

- Land Reform
 - A summary of existing land tenure systems
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LAND is the most precious resource for the life and continued existence of man. It is on land that man settles and achieves security. He can work the land and make a living. Land is the basis on which an entire economic, social and constitutional order is founded. It is therefore understandable why the issues of land and land tenure give rise to many questions and many fears. Land is, at the same time, a valuable asset. The population increases, cities and towns grow and undertakings expand continually. But the amount of land remains the same. For this reason the use of land must be coupled with utmost sensitivity and sound planning.

In South Africa, land tenure and the use of land displays an uneven pattern as a result of many historical factors. Historical settlement patterns, discriminatory measures, economic circumstances and many other factors have contributed to the situation today, where land and land tenure have become one of the most serious problem areas in the country.

Land problems

There are some who think that the land problems can be solved simply by repealing discriminatory laws and by making land available and accessible to all. Certainly the right to own one's own land is an elementary human need that must be respected. However, land problems entail much more than individual claims to land tenure.

There are many other issues to be addressed, such as:
the advancement of agriculture
urbanisation

community development

systems of land registration

Ittlti'

conservation of the environment.

Land reform

Care must also be taken to ensure that land reform is not perceived and experienced as a means of taking away existing security or disturbing existing patterns of the societal order.

Land reform must seek to promote_

t human dignity

t human freedom

l? human progress.

For this reason the Government believes that-

t rights to land must be made accessible in a manner

which is fair to all within a system of a market-

related economy and individual ownership;

i' the productive use of land as the basis for creation

of wealth should be retained and extended:

1% in future this creation of wealth should be access-

ible to all without qualification;

it these opportunities should be expanded and

adapted for those sectors of the population who do

not as yet share fully in the country's progress.

Reform of land tenure should not take place in isola-

tion. It must form part of a total strategy of reform

aimed at the achievement of peace, prosperity, pro-

gress and justice.

The Government's policy on land is based on three

principles:

ir Everyone must be able to obtain land on an equal

basis.

t Everyone's rights to land must enjoy equal protec-

tion.

4: Land is a national asset belonging to all the people

of South Africa and the effective utilisation thereof

is in everyone's interests.

Land tenure

Land rights must be accessible to all through-

out the country

Land rights must be made equally accessible to all,

irrespective of race or population group. The recog-

nition of everyone's equal rights to land is one side of

the coin; to meet the demand for land tenure is another

matter. It is obviously impossible to provide land and

land tenure for everyone. What can be done, however,

and what the Government certainly intends to do, is to

implement more extensive support measures for the

acquisition of land tenure by all South Africans.

In South Africa land tenure is in many respects a complex issue. In the past, land was reserved on a separate basis for the different population groups, because it was believed that peaceful co-existence could thus be ensured.

t In terms of the Black Land Acts of 1913 and 1936. land was reserved for Blacks in constitutionally separate areas while in terms of other laws land was made available to them separately in towns and cities. Certain portions of Black land that were not incorporated into the self-governing territories are being administered by the South African Development Trust.

at- Coloured areas are areas declared as Coloured Group Areas in terms of the Group Areas Act as well as certain rural and settlement areas allocated to Coloureds in terms of other legislation.

at Indian areas are those areas designated as such in terms of the Group Areas Act.

lr Except for central business districts, industrial areas, national parks. State land and wilderness areas. the remaining land is largely owned and controlled by Whites although large numbers of people of colour are also housed there.

The Government has now decided in terms of the Abolition of Racially Based Land Ownership Regulations-

t to repeal all measures that regulate land rights and land tenure according to race and population group:

it that race and population group should no longer be a qualification for the acquisition of land rights: at that exclusive areas for specific races are, therefore, done away with.

The abolition of racial exclusivity does. however, not mean that communities will be compelled to have to surrender their identity. Areas or neighbourhoods that prefer to do so, will be able to maintain the particular character of their own community on the basis of ongoing voluntary and natural association, but not on the basis of racially exclusiveness which rests on statutory measures.

