

# RURAL ASPECTS OF THE WHITE PAPER ON LAND REFORM AND FOUR ACCOMPANYING BILLS

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## Principles

The *White Paper on Land Reform* (WP B-91) and the accompanying Bills incorporate several important shifts of principles for the National Party. At least in principle, there now appears to be consensus between the NP and the ANC that:

- access to land should be open to all, regardless of race;
- forms of tenure other than freehold have a right to exist and expand in a unified rural sector.

On the other hand, differences of principle remain on a number of fundamental issues, notably on:

- the need for redistribution or restitution of land;
- appropriate rates of compensation for present or past owners or occupants.

These will be matters for negotiation if prior consensus cannot be reached. Arguably, the NP will find itself having to give way on the questions of redistribution/restitution and compensation for past owners/occupants - Minister Kriel's announcement in Parliament on 20 May that government is to set up a body to hear land claims and is prepared to review its continued ownership of tracts of land acquired under its population relocation programme appears to confirm this - and the ANC will have to make concessions in respect of compensation for present owners of land.

This would form the basis for a stable solution to the rural land question. Whether such a solution could be achieved in practice would depend on the nature of the policies used to implement the mutually accepted principles. The four Bills lay out the policies presently proposed by government, and it is here - with the critical exception of its reluctance to consider redistribution - that the new position adopted is at its weakest.

## Policies

A substantial shift in policy for the NP - and for the ANC, if the 'discussion document' issued by the Land Commission earlier this year is representative of party policy - has occurred in respect of small scale farming. Both parties now appear to agree that large scale farming, whether privately, publicly or co-operatively undertaken, is not necessarily the most efficient form of agriculture, ie that small scale agriculture has a leading role to play in rural reform. But again, while consensus

on such a fundamental policy issue is welcome, the instruments proposed by government in the Rural Development Bill to give effect to the policy are far from adequate and are hardly likely to draw ANC support.

In respect of rural land, proposed state policy can be divided into two distinct (but overlapping) categories: tenure and small scale farming.

**Tenure:** Most of the legislative reforms intended to deracialize rural land tenure are contained in the Abolition of Racially Based Land Measures Bill (which has now been enlarged to incorporate the Residential Environment Bill to ensure that the latter is not voted down by the House of Representatives). The Abolition Bill is complex and difficult to follow in the form in which it has been presented, which suggests that some difficulties with it will not yet come to light. In essence, it scraps the three seminal acts - the Land Acts of 1913 and 1936 and the Group Areas Act - and all dependent legislation.

Clearly this is welcome in principle, but, first, the expunging of race is incomplete because the changes apply only to those measures passed by the Tricameral Parliament and its predecessor and, second, it leaves a large void since almost all of the land occupied by black South Africans is, in one way or another, governed by these acts. It is the way in which the government has attempted to fill this void that is the source of much concern.

In the 'homelands' much land is owned nominally by the South African Development Trust, which is abolished with the repeal of the 1936 Land Act. As to who shall own the land, the State President will have the sole power to decide. The Upgrading of Land Tenure Rights Bill (still to be published but the essence of which is contained in the *White Paper*) makes provision for certain categories of occupant, including 'tribes', to upgrade their tenure to ownership, and much land will end up in the right hands. The Bill should also provide protection for existing occupants of land in the 'homelands', by requiring that no land acquired by a 'tribe' in terms of the Bill, may be disposed of to any outside party without the permission of a court for a period of ten years after the acquisition of the land - by which stage a non-racial government should be well established.

Perhaps the two main objectives voiced by rural community support organisations relate: firstly, to the arbitrariness of the procedure; secondly, to the exclusion of many communities from the right to claim land in this way.

As Budlender et al point out, 'the State President will have no knowledge of the situation on the ground in any particular case. He will have to rely on information given to him by local officials. If they give him bad advice, he will make bad decisions. Those whose rights are affected will have no means of challenging the decision'. A better alternative would be to have the process administered by a public court operating according to publicly stated criteria and which offers a channel for appeal.

In relation to the second point, amongst others, many communities who do not

meet the tight legal definition of a 'tribe', many individual households, such as labour tenants, who do not occupy land in terms of a lease or a deed of grant and, of course, many communities who, because of forced relocation, no longer occupy land to which they have a long-standing claim, will not be able to upgrade their title.

