, dispossessed communities were given a measure of hope and increasingly began turning to legal means to regain their land. In August 1992 a former resident, Andries Radebe, of the "black spot" of Cremin, 30 kilometres from Ladysmith in Natal, with the help of the Legal Resources Centre in Durban, lodged papers in the Natal Supreme Court. In 1977 Radebe and 3 000 other people had been moved from Cremin to the eZakheni township. In his papers Radebe alleged that, for several reasons, correct procedures were not followed when the land was expropriated and as a result the government never got proper title to the land. He felt that the officials who carried out the removals, expropriation and other associated functions, had not done so properly under the laws of the time. They had ignored or neglected a number of important technicalities, thus making the expropriation invalid. Radebe further argued that he had never accepted the legality of the expropriation or had not understood the significance of accepting government compensation for his land and property. It was hoped that this case would prove to be a test case and be decided in the favour of the former Cremin resident (Stagg, 1992; Rickard, 1994; Slachmuijlder, 1994).

However, many of these hopes were dashed when on 13 November 1992 the Supreme Court (Kimberley Northern Cape Division) handed down a ruling concerning the sale of the Majeng land. In his judgement Mr Justice J.J. Basson ruled that the land had been allocated for specific purposes before the Abolition of Racially Based Land Measures Act had been passed on 30 June 1991 and that ACLA could therefore not make recommendations to the state president on the Majeng community's claim (Robertson, 1992; *Weekly Mail* reporters, 1992). This ruling placed the most narrow

interpretation possible on this Act and effectively excluded most other claims being heard by ACLA. Understandably the ruling also undermined the confidence dispossessed communities had in the ability of ACLA to assist them in any practical way. They were forced to reassess their strategies concerning their struggle to have their land restored to them.

A further setback for those attempting to legally recover their expropriated land occurred when judgement in the Cremin case went against the applicant. In February 1994 Andries Radebe lost his application for the return of his land in the Supreme Court (Natal Division) in Pietermaritzburg. Radebe lost his case on a technicality, namely that there was a three year deadline for appeals against expropriation. Radebe, however, argued that he had waited 16 years because he had been [t]*oo confused and frightened to have done anything earlier about challenging the legality of the state action* (the states of emergency in the 1980s would also have made it risky to confront the state in this way) and because of the state's action in dispossessing him he had become impoverished and [t]*oo poor to seek legal advice* (Rickard, 1994). This argument was not accepted by Mr Justice Booysen who said that if the application was allowed it would [g]*ravely prejudice the present owner of the land and the other respondents* [state officials] *in the case: several key players had died in the intervening years, while important files had been lost or destroyed* (Rickard, 1994). This judgement was not at all encouraging to those communities who had been waiting for the return of their land for many years.

ENDNOTES:

1. At the time a white Ventersdorp farmer was leasing the 1 870 hectares as additional grazing for R311 per month (Mushi, 1991).

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IV: EVICTIONS: THE eZAKHENI TEST CASE

Anthony Minnaar

Imagine this scenario: An old man in his sixties, born on the farm where he has been a tenant labourer all his life, as was his father and grandfather before him, is given notice to leave the farm and vacate his house. When he says he has nowhere to go, the local magistrate gives him an extension of notice. But when this expires, he is arrested. He is then found guilty of unlawful squatting and given the option of a fine or three months in prison. He has no money to pay the fine so he is jailed. While in jail his wattle-and-daub hut is dismantled/destroyed and the police come and take his family away and dump them at a so-called "resettlement" camp — a barren desolate place with no facilities or adequate land for farming purposes. His family resent being removed from land they have occupied for as long as they could remember, on which their forefathers were buried, and on which they have made a living as tenant farmers. However, now they have no future or very little hope of starting all over and re-establishing themselves.

You might say this only happened in the bad old days of apartheid but the practice of evictions is very much alive in a number of rural areas of Natal and the Eastern Transvaal. Legally a white farmer needs only to give a three month's notice in order for a black family to be evicted, often from land they have worked for generations.

However, there appeared to be some hope for evictees in a test case in the Natal Midlands near the eZakheni township. The case involved 15 black labour tenant families and two "labour" farms owned by an absentee landlord. After leasing the farms for a period, a Muden farmer bought them. On purchase he had attempted to evict the families. The latter defied the eviction, arguing that they had a legitimate right to live on the land since their forefathers had lived and died there, and they also actively farmed the land. In retaliation the farmer, assisted by neighbours and the Weenen police, rounded up the tenants' livestock and impounded 184 cattle and 100 goats for which he claimed R18 500 in trespass fees (almost R85 per cattle and R25 per goat). The families would never have been able to raise the money for the trespass fee, which was in any case arbitrarily set by the farmer. This action by the farmer set off a series of events which included the cutting of the farmer's fences and the burning of his grazing while he retaliated by cutting off the water supply to the families and

barring the entry gate to the two farms being used by the families. The tenants, with the assistance of the Association for Rural Advancement (AFRA) and the Weenen-based Church Agricultural Project (CAP), sought a permanent Supreme Court order preventing their eviction. Eventually an out-of-court settlement was reached whereby the families were granted the right to remain on the two farms and a two-year lease with the option to buy at the end of that period. This case particularly highlighted the fact that farmers could not take the law into their own hands in trying to evict tenants. The case also represented a major victory for those organisations campaigning for security of tenure for thousands of labour tenants and farm workers (Anon., 1991).