The change-over to the unrestricted acquisition of rights to land will not happen overnight in terms of a single Act and certain additional adaptations will have to be authorised by the State President by way of proclamation. In essence this is an evolutionary process which must be set in motion systematically and with singleness of purpose. Special measures will also have to be taken with regard to the utilisation of land in Black areas. In addition, the status of local authorities and self-governing territories that was founded on separate land ownership, will be maintained in the meantime. These issues will have to be resolved in the course of time and in the process of constitutional negotiation. In the meantime the areas of jurisdiction of the relevant authorities will be maintained by suitable measures. Regarding the acquisition of ownership by Blacks the abolition of the 1913 and 1936 Acts will bring about certain practical implications to which attention will have to be given on an ongoing basis:

it The constitutional future of the self-governing territories will form the subject of constitutional consultation, although purchases and transfer of land will not summarily be terminated.

lr Urgent development projects or other obligations could still necessitate the purchase and transfer of land. This will be applied in consultation with the people of the areas in question for development and settlement purposes. It will not be incorporated into the self-governing territories concerned for the sole purpose of state development.

it Administrative and political control of such land will, however, be assigned to the appropriate authority.

t The Commission for Co-operation and Development, which advises the Government on the purchasing of Black land, will be disbanded at a suitable date and the South African Development Trust will disband in due course:

it The tribal system of communal land tenure is culturally so deeply rooted and has so many social and management implications that it cannot be abolished summarily. This system is, however, not regarded as ideal and a system of voluntary change-over to individual land ownership, with the consent

of the relevant tribal authority, will be aspired to. Active steps will be taken to encourage individual land tenure and to make it possible. It Tribes will be helped to buy land for the purpose of agriculture and establishing towns, subject to the general prescripts which apply to the use of land. With a view to its own affairs all matters for Whites, Coloureds and Indians the relevant definitions of areas will be maintained, until such time as the constitutional negotiations result in a new dispensation. Various land tenure Acts have formed the statutory basis of the policy of separate development. The repeal of these laws thus requires the necessary adaptation measures with a view to the status of the areas and the authorities instituted for these areas. The status of these territories and authorities cannot be altered at this stage. Such changes must be the outcome of the process of constitutional negotiation and reform. Assistance : to promote the access to land rights

Undoubtedly the greatest challenge of the future is to assist people to acquire land and to use it in accordance with the best social and economic standards. Comprehensive aid projects for urban and rural settlement, agricultural development, housing, infrastructure, the establishment of towns and planning will have to be undertaken and existing schemes expanded, within the means of the country. Existing programmes will have to be adapted and the same criteria with regard to merit will apply to all. The assistance programmes will have to be implemented within the capabilities of the country, and here the private sector and foreign institutions have a big role to play. In this regard the Government's point of view is as follows:

In its approach to development, the Government does not view assistance as a means to achieve an artificial redistribution of land. but as a necessary instrument to achieve greater participation in and a contribution to the process of creating prosperity in the country. This applies to agricultural land as well. Private ownership of agricultural land and the

use of such land by private entrepreneurs forms the basis of an established and successful agricultural industry today. It is in the interests of the population as a whole that this system should continue and that the commercial production potential of land be maintained, with the proviso that opportunities for participation in the system must be opened to all?

The Government intends to address the entire issue of land reform and the development of land in a positive, forward-looking manner. It will simply serve no purpose to return to the past and to revive overlapping and conflicting land claims. This would unleash a great potential for conflict and could seriously disturb the entire country's development momentum.

Everyone's rights and claims to land must be equally protected

Private, community and public interests play an extremely important role in the utilisation of land. These interests must be reconciled and supported by mutual respect.

The Government intends to-

: introduce a uniform system of land registration and to upgrade inferior land titles to ownership:

1: allow traditional communal tenure, but to encourage individual land tenure;

2: respect private and community interests in the protection of land rights in a non-discriminatory manner.

