

## **Land reform – and rapidly!**

### **Introduction**

Many South Africans have suffered from land dispossession, denial of adequate access to land, inadequate forms of title to accessible land, and restrictions on the use thereof. These historical disadvantages have severely handicapped small business development, small-scale agriculture and the provision of housing. Various other factors, including unrealistically high building, surveying and registration standards impede rapid land reform and economic growth.

The gradualist approaches adopted so far to address land and housing issues have hardly made a dent in the problem. Many measures involving the simple suspension or abolition of obstructive laws and regulations can be implemented at the stroke of a pen and will have a virtually immediate effect.

### **Property and Rights in Land**

All South Africans should be able to acquire and enjoy property, including land, with secure title and the right to hold, use and enjoy, sell, let, and mortgage it. The Constitution's property clause recognises this entitlement to legally secure tenure, and charges the state to foster conditions enabling citizens to gain access to land. How, then, should the historically disadvantaged be helped to overcome existing or future obstacles?

To prevent things getting worse, the property clause in the Constitution should be strengthened with a requirement to prevent future legislation from placing any obstacle in the way of obtaining secure title. The insecure land rights which many South Africans hold now or will acquire in future should be secured unambiguously, with due regard to the interests of any community occupying the land. The restrictions on occupants of tribal land under "permission to occupy" dealing with or disposing of their land should be removed. Tribal land rights should be freely transferable and confined to members of the tribe if that is the tribe's preference.

Although the Land Reform (Labour Tenants) Act, 1996 entitles labour tenants to land previously owned by farmers, this discourages farmers from taking on or keeping labour tenants. So the law should instead uphold whatever agreement a farmer and tenant choose to make, enabling holders of rights to use them as they see fit, not confined to personal use or outright sale.

### **Superfluous Government Land**

Currently, land is made available only after infrastructure or basic housing can be provided, so most landless people are destined to stay that way. A national site-without-service approach (such as the Mayibuye programme in Gauteng) would establish people with undeveloped, securely-held land which they can develop. Site-without-service is a proven approach and has always been the basis of traditional land allocation.

Government owns around one third (32-40 million hectares) of South Africa's land, and much of this land is defined by the Department of Land Affairs as "superfluous" and readily disposable. Some of this superfluous state land should be transferred to the homeless free of charge, by a "one-household-one-plot" approach without financing or housing construction, survey or deeds registration. Land could be transferred into full and immediate ownership under secure and unambiguous title that can be freely sold, mortgaged or let.

The estimated three million homeless or landless families could readily each be given up to five hectares of rural land or 200 square metres of urban plot. This would still leave the state with a quarter of all South African land. All South Africans would then at least have a place of their own,

and be able to build a house, even if initially very rudimentary. This is better than the *status quo* – nothing – and would launch a dynamic and dramatic process of empowerment and housing improvement.

### **Democratised Administration and Disposal of Tribal Land**

There is a widespread belief that tribal Chiefs are reactionary and will resist the introduction of land ownership and mortgage. This is mistaken, as most wish to promote development in their areas, and tribes also want the income they can derive from selling or leasing land, but that debate need not be settled in advance. Chiefs should simply be enabled to allocate or dispose of land as they or their people choose, with the proceeds going into the tribal authority trust account.

Democratic methods such as community referenda should be encouraged to establish whether all non-residential land in tribal areas should remain “communally held” or whether and how some of it should be converted to ownership. Tribal authorities might be empowered to sell or let farms, or to convert pasturage grazing rights into cooperative farms.

### **The Challenge of Secure Title**

The legal requirements of land survey and deeds registration impede rapid large-scale provision of cheap land and housing. Systems of registration and survey historically used for “white” land are far too costly and slow, for too little gain, to use in the short term, if our aim is to facilitate the swift creation of secure title. So new land allocation should be made by a simple low-cost form of registration, defining land boundaries by description.

High-standard and costly land surveys should not be a precondition for the granting of more secure ownership rights to the millions of people whose rights are presently insecure, so the Land Survey Act should be suspended wherever it applies to conversion to freehold and transfer to existing occupiers. It is not possible without huge delay and cost to bring all upgradeable titles into the deeds registry system, so the Deeds Office registration requirement should be made optional. And since there is no reason why title of land should not be established in the same way that other forms of title are, the requirement to use a conveyancer for routine property transactions involving simple transfer of ownership or the registration or cancellation of a mortgage bond should also be suspended.

Clear boundary descriptions in title deeds take precedence over any diagram; title disputes about tribal allotments without deeds registration are rare and readily resolved, and the law requiring banks only to grant mortgages against title secured by survey and registration can and should be changed.

All existing unregistered titles could become the lawful property of the existing lawful holder “at the stroke of a (statutory) pen.” Where registration already exists, it can be used and upgraded. Permission to occupy is usually registered in the local magistrate’s office, and it is much more realistic in the short term to upgrade existing magisterial registries to provide accurate records of land rights, than to transfer all properties to the Deeds Office.