This opens up the whole complex question of which claims to land should be regarded as valid and of what compensation should be paid to displaced occupants. Again, a public court of law with a special brief seems to be called for, although some respected members of the legal fraternity feel that the Roman-Dutch legal system itself is ill-equipped to deal with these issues. The attempts of the *White Paper* to keep the lid on what the NP regards as Pandora's box, look likely to succeed in the face of mounting political pressure, even from organisations such as the Urban Foundation and the Development Bank, and because of the obvious instability that failure to address the crucial political questions involved would create.

The remaining major change concerning tenure is contained in the Rural Development Bill, the third chapter of which provides for 'agricultural settlement by indigenous tribes'.

On paper this allows for the expansion of 'traditional communal' tenure, but in practice this is not likely to happen to any significant extent. Not only do many black rural communities not qualify as 'indigenous tribes', and many of the 60 or more existing forms of tenure not qualify as 'traditional communal', but the prerequisites for settlement are so restrictive and the extent of the Minister's arbitrary powers are so great that few communities are likely to find this route to land appealing. This would be more than regrettable because, if it is correct that upgrade is easier than settlement, then it is precisely the farming communities who were removed during the 1960s, 1970s and 1980s and who are in many instances substantially intact, that one should be looking to re-establish.

What is in many respects the most serious shortcoming of the proposed regulations applying to the extension of communal tenure, is the conception of small scale farming that they reveal.

**Small scale farming:** The *White Paper* is quite explicit that 'the size of (small farming) units must be determined with a view to their viability'. This assumes a relatively large minimum area per farm that would make it possible technically for the occupying household to earn a living income from agriculture, whereas most international experience indicates that small farming households - like many of their larger counterparts - generally prefer not to make farming their sole source of income. This is primarily a matter of risk management to which poor households are particularly sensitive. Nor is an 'economically viable' farm size necessary for farming 'to be taken seriously', as the emergence during the last decade of 30 000 small cane growers - mostly with access to only a hectare or two - demonstrates. Since the settlement of small farmers on both the public and the private schemes described by the Rural Development Bill can only take place with the approval of

the Minister, this outmoded concept of small farming will place a major limitation on access.

A still more important limitation is imposed by the retention of the Subdivision of Agricultural Land Act, which prohibits the subdivision of existing farms without special Ministerial permission. Though there appear to be a number of loopholes, chiefly through tenancy, in combination with capital constraint - the average commercial farm is capitalized to the tune of about R750 000 - the subdivision Act effectively ringfences small scale agriculture to areas which meet with the approval of the Minister.

This places the credibility of the state's efforts to foster small scale farming in doubt, particularly because self-initiated undertakings occurring through an appropriately reshaped market are more likely to succeed than settlement schemes, and this is where the main thrust of the small farming policy should be taking place. The limited extent of the land allocated by the state for its own settlement projects - a maximum of 474 000 ha of land already owned by the state (unless it purchases some more), representing less than 0.5 per cent of the total stock of agricultural land, and perhaps a good less in practice - adds further to the doubt.

The third prong of the Rural Development Bill proposes the establishment of a National Rural Development Corporation (NRDC) 'to plan, initiate, finance, co-ordinate, promote, carry out or evaluate a development programme'. It would be premature to dismiss the proposed corporation as inappropriate and ineffective, if only because its actual functions and funding are still largely unknown, but the setting up of what would seem to be a highly centralised structure, staffed in part by officials of the old, discredited development corporations, also creates serious doubts. At the least, the move would appear to be premature, since the *White Paper* refers to the intention to reformulate thoroughly rural development policy and the NRDC will hardly be in a position to do this dispassionately.

If what is contained in the Rural Development Bill is all there is to the state's affirmative action programme for small farmers, for which it acknowledged a need in the *White Paper*, then the programme is seriously deficient. Amongst the shortcomings, the barrier imposed by the Subdivision Act draws attention to the need to review a far wider range of legislation and procedures than merely those which are overtly racially discriminatory in content. Many discriminate in favour of large scale farmers. Then there is the need to adapt and extend the physical and institutional infrastructures, particularly to make the upgrade of existing subsistence agriculture. And, most controversially, there will be a need to undertake a state land acquisition programme - whether for grant, resale or lease - since neither the market, supplemented by an affirmative action programme, nor a land court are likely to 'deliver' land at politically acceptable rates.

There is little appreciation in the *White Paper* of these issues. If the *White Paper* is simply an interim measure, then there is much to commend for in its advances in principle. If it is an attempt to pre-empt further change, it cannot be successful and

must be firmly rejected.

**Reference**

Budlender, G, A Claassens, DG Marcus, M Moosa, M Robertson, J Yewitch (1991) - 'Statement on the *White Paper on Land Reform and the accompanying Bills*' (unpublished).

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