The Government intends to rationalise the existing rights to land tenure and systems of land registration by means of the Upgrading of Land Tenure Bill as follows, by-

.. upgrading the various systems of land tenure (leasehold, quitrent and deed of grant) in Black areas to full ownership:

.. establishing a single land registration system in the office of the Registrar of Deeds.

The gist of this Bill is that inferior forms of land tenure are to be converted to full ownership in a manner which is simple and inexpensive. -

Tribal communities will also be given the competence to exercise rights of ownership in their own name and title. Mechanisms will be created for the settlement of disputes about land.

A considerable number of practical problems will have to be resolved, but the Government is convinced that the upgrading of inferior rights of tenure will provide a strong stimulus to the economy since a new property market with substantial potential for growth is thereby created.

The Government does not intend to overturn the existing order in the tribal areas, but at the same time, nevertheless wishes to encourage individual ownership of land.

The Government will at all times acknowledge the integrity of land rights and protect them against all forms of infringement or threat, squatting in particular. The Government is well aware of the fact that sufficient settlement and housing opportunities will have to be provided in order not to bring existing property rights under pressure". - .

The established urban environment must be protected against dilapidation and deterioration. The Environment Bill will make provision for the protection of the urban environment by?

- t adopting effective management strategies
- at attending to states of dilapidation
- at preventing urban deterioration
- t combating abuses.

The Government fully appreciates that some communities are concerned about the possible demise of their established community life by the abolition of the Group Areas Act. To allay these fears, the Government is committed to-

- t an active policy aimed at alleviating the housing shortage;

- at giving local communities a greater say in the preservation of their community standards;
- it encourage and assist communities to develop a culture of independence:

4r introduce simple arbitration procedures for the resolution of disputes in the community so that communities can solve their own problems and develop as viable, supportive units.

Utilisation of land

The effective utilisation of land is in the interest of all

At present land tenure is one of the problems in South Africa. As the State President said in his Opening address to Parliament on 1 February 1991: hNo-one dares underestimate the emotion and even the potential conflict attached to land rights. h

The government has taken a clear and unequivocal policy stand that-

: the commercial production value of agricultural land must be maintained and developed further

Within the framework of free enterprise and free access to private ownership;

t the economic and human potential of backward areas must be developed in a purposeful and coordinated manner;

high priority must be given to making urban land available to facilitate the process of urbanisation:

t land must be maintained and conserved for posterity.

There are mainly two systems of ownership of agricultural land in South Africa, namely private ownership and traditional communal ownership. The importance of commercial farming will certainly never be underestimated, since this sector is responsible for 95 per cent of the entire agricultural output at present. The current agricultural policy emphasises-

t economic and social development and stability

t a healthy agricultural sector

it a sufficient supply of food for the domestic market

it optimum promotion of the export potential of agricultural products.

The policy will be expanded further and the potential of subsistence farming areas must also be exploited. Agricultural land is a valuable asset that must be conserved. A sound balance must at all times be maintained between the urban and the rural environment. Agricultural opportunities must be made accessible to everyone in the country, in accordance with sound business principles and the precepts of the free enterprise system. The Government is totally opposed to any form of redistribution of agricultural land, whether by means of confiscation, nationalisation or expropriation. To ensure that equal opportunities be given to all in the agricultural sphere, agricultural credit and Land Bank assistance will be granted in all deserving cases in future.

Rural development

Backward areas must, as a matter of urgency, be helped to_

t produce more food

we create more job opportunities

v: alleviate the problem of overpopulation through a positive urbanisation programme.

A Rural Development Corporation is to be established, which will-

t make maximum use of the talents of experts from both home and abroad

i make maximum use of the resources of both state and private institutions

at co-ordinate existing expertise and structures

it establish additional settlements

it further exploit the agricultural potential particularly in less developed areas.