It should then prove simple to convert all forms of *apartheid* title (such as permissions to occupy) and all forms of lease to freehold title and ownership by the existing lawful occupant, after suitable local advertising of property-holder lists where these exist. Legal provisions for rectification of title can handle any boundary problems which may emerge later.

### **The Challenge of Financing**

To enable banks to lend against the security of low-value property, to those perceived as high-risk borrowers, the usury law ceilings on effective interest rate should be repealed. Banks would not

necessarily need to raise interest rates if they were allowed to adjust their administration fees to compensate for risk and transaction size.

Lenders need the likelihood of payment even more than security, and it is admittedly not clear whether rural borrowers will pay dependably. One possible solution may be for a loan applicant's *stokvel* to pledge collective security for repayment.

### **Subdivision of Agricultural Land**

If subdivision is permitted, existing landowners will be able to endow their tenant farmers with land by mutual agreement. It is the law that victimises labour tenants, not the farmers. For historically disadvantaged people, a large supply of land in small and affordable units is urgently needed. Repeal of the Subdivision of Agricultural Land Act would be a practical and cost-free way of making vast quantities of land rapidly accessible. The self-interest of ordinary people is sufficient to ensure that, if a piece of land is too small to be viable, it will be sold or let to the user of a bigger unit.

### **Removal of Restrictions on Land Use**

Reverting to the 1960s versions of laws for establishing “formal” settlements would lead, as it did then, to empowerment of lower-income developers and an explosion of property development and rapid delivery of affordable land and housing to large numbers of people. Three decades of legislation have made township development procedures so cumbersome and costly that now only wealthy developers can afford them. Most approval requirements for the establishment of formal settlements should be dropped, and costly infrastructure (roads, drains, electricity, etc.) should be made optional.

Prescriptive land use controls should be scrapped. Any new restriction on usage should be regarded as a usurpation of property rights, requiring just compensation. Land rights should always include the reasonable right of use and enjoyment, and many excessively restrictive conditions of title and zoning need critical review. Town planning schemes and municipal by-laws should be amended, replacing zoning laws with nuisance and neighbourhood law (common law). The courts, especially small claims courts, should be enabled to enforce these, and to issue interdicts.

Adjusting housing policy by reducing minimum housing standards to realistic levels would accelerate housing provision. Housing of a low standard is preferable to no housing, and lawful housing is better than unlawful housing. Another low-income housing option would be to suspend or relax housing, township development and slum laws within new Special Housing Zones, also exempting these zones from building codes, interest-rate ceilings and costly formalities for mortgage and non-mortgage finance.

### **The National Home Builders Registration Council Bill, 1997**

Current laws impose entry barriers into the building industry and minimum standards for building materials and labour, thus raising costs and curtailing the supply of low-cost housing. The draft National Home Builders Registration Council Bill would impose further costs and entry barriers, and create an unnecessary and potentially harmful bureaucracy. There is no justification for the registration of builders, let alone the “enrolment” of houses, and passing this Bill into law will ensure that we get less housing, not more. It should be withdrawn.

### **Removal of Stamp Duties and Transfer Duties**

In a country where land redistribution is a priority, it is anomalous that the state intervenes to make it difficult and costly. Land transactions should not be a source of general revenue, so stamp duties and transfer duties attached to land transactions should be scrapped for all first home-buyers. These

medieval imposts on land transfer should be abolished forthwith, thus removing another restriction on market-driven land redistribution and another obstacle in the path of landless people.

## **Conclusion**

Good government is less government, and this briefing paper has focussed on the rapid suspension or repeal of legislation obstructing land reform and access to land, without laying out both sides of each issue in detail. The pervasive inefficiencies and economic, environmental and human impact of the *status quo* are hard to quantify, but there is undeniably much to be gained.

When proposing sweeping and abolitionist reforms, however, one may not just wish away difficulties such as potential tribal resistance to change, state reluctance to part with land and power, and concerns about ownership and boundary disputes. Surveyors and conveyancers have their vested interests. Some may worry that unsophisticated people may over-extend themselves in buying land or housing. The old authoritarian inclination towards coercive central planning and controlled order, and the defensive argument that reforms must not lower standards, have not vanished.

Problems of this kind explain the current inertia. Government has unenviable choices. On the one hand, to strive for a perfect risk-free world for its citizens, and to be accused of non-delivery of land, houses, jobs and opportunity. On the other hand, to have a dynamic prosperous economy while dealing with myriad problems relating to rapid property-rights recognition and repealed legislation. Clearly the potential benefits far outweigh the risks.

## **Further reading**

Jacoby, EH (1971) *Man and the Land*, Andre Deutsch, London.

North, DC (1992) *Institutions, Institutional Change and Economic Performance*, Cambridge University Press, Cambridge

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