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V: CONSERVE IT OR USE IT?: THE DUKUDUKU FOREST

Sam Pretorius

It is disturbing that so little attention has been given to the people living in the Dukuduku State Forest near Mtubatuba in Zululand. Attention had first been focused on the plight of the forest and of the squatters living there by the eruption of the controversy surrounding the planned mining by Richards Bay Minerals (RBM) of the dunes on the eastern shores of St Lucia Lake. In a remark of an environmental activist concerning the St Lucia dune mining controversy the following sentiment was expressed: [I]*t was nothing deliberate, but the people haven't been foremost in the minds of the Campaign for St Lucia (CSL)* (Marais, 1993:34). Very little has been done for the people of Dukuduku except to classify them as "squatters". But, [s]*ome of them were born there decades ago and others had been there for years* (Anon., 1992a) and [t]*hey have built their own school and set up a clinic area* (Matthewman, 1992).

Removals of people from the state forests in the area and from the eastern shores of St Lucia Lake had [o]*ccurred between 1956 and 1974, but have been poorly documented* (Marais, 1993:34). Records are only available at the regional forestry office in Eshowe, but when asked to see the records, the district officer apparently replied: [w]*ith this new SA stuff, you know, we don't want to go digging up old bones* (Marais, 1993:34). In the 1980s many of those removed began coming back into the area and entered the Dukuduku Forest, squatting there "illegally". By October 1991 an estimated 2 000 squatters (400 families) were scattered throughout the 13 500 hectares of the Dukuduku Forest (Carnie, 1991; Matthewman, 1992), mostly because they had nowhere else to go and had been refused access to the surrounding pine plantations.

The Dukuduku Forest is the largest remaining example of coastal lowland forest in South Africa and has been earmarked for inclusion into the Greater St Lucia Wetland Park run by the Natal Parks Board (NPB). When the extent of the squatters' penetration of the forest was realised there were fears that they would cause irrevocable harm to it. For this reason a number of conservationists, in particular the Wildlife Society, had put pressure on the authorities to remove the Dukuduku people from the forest and to provide alternative land for their resettlement.

In 1990 the Department of Forestry had obtained an interdict in the Pietermaritzburg Supreme Court for the immediate removal of 400 Dukuduku families. However, the Natal Provincial Administration (NPA) had successfully argued for a delay so that alternative land could be arranged for them. Months of negotiations between the NPA, the Department of Forestry and the NPB had been fruitless since no-one wanted to take the responsibility for providing alternative land or for evicting the squatters (Slachmuijlder, 1993). However, throughout the negotiations concerning their removal the squatters were never consulted nor were their views and wishes taken into account.

In October 1992 the NPA came to an agreement with the Dukuduku community that no further squatters would settle in the forest and that the NPA would consult and negotiate with them concerning the provision of alternative land for resettlement. The situation was complicated by the fact that some people were illegally selling plots of land in the Dukuduku Forest thereby encouraging more settlers into the forest under the mistaken belief that such buyers now "owned their plot of land" in the forest (Smith, 1992).

Eventually alternative land five kilometres from the forest was provided by the NPA. The NPA built two schools at the new site and offered each squatter R1 000 to relocate. By mid-October 1993 only 200 out of 950 families (representing an estimated 8 000-12 000 illegal squatters) had voluntarily moved. The remaining squatters had refused to leave the forest since they felt that the offered land was inadequate (not as fertile as the virgin forest land), that they had a hereditary right to land in the forest and finally that they did not want to abandon the gardens and crops they had already established in the forest. Eventually they were all served notices to vacate the Dukuduku Forest by the 31 October 1993. To enforce the eviction notices the NPA demolished about 200 dwellings (Cresswell, 1993; Slachmuijlder, 1993; Zondi, 1993; Smith, 1993).

Tensions had soon arisen and the Dukuduku people accused the police of using excessive force and harassing them in order to enforce the eviction notices. Residents maintained that: [c]*aspirs and police vans cut through the bush at dangerous speeds* (Cresswell, 1993), while a man was killed when [d]*emolishers and policemen broke down a hut in the forest* (Cresswell, 1993). Natal MEC Val Volker said that: [t]*he NPA would continue to help people move to the new site* (Cresswell, 1993), while the NPA threatened that charges would be laid against people who continued to stay in the forest.

After pressure from the public, the final environmental impact report by the Council for Scientific and Industrial Research (CSIR) on the proposed mining of the St Lucia dunes gave more attention to the people of the region. Claims for relocation to ancestral land (including the Dukuduku Forest and the eastern shores of St Lucia Lake) were received from the Mkhwanazi and Mbuyazi clans. The problem is that the Mkhwanazi clan (the bigger of the two) favours mining of the area, while the Mbuyazi clan wants the land returned to their people (Moloi, 1993). The Mkhwanazi clan's pro-mining sentiment is understandable in the light of them [h]*aving been removed from their homes and land — often several times — to make way for state conservation projects of the Parks Board or Department of Forestry* (Marais, 1993:35) along with the prospect of their getting jobs at the new mining site.

The Mkhwanazi clan's decision to support mining would appear to be reasonable under the circumstances but the tragedy is that it reflects the effect that the actions of the government has had on these people's attitude towards conservation. It is interesting to note that [A]*NC president Nelson Mandela signed the campaign's [CSL] anti-mining petition* on 16 August 1993 (Anon., 1993).

The people of this region are in desperate need of resources and have virtually no option other than that of exploiting the forest. The challenge that environmentalists and others concerned with this issue are faced with, is to [m]*ake the resources valuable* through some form of sustainable development.

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