High priority will be given at all levels to the investigation into and realisation of making agricultural land available and to the establishment of towns in backward areas.

In addition to measures aimed at the development of subsistence agricultural areas, the Rural Development Bill also contains provisions aimed at assisting new entrepreneurs in future to become established as independent small-time and middle-sized farmers.

Urbanisation

The Government is very much aware of the natural and irreversible process of urbanisation which is a feature of all developing countries. In this regard it is unequivocally stated that:

slMaking land available to regulate the urbanisation process in an orderly manner and to accommodate it timeously, is one of the greatest development challenges which this country has ever faced." This strongly worded statement on the part of the Government is proof of its determination to make our towns and cities the focal point of growth and development by providing land, housing and job opportunities there, since that is where the greatest part of the South African population will be living and working. The Government has expressed the conviction that: ttIf the subsistence needs which are linked with the urbanisation process are not addressed properly, the striving for peace, progress and stability in the country will never be realised?

Town planning and the establishment and expansion of towns will be regulated in accordance with the needs and level of sophistication of the community concerned. Because of the urgent need to establish new settlements, provision has already been made in the new Less Formal Establishment of Towns Bill for simpler procedures for the establishments of towns at places and in circumstances determined by the Administrators of the provinces. "

_ In practical terms this means that a farmer will also in certain circumstances be able to apply to establish a farm village.

Housing

Housing, particularly informal housing on premises that have basic services and accompanying community facilities, will continue to form the basis of rapid urbanisation. In this regard a start has already been made with extensive schemes and projects. Of course, greater urbanisation creates ever more needs, therefore domestic resources must be optimally utilised and a sound agricultural policy must again be emphasised in this context.

Land and funds for low-income housing are still urgently needed and the South African Advisory Council on Housing has been commissioned to advise the Government on a new national housing policy and strategy. Squatting is a fact of life which has to be grasped in its entirety and must be addressed positively.

Conservation of the environment

The environment and land must be preserved for future generations. Air, water and ground pollution, as well as the problems of land erosion and damage to the environment, are matters of extreme seriousness that must be countered at every level. The accessibility of land to all is in essence also an act of conservation. The more people who have a private interest in land and the utilisation thereof, the greater the motivation to conserve the land and the environment.

The conservation of the environment has many facets, both nationally and internationally. It is linked with socio-economic problems, and level of education and settlement practices—all matters that are well understood by the Government and which will be addressed.

Ultimately, man is the key factor in the effective utilisation of development opportunities offered by land.

The making available of land, the utilisation of land and the protection of the environment are all ways in which the prosperity and security of South Africans can be ensured.

Peace, security and prosperity

South Africa is in the midst of major changes in every conceivable sphere—constitutional, political, economic and social. It serves no purpose to create new institutions and structures and to design new governmental procedures if the most fundamental problems are not addressed. The ownership and utilisation of land are examples of such fundamental issues. A sound, viable and non-discriminatory land tenure policy and real action to settle people and to enable them to live and work according to a decent standard is an immediate task and challenge. In its land tenure policy as envisaged in the new draft legislation, the Government has

accepted this challenge. Peace, security, prosperity and human dignity are not abstract concepts. They are fed and nurtured where every person lives and works. The draft legislation which is to be put before Parliament as part of the Government's comprehensive scheme for land reform, will not be adopted and applied without consultation. Because these measures are so wide-ranging and because they affect all aspects of the national interest in the socio-economic and constitutional spheres, it is essential that sufficient opportunity be afforded for consultation with relevant communities, representation and negotiation before they are implemented.

A summary of the existing land tenure systems

The expression land tenure, is used here to explain in layman's language the different forms of ownership, possession and occupation of land. The explanation is mainly aimed at legislation that would have to be repealed or rationalised in terms of a land reform programme.

