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LAND REFORM IN SOUTH AFRICA

By Dee Mashinini

The South African government is preparing to tackle one of the most explosive reform issues it faces by taking the first steps towards repealing the 1913 and 1936 Land Acts – regarded as the foundations of apartheid. The proposed repeal would also affect the second fundamental law of apartheid, the Group Areas Act.

The principal objective of the land acts was to prevent blacks from entering into contracts for sale or lease of land. This attitude was reinforced by the bantustan establishments which the government found as good reason to refuse more land to the Africans.

De Klerk announced early last year that the Land Acts were being reviewed with the intention of replacing them with non-discriminatory measures that are generally acceptable. He said the Population Registration Act will automatically be repealed when a new constitution is enacted but is necessary until then.

The repeal of the Land Acts and the Group Areas Act is expected to be announced in de Klerk's speech to the opening of Parliament on 1 February. Although this could signal an end to apartheid's main laws on the statute book, South Africa would be left to adopt a bill of rights which will secure individual rights amongst all South Africans.

As in the case of the Separate Amenities Acts which were repealed in October 1990, racist tendencies toward the amenities are still evident. The repeal of the land acts will also take several months to implement and a number of years to effectively register results.

The promised repeal is being seen as the culmination of the resistance of black communities in their fight to regain lost land and the right to own and purchase land.

ANC constitutional expert, Albie Sachs, says South Africa presently has two completely different and unequal sets of land laws.

"Land law for whites was based on private property, registration of transactions in relation to land ownership, property certificate of title and demarcated plots."

In contrast, he says, black land is state-owned and controlled. Access to such land is governed by a system of grants, rigid laws of succession and supervision by government-appointed chiefs.

There are no official settlement areas outside the bantustans which are reserved for blacks. Additional land given to townships adjacent to cities has been done with the understanding that all persons living in the townships must have a home in one of the bantustans.

Sachs insists that, as the country changes its apartheid laws and structures, a Land Court must be established to mediate contending rights for ownership and occupancy, make awards in these terms and rule on compensation for parties with lesser claims.

The National Land Committee (NLC), whose constituent organisations spearheaded the fight against forced removals says, "a free market in land brings no real upliftment to the rural poor who have no money to buy land. It is one thing to ensure rights to buy land; it is quite another to give people ability to buy land and use it productively."

The NLC says that much of the land that constitutes the 14 percent occupied by South African blacks in bantustans is held in the name of the homeland governments where individual ministers have made local communities into ordinary tenants. The government also says tribally-based land will be phased out over a period of 10 years.

Exiled constitutional law expert Kader Asmal says that the repealing of the land acts must be replaced by a land policy which will guarantee ownership rights to the majority and the return of forcefully acquired land.

The United Democratic Front (UDF) and the Minister of Planning and Provincial Affairs, Hernus Kriel, have started talks on the returning of unused land to homeless Africans. At the end of one of their meetings in mid-August 1990, the Minister said there will be no more forced removals or demolishing of shanties without prior consultation with residents and organisations.

Analysts affirm that the repeal will only be enjoyed by a few rich Africans who can afford to buy houses in white areas. With the repeal of these acts there are no clues about a fair redistribution of land in line with the African National Congress (ANC) Freedom Charter declaration.

The ANC says a land policy must be adopted to replace the Land Acts and should include the following: assurance that the existing land rights are protected; those communities removed from "black spots" have their land returned to them without delay; and provision for legislation which will grant full protection and rights to farm workers and tenants living and working on farms.

Minister of Constitutional Development and Planning, Gerrit Viljoen, emphasised that existing land owners would not be affected by the decision to scrap the land laws. Viljoen said there was no question of land being restored to people from whom it had been expropriated because this would lead to a white revolution.

There nevertheless seems to be a broad consensus on the urgent need for land reform in South Africa amidst the problems anticipated in the process. Resistance is more likely to come from white farmers unions in the Orange Free State and the Transvaal who support the Conservative Party. They have already started forming vigilante units to defend against what they see as intruding black farmers and tenants.

A survey among 12 000 white farmers in Transvaal province drew a 95 percent vote against blacks owning land. Reports say farmers have been mounting massive gatherings to voice their protests against blacks owning land.

But supporters of the National Party and government institutions like the Development Bank have endorsed affirmative actions to assist black people in getting access to land in former white areas.

A recent ANC/COSATU statement indicates that nationalisation is not considered an option at the moment as conflicting national interests appear to be at stake.

Director of Socio-Legal Studies at the University of Natal Professor Mike Robertson, suggests that a land commission which will involve both government and opposition parties should be formed to look into all aspects of land redistribution.

Robertson says, conflicting ideas on the land question should be brought up with all interested parties, including farmers and financial institutions which will support the needy for the development of agriculture and housing for the homeless.

"True sharing of the land," observes Sachs, "as in the case of the country or of power, is not essentially a special or quantitative matter, an issue of quotas, but a question of values and interest." (SARDC)

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