The concept of ownership will be used as a point of departure for an explanation of land tenure. In South Africa, following the example of Western countries, ownership is legalised by the registration of title deeds in deeds offices. In broad outline it means the acquisition of an absolute right to use and enjoy the land. Ownership is sometimes referred to as freehold. This is from a legal point of view incorrect. However, the use of ownership in common parlance is not wholly inappropriate-especially not if it is used to distinguish ' (full) ownership from leasehold.

Land tenure is often discussed from an ideological point of view; In South Africa, and in large parts of Africa, ideological claims to land unfortunately spill over into Black vis-a-vis White demands. Such conflicting interests are understandable. Land tenure systems are inextricably intertwined with a country's political and social organisation.

In South Africa, in line with other African countries, land tenure systems were initially to a large extent dictated by the circumstances that prevailed when the Europeans first settled here. There were in fact large tracts of unoccupied land. The Europeans not only settled on vacant land, but also acquired land from the indigenous people by negotiation, cession, purchase and conquest. They brought European principles of individual land tenure and administration of land to bear upon land in general. This Eurocentric approach did not sufficiently take heed of the aspirations and needs of the indigenous African people. It gave rise to bitter and bloody conflicts. The distinction between Black and White ownership and occupation of land, nonetheless, gradually became an accomplished fact and was legally enshrined in the Black Land Act, 1913 (Act No. 27 of 1913).

The continued distinction was facilitated by the fact that Africans maintained an agrarian lifestyle and a subsistence economy for many years. They still occupied land in traditional fashion. This virtually paved the way for segregation measures which became more prominent as more and more Blacks entered the economic sector and became urbanised. In 1923, for instance, the first law was made to establish "locations" in which Black persons in urban areas were obliged to live. This culminated in the Blacks (Urban Areas) Act of 1945 which brought about the most comprehensive division between White and Black urban land.

Territorial segregation between Whites and Asians (mostly Indians) took an entirely different route. This was preceded by legislation primarily aimed at avoiding economic penetration by Asiatics (particularly Indians). This culminated in the Asiatic Land Tenure and Indian Representation Act, 1946 (Act No. 28 of 1946), which pegged the racial character of land as between Whites and Asians. Asiatics could later acquire ownership of land in areas set aside for them and Whites were debarred from acquiring land in those areas. The 1946 Act virtually served as a model for the first Group Areas Act of 1950.

There were no such prominent efforts to provide for segregation of Coloureds, but in 1950 they were also brought within the scope of the Group Areas Act. The first far-reaching change was, however, brought about by the Black Land Act, 1913 (Act No. 27 of 1913). In terms of that Act Blacks were prohibited from acquiring land outside the areas allocated to them. Whites were likewise prohibited from acquiring land in the areas set aside for Blacks. The land thus identified for Black ownership and occupation was listed in a Schedule to the Act. To this day the land is referred to as scheduled areas.

It was clear from the very beginning that the land set aside for Blacks was inadequate. In terms of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), a further category of land was therefore defined as set aside for ownership and occupation by Black persons. The land was called 'released areas', that is land that could be transferred to the South African Development Trust for adding to the scheduled areas.

According to a recent publication of the Urban Foundation both categories of land presently comprise 13.6 per cent of the total land area of the Republic of South Africa.

There are still a number of tribes on White-owned farms. Most tribes are, however, established on scheduled or released areas. In such tribal areas the traditional land tenure system still applies. In terms of this the tribal head, mostly called tchiefi in South Africa, holds the land in trust and tribal members occupy the land on a communal basis under his authority. Land does not have a commercial value and is not bought and sold. However, tribesmen acquire exclusive rights to the possession and occupation of residential sites and arable land while grazing and other natural resources such as water, clay and trees are used communally. The greatest disadvantage of this type of land tenure is that the land does not have a commercial value, it cannot serve as security, for instance for loans, and rights of occupation can under certain circumstances be revoked. (This system and the problems that go with it are, by the way, peculiar to land tenure in Africa south of the Sahara.)

Another important aspect of the 1913 and 1936 land is that it forms the basis of the six self-governing territories and of the independent states, Transkei, Bophuthatswana, Venda and Ciskei (referred to as TBVC countries). The constituting law of the self-governing territories is the Self-governing Territories Constitution Act of 1971. Each of the independent countries was constituted by way of a status Act and the land concerned was transferred to them. There is, however, still about one and a quarter million hectares outside the TBVC countries and self-governing territories that vests in the South African Development Trust or belongs to certain Black communities and individuals.

Another form of land tenure for Black persons developed from the residential separation in towns and cities outside the TBVC countries and self-governing territories. Initially townships, in which Blacks could acquire limited residential rights and rights of lease, were established. At present the position is such that townships under the control of Black local authorities are established on land which is known as development areas. In terms of the Black Communities Development

Act. 1984 (Act No. 4 of 1984), mainly Blacks can acquire leasehold and ownership in such townships. There are, however, so many technical requirements to be complied with before ownership can be granted that it is not yet possible to grant (full) ownership in all townships.

For the sake of completeness it should be mentioned that leasehold and ownership can likewise be acquired in about thirteen townships or land that is administered by the South African Development Trust and in townships situated in the self-governing territories. The measures concerned are contained in Proclamations, and Government Notices and in laws of the self-governing territories. i

Squatting, albeit mostly illegally, is a system of land tenure that occurs quite frequently nowadays. It is controlled by the Prevention of Illegal Squatting Act, 1951 (Act No. 52 of 1951). The Act provides that squatters may be prosecuted or relocated. The Act has, however, been amended in 1986 and again in 1988 to bring about the upgrading of squatter settlements-so much so that leasehold and eventually ownership can be granted in such settlements. '

Besides the 1913 and 1936 land Acts the most fundamental separation of land tenure is enforced by the Group Areas Act, 1966 (Act No. 36 of 1966). In terms of this Act the ownership of land has been frozen throughout the country since the first Group Areas Act was enacted in 1950. Most urban areas have been declared group areas for Whites, Coloureds and Indians. The rest of the country outside scheduled and released areas has been designated controlled areas. In these areas land may not be transferred from one racial group to another without the approval of the relevant minister. There are a number of exceptions, but the complete picture is one of absolute separation of the different race groups.

The Free Settlement Areas Act, 1988 (Act No. 102 of 1988), makes provision for free settlement areas in which the restrictive provisions of the Group Areas Act do not apply. In such areas immovable property may be acquired, occupied or transferred to any person, irrespective of race.

A significant number of Black persons live and work on farms. Most of them are dependent upon the farm owners for accommodation. Among them, especially in the Eastern Transvaal and in Natal, there is a considerable number of labour tenants. They have entered into agreements with the farm owners which give them the right to live and to farm there on a limited scale in return for their services for a certain period of each year, which ranges from two to six months. They thus acquire limited residential and land use rights in return for their services.

Lastly, a word about Coloured areas. Coloureds simply possess and occupy land that has been proclaimed as group areas for the Coloured group, and land which has been reserved for the occupation by members of the Coloured group in terms of the Coloured Persons Settlement Act, 1946 (Act No. 7 of 1946), and the Rural Coloured Areas Act, 1963 (Act No. 24 of 1963). These areas are administered as an own affair by the Coloured population group in terms of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983). It is for present purposes not necessary to analyse legislation with regard to land in greater detail. In the nature of things land tenure is a complex network of rights and duties. Since it affords material and psychological security it is necessary all over the world to regulate the acquisition and tenure thereof in the finest detail. It stands to reason that the land tenure reformer is faced with a formidable task. Land tenure is but a fraction of the body of political, economic, social, and nowadays also ecological, factors involved in the ownership and occupation of land. It is understandable that the Government now intends to deal with the whole spectrum and not only with the abolition of racially based land legislation.